

House Bill 366 (FLOOR SUBSTITUTE)

By: Representatives Murphy of the 23rd, Amerson of the 9th, Byrd of the 20th, Miller of the 106th, Scheid of the 22nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal
2 defense for indigents, so as to allow alternative delivery systems to opt out from having a
3 public defender system under certain circumstances; to change provisions relating to
4 alternative delivery systems; to provide for appeal; to change certain provisions relating to
5 the Georgia Public Defender Standards Council development of standards; to provide for an
6 assistant public defender for the juvenile division within each circuit public defender office;
7 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
8 for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense
12 for indigents, is amended by striking Code Section 17-12-8, relating to approval by council
13 for representation of indigents and development of standards, and inserting in lieu thereof the
14 following:

15 "17-12-8.

16 (a) The council shall approve the development and improvement of programs which
17 provide legal representation to indigent persons and juveniles.

18 (b) The council shall approve and implement programs, services, rules, policies,
19 procedures, regulations, and standards as may be necessary to fulfill the purposes and
20 provisions of this article and to comply with all applicable laws governing the rights of
21 indigent persons accused of violations of criminal law. Standards shall include, but shall
22 not be limited to, the following:

23 (1) Standards for maintaining and operating circuit defender offices, including
24 requirements regarding qualifications, training, and size of the legal and supporting staff
25 of such offices;

- 1 (2) Standards prescribing minimum experience, training, and other qualifications for
 - 2 appointed counsel where a conflict of interest arises between the public defender and an
 - 3 indigent person;
 - 4 (3) Standards for assistant public defender and appointed counsel caseloads;
 - 5 (4) Standards for the performance of assistant public defenders and appointed counsel
 - 6 representing indigent persons;
 - 7 (5) Standards and procedures for the appointment of independent, competent, and
 - 8 efficient counsel for representation in both the trial and appellate courts of indigent
 - 9 persons whose cases present conflicts of interest;
 - 10 (6) Standards for providing and compensating experts, investigators, and other persons
 - 11 who provide services necessary for the effective representation of indigent persons;
 - 12 (7) Standards for qualifications and performance of counsel representing indigent
 - 13 persons in capital cases;
 - 14 (8) Standards for determining indigence and for assessing and collecting the costs of
 - 15 legal representation and related services;
 - 16 (9) Standards for compensation of attorneys appointed to represent indigent persons
 - 17 under this article;
 - 18 (10) Standards for removing a circuit public defender for cause pursuant to Code Section
 - 19 17-12-20;
 - 20 (11) Standards for a uniform definition of a 'case' for purposes of determining caseload
 - 21 statistics; and
 - 22 (12) Standards for accepting contractual indigent defense representation.
- 23 (c) The initial minimum standards promulgated by the council pursuant to this Code
24 section and which are determined by the General Oversight Committee for the Georgia
25 Public Defender Standards Council to have a fiscal impact shall be submitted by the
26 council to the General Assembly at the regular session for 2005 and shall become effective
27 only when ratified by joint resolution of the General Assembly and upon the approval of
28 the resolution by the Governor or upon its becoming law without such approval. The power
29 of the council to promulgate such initial minimum standards shall be deemed to be
30 dependent upon such ratification; provided, however, the minimum standards promulgated
31 by the council shall be utilized as a guideline prior to ratification. Any subsequent
32 amendments or additions to the initial minimum standards promulgated by the council
33 pursuant to this Code section and which are determined by the General Oversight
34 Committee for the Georgia Public Defender Standards Council to have a fiscal impact shall
35 be ratified at the next regular session of the General Assembly and shall become effective
36 only when ratified by joint resolution of the General Assembly and upon the approval of
37 the resolution by the Governor or upon its becoming law without such approval.

1 (d) All standards that are promulgated by the council shall be publicly available for review
 2 and shall be posted on the council's website. Each standard shall identify the date upon
 3 which the standard took effect, and if the standard is subject to ratification by the General
 4 Assembly as provided by subsection (c) of this Code section, the status of the standard with
 5 respect to ratification."

6 SECTION 2.

7 Said chapter is further amended by striking subsection (a) of Code Section 17-12-27, relating
 8 to the appointment of assistant public defenders, and inserting in lieu thereof the following:

9 "(a) Subject to the provisions of this Code section, the circuit public defender in each
 10 judicial circuit is authorized to appoint:

11 (1) One assistant public defender for each superior court judge authorized for the circuit,
 12 excluding the chief judge and senior judges; ~~and~~

13 (2) One assistant public defender for each full-time juvenile court judge authorized for
 14 the circuit; and in those circuits where there is no full-time juvenile court judge, one
 15 assistant public defender for the juvenile division in that circuit subject to funds being
 16 appropriated by the General Assembly or otherwise available; and

17 (3) Subject to funds being appropriated by the General Assembly or otherwise available,
 18 additional assistant public defenders as may be authorized by the council. In authorizing
 19 additional assistant public defenders, the council shall consider the caseload, present staff,
 20 and resources available to each circuit public defender; and shall make authorizations as
 21 will contribute to the efficiency of individual circuit public defenders and the
 22 effectiveness of providing adequate legal defense for indigent defendants."

23 SECTION 3.

24 Said chapter is further amended by striking Code Section 17-12-36, relating to alternative
 25 delivery systems, and inserting in lieu thereof the following:

26 "17-12-36.

27 (a) The council may permit a judicial circuit composed of a single county to continue in
 28 effect an alternative delivery system to the one set forth in this article if:

29 (1) The delivery system:

30 (A) Has a full-time director and staff and had been fully operational for at least two
 31 years on July 1, 2003; or

32 (B) Is administered by the county administrative office of the courts or the office of the
 33 court administrator of the superior court and had been fully operational for at least two
 34 years on July 1, 2003;

1 (2) The council, by majority vote of the entire council, determines that the delivery
2 system meets or exceeds its standards, including, without limitation, caseload standards,
3 as the council adopts;

4 (3) The governing authority of the county comprising the judicial circuit enacts a
5 resolution expressing its desire to continue its delivery system and transmits a copy of
6 such resolution to the council not later than September 30, 2004; and

7 (4) The governing authority of the county comprising the judicial circuit enacts a
8 resolution agreeing to fully fund its delivery system.

9 (b) A judicial circuit composed of a single county may request an alternative delivery
10 system only one time, ~~which request shall be made on or before September 30, 2004;~~
11 provided, however, that if such judicial circuit's request for an alternative delivery system
12 was disapproved on or before December 31, 2004, such judicial circuit may make one
13 further request on or before September 1, 2005. The council shall allow such judicial
14 circuit to have a hearing on such judicial circuit's request.

15 (c) The council shall make a ~~final~~ determination with regard to continuation of an
16 alternative delivery system not later than ~~December 31, 2004~~ December 1, 2005, and if the
17 council determines that such judicial circuit's alternative delivery system does not meet the
18 standards as established by the council, the council shall notify such judicial circuit of its
19 deficiencies in writing and shall allow such judicial circuit an opportunity to cure such
20 deficiencies. The council shall make a final determination with regard to continuation of
21 an alternative delivery system on or before December 31, 2005. Initial and subsequent

22 approvals of alternative delivery systems shall be by a majority vote of the entire council.
23 (d) Any circuit whose alternative delivery system is disapproved at any time shall be
24 governed by the provisions of this article other than this Code section.

25 (e) In the event an alternative delivery system is approved, the council shall annually
26 review the operation of such system and determine whether such system is meeting the
27 standards as established by the council and is eligible to continue operating as an approved
28 alternative delivery system. In the event the council determines that such system is not
29 meeting the standards as established by the council, the council shall provide written notice
30 to such system of the deficiencies and shall provide such system an opportunity to cure
31 such deficiencies.

32 (f) In the event an alternative delivery system is approved, it shall keep and maintain
33 appropriate records, which shall include the number of persons represented; the offenses
34 charged; the outcome of each case; the expenditures made in providing services; and any
35 other information requested by the council.

1 (g) In the event the council disapproves an alternative delivery system either in its initial
2 application or annual review, such system may appeal such decision to the Supreme Court
3 of Georgia under such rules and procedures as shall be prescribed by the Supreme Court."

4 **SECTION 4.**

5 This Act shall become effective upon its approval by the Governor or upon its becoming law
6 without such approval; except that Section 2 of this Act shall become effective when funds
7 are specifically appropriated and available for the purpose of Section 2 in an appropriations
8 Act making specific reference to the provisions of Section 2 of this Act.

9 **SECTION 5.**

10 All laws and parts of laws in conflict with this Act are repealed.