

House Bill 366 (FLOOR SUBSTITUTE)

By: Representatives Murphy of the 23<sup>rd</sup>, Amerson of the 9<sup>th</sup>, Byrd of the 20<sup>th</sup>, Miller of the 106<sup>th</sup>, Scheid of the 22<sup>nd</sup>, 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.