

Senate Bill 503

By: Senators Hamrick of the 30th and Hill of the 4th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 21A of Title 15, Title 17, and Code Section 42-8-34.1 of the Official
2 Code of Georgia Annotated, relating respectively to judicial accounting, criminal procedure,
3 and to legal defense for indigents, requirements for revocation of probated or suspended
4 sentence, so as to change certain provisions relating to the Georgia Public Defender
5 Standards Council and the provision of legal services to indigent persons; to clarify that the
6 application fee for indigent defense services is not a prerequisite to obtaining legal services;
7 to provide that such fee may be paid as a condition of probation; to provide that failure to pay
8 such fee shall not serve as the sole basis of a probation revocation; to provide for staggered
9 terms for the councilmembers of the Georgia Public Defender Standards Council; to specify
10 the types of standards that shall be submitted to the General Oversight Committee for the
11 Georgia Public Defender Standards Council; to change certain provisions relating to the
12 budget of the council; to change certain provisions relating to contracting with the
13 Department of Administrative Services for personnel paid by local governments; to change
14 certain provisions relating to the budget for the Office of the Georgia Capital Defender; to
15 provide for related matters; to provide for an effective date; to repeal conflicting laws; and
16 for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Chapter 21A of Title 15 of the Official Code of Georgia Annotated, relating to judicial
20 accounting, is amended by striking Code Section 15-21A-6, relating to additional filing fees
21 and application fee for free legal services, and inserting in lieu thereof the following:

22 "15-21A-6.

23 (a) In addition to all other legal costs there shall be charged to the filing party and
24 collected by the clerk an additional filing fee of \$15.00 in each civil action or case filed in
25 the superior, state, probate, recorder's, mayor's, and magistrate courts except that
26 municipalities, counties, and political subdivisions shall be exempt from such fee. Without

1 limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari,
 2 applications by personal representatives for leave to sell or reinvest, trade name
 3 registrations, applications for change of name, and all other proceedings of a civil nature.
 4 Any matter which is docketed upon the official dockets of the enumerated courts and to
 5 which a number is assigned shall be subject to such fee, whether such matter is contested
 6 or not.

7 (b) Any person who applies for or receives legal defense services under Chapter 12 of
 8 Title 17 shall pay the entity providing the services a single fee of \$50.00 for the application
 9 for, receipt of, or application for and receipt of such services. The application fee may not
 10 be imposed if the payment of the fee is waived by the court. The court shall waive the fee
 11 if it finds that the applicant is unable to pay the fee or that hardship will result if the fee is
 12 charged. If the application fee required by this subsection has not been paid or waived at
 13 the time the defendant is sentenced, the court shall impose such fee as a condition of
 14 probation.

15 (c) Each clerk of court, each indigent defense program, or any other officer or agent of any
 16 court receiving any funds subject to this Code section shall collect the additional fees
 17 provided in this Code section and shall pay such moneys over to the authority by the last
 18 day of the month after the month of collection, to be deposited by the authority into the
 19 general fund of the state treasury.

20 (d) It is the intent of the General Assembly that all funds derived under this Code section
 21 shall be made available through the general appropriations process and may be
 22 appropriated for purposes of funding indigent defense.

23 (e) A public entity other than an entity providing legal defense services under Chapter 12
 24 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a
 25 \$50.00 application fee unless waived by the court for inability to pay or hardship. If the
 26 application fee required by this subsection has not been paid or waived at the time the
 27 defendant is sentenced, the court shall impose such fee as a condition of probation. Any
 28 such fee shall be retained by the entity providing the services or used as otherwise provided
 29 by law and shall not be subject to payment to the authority or deposit into the state
 30 treasury."

31 SECTION 2.

32 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
 33 amended in Chapter 10, relating to sentence and punishment, by adding a new Code section
 34 to read as follows:

1 "17-10-8.1.

2 In any case in which a defendant receives legal defense services pursuant to Chapter 12 of
3 Title 17 where the defendant has not paid the application fee required by Code Section
4 15-21A-6 and the court has not waived such fee at the time of sentencing, the court shall
5 impose such fee as a condition of probation."

6 **SECTION 3.**

7 Said title is further amended by striking Code Section 17-12-3, relating to the Georgia Public
8 Defender Standards Council's creation and membership, and inserting in lieu thereof the
9 following:

10 "17-12-3.

11 (a) There is created the Georgia Public Defender Standards Council to be composed of 11
12 members.

13 (b) Ten members ~~The membership~~ of the council shall be appointed as follows:

14 (1) Two members shall be appointed by the Governor, the Lieutenant Governor, the
15 Speaker of the House of Representatives, the Chief Justice of the Supreme Court of
16 Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in
17 paragraph (2) of this subsection. The members of the council shall be individuals with
18 significant experience working in the criminal justice system or who have demonstrated
19 a strong commitment to the provision of adequate and effective representation of indigent
20 defendants. The ~~These~~ members shall serve terms of four years; provided, however, that
21 the members appointed from the even-numbered judicial administration circuits shall
22 serve initial terms of six years and thereafter shall serve terms of four years;

23 (2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen
24 so that each of the ten judicial administration districts in the state is represented and so
25 that each appointing authority shall rotate the particular judicial administration district
26 for which he or she is responsible for appointing. The appointments shall be as follows:

27 (A) For the initial appointments:

28 (i) The Governor shall appoint one person who resides in judicial administration
29 district 1 and one person who resides in judicial administration district 2;

30 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
31 administration district 3 and one person who resides in judicial administration district
32 4;

33 (iii) The Speaker of the House of Representatives shall appoint one person who
34 resides in judicial administration district 5 and one person who resides in judicial
35 administration district 6;

1 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who
2 resides in judicial administration district 7 and one person who resides in judicial
3 administration district 8; and

4 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who
5 resides in judicial administration district 9 and one person who resides in judicial
6 administration district 10;

7 (B) For the first subsequent council appointments:

8 (i) The Governor shall appoint one person who resides in judicial administration
9 district 3 and one person who resides in judicial administration district 4;

10 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
11 administration district 5 and one person who resides in judicial administration district
12 6;

13 (iii) The Speaker of the House of Representatives shall appoint one person who
14 resides in judicial administration district 7 and one person who resides in judicial
15 administration district 8;

16 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who
17 resides in judicial administration district 9 and one person who resides in judicial
18 administration district 10; and

19 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who
20 resides in judicial administration district 1 and one person who resides in judicial
21 administration district 2;

22 (C) For the second subsequent council appointments:

23 (i) The Governor shall appoint one person who resides in judicial administration
24 district 5 and one person who resides in judicial administration district 6;

25 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
26 administration district 7 and one person who resides in judicial administration district
27 8;

28 (iii) The Speaker of the House of Representatives shall appoint one person who
29 resides in judicial administration district 9 and one person who resides in judicial
30 administration district 10;

31 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who
32 resides in judicial administration district 1 and one person who resides in judicial
33 administration district 2; and

34 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who
35 resides in judicial administration district 3 and one person who resides in judicial
36 administration district 4;

37 (D) For the third subsequent council appointments:

1 (i) The Governor shall appoint one person who resides in judicial administration
2 district 7 and one person who resides in judicial administration district 8;

3 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
4 administration district 9 and one person who resides in judicial administration district
5 10;

6 (iii) The Speaker of the House of Representatives shall appoint one person who
7 resides in judicial administration district 1 and one person who resides in judicial
8 administration district 2;

9 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who
10 resides in judicial administration district 3 and one person who resides in judicial
11 administration district 4; and

12 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who
13 resides in judicial administration district 5 and one person who resides in judicial
14 administration district 6; and

15 (E) For the fourth subsequent council appointments:

16 (i) The Governor shall appoint one person who resides in judicial administration
17 district 9 and one person who resides in judicial administration district 10;

18 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
19 administration district 1 and one person who resides in judicial administration district
20 2;

21 (iii) The Speaker of the House of Representatives shall appoint one person who
22 resides in judicial administration district 3 and one person who resides in judicial
23 administration district 4;

24 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who
25 resides in judicial administration district 5 and one person who resides in judicial
26 administration district 6; and

27 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who
28 resides in judicial administration district 7 and one person who resides in judicial
29 administration district 8.

30 All subsequent appointments shall continue on, with the entire cycle starting over again
31 as specified in subparagraph (A) of this paragraph;

32 (3) In addition, ~~there~~ the eleventh member shall be one circuit public defender who shall
33 serve on the council. After the initial appointments as set forth in paragraph (4) of this
34 subsection, the circuit public defender to serve on the council shall be elected by a
35 majority vote of all the circuit public defenders. The circuit public defender
36 councilmember shall serve terms of two years;

1 (4) All initial appointments shall be made to become members of the council on July 1,
 2 2003, and their successors shall become members of the council on July 1 following their
 3 appointment. The initial appointees from the even-numbered judicial administration
 4 circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3)
 5 of this subsection, the initial member representing the circuit public defenders shall be
 6 made by the Supreme Court of Georgia. The person representing the circuit defender
 7 position on the initial council shall be engaged on a full-time basis in the provision of
 8 criminal defense to the indigent;

9 (5) Any vacancy for a member appointed pursuant to paragraphs (1) and (2) of this
 10 subsection shall be filled by the appointing authority, and such appointee shall serve the
 11 balance of the vacating member's unexpired term; and

12 (6) Any vacancy for a member appointed pursuant to paragraph (3) of this subsection
 13 shall be the successor to the circuit public defender as set forth in subsection (d) of Code
 14 Section 17-12-20.

15 (c) In making these appointments, the appointing authorities shall seek to identify and
 16 appoint persons who represent a diversity of backgrounds and experience and shall solicit
 17 suggestions from the State Bar of Georgia, state and local bar associations, the Georgia
 18 Association of Criminal Defense Lawyers, the councils representing the various categories
 19 of state court judges in Georgia, and the Prosecuting Attorneys' Council of the State of
 20 Georgia, as well as from the public and other interested organizations and individuals
 21 within the state. The appointing authorities shall not appoint a prosecuting attorney as
 22 defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting
 23 attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of
 24 Georgia to serve on the council.

25 (d) This Code section shall become effective on July 1, 2003, for purposes of making the
 26 initial appointments to the council."

27 **SECTION 4.**

28 Said title is further amended by striking subsection (c) of Code Section 17-12-8, relating to
 29 submission to and ratification by the General Assembly of standards having a fiscal impact,
 30 and inserting in lieu thereof the following:

31 "(c) The initial minimum standards promulgated by the council pursuant to this Code
 32 section which are determined by the General Oversight Committee for the Georgia Public
 33 Defender Standards Council to have a fiscal impact shall be submitted by the council to the
 34 General Assembly at the regular session for 2005 and shall become effective only when
 35 ratified by joint resolution of the General Assembly and upon the approval of the resolution
 36 by the Governor or upon its becoming law without such approval. The power of the council

1 to promulgate such initial minimum standards shall be deemed to be dependent upon such
 2 ratification; provided, however, the minimum standards promulgated by the council shall
 3 be utilized as a guideline prior to ratification. Any subsequent amendments or additions to
 4 the initial minimum standards promulgated by the council pursuant to this Code section
 5 which are determined by the General Oversight Committee for the Georgia Public
 6 Defender Standards Council to have a significant fiscal impact shall be ratified at the next
 7 regular session of the General Assembly and shall become effective only when ratified by
 8 joint resolution of the General Assembly and upon the approval of the resolution by the
 9 Governor or upon its becoming law without such approval."

10 **SECTION 5.**

11 Said title is further amended by striking subsection (a) of Code Section 17-12-24, relating
 12 to guidelines for determining indigency, and inserting in lieu thereof the following:

13 "(a) The council shall establish ~~guidelines~~ standards for determining the financial
 14 eligibility of persons claiming indigence, and the circuit public defender and any other
 15 person or entity providing indigent defense services shall use the ~~guidelines~~ standards to
 16 determine the financial eligibility of any person or juvenile arrested, detained, or charged
 17 in any manner that would entitle him or her to representation under this article. Any person
 18 claiming indigence shall not be denied legal representation on the basis of the person's
 19 failure to pay the application fee required by Code Section 15-21A-6."

20 **SECTION 6.**

21 Said title is further amended by striking subsection (b) of Code Section 17-12-26, relating
 22 to the budget of the council, and inserting in lieu thereof the following:

23 "(b) The budget of the council shall include the budget of all circuit public defenders and
 24 other offices and entities, including conflict defender offices and appointed attorneys
 25 providing indigent defense representation under the authority of this article and the
 26 ~~multicounty public defender office~~ Office of the Georgia Capital Defender and the office
 27 of the mental health advocate."

28 **SECTION 7.**

29 Said title is further amended by striking Code Section 17-12-32, relating to contracting with
 30 the Department of Administrative Services for personnel paid by local governments, and
 31 inserting in lieu thereof the following:

32 "17-12-32.

33 The governing authority of any county or municipality within the judicial circuit which
 34 provides additional personnel for the office of circuit public defender may contract with

1 the ~~Department of Administrative Services~~ council to provide such additional personnel
 2 in the same manner as is provided for state paid personnel in this article. Any such
 3 personnel shall be considered state employees and shall be entitled to the same fringe
 4 benefits as other state paid personnel employed by the circuit public defender pursuant to
 5 this article. The governing authority of such county or municipality shall transfer to the
 6 ~~department~~ council such funds as may be necessary to cover the compensation, benefits,
 7 travel, and other expenses for such personnel."

8 **SECTION 8.**

9 Said title is further amended by striking Code Section 17-12-124, relating to the budget for
 10 the Office of the Georgia Capital Defender, and inserting in lieu thereof the following:

11 "17-12-124.

12 The council shall prepare an annual budget showing all anticipated expenses of the office
 13 for the following fiscal year, which shall be the same as the fiscal year of this state. The
 14 budget shall be submitted by the capital defender to the council and for Fiscal Year 2005
 15 and thereafter shall include the proposed budget for representation of all indigent persons
 16 accused of a capital felony for which the death penalty is or is likely to be sought."

17 **SECTION 9.**

18 Code Section 42-8-34.1 of the Official Code of Georgia Annotated, relating to requirements
 19 for revocation of probated or suspended sentence, is amended by adding a new subsection
 20 to read as follows:

21 "(h) Notwithstanding any other provision of this Code section, an alleged violation of
 22 probation for failure to pay the application fee pursuant to Code Section 15-21A-6 shall not
 23 serve as a sole basis for a probation revocation and the court shall not revoke probation for
 24 such failure to pay."

25 **SECTION 10.**

26 This Act shall become effective upon its approval by the Governor or upon its becoming law
 27 without such approval.

28 **SECTION 11.**

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