

Senate Bill 503

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

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 21A of Title 15 and Title 17 of the Official Code of Georgia Annotated,
 2 relating respectively to judicial accounting and criminal procedure, so as to change certain
 3 provisions relating to the Georgia Public Defender Standards Council and the provision of
 4 legal services to indigent persons; to clarify that the application fee for indigent defense
 5 services is not a prerequisite to obtaining legal services; to provide that such fee may be paid
 6 as a condition of probation; to provide for staggered terms for the councilmembers of the
 7 Georgia Public Defender Standards Council; to change certain provisions relating to the
 8 budget of the council; to provide that public defenders shall not be authorized to utilize a
 9 badge, shield, or similar item; to change certain provisions relating to public defenders; to
 10 change certain provisions relating to contracting with the Department of Administrative
 11 Services for personnel paid by local governments; to provide eligibility standards to
 12 determine who may receive representation under Chapter 12 of Title 17; to change certain
 13 provisions relating to the budget for the Office of the Georgia Capital Defender; to provide
 14 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
 15 purposes.

16 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

17 **SECTION 1.**

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

22 "(b) Any person who applies for or receives legal defense services under Chapter 12 of
 23 Title 17 shall pay the entity providing the services a single fee of \$50.00 for the application
 24 for, receipt of, or application for and receipt of such services. The application fee may not
 25 be imposed if the payment of the fee is waived by the court. The court shall waive the fee
 26 if it finds that the applicant is unable to pay the fee or that hardship will result if the fee is

1 charged. If the application fee required by this subsection has not been paid or waived at
 2 the time the defendant is sentenced, the court shall impose such fee as a condition of
 3 probation."

4 "(e) A public entity other than an entity providing legal defense services under Chapter 12
 5 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a
 6 \$50.00 application fee unless waived by the court for inability to pay or hardship. If the
 7 application fee required by this subsection has not been paid or waived at the time the
 8 defendant is sentenced, the court shall impose such fee as a condition of probation. Any
 9 such fee shall be retained by the entity providing the services or used as otherwise provided
 10 by law and shall not be subject to payment to the authority or deposit into the state
 11 treasury."

12 SECTION 2.

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

16 "17-10-8.1.

17 In any case in which a defendant receives legal defense services pursuant to Chapter 12 of
 18 Title 17 where the defendant has not paid the application fee required by Code Section
 19 15-21A-6 and the court has not waived such fee at the time of sentencing, the court shall
 20 impose such fee as a condition of probation."

21 SECTION 3.

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

25 "17-12-3.

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

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

29 (1) Two members shall be appointed by the Governor, the Lieutenant Governor, the
 30 Speaker of the House of Representatives, the Chief Justice of the Supreme Court of
 31 Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in
 32 paragraph (2) of this subsection. The members of the council shall be individuals with
 33 significant experience working in the criminal justice system or who have demonstrated
 34 a strong commitment to the provision of adequate and effective representation of indigent
 35 defendants. The ~~These~~ members shall serve terms of four years; provided, however, that

1 the members appointed from the even-numbered judicial administration circuits shall
2 serve initial terms of six years and thereafter shall serve terms of four years;

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

7 (A) For the initial appointments:

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

10 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
11 administration district 3 and one person who resides in judicial administration district
12 4;

13 (iii) The Speaker of the House of Representatives shall appoint one person who
14 resides in judicial administration district 5 and one person who resides in judicial
15 administration district 6;

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

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

22 (B) For the first subsequent council appointments:

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

25 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
26 administration district 5 and one person who resides in judicial administration district
27 6;

28 (iii) The Speaker of the House of Representatives shall appoint one person who
29 resides in judicial administration district 7 and one person who resides in judicial
30 administration district 8;

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

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

37 (C) For the second subsequent council appointments:

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

3 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
4 administration district 7 and one person who resides in judicial administration district
5 8;

6 (iii) The Speaker of the House of Representatives shall appoint one person who
7 resides in judicial administration district 9 and one person who resides in judicial
8 administration district 10;

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

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

15 (D) For the third subsequent council appointments:

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

18 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
19 administration district 9 and one person who resides in judicial administration district
20 10;

21 (iii) The Speaker of the House of Representatives shall appoint one person who
22 resides in judicial administration district 1 and one person who resides in judicial
23 administration district 2;

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

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

30 (E) For the fourth subsequent council appointments:

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

33 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
34 administration district 1 and one person who resides in judicial administration district
35 2;

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

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

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

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

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

17 (4) All initial appointments shall be made to become members of the council on July 1,
 18 2003, and their successors shall become members of the council on July 1 following their
 19 appointment. The initial appointees from the even-numbered judicial administration
 20 circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3)
 21 of this subsection, the initial member representing the circuit public defenders shall be
 22 made by the Supreme Court of Georgia. The person representing the circuit defender
 23 position on the initial council shall be engaged on a full-time basis in the provision of
 24 criminal defense to the indigent;

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

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

31 (c) In making these appointments, the appointing authorities shall seek to identify and
 32 appoint persons who represent a diversity of backgrounds and experience and shall solicit
 33 suggestions from the State Bar of Georgia, state and local bar associations, the Georgia
 34 Association of Criminal Defense Lawyers, the councils representing the various categories
 35 of state court judges in Georgia, and the Prosecuting Attorneys' Council of the State of
 36 Georgia, as well as from the public and other interested organizations and individuals
 37 within the state. The appointing authorities shall not appoint a prosecuting attorney as

1 defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting
 2 attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of
 3 Georgia to serve on the council.

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

6 SECTION 4.

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

9 ~~"(a) The council shall establish guidelines for determining the financial eligibility of~~
 10 ~~persons claiming indigence, and the circuit public defender and any other person or entity~~
 11 ~~providing indigent defense services shall use the guidelines to determine the financial~~
 12 ~~eligibility of any person or juvenile arrested, detained, or charged in any manner that would~~
 13 ~~entitle him or her to representation under this article. For purposes of determining the~~
 14 ~~eligibility of persons claiming indigency and arrested, detained, or charged in any manner~~
 15 ~~that would entitle him or her to representation under this chapter, the following shall apply:~~

16 (1) A person charged with a misdemeanor, violation of probation, or a municipal, county,
 17 or juvenile offense punishable by imprisonment who earns or, in the case of a juvenile,
 18 whose parents earn, less than 125 percent of the federal poverty guidelines is entitled to
 19 legal representation under this chapter unless there is evidence that the person has other
 20 resources that might reasonably be used to employ a lawyer without undue hardship on
 21 the person or his or her dependents;

22 (2) A person charged with a felony who earns or, in the case of a juvenile, whose parents
 23 earn, less than 150 percent of the federal poverty guidelines is entitled to legal
 24 representation under this chapter unless there is evidence that the person has other
 25 resources that might reasonably be used to employ a lawyer without undue hardship on
 26 the person or his or her dependents; and

27 (3) In no case shall a person whose maximum income level exceeds 150 percent of the
 28 federal poverty level or, in the case of a juvenile, whose household income exceeds 150
 29 percent of the federal poverty level be entitled to representation under this chapter."

30 SECTION 5.

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

33 "(b) The budget of the council shall include the budget of all circuit public defenders and
 34 other offices and entities, including conflict defender offices and appointed attorneys
 35 providing indigent defense representation under the authority of this article and the

1 ~~multicounty public defender office~~ Office of the Georgia Capital Defender and the office
2 of the mental health advocate."

3 **SECTION 5.1.**

4 Said title is further amended by striking subsection (g) of Code Section 17-12-27, relating
5 to the appointment of assistant public defenders, salary, and promotions, and inserting a new
6 subsection (g) to read as follows:

7 "(g) All full-time state paid employees of the office of the circuit public defender shall be
8 state employees in the unclassified service of the State Merit System of Personnel
9 Administration with all benefits of such appointed state employees as provided by law.
10 A circuit public defender, assistant public defender, or local public defender may be issued
11 an employee identification card by his or her employing agency; provided, however, no
12 employer of any such public defender shall issue nor shall any public defender display,
13 wear, or carry any badge, shield, card, or other item that is similar to a law enforcement
14 officer's badge or that could be reasonably construed to indicate that the public defender
15 is a peace officer or law enforcement official."

16 **SECTION 6.**

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

20 "17-12-32.

21 The governing authority of any county or municipality within the judicial circuit which
22 provides additional personnel for the office of circuit public defender may contract with
23 the ~~Department of Administrative Services~~ council to provide such additional personnel
24 in the same manner as is provided for state paid personnel in this article. Any such
25 personnel shall be considered state employees and shall be entitled to the same fringe
26 benefits as other state paid personnel employed by the circuit public defender pursuant to
27 this article. The governing authority of such county or municipality shall transfer to the
28 ~~department~~ council such funds as may be necessary to cover the compensation, benefits,
29 travel, and other expenses for such personnel."

30 **SECTION 7.**

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

33 "17-12-124.

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

6 **SECTION 8.**

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

9 **SECTION 9.**

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