

The House Committee on Judiciary Non-civil offers the following substitute to SB 503:

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 define an indigent person with respect to the federal poverty  
7 level; to provide for staggered terms for the councilmembers of the Georgia Public Defender  
8 Standards Council; to change certain provisions relating to the standards created by the  
9 Georgia Public Defender Standards Council; to change certain provisions relating to  
10 guidelines for determining indigency; to change certain provisions relating to the budget of  
11 the council; to provide that public defenders shall not be authorized to utilize a badge, shield,  
12 or similar item; to change certain provisions relating to public defenders; to change certain  
13 provisions relating to contracting with the Department of Administrative Services for  
14 personnel paid by local governments; to change certain provisions relating to the budget for  
15 the Office of the Georgia Capital Defender; to provide for related matters; to provide for an  
16 effective date; to repeal conflicting laws; and 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 subsections (b) and (e) of Code Section 15-21A-6,  
21 relating to additional filing fees and application fee for free legal services, and inserting in  
22 lieu thereof the following:

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

1 if it finds that the applicant is unable to pay the fee or that hardship will result if the fee is  
 2 charged. If the application fee required by this subsection has not been paid or waived at  
 3 the time the defendant is sentenced, the court shall impose such fee as a condition of  
 4 probation."

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

### 13 SECTION 2.

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

17 "17-10-8.1.

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

### 22 SECTION 3.

23 Said title is further amended by striking Code Section 17-12-2, relating to definitions, and  
 24 inserting in lieu thereof the following:

25 "17-12-2.

26 As used in this chapter, the term:

- 27 (1) 'Assistant public defender' means an attorney who is employed by any circuit public  
 28 defender or conflict defender office.
- 29 (2) 'Circuit public defender' means the head of a public defender office providing  
 30 indigent defense representation within any given judicial circuit of this state.
- 31 (3) 'Circuit public defender office' means the office of any of the several circuit public  
 32 defenders.
- 33 (4) 'Council' means the Georgia Public Defender Standards Council.
- 34 (5) 'Indigent person' or 'indigent defendant' means:

1 (A) A person charged with a misdemeanor, violation of probation, or a municipal,  
 2 county, or juvenile offense punishable by imprisonment who earns or, in the case of a  
 3 juvenile, whose parents earn, less than 125 percent of the federal poverty guidelines  
 4 unless there is evidence that the person has other resources that might reasonably be  
 5 used to employ a lawyer without undue hardship on the person or his or her dependents;  
 6 and

7 (B) A person charged with a felony who earns or, in the case of a juvenile, whose  
 8 parents earn, less than 150 percent of the federal poverty guidelines unless there is  
 9 evidence that the person has other resources that might reasonably be used to employ  
 10 a lawyer without undue hardship on the person or his or her dependents.

11 In no case shall a person whose maximum income level exceeds 150 percent of the  
 12 federal poverty level or, in the case of a juvenile, whose household income exceeds 150  
 13 percent of the federal poverty level be an indigent person or indigent defendant.

14 (6) 'Public defender' means an attorney who is employed in a circuit public defender  
 15 office or conflict defender office or who represents an indigent person pursuant to this  
 16 chapter."

#### 17 **SECTION 4.**

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

21 "17-12-3.

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

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

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

34 (2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen  
 35 so that each of the ten judicial administration districts in the state is represented and so

1 that each appointing authority shall rotate the particular judicial administration district  
2 for which he or she is responsible for appointing. The appointments shall be as follows:

3 (A) For the initial appointments:

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

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

9 (iii) The Speaker of the House of Representatives shall appoint one person who  
10 resides in judicial administration district 5 and one person who resides in judicial  
11 administration district 6;

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

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

18 (B) For the first subsequent council appointments:

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

21 (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
22 administration district 5 and one person who resides in judicial administration district  
23 6;

24 (iii) The Speaker of the House of Representatives shall appoint one person who  
25 resides in judicial administration district 7 and one person who resides in judicial  
26 administration district 8;

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

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

33 (C) For the second subsequent council appointments:

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

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

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

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

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

13 (D) For the third subsequent council appointments:

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

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

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

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

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

28 (E) For the fourth subsequent council appointments:

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

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

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

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

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

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

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

14 (4) All initial appointments shall be made to become members of the council on July 1,  
15 2003, and their successors shall become members of the council on July 1 following their  
16 appointment. The initial appointees from the even-numbered judicial administration  
17 circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3)  
18 of this subsection, the initial member representing the circuit public defenders shall be  
19 made by the Supreme Court of Georgia. The person representing the circuit defender  
20 position on the initial council shall be engaged on a full-time basis in the provision of  
21 criminal defense to the indigent;

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

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

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

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

3 **SECTION 5.**

4 Said title is further amended by striking paragraph (8) of subsection (b) of Code Section  
5 17-12-8, relating to approval by the Georgia Public Defender Standards Council of programs  
6 for representation of indigents and development of standards, and inserting in lieu thereof the  
7 following:

8 "(8) Standards for ~~determining indigence and for assessing and~~ collecting the costs of  
9 legal representation and related services;"

10 **SECTION 6.**

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 for determining the financial eligibility of~~  
14 ~~persons claiming indigence, and the~~ circuit public defender and any other person or entity  
15 providing indigent defense services shall ~~use the guidelines to~~ determine the financial  
16 eligibility of any person or juvenile arrested, detained, or charged in any manner in  
17 accordance with the definition of an indigent person set forth in Code Section 17-12-2 that  
18 would entitle him or her to representation under this ~~article~~ chapter."

19 **SECTION 7.**

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

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

27 **SECTION 8.**

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

31 "(g) All full-time state paid employees of the office of the circuit public defender shall be  
32 state employees in the unclassified service of the State Merit System of Personnel  
33 Administration with all benefits of such appointed state employees as provided by law.

1 A circuit public defender, assistant public defender, or local public defender may be issued  
 2 an employee identification card by his or her employing agency; provided, however, no  
 3 employer of any such public defender shall issue nor shall any public defender display,  
 4 wear, or carry any badge, shield, card, or other item that is similar to a law enforcement  
 5 officer's badge or that could be reasonably construed to indicate that the public defender  
 6 is a peace officer or law enforcement official."

#### 7 **SECTION 9.**

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

11 "17-12-32.

12 The governing authority of any county or municipality within the judicial circuit which  
 13 provides additional personnel for the office of circuit public defender may contract with  
 14 the ~~Department of Administrative Services~~ council to provide such additional personnel  
 15 in the same manner as is provided for state paid personnel in this article. Any such  
 16 personnel shall be considered state employees and shall be entitled to the same fringe  
 17 benefits as other state paid personnel employed by the circuit public defender pursuant to  
 18 this article. The governing authority of such county or municipality shall transfer to the  
 19 ~~department~~ council such funds as may be necessary to cover the compensation, benefits,  
 20 travel, and other expenses for such personnel."

#### 21 **SECTION 10.**

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

24 "17-12-124.

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

#### 30 **SECTION 11.**

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

1

**SECTION 12.**

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