

House Bill 1245

By: Representatives Ralston of the 7th, Knox of the 24th, Levitas of the 82nd, and Martin of the 47th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 and Chapter 12 of Title 17 of the Official Code of Georgia Annotated,
2 relating to courts and legal defense for indigents, respectively, so as to revise matters relative
3 to funding, budgeting, and the organization of providing indigent defense; to change certain
4 provisions relating to requesting judicial assistance from other courts; to change certain
5 provisions relating to senior judge status and requesting assistance of senior judges; to
6 change certain provisions relating to senior judges of the state court, probate court, or
7 juvenile court and requesting assistance of a senior judge; to provide that the Georgia
8 Superior Court Clerks' Cooperative Authority be responsible for collecting and disbursing
9 certain funds paid to the clerk of court and sheriff for funding of indigent defense, instead
10 of the Georgia Public Defender Standards Council; to remove provisions directing funding
11 for indigent defense; to remove the additional penalty to be imposed in certain criminal,
12 quasi-criminal, and traffic cases; to direct certain funds to be paid to governing authorities;
13 to change certain provisions relating to the \$50.00 application fee for indigent defense
14 services; to change certain definitions; to change the composition of the the Georgia Public
15 Defender Standards Council to include county commissioners; to provide for appointment,
16 qualifications, and terms for new members; to require auditing and accounting of revenues
17 received by the council; to expand the director's responsibilities; to remove the ratification
18 process for standards adopted by the council; to enhance the council's annual reporting of
19 certain matters; to change provisions relating to the General Oversight Committee of the
20 Georgia Public Defender Standards Council; to repeal provisions relating to the council
21 assuming the responsibilities of the former Georgia Indigent Defense Council; to provide for
22 the mental health advocacy division and its duties and responsibilities; to repeal provisions
23 relating to the transition period; to provide for the Georgia capital defender division and its
24 duties and responsibilities; to provide for conflict counsel in death penalty cases and costs
25 associated therewith; to change matters relating to the appointment of counsel in death
26 penalty cases; to change matters relating to payment of attorney's fees and expenses in
27 capital cases in which the death penalty is sought; to change the name and composition of
28 the circuit public defender selection panels; to provide for a chairperson and secretary for the

1 panel and responsibilities; to provide for the removal of circuit public defenders not for
 2 cause; to change the length of the term for circuit public defenders; to change provisions
 3 regarding legal representation in cases where a circuit public defender office has a conflict
 4 of interest; to change provisions relating to the 72 hour rule; to change provisions relating
 5 to cost-of-living adjustments for and employment of circuit public defenders; to clarify that
 6 circuit public defenders may hire additional personnel only if authorized by local law or if
 7 approved by the county governing authority; to change provisions relating to certain
 8 prohibitions for assistant public defenders; to change provisions relating to the budget of the
 9 council; to correct cross-references; to provide for funding for alternative delivery systems;
 10 to remove legislative intent with regard to attorney's fees collected being used to fund
 11 indigent defense; to repeal provisions relating to the office of mental health advocacy; to
 12 provide for verification of income by a governing authority; to repeal provisions relating to
 13 the Office of the Georgia Capital Defender; to provide for related matters; to provide for
 14 effective dates and applicability; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by adding
 18 a new subsection to Code Section 15-1-9.1, relating to requesting judicial assistance from
 19 other courts, to read as follows:

20 "(n) Notwithstanding the provisions of this Code section, a senior judge shall not be
 21 assigned, designated, or preside in any criminal case involving a capital offense for which
 22 the death penalty may be imposed."

23 **SECTION 2.**

24 Said title is further amended by adding a new subsection to Code Section 15-1-9.2, relating
 25 to senior judge status and requesting assistance of senior judges, to read as follows:

26 "(e) Notwithstanding the provisions of this Code section, a senior judge shall not be
 27 assigned, designated, or preside in any criminal case involving a capital offense for which
 28 the death penalty may be imposed."

29 **SECTION 3.**

30 Said title is further amended by adding a new subsection to Code Section 15-1-9.3, relating
 31 to senior judges of the state court, probate court, or juvenile court and requesting assistance
 32 of a senior judge, to read as follows:

1 "(g) Notwithstanding the provisions of this Code section, a senior judge shall not be
 2 assigned, designated, or preside in any criminal case involving a capital offense for which
 3 the death penalty may be imposed."

4 SECTION 4.

5 Said title is further amended by revising Code Section 15-6-76.1, relating to the election by
 6 clerks as to investing or depositing funds and the manner of depositing funds paid into the
 7 court registry, as follows:

8 "15-6-76.1.

9 (a) In counties where the clerk of the superior court exercised discretion to invest funds
 10 pursuant to Code Section 15-6-75 or to deposit funds in one or more interest-bearing
 11 accounts pursuant to Code Section 15-6-76, and such funds were invested or on deposit on
 12 January 1, 1993, the clerk may continue to invest such funds pursuant to Code Section
 13 15-6-75 or deposit such funds pursuant to Code Section 15-6-76 until July 1, 1994. In such
 14 counties, clerks who do not elect to continue investing or depositing funds pursuant to such
 15 Code sections, or who cease depositing or investing such funds pursuant to such Code
 16 sections, shall be subject to the provisions of subsections (c) through (g) of this Code
 17 section. ~~In such counties, clerks shall provide a written notice to the Georgia Public
 18 Defender Standards Council within 30 days following July 1, 1993, stating that funds were
 19 invested or on deposit pursuant to Code Section 15-6-75 or 15-6-76 on January 1, 1993,
 20 and stating whether they have elected to continue investing or depositing funds pursuant
 21 to Code Sections 15-6-75 and 15-6-76 or to comply with the provisions of subsections (c)
 22 through (g) of this Code section. In such counties, clerks may change their election by
 23 written notice to the Georgia Public Defender Standards Council.~~

24 (b) In counties where no funds were invested or on deposit pursuant to Code Section
 25 15-6-75 or 15-6-76 on January 1, 1993, clerks shall be subject to the provisions of
 26 subsections (c) through (g) of this Code section, effective July 1, 1993.

27 (c) When funds are paid into the registry of the court, the clerk shall deposit such funds
 28 in one or more interest-bearing trust accounts in investments authorized by Code Section
 29 36-80-3 or by Chapter 83 of Title 36.

30 (d) When funds have been paid into the registry of the court pursuant to a court order
 31 directing that such funds be deposited in an interest-bearing trust account for the benefit
 32 of one or more of the parties, the interest received from such funds after service charges
 33 or fees imposed by the bank or depository shall be paid to one or more of the parties as the
 34 order of the court directs.

35 (e) When funds have been paid into the registry of the court and the order of the court
 36 relating to such funds does not state that such funds shall be placed in an interest-bearing

1 trust account for the benefit of one or more of the parties, the clerk shall deposit such funds
 2 in an interest-bearing trust account, and the financial institution in which such funds are
 3 deposited shall remit, after service charges or fees are deducted, the interest generated by
 4 said funds directly, at least quarterly and within 30 days of receipt, to the Georgia Superior
 5 Court Clerks' Cooperative Authority for distribution to the Georgia Public Defender
 6 Standards Council for distribution to the circuit public defender offices. With each
 7 remittance, the financial institution shall send a statement showing the name of the court,
 8 the rate of interest applied, the average monthly balance in the account against which the
 9 interest rate is applied, the service charges or fees of the bank or other depository, and the
 10 net remittance. This subsection shall include, but not be limited to, cash supersedeas bonds
 11 for criminal appeal, other supersedeas bonds, and bonds or funds paid into the court
 12 registry in actions involving interpleader, condemnation, and requests for injunctive relief.
 13 ~~The Georgia Public Defender Standards Council~~ Superior Court Clerks' Cooperative
 14 Authority shall allocate all interest received from such funds deposited in interest-bearing
 15 trust accounts to the circuit public defender offices.

16 (f) In its discretion, the court may at any time amend its order to require that the funds be
 17 deposited into an interest-bearing account for the benefit of one or more of the parties to
 18 the action, and the clerk shall comply with such amended order.

19 (g) In counties where the service charges or fees of the bank or depository would exceed
 20 the interest received from funds subject to this Code section, the clerk shall be exempt from
 21 subsections (a) through (f) of this Code section. In such counties, the clerk shall send a
 22 written notice to the ~~Georgia Public Defender Standards Council~~ Superior Court Clerks'
 23 Cooperative Authority."

24 SECTION 5.

25 Said title is further amended by revising Code Section 15-7-49, relating to remittance of
 26 interest from interest-bearing trust accounts to the Georgia Public Defender Standards
 27 Council, as follows:

28 "15-7-49.

29 When funds are paid into the court registry, the clerk shall deposit such funds in
 30 interest-bearing trust accounts, and the interest from those funds shall be remitted to the
 31 ~~Georgia Public Defender Standards Council~~ Superior Court Clerks' Cooperative Authority
 32 in accordance with the provisions of subsections (c) through (g) of Code Section 15-6-76.1.
 33 ~~The Georgia Public Defender Standards Council~~ Superior Court Clerks' Cooperative
 34 Authority shall allocate all interest received from such funds in accordance with subsection
 35 (e) of Code Section 15-6-76.1."

1 With each remittance, the financial institution shall send a statement showing the name of
 2 the county, deposits and withdrawals from the account or accounts, interest paid, service
 3 charges or fees of the bank or other depository, and the net remittance. The Georgia ~~Public~~
 4 ~~Defender Standards Council~~ Superior Court Clerks' Cooperative Authority shall allocate
 5 all interest received from such funds deposited in interest-bearing trust accounts to the
 6 circuit public defender offices.

7 (c) In counties where the service charges or fees of the bank or depository would exceed
 8 the interest received from funds subject to this Code section, the sheriff shall be exempt
 9 from subsections (a) and (b) of this Code section. In such counties, the sheriff shall send
 10 a written notice to the Georgia ~~Public Defender Standards Council~~ Superior Court Clerks'
 11 Cooperative Authority."

12 SECTION 9.

13 Said title is further amended by revising Code Section 15-21-73, relating to the penalties to
 14 be imposed in certain criminal, quasi-criminal, and traffic cases and upon violation of bond,
 15 as follows:

16 "15-21-73.

17 (a)(1) In every case in which any state court, probate court, juvenile court, police,
 18 recorder's, or mayor's court, municipal court, magistrate court, or superior court in this
 19 state shall impose a fine, which shall be construed to include costs, for any criminal or
 20 quasi-criminal offense against a criminal or traffic law, including civil traffic violations and
 21 violations of local criminal ordinances, of this state or political subdivision thereof, there
 22 shall be imposed as an additional penalty a sum equal to:

23 (A) The lesser of \$50.00 or 10 percent of the original fine; plus

24 (B) An additional 10 percent of the original fine.

25 (2) At the time of posting bail or bond in any case involving a violation of a criminal or
 26 traffic law of this state or political subdivision thereof, an additional sum equal to:

27 (A) The lesser of ~~\$50.00~~ \$100.00 or 10 percent of the original amount of bail or bond;
 28 plus

29 (B) The lesser of an additional ~~\$50.00~~ \$100.00 or 10 percent of the original amount of
 30 bail or bond

31 shall be posted. In every case in which any state court, probate court, municipal court,
 32 magistrate court, recorder's court, mayor's court, or superior court shall order the forfeiture
 33 of bail or bond, the additional amounts provided for in this paragraph shall be paid over as
 34 provided in Code Section 15-21-74.

35 (b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to
 36 be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51

1 concerning the Judges of the Probate Courts Retirement Fund of Georgia and any other
2 amounts provided for by law."

3 **SECTION 10.**

4 Said title is further amended by revising Code Section 15-21-74, relating to assessment and
5 collection of penalties, transfer of payments to the Georgia Superior Court Clerks'
6 Cooperative Authority, and quarterly accounting, as follows:

7 "15-21-74.

8 The sums provided for in under paragraph (1) of subsection (a) of Code Section 15-21-73
9 shall be assessed and collected by the court officer charged with the duty of collecting
10 moneys arising from fines ~~and forfeited bonds~~ and shall be paid over to the Georgia
11 Superior Court Clerks' Cooperative Authority by the last day of the month there following,
12 to be deposited by the authority into the general treasury. The sums provided for under
13 paragraph (2) of subsection (a) of Code Section 15-21-73 shall be assessed and collected
14 by the court officer charged with the duty of collecting moneys arising from forfeited
15 bonds and shall be paid over to the Georgia Superior Court Clerks' Cooperative Authority
16 by the last day of the month there following. Fifty percent of such funds shall be deposited
17 by the authority into the general treasury. The other 50 percent shall be remitted to the
18 governing authority which collected such funds if such governing authority has a procedure
19 to verify the applicant's income as set forth in Code Section 17-12-80; provided, however,
20 that if such governing authority does not have such verification procedure, such funds shall
21 be deposited into the general treasury. The authority shall, on a quarterly basis, make a
22 report and accounting of all funds collected and disbursed pursuant to this article and shall
23 submit such report and accounting to the Office of Planning and Budget, the House Budget
24 Office, and the Senate Budget Office no later than 60 days after the last day of the
25 preceding quarter."

26 **SECTION 11.**

27 Said title is further amended by revising Code Section 15-21-77, relating to collections to be
28 appropriated for law enforcement or prosecutorial officers' training and funding for indigent
29 defense, as follows:

30 "15-21-77.

31 (a) An amount equal to the net proceeds derived under subparagraphs (a)(1)(A) and
32 (a)(2)(A) of Code Section 15-21-73 in the immediately preceding year shall be
33 appropriated to fund law enforcement or prosecutorial officers' training, or both, and
34 activities incident thereto, including, but not limited to, payment or repayment to the state
35 treasury for capital outlay, general obligation bond debt service, administrative expenses,

1 and any other expense or fund application which the General Assembly may deem
 2 appropriate. This subsection shall not preclude the appropriation of a greater amount for
 3 this purpose.

4 ~~(b) It is the intent of the General Assembly that all funds derived under subparagraphs~~
 5 ~~(a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 shall be made available through the~~
 6 ~~general appropriations process and may be appropriated for purposes of funding indigent~~
 7 ~~defense.~~

8 ~~(c) Where the Georgia Public Defender Standards Council has approved an alternative~~
 9 ~~delivery system as set forth in Code Section 17-12-36, the council shall pay from funds~~
 10 ~~available to the council an amount of funds equal to the amount that would have been~~
 11 ~~allocated to the circuit for the minimum salary of the circuit public defender, the assistant~~
 12 ~~circuit public defenders, the investigator, and the administrative staff, exclusive of benefits,~~
 13 ~~if the circuit was not operating an alternative delivery system."~~

14 **SECTION 12.**

15 Said title is further amended by revising Code Section 15-21A-6, relating to additional filing
 16 fees, application for free legal services, and remittance of funds, as follows:

17 "15-21A-6.

18 (a) In addition to all other legal costs, there shall be charged to the filing party and
 19 collected by the clerk an additional filing fee of \$15.00 in each civil action or case filed in
 20 the superior, state, recorder's, mayor's, and magistrate courts except that municipalities,
 21 counties, and political subdivisions shall be exempt from such fee. Without limiting the
 22 generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name
 23 registrations, applications for change of name, and all other proceedings of a civil nature.
 24 Any matter which is docketed upon the official dockets of the enumerated courts and to
 25 which a number is assigned shall be subject to such fee, whether such matter is contested
 26 or not.

27 (b)(1) As used in this subsection, the term 'civil action' means:

28 (A) With regard to decedents' estates, the following proceedings: petition for letters
 29 of administration; petition to probate a will in solemn form; petition for an order
 30 declaring no administration necessary; petition to probate a will in solemn form and for
 31 letters of administration with will annexed; and petition for year's support;

32 (B) With regard to a minor guardianship matter as set forth in paragraph (1) of
 33 subsection (f) of Code Section 15-9-60, the proceeding by which the jurisdiction of the
 34 probate court is first invoked;

1 (C) With regard to an adult guardianship matter as set forth in paragraph (1) of
 2 subsection (g) of Code Section 15-9-60, the proceeding by which the jurisdiction of the
 3 probate court is first invoked; and

4 (D) An application for writ of habeas corpus.

5 (2) In addition to all other legal costs, there shall be charged to the filing party and
 6 collected by the clerk an additional fee of \$15.00 in each civil action filed in the probate
 7 court. For the purposes of the imposition of the civil filing fee required by this
 8 subsection, the probate court shall collect the civil filing fee on each proceeding listed in
 9 subparagraph (A) of paragraph (1) of this subsection involving a decedent but once only
 10 in a guardianship matter involving the same ward or an application for writ of habeas
 11 corpus involving the same applicant.

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

20 (d) Each clerk of court, each indigent defense program, or any other officer or agent of any
 21 court receiving any funds subject to this Code section shall collect the ~~additional~~ fees
 22 provided in this Code section and, if the governing authority has a procedure to verify the
 23 applicant's income as set forth in Code Section 17-12-80, shall pay such moneys over to
 24 the ~~authority~~ entity providing legal defense services under Chapter 12 of Title 17 by the last
 25 day of the month after the month of collection, ~~to be deposited by~~ and such funds shall not
 26 be subject to payment to the authority into the general fund of the state treasury. If the
 27 governing authority does not have such verification procedure, the moneys shall be paid
 28 over to the authority by the last day of the month after the month of collection, to be
 29 deposited by the authority into the general fund of the state treasury.

30 (e) ~~It is the intent of the General Assembly that all funds derived under this Code section~~
 31 ~~shall be made available through the general appropriations process and may be~~
 32 ~~appropriated for purposes of funding indigent defense.~~

33 (f) A public entity other than an entity providing legal defense services under Chapter 12
 34 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a
 35 \$50.00 application fee unless such fee is waived by the court for inability to pay or
 36 measurable hardship. If the application fee required by this subsection has not been paid
 37 ~~or waived at~~ prior to the time the defendant is sentenced, the court shall impose such fee

1 as a condition of probation. Any such fee shall be retained by the entity providing ~~the~~ such
 2 services or used as otherwise provided by law and shall not be subject to payment to the
 3 authority or deposit into the state treasury.

4 ~~(g)~~(f) For the purposes of this Code section, a county or municipality that provides
 5 indigent defense services or that contracts with a circuit public defender office for the
 6 provision of indigent defense services in courts other than the superior and juvenile court
 7 is shall be deemed to be the entity providing the legal defense services and is shall be
 8 entitled to impose and collect the application fee authorized by subsection ~~(f)~~ (e) of this
 9 Code section."

10 SECTION 13.

11 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense
 12 for indigents, is amended by revising Code Section 17-12-2, relating to definitions, as
 13 follows:

14 "17-12-2.

15 As used in this chapter, the term:

16 (1) 'Assistant public defender' means an attorney who is employed by any circuit public
 17 defender ~~or conflict defender office.~~

18 (2) 'Circuit public defender' means the head of a public defender office providing
 19 indigent defense representation within any given judicial circuit of this state.

20 (3) 'Circuit public defender office' means the office of any of the several circuit public
 21 defenders.

22 (4) 'Council' means the Georgia Public Defender Standards Council.

23 (5) 'Indigent person' or 'indigent defendant' means:

24 (A) A person charged with a misdemeanor, violation of probation, or a municipal,
 25 county, or juvenile offense punishable by imprisonment who earns or, in the case of a
 26 juvenile, whose parents earn, less than ~~125~~ 100 percent of the federal poverty guidelines
 27 unless there is evidence that the person has other resources that might reasonably be
 28 used to employ a lawyer without undue hardship on the person or his or her dependents;
 29 and

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

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

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

4 SECTION 14.

5 Said chapter is further amended by revising Code Section 17-12-3, relating to creation and
 6 membership of the Georgia Public Defender Standards Council, as follows:

7 "17-12-3.

8 (a) There is created the Georgia Public Defender Standards Council to be composed of ~~11~~
 9 15 members.

10 (b) Ten members of the council shall be appointed as follows:

11 (1) Two members shall be appointed by the Governor, the Lieutenant Governor, the
 12 Speaker of the House of Representatives, the Chief Justice of the Supreme Court of
 13 Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in
 14 paragraph (2) of this subsection. Except as provided in paragraph (3.1) of this subsection,
 15 the ~~The~~ members of the council shall be individuals with significant experience working
 16 in the criminal justice system or who have demonstrated a strong commitment to the
 17 provision of adequate and effective representation of indigent defendants. The members
 18 shall serve terms of four years; provided, however, that the members appointed from the
 19 even-numbered judicial administration circuits shall serve initial terms of six years and
 20 thereafter shall serve terms of four years;

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

25 (A) For the initial appointments:

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

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

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

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

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

4 (B) For the first subsequent council appointments:

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

7 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
8 administration district 5 and one person who resides in judicial administration district
9 6;

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

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

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

19 (C) For the second subsequent council appointments:

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

22 (ii) The Lieutenant Governor shall appoint one person who resides in judicial
23 administration district 7 and one person who resides in judicial administration district
24 8;

25 (iii) The Speaker of the House of Representatives shall appoint one person who
26 resides in judicial administration district 9 and one person who resides in judicial
27 administration district 10;

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

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

34 (D) For the third subsequent council appointments:

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

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

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

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

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

13 (E) For the fourth subsequent council appointments:

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

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

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

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

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

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

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

35 (3.1) Four members of the council shall be county commissioners who have been elected
 36 and are serving as members of the county governing authority of this state. The county
 37 commissioner councilmembers shall be appointed by the Governor on or before July 1,

1 2008, and shall be from different geographic regions of this state. The Governor may
 2 solicit recommendations for such appointees from the Association County
 3 Commissioners of Georgia. Each county commissioner councilmember shall serve terms
 4 of four years; provided, however, that the initial appointments shall be for one, two, three,
 5 and four years, respectively, as designated by the Governor for each appointment, and
 6 thereafter, such members shall serve terms of four years. A county commission
 7 councilmember shall be eligible to serve so long as he or she retains the office by virtue
 8 of which he or she is serving on the council;

9 (4) Except as provided in paragraph (3.1) of this subsection, all ~~At~~ initial appointments
 10 shall be made to become members of the council on July 1, 2003, and their successors
 11 shall become members of the council on July 1 following their appointment. The initial
 12 appointees from the even-numbered judicial administration circuits shall serve until June
 13 30, 2009. Notwithstanding the provisions of paragraph (3) of this subsection, the initial
 14 member representing the circuit public defenders shall be made by the Supreme Court of
 15 Georgia. The person representing the circuit defender position on the initial council shall
 16 be engaged on a full-time basis in the provision of criminal defense to the indigent;

17 (5) Any vacancy for a member appointed pursuant to paragraphs (1), ~~and (2), and (3.1)~~
 18 of this subsection shall be filled by the appointing authority, and such appointee shall
 19 serve the balance of the vacating member's unexpired term; and

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

23 (c) In making ~~these~~ the appointments for ten members of the council as provided in
 24 paragraph (2) of subsection (b) of this Code section, the appointing authorities shall seek
 25 to identify and appoint persons who represent a diversity of backgrounds and experience
 26 and shall solicit suggestions from the State Bar of Georgia, state and local bar associations,
 27 the Georgia Association of Criminal Defense Lawyers, the councils representing the
 28 various categories of state court judges in Georgia, and the Prosecuting Attorneys' Council
 29 of the State of Georgia, as well as from the public and other interested organizations and
 30 individuals within ~~the~~ this state. The appointing authorities shall not appoint a prosecuting
 31 attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a
 32 prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the
 33 State of Georgia to serve on the council.

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

1 (2) The director, with the consent of the council, may establish divisions within the
 2 office to administer the services and programs as may be necessary to fulfill the purposes
 3 of this chapter. The director shall establish a mental health advocacy division and the
 4 Georgia capital defender division.

5 (3) The director may hire and supervise such staff employees and may contract with
 6 outside consultants on behalf of the office as may be necessary to provide the services
 7 contemplated by this chapter.

8 (c) The director shall:

9 (1) Prepare and submit to the council a proposed budget for the council. ~~Said budget~~
 10 ~~shall not contain any request for funding for the operation of the circuit public defender~~
 11 ~~offices until the budget submission for Fiscal Year 2005.~~ The director shall also prepare
 12 and submit an annual report containing pertinent data on the operations, costs, and needs
 13 of the council and such other information as the council may require;

14 (2) Develop such rules, policies, procedures, regulations, and standards as may be
 15 necessary to carry out the provisions of this chapter and comply with all applicable laws,
 16 standards, and regulations, and submit these to the council for approval;

17 (3) Administer and coordinate the operations of the council and supervise compliance
 18 with rules, policies, procedures, regulations, and standards adopted by the council;

19 (4) Maintain proper records of all financial transactions related to the operation of the
 20 council;

21 (5) At the director's discretion, solicit and accept on behalf of the council any funds that
 22 may become available from any source, including government, nonprofit, or private
 23 grants, gifts, or bequests;

24 (6) Coordinate the services of the council with any federal, county, or private programs
 25 established to provide assistance to indigent persons in cases subject to this chapter and
 26 consult with professional bodies concerning the implementation and improvement of
 27 programs for providing indigent services;

28 (7) Provide for the training of attorneys and other staff involved in the legal
 29 representation of persons subject to this chapter;

30 (8) Attend all council meetings, except those meetings or portions thereof that address
 31 the question of appointment or removal of the director;

32 (9) Ensure that the expenditures of the council are not greater than the amounts budgeted
 33 or available from other revenue sources; ~~and~~

34 (10) Hire, with the pending approval of the council, a mental health advocate who shall
 35 serve as director of the division of the office of mental health advocacy;

36 (11) Hire, with the pending approval of the council, the capital defender who shall serve
 37 as the director of the division of the office of the Georgia capital defender;

1 (12) Evaluate each circuit public defender's job performance and communicate his or her
 2 findings to the council; and
 3 (13) Perform other duties as the council may assign."

4 SECTION 17.

5 Said chapter is further amended by revising subsection (b) of Code Section 17-12-6, relating
 6 to assistance of council to public defenders, as follows:

7 "(b) The council:

8 (1) Shall be the fiscal officer for the circuit public defender offices and shall account for
 9 all moneys received from each governing authority; and

10 (2) Shall collect, maintain, review, and publish records and statistics for the purpose of
 11 evaluating the delivery of indigent defense representation in Georgia."

12 SECTION 18.

13 Said chapter is further amended by revising Code Section 17-12-8, relating to approval by
 14 the council of programs for representation of indigents, development of standards, and
 15 submission to and ratification by the General Assembly of standards having a fiscal impact,
 16 as follows:

17 "17-12-8.

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

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

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

28 ~~(2) Standards prescribing minimum experience, training, and other qualifications for~~
 29 ~~appointed counsel where a conflict of interest arises between the public defender and an~~
 30 ~~indigent person;~~

31 ~~(3) Standards for assistant public defender and appointed counsel caseloads;~~

32 ~~(4) Standards for the performance of assistant public defenders and appointed counsel~~
 33 ~~representing indigent persons;~~

1 ~~(5) Standards and procedures for the appointment of independent, competent, and~~
2 ~~efficient counsel for representation in both the trial and appellate courts of indigent~~
3 ~~persons whose cases present conflicts of interest;~~
4 ~~(6) Standards for providing and compensating experts, investigators, and other persons~~
5 ~~who provide services necessary for the effective representation of indigent persons;~~
6 ~~(7) Standards for qualifications and performance of counsel representing indigent~~
7 ~~persons in capital cases;~~
8 ~~(8) Standards for collecting the costs of legal representation and related services;~~
9 ~~(9) Standards for compensation of attorneys appointed to represent indigent persons~~
10 ~~under this article;~~
11 ~~(10) Standards for removing a circuit public defender for cause pursuant to Code Section~~
12 ~~17-12-20;~~
13 ~~(11) Standards for a uniform definition of a 'case' for purposes of determining caseload~~
14 ~~statistics; and~~
15 ~~(12) Standards for accepting contractual indigent defense representation.~~
16 (c) ~~The initial minimum standards promulgated by the council pursuant to this Code~~
17 ~~section which are determined by the General Oversight Committee for the Georgia Public~~
18 ~~Defender Standards Council to have a fiscal impact shall be submitted by the council to the~~
19 ~~General Assembly at the regular session for 2005 and shall become effective only when~~
20 ~~ratified by joint resolution of the General Assembly and upon the approval of the resolution~~
21 ~~by the Governor or upon its becoming law without such approval. The power of the~~
22 ~~council to promulgate such initial minimum standards shall be deemed to be dependent~~
23 ~~upon such ratification; provided, however, the minimum standards promulgated by the~~
24 ~~council shall be utilized as a guideline prior to ratification. Any subsequent amendments~~
25 ~~or additions to the initial minimum standards promulgated by the council pursuant to this~~
26 ~~Code section which are determined by the General Oversight Committee for the Georgia~~
27 ~~Public Defender Standards Council to have a fiscal impact shall be ratified at the next~~
28 ~~regular session of the General Assembly and shall become effective only when ratified by~~
29 ~~joint resolution of the General Assembly and upon the approval of the resolution by the~~
30 ~~Governor or upon its becoming law without such approval.~~
31 ~~(d) All rules, regulations, policies, and standards that are promulgated by the council shall~~
32 ~~be publicly available for review and shall be posted on the council's website. Each rule,~~
33 ~~regulation, policy, and standard shall identify the date upon which the such rule, regulation,~~
34 ~~policy, and standard took effect, and if the standard is subject to ratification by the General~~
35 ~~Assembly as provided by subsection (c) of this Code section, the status of the standard with~~
36 ~~respect to ratification."~~

SECTION 21.

Said chapter is further amended by revising Code Section 17-12-10.1, relating to creation of general oversight committee, membership, and reporting audits, as follows:

"17-12-10.1.

(a) There is created the General Oversight Committee for the Georgia Public Defender Standards Council which shall be composed of eight persons: three members of the House of Representatives appointed by the Speaker of the House of Representatives, three members of the Senate appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule, and one member of the House of Representatives and one member of the Senate appointed by the Governor. The members of such committee shall be selected within ten days after the convening of the General Assembly in each odd-numbered year and shall serve until their successors are appointed.

(b) The Speaker of the House of Representatives shall appoint a member of the committee to serve as chairperson, and the Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint one member of the committee to serve as vice chairperson during each even-numbered year. The Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint a member of the committee to serve as chairperson, and the Speaker of the House of Representatives shall appoint one member to serve as vice chairperson during each odd-numbered year. Such committee shall meet at least ~~six~~ three times each year and, upon the call of the chairperson, at such additional times as deemed necessary by the chairperson.

(c) It shall be the duty of such committee to review and evaluate ~~the following~~:

- (1) Information on new programs submitted by the council;
- (2) Information on rules, regulations, policies, and standards proposed by the council;
- (3) The strategic plans for the council;
- (4) Program evaluation reports and budget recommendations of the council;
- (5) The fiscal impact of fees and fines on counties;
- (6) The reports submitted pursuant to Code Section 15-21A-7 in order to identify, among other things, opportunities to reduce or consolidate fees, fines, and surcharges; and
- (7) Such other information or reports as deemed necessary by such committee.

(d) The council shall cooperate with such committee and provide such information or reports as requested by the committee for the performance of its functions.

(e) The council shall submit its budget estimate to the director of the Office of Planning and Budget in accordance with subsection (a) of Code Section 45-12-78.

(f) The committee shall make an annual report of its activities and findings to the membership of the General Assembly and the Governor within one week of the convening of each regular session of the General Assembly. The chairperson of the committee shall

1 deliver written executive summaries of such report to the members of the General
2 Assembly prior to the adoption of the General Appropriations Act each year.

3 (g) The members of the committee shall receive the allowances authorized for legislative
4 members of legislative committees. The funds necessary to pay such allowances shall
5 come from funds appropriated to the House of Representatives and the Senate.

6 (h) The committee shall be authorized to request that a performance audit of the council
7 be conducted."

8 SECTION 22.

9 Said chapter is further amended by revising Code Section 17-12-10.2, relating to civil
10 liability, as follows:

11 "17-12-10.2.

12 The members of the council as created by this article, the members of the circuit public
13 defender ~~selection~~ supervisory panel created by Article 2 of this chapter, and other
14 policy-making or administrative personnel acting in a policy-making or administrative
15 capacity shall not be subject to civil liability resulting from any act or failure to act in the
16 implementation and carrying out of the purposes of this ~~article and Article 2 of this~~
17 chapter."

18 SECTION 23.

19 Said chapter is further amended by revising Code Section 17-12-11, relating to the council
20 assuming the responsibility of the Georgia Indigent Defense Council, funding, and personnel,
21 as follows:

22 "17-12-11.

23 ~~(a) On December 31, 2003, the Georgia Public Defender Standards Council shall assume~~
24 ~~all powers, duties, and obligations of the Georgia Indigent Defense Council created by~~
25 ~~former Code Section 17-12-32, and all references in this Code to the Georgia Indigent~~
26 ~~Defense Council shall be deemed to be references to the Georgia Public Defender~~
27 ~~Standards Council. Such powers shall include, without limitation, making grants and~~
28 ~~distributions to the counties.~~

29 ~~(b) At least 90 percent of all state appropriated funds to the former Georgia Indigent~~
30 ~~Defense Council or the Georgia Public Defender Standards Council for grants to counties~~
31 ~~shall be distributed to counties for the January 1, 2004, through December 31, 2004, time~~
32 ~~period, based upon previous year expenditures for the provision of defense services at the~~
33 ~~local level.~~

34 ~~(c) On December 31, 2003, the employees in good standing, assets, and resources of the~~
35 ~~Georgia Indigent Defense Council shall be transferred to the Georgia Public Defender~~

1 ~~Standards Council, and the council shall assume any executory contractual obligations of~~
2 ~~the Georgia Indigent Defense Council, provided that allocated funding resources for such~~
3 ~~obligations are also transferred. All full-time employees of the Georgia Public Defender~~
4 ~~Standards Council shall be state employees in the unclassified service of the State Merit~~
5 ~~System of Personnel Administration with all of the benefits of appointed state employees~~
6 ~~provided by law.~~

7 (a) The mental health advocacy division shall represent in any court in this state indigent
8 persons found not guilty by reason of insanity at the time of the crime or found mentally
9 incompetent to stand trial and shall be the successor to the office of mental health advocacy
10 created by Article 4 of this chapter as it existed on January 1, 2008. Any assets or
11 resources of the office of mental health advocacy shall be transferred to the council. The
12 mental health advocacy division office shall serve all counties of this state.

13 (b) Whenever any person has been found not guilty by reason of insanity at the time of the
14 crime pursuant to Code Section 17-7-131 or found mentally incompetent to stand trial
15 pursuant to Code Section 17-7-130 and has been determined to be an indigent person, the
16 court in which such case is pending shall notify the mental health advocacy division, and
17 the division may assume the defense and representation of such person in all matters
18 pursuant to Code Sections 17-7-130 and 17-7-131, as applicable, if the resources, funding,
19 and staffing of the division allow; provided, however, that the circuit public defender or
20 other attorney who represented the indigent person at the time of the finding of not guilty
21 by reason of insanity at the time of the crime or the finding of mentally incompetent to
22 stand trial shall have the option to retain responsibility for the representation of any such
23 person.

24 (c) Nothing in this Code section shall prevent the circuit public defender, the court, or the
25 court appointed attorney from requesting the participation of the mental health advocacy
26 division prior to a finding of not guilty by reason of insanity at the time of the crime or a
27 finding of mentally incompetent to stand trial. The circuit public defender, the court, or the
28 court appointed attorney may request that the mental health advocacy division assist in the
29 case prior to a plea being entered and accepted by the court.

30 (d) If for any reason the mental health advocacy division is unable to represent any
31 indigent person found not guilty by reason of insanity at the time of the crime or found
32 mentally incompetent to stand trial, such representation shall be provided as otherwise
33 provided by law.

34 (e) The council's director shall be responsible for management of the mental health
35 advocacy division; provided, however, that the director may delegate day-to-day operations
36 of the division to the mental health advocate."

SECTION 24.

Said chapter is further amended by revising Code Section 17-12-12, relating to the transition period, as follows:

"17-12-12.

~~From January 1, 2005, through December 31, 2005, the Georgia Public Defender Standards Council shall coordinate the transition from the procedures for providing criminal defense to indigent persons in effect on December 31, 2004, in each county to the procedures provided in Article 2 of this chapter. On and after January 1, 2005, the provisions of Article 2 of this chapter shall govern the public provision of criminal defense to indigent persons in the courts of this state.~~

(a) The Georgia capital defender division shall represent all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state and shall be the successor to the Office of the Georgia Capital Defender created by Article 6 of this chapter as it existed on January 1, 2008. Any assets or resources of the Office of the Georgia Capital Defender shall be transferred to the council. The Georgia capital defender division shall serve all counties of this state.

(b) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be an indigent person who has requested the assistance of counsel, the court in which the charges are pending shall notify the Georgia capital defender division, and the division shall assume the defense of such person except as provided in Code Section 17-12-12.1.

(c) No person shall be assigned the primary responsibility of representing an indigent person accused of a capital offense for which the death penalty is sought unless such person is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a capital felony.

(d) The Georgia capital defender division or appointed counsel's defense of a defendant in a case in which the death penalty is sought shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender division nor appointed counsel shall assist with any petition for a writ of habeas corpus in federal court.

(e) The council's director shall be responsible for management of the Georgia capital defender division; provided, however, that the director may delegate day-to-day operations of the division to the capital defender."

SECTION 25.

Said chapter is further amended by adding a new Code section to read as follows:

1 "17-12-12.1.

2 (a) If there is a conflict of interest such that the Georgia capital defender division is unable
3 to defend any indigent person accused of a capital felony for which the death penalty is
4 being sought, the council's director shall determine and appoint counsel to represent the
5 defendant. The council's director shall establish the contractual agreement with the
6 defendant's counsel for payment of representing the defendant, and, when feasible and
7 prudent, a flat fee structure shall be utilized.

8 (b) A maximum of two attorneys shall be paid by the council at an hourly rate established
9 by the council with state funds appropriated to the council. State funds shall be
10 appropriated to the council for use by the Georgia capital defender division for the first
11 \$150,000.00 paid for each death penalty case. Funding for attorney's fees and expenses
12 between \$150,000.01 and \$250,000.00 for each death penalty case shall be paid through
13 state appropriations for 75 percent of such attorney's fees and expenses, and the county
14 governing authority shall pay 25 percent of such attorney's fees and expenses. Funding for
15 all attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall
16 be paid through state appropriations for 50 percent of such attorney's fees and expenses,
17 and the county governing authority shall pay 50 percent of such attorney's fees and
18 expenses. The trial judge may appoint not more than one additional attorney to represent
19 the defendant; provided, however, that such attorney shall be paid by the county governing
20 authority with county funds at a rate established by the council.

21 (c) The council, with the assistance of the Georgia capital defender division, shall establish
22 guidelines for all expense requests for cases in which the death penalty is sought, including,
23 but not limited to, attorney's fees, expert witness fees, investigative fees, travel and
24 accommodation expenses, and copy and transcription costs.

25 (d) A county governing authority may provide supplemental compensation to counsel
26 appointed pursuant to this Code section."

27 **SECTION 26.**

28 Said chapter is further amended by revising Code Section 17-12-20, relating to public
29 defender selection panel for each circuit, appointment and removal of circuit public
30 defenders, and vacancies, as follows:

31 "17-12-20.

32 (a) On and after July 1, 2008, there ~~There~~ is created in each judicial circuit in ~~the~~ this state
33 a circuit public defender ~~selection~~ supervisory panel to be composed of ~~five~~ seven
34 members. The ~~membership shall be composed of one member each appointed by the~~
35 ~~Governor, the~~ Lieutenant Governor, the Speaker of the House of Representatives, ~~the~~ Chief
36 ~~Justice of the Supreme Court of Georgia,~~ and the chief judge of the superior court of the

1 circuit shall each appoint one member. The Governor shall appoint four members, two of
2 which shall be members of the governing authority of the counties within the judicial
3 circuit for which such member is appointed to serve. A member of a governing authority
4 shall be eligible to serve so long as he or she retains the office by virtue of which he or she
5 is serving on the panel. Members Other than the county commissioner, members of the
6 circuit public defender ~~selection~~ supervisory panel shall be individuals with significant
7 experience working in the criminal justice system or who have demonstrated a strong
8 commitment to the provision of adequate and effective representation of indigent
9 defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51,
10 any employee of a prosecuting attorney's office, or an employee of the Prosecuting
11 Attorneys' Council of the State of Georgia shall not serve as a member of the circuit public
12 defender ~~selection~~ supervisory panel after July 1, 2005. On and after July 1, 2008, no
13 employees of the council shall serve as a member of the circuit public defender supervisory
14 panel. Members of the circuit public defender ~~selection~~ supervisory panel shall reside in
15 the judicial circuit in which they serve. The circuit public defender ~~selection~~ supervisory
16 panel members shall serve for a term of five years. Any vacancy for an appointed member
17 shall be filled by the appointing authority.

18 (b)(1) By majority vote of its membership, the circuit public defender supervisory panel
19 shall annually elect a chairperson and secretary and determine a quorum for the
20 transaction of business. The chairperson shall conduct the meetings and deliberations of
21 the panel and direct all activities. The secretary shall keep accurate records of all the
22 meetings and deliberations and perform such other duties as the chairperson may direct.
23 The panel may be called into session upon the direction of the chairperson or by the
24 council.

25 (2) By majority vote of its membership, the circuit public defender ~~selection~~ supervisory
26 panel shall appoint the circuit public defender in the circuit as provided in this article. The
27 first such appointments shall be made to take office on January 1, 2005, for terms of up
28 to four years. The initial appointments shall be for a term of up to four years. Any circuit
29 public defender whose term expires on or after January 1, 2009, and any circuit public
30 defender appointed after January 1, 2009, shall serve for a term not longer than two years.
31 A circuit public defender may be appointed for successive terms but shall not be
32 reappointed if he or she was removed pursuant to subsection (c) of this Code section.

33 (c) A circuit public defender may be removed for cause by a majority vote of the council
34 and may be removed without cause by a vote of two-thirds of the members of the entire
35 council.

36 (d) A circuit public defender supervisory panel may convene at any time during its circuit
37 public defender's term of office and shall convene at least semiannually for purposes of

1 reviewing the circuit public defender's job performance and the performance of the circuit
 2 public defender office. The council and circuit public defender shall be notified at least
 3 two weeks in advance of the convening of the circuit public defender supervisory panel.
 4 The circuit public defender shall be given the opportunity to appear before the circuit
 5 public defender supervisory panel and present evidence and testimony. The chairperson
 6 shall determine the agenda for the semiannual review process, but, at a minimum, such
 7 review shall include information collected pursuant to subsection (c) of Code Section
 8 17-12-24, usage of state and local funding, expenditures, and budgeting matters. The
 9 chairperson shall make an annual report on or before the thirtieth day of September of each
 10 year concerning the circuit public defender supervisory panel's findings regarding the job
 11 performance of the circuit public defender and his or her office to the council on a form
 12 provided to the panel by the council. If at any time the circuit public defender supervisory
 13 panel finds that the circuit public defender is performing in a less than satisfactory manner
 14 or finds information of specific misconduct, the circuit public defender supervisory panel
 15 may by majority vote of its members adopt a resolution seeking review of their findings
 16 and remonstrative action by the council. Such resolution shall specify the reason for such
 17 request. All evidence presented and the findings of the circuit public defender supervisory
 18 panel shall be forwarded to the council within 15 days of the adoption of the resolution.
 19 The council shall initiate action on the circuit public defender supervisory panel's
 20 resolution at its next regularly scheduled meeting and take final action within 60 days
 21 thereafter. The council shall notify the circuit public defender supervisory panel, in writing,
 22 of any actions taken pursuant to submission of a resolution under this subsection.

23 ~~(d)~~(e) If a vacancy occurs for the position of circuit public defender, the chief judge of the
 24 superior court of the circuit shall appoint an interim circuit public defender to serve until
 25 the circuit public defender ~~selection~~ supervisory panel has appointed a replacement to serve
 26 out the unexpired term of office. The circuit public defender ~~selection~~ supervisory panel
 27 shall appoint a replacement circuit public defender within three months of the occurring
 28 of the vacancy. The replacement circuit public defender shall not be any individual who
 29 has been removed by the council pursuant to subsection (c) of this Code section."

30 SECTION 27.

31 Said chapter is further amended by revising Code Section 17-12-22, relating to the procedure
 32 for appointment of attorneys for indigent defendants in the event the public defender has a
 33 conflict of interest, as follows:

34 "17-12-22.

35 (a) The council shall establish a procedure for providing legal representation in cases
 36 where the circuit public defender office has a conflict of interest. This procedure may be

1 by appointment of individual counsel on a case-by-case basis or by the establishment of a
 2 conflict defender office in those circuits where the volume of cases may warrant a separate
 3 conflict defender office utilization of another circuit public defender office when feasible.
 4 It is the intent of the General Assembly that the council consider the most efficient and
 5 effective system to provide legal representation where the circuit public defender office has
 6 a conflict of interest.

7 (b) The circuit public defender shall establish a method for identifying conflicts of interest
 8 at the earliest possible opportunity. If there is a conflict of interest such that the circuit
 9 public defender office cannot represent a defendant, the attorney who is appointed to
 10 represent such defendant shall have a contractual relationship with the council to represent
 11 indigent persons in conflict of interest cases.

12 (c) Attorneys who seek appointment in conflict cases ~~must~~ shall have such experience or
 13 training in the defense of criminal cases as is necessary in light of the complexity of the
 14 case to which ~~they are~~ he or she is appointed and ~~must~~ shall meet such qualifications,
 15 regulations, and standards for the representation of indigent defendants as are established
 16 by the council.

17 ~~(c) The circuit public defender shall establish a method for identifying conflicts of interest~~
 18 ~~at the earliest possible opportunity."~~

19 SECTION 28.

20 Said chapter is further amended by revising Code Section 17-12-23, relating to cases in
 21 which public defender representation is required, timing of representation, and contracts with
 22 local governments, as follows:

23 "17-12-23.

24 (a) The circuit public defender shall provide representation in the following actions and
 25 proceedings:

26 (1) Any case prosecuted in a superior court under the laws of the State of Georgia in
 27 which there is a possibility that a sentence of imprisonment or probation or a suspended
 28 sentence of imprisonment may be adjudged;

29 (2) A hearing on a revocation of probation in a superior court;

30 (3) Any juvenile court case where the juvenile may face a disposition of confinement,
 31 commitment, or probation; and

32 (4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3)
 33 of this subsection.

34 (b) ~~In each of the actions and proceedings enumerated in subsection (a) of this Code~~
 35 ~~section, entitlement to the services of counsel begins as soon as is feasible and no more~~
 36 ~~than 72 hours after the indigent person is taken into custody or service is made upon him~~

1 ~~or her of the charge, petition, notice, or other initiating process.~~ An indigent person shall
 2 be entitled to the services of a public defender in each of the actions and proceedings
 3 enumerated in subsection (a) of this Code section. In order to obtain the services of a
 4 public defender, a person shall request that counsel be appointed and shall have been taken
 5 into custody or service made upon such person of a charge, petition, notice, or other
 6 initiation process. A public defender shall have personal contact with such person not more
 7 than five business days after such person's request for services; provided, however, that
 8 such person shall have personal contact with an employee of the circuit public defender
 9 office within three business days of requesting counsel.

10 (c) Each circuit public defender shall establish a juvenile division within the circuit public
 11 defender office to specialize in the defense of juveniles.

12 (d) A city or county may contract with the circuit public defender office for the provision
 13 of criminal defense for indigent persons accused of violating city or county ordinances or
 14 state laws. If a city or county does not contract with the circuit public defender office, the
 15 city or county shall be subject to all applicable rules, regulation, policies, and standards
 16 adopted by the council for representation of indigent persons in this state."

17 **SECTION 29.**

18 Said chapter is further amended by revising subsections (a) and (c) of Code Section
 19 17-12-24, relating to financial eligibility for indigent defense services representation and
 20 operation of the public defender's office, as follows:

21 "(a) The circuit public defender, ~~and any other person or entity providing indigent defense~~
 22 ~~services, or the system established pursuant to Code Section 17-12-80 shall determine the~~
 23 ~~financial eligibility of any~~ if a person or juvenile arrested, detained, or charged in any
 24 manner ~~in accordance with the definition of an~~ is an indigent person set forth in Code
 25 ~~Section 17-12-2 that would entitle him or her~~ entitled to representation under this chapter."

26 "(c) The circuit public defender shall keep and maintain appropriate records, which shall
 27 include the number of persons represented ~~under this article~~, including cases assigned to
 28 other counsel based on conflict of interest; the offenses charged; the outcome of each case;
 29 the expenditures made in carrying out the duties imposed by this ~~article~~ chapter; and any
 30 other information requested by the council."

31 **SECTION 30.**

32 Said chapter is further amended by revising Code Section 17-12-25, relating to the salary of
 33 the public defender and prohibiting the private practice of law, as follows:

1 "17-12-25.

2 (a) Each circuit public defender shall receive an annual salary of \$87,593.58, and
 3 cost-of-living adjustments may be given by the General Assembly in the General
 4 Appropriations Act by a percentage not to exceed the average percentage of the general
 5 increase in salary as may from time to time be granted to employees of the executive,
 6 judicial, and legislative branches of government ~~from state funds~~; provided, however, that
 7 any increase for such circuit public defender shall not include within-grade step increases
 8 for which classified employees of the state merit system are eligible. Any increase granted
 9 pursuant to this subsection shall become effective at the same time that funds are made
 10 available for the increase for such employees. The Office of Planning and Budget shall
 11 calculate the average percentage increase.

12 (b) The county or counties comprising the judicial circuit may supplement the salary of
 13 the circuit public defender in an amount as is or may be authorized by local Act or in an
 14 amount as may be determined by the governing authority of the county or counties,
 15 whichever is greater.

16 (c) No circuit public defender shall engage in the private practice of law for profit or serve
 17 concurrently in any judicial office."

18 SECTION 31.

19 Said chapter is further amended by revising Code Section 17-12-26, relating to the budget
 20 of the council, as follows:

21 "17-12-26.

22 (a) The council shall prepare and submit to the director of the Office of Planning and
 23 Budget ~~an annual proposed~~ its budget estimate necessary for fulfilling the purposes of this
 24 article chapter in accordance with Code Section 45-12-78. ~~The budget request shall be~~
 25 ~~based on the previous year's expenditures and budget requests submitted by each circuit~~
 26 ~~public defender, the Office of the Georgia Capital Defender, and the office of the mental~~
 27 ~~health advocate. The council's total budget request for funding for the operations of the~~
 28 ~~circuit public defender offices and the council's programs shall not exceed the amount of~~
 29 ~~funds collected for indigent defense pursuant to Code Sections 15-21-73 and 15-21A-6;~~
 30 ~~provided, however, that the General Assembly shall not be obligated to appropriate such~~
 31 ~~amount for indigent defense. The council is also~~ shall be authorized to seek, solicit, apply
 32 for, and utilize funds from any public or private source to use in fulfilling the purposes of
 33 this article chapter.

34 (b) ~~The budget of the council shall include the budget of all circuit public defenders and~~
 35 ~~other offices and entities, including conflict defender offices and appointed attorneys~~

1 ~~providing indigent defense representation under the authority of this article and the Office~~
 2 ~~of the Georgia Capital Defender and the office of the mental health advocate.~~

3 ~~(c)(1) Subject to the provisions of paragraphs (3) and (4) of this subsection, expenses~~
 4 ~~paid by the council pursuant to this Code section shall be paid out of funds as may be~~
 5 ~~appropriated by the General Assembly.~~

6 ~~(2) On or before June 1 of each year, the council shall establish and furnish to each~~
 7 ~~circuit public defender and the state auditor the travel budget for each judicial circuit~~
 8 ~~based on the amount appropriated by the General Assembly for travel.~~

9 ~~(3) In determining the travel budget for each judicial circuit, the council shall consider~~
 10 ~~the budget request submitted by the circuit public defender of each judicial circuit, the~~
 11 ~~geographic size and the caseload of each circuit, and other facts as may be relevant. The~~
 12 ~~council is authorized to establish a contingency reserve of not more than 3 percent of the~~
 13 ~~total amount appropriated by the General Assembly in order to meet any expenses which~~
 14 ~~could not be reasonably anticipated. The council shall submit to each circuit public~~
 15 ~~defender, the state auditor, and the legislative budget analyst a monthly report showing~~
 16 ~~the budget amount of expenditures made under the travel budget. The council may~~
 17 ~~periodically review and adjust the travel budget as may be necessary to carry out the~~
 18 ~~purposes of this subsection.~~

19 ~~(4) Neither the circuit public defender nor any personnel compensated by the state~~
 20 ~~pursuant to the provisions of this article shall be reimbursed from state funds for any~~
 21 ~~expenses for which the person has been reimbursed from funds other than state funds;~~
 22 ~~provided, however, that the governing authority of the county or counties comprising the~~
 23 ~~judicial circuit are authorized to provide travel advances or to reimburse expenses which~~
 24 ~~may be incurred by the person in the performance of his or her official duties to the extent~~
 25 ~~the expenses are not reimbursed by the state as provided in this Code section."~~

26 **SECTION 32.**

27 Said chapter is further amended by revising subsection (f) of Code Section 17-12-28, relating
 28 to appointment of investigator, role and responsibilities, compensation, and promotions, as
 29 follows:

30 "(f) Personnel appointed pursuant to this Code section shall be reimbursed for actual
 31 expenses incurred in the performance of their official duties ~~in accordance with the~~
 32 ~~provisions of Code Section 17-12-26."~~

33 **SECTION 33.**

34 Said chapter is further amended by revising Code Section 17-12-31, relating to employment
 35 of additional personnel, as follows:

1 "17-12-31.

2 (a) The circuit public defender in each judicial circuit may employ additional assistant
3 circuit public defenders, deputy circuit public defenders, or other attorneys, investigators,
4 paraprofessionals, clerical assistants, and other employees or independent contractors ~~as~~
5 ~~may be~~ if the employment of such additional personnel is provided for by local law or ~~as~~
6 ~~may be~~ if the employment of such additional personnel is specifically authorized and
7 funded by the governing authority of the county or counties comprising the judicial circuit.
8 The circuit public defender shall define the duties and fix the title of any attorney or other
9 employee of the office of the circuit public defender.

10 (b) Personnel employed by the circuit public defender pursuant to this Code section shall
11 serve at the pleasure of the circuit public defender and shall be compensated by the county
12 or counties comprising the judicial circuit; in the manner and in an amount of compensation
13 ~~to be paid to be~~ fixed either by local Act or by the circuit public defender with the specific
14 approval of the county or counties comprising the judicial circuit."

15 **SECTION 34.**

16 Said chapter is further amended by revising Code Section 17-12-33, relating to assistant
17 public defenders' private practice of law prohibited and admission to the bar of Georgia, as
18 follows:

19 "17-12-33.

20 (a) Any assistant public defender or other attorney at law employed full time by the circuit
21 public defender who is compensated in whole or in part by state funds shall not engage in
22 the private practice of law for profit or serve concurrently in any judicial office.

23 (b) Any assistant public defender or any other attorney at law employed by the circuit
24 public defender shall be a member of the State Bar of Georgia and shall be admitted to
25 practice before the appellate courts of this state. The assistant public defender shall serve
26 at the pleasure of the circuit public defender and shall have such authority, powers, and
27 duties as may be assigned by the circuit public defender."

28 **SECTION 35.**

29 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
30 17-12-36, relating to alternative delivery systems and annual review of operations by the
31 council, as follows:

32 "(2) The council, by majority vote of the entire council, determines that the delivery
33 system meets or exceeds its rules, regulations, policies, and standards, including, without
34 limitation, caseload standards, as the council adopts;"

1 ~~17-12-83.~~

2 ~~The council shall be responsible for management of the office. Managerial duties shall~~
3 ~~include, but are not limited to, the following:~~

4 ~~(1) Appointment of the mental health advocate;~~

5 ~~(2) Establishing the salaries of the mental health advocate and the office's staff;~~

6 ~~(3) Approving the level of staffing and establishing policy consistent with the intent of~~
7 ~~this chapter; and~~

8 ~~(4) Preparing an annual budget for the office, administering the funds made available to~~
9 ~~the office, and overseeing the expenditure of such funds.~~

10 ~~17-12-84.~~

11 ~~The council shall prepare an annual budget showing all anticipated expenses of the office~~
12 ~~for the following fiscal year, which shall be the same as the fiscal year of this state. Such~~
13 ~~budget shall be submitted by the mental health advocate to the council.~~

14 ~~17-12-85.~~

15 ~~The mental health advocate shall be appointed by and shall serve at the pleasure of the~~
16 ~~council. The mental health advocate must be a member in good standing of the State Bar~~
17 ~~of Georgia with at least three years' experience in the practice of law and must be~~
18 ~~competent to counsel and represent a person found not guilty by reason of insanity at the~~
19 ~~time of the crime. The salary of the mental health advocate shall be established by the~~
20 ~~council.~~

21 ~~17-12-86.~~

22 ~~The mental health advocate shall employ, with the advice and consent of the council and~~
23 ~~in the manner and at the compensation prescribed by the council, as many assistant~~
24 ~~attorneys, clerks, investigators, paraprofessionals, administrative assistants, and any other~~
25 ~~persons as may be necessary for carrying out the responsibilities assigned to the office by~~
26 ~~law. A person employed under this Code section serves at the pleasure of the mental health~~
27 ~~advocate.~~

28 ~~17-12-87.~~

29 ~~(a) Whenever any person has been found not guilty by reason of insanity at the time of the~~
30 ~~crime pursuant to Code Section 17-7-131 and has been determined to be indigent, as~~
31 ~~provided in Article 1 of this chapter, the court in which such charges are pending shall~~
32 ~~notify the office and the office may assume the defense and representation of such persons~~
33 ~~in all matters pursuant to Code Section 17-7-131 if the resources, funding, and staffing of~~

1 ~~the office allow; provided, however, that the circuit public defender or other attorney who~~
 2 ~~represented the indigent at the time of the finding of not guilty by reason of insanity at the~~
 3 ~~time of the crime shall have the option to retain responsibility for the representation of any~~
 4 ~~such person.~~

5 ~~(b) Nothing in this Code section shall prevent the circuit public defender, the court, or the~~
 6 ~~court appointed attorney from requesting the participation of the office prior to a finding~~
 7 ~~of not guilty by reason of insanity at the time of the crime. The circuit public defender, the~~
 8 ~~court, or the court appointed attorney may request that the office assist in the case prior to~~
 9 ~~a plea being entered and accepted by the court.~~

10 ~~(c) If for any reason the office is unable to represent any indigent person found not guilty~~
 11 ~~by reason of insanity at the time of the crime, such representation shall be provided as~~
 12 ~~otherwise provided by law.~~

13 ~~17-12-88.~~

14 ~~This article shall become effective on December 31, 2003."~~

15 **SECTION 40.**

16 Said chapter is further amended by revising Article 6, relating to the Georgia Capital
 17 Defender, as follows:

18 ~~"ARTICLE 6~~

19 ~~17-12-120.~~

20 ~~As used in this article, the term 'office' means the Office of the Georgia Capital Defender~~
 21 ~~created by this article.~~

22 ~~17-12-121.~~

23 ~~There is created the Office of the Georgia Capital Defender to undertake the defense of all~~
 24 ~~indigent persons charged with a capital felony for which the death penalty is being sought~~
 25 ~~in any court in this state and to be the successor to the office of the multicounty public~~
 26 ~~defender. The office shall serve all counties of this state.~~

27 ~~17-12-122.~~

28 ~~The Office of the Georgia Capital Defender shall be a legal entity, shall have perpetual~~
 29 ~~existence, may contract, may own property, may accept funds, grants, and gifts from any~~
 30 ~~public or private source, which funds shall be used to defray the expenses incident to~~
 31 ~~implementing its purposes, and may establish a principal office.~~

1 ~~17-12-123.~~

2 ~~The council shall be responsible for management of the office. Managerial duties shall~~
 3 ~~include, but not be limited to, the following:~~

4 ~~(1) Appointing the capital defender;~~

5 ~~(2) Establishing the salaries of the capital defender and the office's staff;~~

6 ~~(3) Approving the level of staffing and establishing policy consistent with the intent of~~
 7 ~~this article; and~~

8 ~~(4) Preparing an annual budget for the office, administering the funds made available to~~
 9 ~~the office, and overseeing the expenditure of such funds.~~

10 ~~17-12-124.~~

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

16 ~~17-12-125.~~

17 ~~The capital defender shall be appointed by and shall serve at the pleasure of the council.~~
 18 ~~The capital defender must have been licensed to practice law in this state for at least five~~
 19 ~~years and must be competent to counsel and defend a person charged with a capital felony.~~
 20 ~~The salary of the capital defender shall be established by the council.~~

21 ~~17-12-126.~~

22 ~~(a) The capital defender shall employ, with the advice and consent of the council and in~~
 23 ~~the manner and at the compensation prescribed by the council, as many assistant attorneys,~~
 24 ~~clerks, investigators, paraprofessionals, administrative assistants, and other persons as may~~
 25 ~~be necessary for carrying out his or her responsibilities under this article. A person~~
 26 ~~employed under this Code section serves at the pleasure of the capital defender.~~

27 ~~(b) No person may be assigned the primary responsibility of representing an indigent~~
 28 ~~person accused of a capital offense for which the death penalty is sought unless the person~~
 29 ~~is authorized to practice law in this state and is otherwise competent to counsel and defend~~
 30 ~~a person charged with a capital felony.~~

31 ~~17-12-127.~~

32 ~~(a) Whenever any person accused of a capital felony for which the death penalty is being~~
 33 ~~sought has been determined to be indigent, as provided in Article 2 of this chapter, the~~

1 ~~court in which the charges are pending shall notify the office, and the office shall assume~~
 2 ~~the defense of the person if there is no conflict of interest.~~

3 ~~(b) If for any reason the office is unable to defend any indigent person accused of a capital~~
 4 ~~felony for which the death penalty is being sought, the presiding judge of the superior court~~
 5 ~~in which the case is pending shall appoint counsel to represent the defendant. A maximum~~
 6 ~~of two attorneys shall be paid by the council at an hourly rate established by the council~~
 7 ~~with state funds appropriated to the council for use by the office. The council with the~~
 8 ~~assistance of the office shall establish guidelines for attorney's fees and expense requests.~~
 9 ~~A county governing authority may provide supplemental compensation to appointed~~
 10 ~~counsel. The presiding judge may appoint not more than one additional attorney to~~
 11 ~~represent the defendant, provided, however, that such attorney shall be paid by the county~~
 12 ~~governing authority with county funds at a rate established by the council.~~

13 ~~(c) The office or appointed counsel's defense of a defendant shall include all proceedings~~
 14 ~~in the trial court and any appeals to the Supreme Court of Georgia. Neither the office nor~~
 15 ~~appointed counsel shall assist with any petition for a writ of habeas corpus in federal court.~~

16 ~~17-12-127.1.~~

17 ~~On and after January 1, 2005, any attorney appointed pursuant to Article 5 of this chapter~~
 18 ~~shall continue to represent a defendant under this article and shall be paid for services~~
 19 ~~pursuant to this article.~~

20 ~~17-12-128.~~

21 ~~This article shall become effective on January 1, 2005."~~

22 **SECTION 41.**

23 This Act shall become effective on July 1, 2008; provided, however, that for purposes of the
 24 appointment of the councilmembers and circuit public defender supervisory panel members,
 25 this Act shall become effective upon its approval by the Governor or upon its becoming law
 26 without such approval.

27 **SECTION 42.**

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