The Senate Judiciary Committee offered the following substitute to HB 1245:

A BILL TO BE ENTITLED
AN ACT

To amend Title 15 and Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to courts and legal defense for indigents, respectively, so as to revise matters relative to funding, budgeting, and the organization of providing indigent defense; to change certain provisions relating to requesting judicial assistance from other courts; to change certain provisions relating to senior judge status and requesting assistance of senior judges; to change certain provisions relating to senior judges of the state court, probate court, or juvenile court and requesting assistance of a senior judge; to provide that the Georgia Superior Court Clerks´ Cooperative Authority be responsible for collecting and disbursing certain funds paid to the clerk of court and sheriff for funding of indigent defense, instead of the Georgia Public Defender Standards Council; to change provisions relating to the priorities of distribution of fines, forfeitures, surcharges, additional fees, and costs of partial payments into court; to remove provisions directing funding for indigent defense; to remove the additional penalty to be imposed in certain criminal, quasi-criminal, and traffic cases; to direct certain funds to be paid to governing authorities; to change certain provisions relating to the $50.00 application fee for indigent defense services; to change certain definitions; to change the composition of the the Georgia Public Defender Standards Council to include county commissioners; to provide for appointment, qualifications, and terms for new members; to require auditing and accounting of revenues received by the council; to expand the director´s responsibilities; to remove the ratification process for standards adopted by the council; to enhance the council´s annual reporting of certain matters; to change provisions relating to the General Oversight Committee of the Georgia Public Defender Standards Council; to repeal provisions relating to the council assuming the responsibilities of the former Georgia Indigent Defense Council; to provide for the mental health advocacy division and its duties and responsibilities; to repeal provisions relating to the transition period; to provide for the Georgia capital defender division and its duties and responsibilities; to provide for conflict counsel in death penalty cases and costs associated therewith; to change matters relating to the appointment of counsel in death penalty cases; to change matters relating to payment of attorney´s fees and expenses in capital cases in which the death

penalty is sought; to change the name and composition of the circuit public defender selection panels; to provide for a chairperson and secretary for the panel and responsibilities; to provide for the removal of circuit public defenders not for cause; to change provisions regarding legal representation in cases where a circuit public defender office has a conflict of interest; to change provisions relating to the 72 hour rule; to change provisions relating to cost-of-living adjustments for and employment of circuit public defenders; to clarify that circuit public defenders may hire additional personnel only if authorized by local law or if approved by the county governing authority; to change provisions relating to certain prohibitions for assistant public defenders; to change provisions relating to the budget of the council; to correct cross-references; to provide for funding for alternative delivery systems; to remove legislative intent with regard to attorney´s fees collected being used to fund indigent defense; to repeal provisions relating to the office of mental health advocacy; to provide for verification of income by a governing authority; to repeal provisions relating to the Office of the Georgia Capital Defender; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

″(n) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty.″

SECTION 2.

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

″(e) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty.″

SECTION 3.

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

"(g) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed once the state has filed a notice of its intention to seek the death penalty."

SECTION 4.

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

"15-6-76.1.

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

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

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

(d) When funds have been paid into the registry of the court pursuant to a court order directing that such funds be deposited in an interest-bearing trust account for the benefit

of one or more of the parties, the interest received from such funds after service charges or fees imposed by the bank or depository shall be paid to one or more of the parties as the order of the court directs.

(e) When funds have been paid into the registry of the court and the order of the court relating to such funds does not state that such funds shall be placed in an interest-bearing trust account for the benefit of one or more of the parties, the clerk shall deposit such funds in an interest-bearing trust account, and the financial institution in which such funds are deposited shall remit, after service charges or fees are deducted, the interest generated by said funds directly~~, at least quarterly and within 30 days of receipt,~~ to the Georgia Superior Court Clerks´ Cooperative Authority by the last day of the month following the month in which such funds were received for distribution to the Georgia Public Defender Standards Council for ~~distribution~~ allotment to the circuit public defender offices. With each remittance, the financial institution shall send a statement showing the name of the court, the rate of interest applied, the average monthly balance in the account against which the interest rate is applied, the service charges or fees of the bank or other depository, and the net remittance. This subsection shall include, but not be limited to, cash supersedeas bonds for criminal appeal, other supersedeas bonds, and bonds or funds paid into the court registry in actions involving interpleader, condemnation, and requests for injunctive relief. ~~The Georgia Public Defender Standards Council shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the circuit public defender offices.~~

(f) The Georgia Superior Court Clerks´ Cooperative Authority shall prescribe uniform procedures and forms for the reporting and remittance of all funds reported to or remitted by the Georgia Superior Court Clerks´ Cooperative Authority.

(g) Any interest earned on funds subject to this Code section or Code Section 15-7-49, 15-9-18, or 15-10-240 while in the custody of the the Georgia Superior Court Clerks´ Cooperative Authority shall be remitted to the Georgia Public Defender Standards Council.

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

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

SECTION 5.

Said title is further amended by revising Code Section 15-6-95, relating to the priorities of distribution of fines, forfeitures, surcharges, additional fees, and costs of partial payments into court, as follows:

″15-6-95.

Notwithstanding any law to the contrary, a clerk of any superior court of this state who receives partial payments, as ordered by the court, of criminal fines, forfeitures, or costs shall distribute said sums in the order of priority set forth below:

(1) The amount provided for in Chapter 17 of Title 47 for the Peace Officers´ Annuity and Benefit Fund;

(2) The amount provided for in Chapter 14 of Title 47 for the Superior Court Clerks´ Retirement Fund of Georgia;

(3) The amount provided for in Chapter 16 of Title 47 for the Sheriffs´ Retirement Fund of Georgia;

(4) The amounts provided under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73;

(5) The amounts provided for under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73;

(6) The amount as may be provided in Chapter 15 of Title 36 for county law libraries;

(7) The surcharge provided for in Chapter 21 of this title for jail construction and staffing;

(8) The surcharge provided for in cases of driving under the influence for purposes of state crime victim compensation under Code Section 15-21-112;

(9) The application fee provided for in subsection (c) of Code Section 15-21A-6;

(10) The balance of the fine shall be paid to the county; and

~~(10)~~(11) After the final partial or installment payment, the surcharge provided for in Code Sections 15-21-100 and 15-21-101 for the Drug Abuse Treatment and Education Fund.″

SECTION 6.

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

″15-7-49.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia ~~Public Defender Standards Council~~ Superior Court Clerks´ Cooperative Authority

in accordance with the provisions of subsections (c) through ~~(g)~~ (i) of Code Section 15-6-76.1~~. The~~ for distribution to the Georgia Public Defender Standards Council ~~shall allocate all interest received from such funds in accordance with subsection (e) of Code Section 15-6-76.1~~."

SECTION 7.

Said title is further amended by revising Code Section 15-9-18, relating to remittance of interest from cash bonds to the Georgia Public Defender Standards Council, as follows:

"15-9-18.

Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts, and the interest from those funds shall be remitted to the Georgia ~~Public Defender Standards Council~~ Superior Court Clerks´ Cooperative Authority in accordance with the provisions of subsections (c) through ~~(g)~~ (i) of Code Section 15-6-76.1~~. The~~ for distribution to the Georgia Public Defender Standards Council ~~shall allocate all interest received from such funds in accordance with subsection (e) of Code Section 15-6-76.1~~."

SECTION 8.

Said title is further amended by revising Code Section 15-10-240, relating to remittance of interest from funds to the Georgia Public Defender Standards Council, as follows:

"15-10-240.

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

SECTION 9.

Said title is further amended by revising Code Section 15-16-27, relating to deposit by sheriff of cash bonds and reserves of professional bondspersons in interest-bearing accounts and disposition of interest, as follows:

"15-16-27.

(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly~~, at least quarterly and within 30 days of receipt,~~ to the Georgia ~~Public Defender Standards Council~~ Superior Court Clerks´ Cooperative Authority in accordance with the provisions of subsections (c) through (i) of Code Section 15-6-76.1 for distribution to the ~~circuit public defender offices~~ Georgia Public Defender Standards Council. With each remittance, the financial institution shall send a statement showing the name of the county, deposits and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance. ~~The Georgia Public Defender Standards Council shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the circuit public defender offices.~~

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

SECTION 10.

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

″15-21-73.

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

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

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

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

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

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

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

(b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to be paid into the Peace Officers´ Annuity and Benefit Fund or Code Section 47-11-51 concerning the Judges of the Probate Courts Retirement Fund of Georgia and any other amounts provided for by law.″

SECTION 11.

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

″15-21-74.

The sums provided for ~~in~~ under paragraph (1) of subsection (a) of Code Section 15-21-73 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines ~~and forfeited bonds~~ and shall be paid over to the Georgia Superior Court Clerks´ Cooperative Authority by the last day of the month there following, to be deposited by the authority into the general treasury. The sums provided for under paragraph (2) of subsection (a) of Code Section 15-21-73 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from forfeited bonds and shall be paid over to the Georgia Superior Court Clerks´ Cooperative Authority by the last day of the month there following for remittance to the Office of Treasury and Fiscal Services; provided, however, that if the local governing authority has an approved procedure to verify the applicant´s income as set forth in Code Section 17-12-80, the court officer shall remit 50 percent of such finds to the Georgia Superior Court Clerks´ Cooperative Authority, and the remaining 50 percent shall be remitted to the local governing authority and reported to the Georgia Superior Court Clerks´ Cooperative Authority. The authority shall, on a quarterly basis, make a report and accounting of all funds collected and disbursed pursuant to this article and shall submit such report and accounting to the Office of Planning and Budget, the House Budget Office, and the Senate Budget Office no later than 60 days after the last day of the preceding quarter.″

SECTION 12.

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

″15-21-77.

~~(a)~~ An amount equal to the net proceeds derived under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73 in the immediately preceding year shall be appropriated to fund law enforcement or prosecutorial officers´ training, or both, and activities incident thereto, including, but not limited to, payment or repayment to the state treasury for capital outlay, general obligation bond debt service, administrative expenses, and any other expense or fund application which the General Assembly may deem appropriate. This ~~subsection~~ Code section shall not preclude the appropriation of a greater amount for this purpose.

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

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

SECTION 13.

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

″15-21A-6.

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

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

(A) With regard to decedents´ estates, the following proceedings: petition for letters of administration; petition to probate a will in solemn form; petition for an order

declaring no administration necessary; petition to probate a will in solemn form and for letters of administration with will annexed; and petition for year´s support;

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

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

(D) An application for writ of habeas corpus.

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

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

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

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

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

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

SECTION 14.

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

"17-12-2.

As used in this chapter, the term:

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

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

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

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

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

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

(B) A juvenile charged as a status offender or with a delinquent act or a violation of probation punishable by detention whose parents earn less than 125 percent of the

federal poverty guidelines unless there is evidence that the juvenile or his or her parents have other resources that might reasonably be used to employ a lawyer without undue hardship on the juvenile, his or her parents, or the parent´s dependents; and

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

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

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

SECTION 15.

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

″17-12-3.

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

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

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

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

(A) For the initial appointments:

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

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

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

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

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

(B) For the first subsequent council appointments:

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

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

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

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

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

(C) For the second subsequent council appointments:

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

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

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

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

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

(D) For the third subsequent council appointments:

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

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

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

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

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

(E) For the fourth subsequent council appointments:

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

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

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

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

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

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

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

(3.1) Four members of the council shall be county commissioners who have been elected and are serving as members of the county governing authority of this state. The county commissioner councilmembers shall be appointed by the Governor on or before July 1, 2008, and shall be from different geographic regions of this state. The Governor may solicit recommendations for such appointees from the Association County Commissioners of Georgia. Each county commissioner councilmember shall serve terms of four years; provided, however, that the initial appointments shall be for one, two, three, and four years, respectively, as designated by the Governor for each appointment, and thereafter, such members shall serve terms of four years. A county commission councilmember shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the council;

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

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

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

(c) In making ~~these~~ the appointments for ten members of the council as provided in paragraph (2) of subsection (b) of this Code section, the appointing authorities shall seek

to identify and appoint persons who represent a diversity of backgrounds and experience and shall solicit suggestions from the State Bar of Georgia, state and local bar associations, the Georgia Association of Criminal Defense Lawyers, the Georgia Alliance of African American Attorneys, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys´ Council of the State of Georgia, as well as from the public and other interested organizations and individuals within ~~the~~ this state. The appointing authorities shall not appoint a prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney´s office, or an employee of the Prosecuting Attorneys´ Council of the State of Georgia to serve on the council.

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

SECTION 16.

Said chapter is further amended by revising subsection (b) of Code Section 17-12-4, relating to the authority of the council, its annual report, and compensation of personnel, as follows:

″(b) The council shall establish auditing procedures as may be required in connection with the handling of public funds. The state auditor ~~is~~ shall be authorized and directed to make an annual audit of the transactions of the council and to make a complete report of the same to the General Assembly. The ~~report~~ annual audit shall disclose all moneys received by the council and all expenditures made by the council~~, including administrative expense~~ by revenue source, including all programs and special projects itemized in the General Appropriations Act. The annual audit shall include an itemization by revenue source of encumbered and reserved money. Revenue sources shall include each county governing authority´s expenditures which are made pursuant to Code Sections 17-12-31 and 17-12-32 and city or county expenditures which are made pursuant to subsection (d) of Code Section 17-12-23. The state auditor shall also make an audit of the affairs of the council at any time when requested to do so by a majority of the council or by the ~~Chief Justice of the Supreme Court of Georgia~~ Governor or General Assembly.″

SECTION 17.

Said chapter is further amended by revising Code Section 17-12-5, relating to the council´s director, qualification, selection, and responsibilities, as follows:

″17-12-5.

(a) To be eligible for appointment as the council´s director, a candidate shall be a member in good standing of the State Bar of Georgia with at least ~~three~~ seven years´ experience in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the council deems appropriate. The director shall serve at

the pleasure of the council and may be removed by a majority vote of the entire council. The council shall establish the director´s salary.

(b)(1) The director shall work with and provide support services and programs for circuit public defender offices and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this chapter. Such services and programs shall include, but shall not be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; assistance with death penalty cases; and assistance with appellate advocacy.

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

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

(c) The director shall:

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

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

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

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

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

(6) Coordinate the services of the council with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this chapter and

consult with professional bodies concerning the implementation and improvement of programs for providing indigent services;

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

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

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

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

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

(12) Evaluate each circuit public defender´s job performance and communicate his or her findings to the council; and

(13) Perform other duties as the council may assign.″

SECTION 18.

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

″(b) The council:

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

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

SECTION 19.

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

″17-12-8.

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

(b) The council shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this ~~article~~ chapter and to comply with all applicable laws governing the

rights of indigent persons accused of violations of criminal law. ~~Standards shall include, but shall not be limited to, the following:~~

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

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

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

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

~~(5) Standards and procedures for the appointment of independent, competent, and efficient counsel for representation in both the trial and appellate courts of indigent persons whose cases present conflicts of interest;~~

~~(6) Standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons;~~

~~(7) Standards for qualifications and performance of counsel representing indigent persons in capital cases;~~

~~(8) Standards for collecting the costs of legal representation and related services;~~

~~(9) Standards for compensation of attorneys appointed to represent indigent persons under this article;~~

~~(10) Standards for removing a circuit public defender for cause pursuant to Code Section 17-12-20;~~

~~(11) Standards for a uniform definition of a 'case' for purposes of determining caseload statistics; and~~

~~(12) Standards for accepting contractual indigent defense representation.~~

(c) ~~The initial minimum standards promulgated by the council pursuant to this Code section which are determined by the General Oversight Committee for the Georgia Public Defender Standards Council to have a fiscal impact shall be submitted by the council to the General Assembly at the regular session for 2005 and shall become effective only when ratified by joint resolution of the General Assembly and upon the approval of the resolution by the Governor or upon its becoming law without such approval. The power of the council to promulgate such initial minimum standards shall be deemed to be dependent upon such ratification; provided, however, the minimum standards promulgated by the council shall be utilized as a guideline prior to ratification. Any subsequent amendments or additions to the initial minimum standards promulgated by the council pursuant to this Code section which are determined by the General Oversight Committee for the Georgia~~

~~Public Defender Standards Council to have a fiscal impact shall be ratified at the next regular session of the General Assembly and shall become effective only when ratified by joint resolution of the General Assembly and upon the approval of the resolution by the Governor or upon its becoming law without such approval.~~

~~(d)~~ All rules, regulations, policies, and standards that are promulgated by the council shall be publicly available for review and shall be posted on the council´s website. Each rule, regulation, policy, and standard shall identify the date upon which ~~the~~ such rule, regulation, policy, and standard took effect~~, and if the standard is subject to ratification by the General Assembly as provided by subsection (c) of this Code section, the status of the standard with respect to ratification~~.″

SECTION 20.

Said chapter is further amended by revising Code Section 17-12-9, relating to continuing legal education for public defenders and staff, as follows:

″17-12-9.

The council shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the circuit public defenders or their staff members. The council, in accordance with such rules as it shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by any circuit public defender or their staff members in attending any approved course or training program from funds as may be appropriated or otherwise made available to the council. ~~Notwithstanding any other provision of law, the~~ The circuit public defenders or their staff members shall be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs~~, provided that no person shall be entitled to claim reimbursement under both this Code section and Code Section 17-12-26~~. The council shall adopt rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this Code section properly.″

SECTION 21.

Said chapter is further amended by revising Code Section 17-12-10, relating to annual reporting, as follows:

″17-12-10.

(a) The council shall prepare annually a report of its activities in order to provide the General Assembly, the Governor, and the Supreme Court of Georgia with an accurate description and accounting of the preceding year´s expenditures and ~~accomplishments~~ revenue, including moneys received from cities and county governing authorities. Such

report shall include a three-year cost projection and anticipated revenues for all programs defined in the General Appropriations Act.

(b) The council shall ~~also~~ provide to the General Assembly, the Governor, and the Supreme Court of Georgia a detailed analysis of all grants and funds, whether public or private, applied for or granted, together with how and in what manner the same are to be utilized and expended.

(c) The council shall prepare annually a report in order to provide the General Assembly and the Governor with information on the council´s assessment of the delivery of indigent defense services, including, but not limited to, the costs involved in operating each program and each governing authority´s indigent person verification system, methodology used, costs expended, and savings realized.″

SECTION 22.

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

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

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

SECTION 23.

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

″17-12-10.2.

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

SECTION 24.

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

"17-12-11.

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

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

~~(c) On December 31, 2003, the employees in good standing, assets, and resources of the Georgia Indigent Defense Council shall be transferred to the Georgia Public Defender Standards Council, and the council shall assume any executory contractual obligations of the Georgia Indigent Defense Council, provided that allocated funding resources for such obligations are also transferred. All full-time employees of the Georgia Public Defender Standards Council shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all of the benefits of appointed state employees provided by law.~~

(a) The mental health advocacy division shall represent in any court in this state indigent persons found not guilty by reason of insanity at the time of the crime or found mentally incompetent to stand trial and shall be the successor to the office of mental health advocacy created by Article 4 of this chapter as it existed on June 30, 2008. Any assets or resources of the office of mental health advocacy shall be transferred to the council. The mental health advocacy division office shall serve all counties of this state.

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

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

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

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

SECTION 25.

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 June 30, 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 26.

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

″17-12-12.1.

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

(b) A maximum of two attorneys shall be paid by the council at an hourly rate established by the council with state funds appropriated to the council. State funds shall be appropriated to the council for use by the Georgia capital defender division for the first $150,000.00 paid for each death penalty case. Funding for attorney´s fees and expenses between $150,000.01 and $250,000.00 for each death penalty case shall be paid through state appropriations for 75 percent of such attorney´s fees and expenses, and the county governing authority shall pay 25 percent of such attorney´s fees and expenses. Funding for all attorney´s fees and expenses in excess of $250,000.00 for each death penalty case shall be paid through state appropriations for 50 percent of such attorney´s fees and expenses, and the county governing authority shall pay 50 percent of such attorney´s fees and expenses.

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

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

SECTION 27.

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

"17-12-20.

(a) On and after July 1, 2008, there ~~There~~ is created in each judicial circuit in ~~the~~ this state a circuit public defender ~~selection~~ supervisory panel to be composed of ~~five~~ seven members. The ~~membership shall be composed of one member each appointed by the Governor, the~~ Lieutenant Governor, the Speaker of the House of Representatives, ~~the Chief Justice of the Supreme Court of Georgia,~~ and the chief judge of the superior court of the circuit shall each appoint one member. The Governor shall appoint four members, two of which shall be members of the governing authority of the counties within the judicial circuit for which such member is appointed to serve. A member of a governing authority shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the panel. ~~Members~~ Other than the county commissioner, members of the circuit public defender ~~selection~~ supervisory panel shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney´s office, or an employee of the Prosecuting Attorneys´ Council of the State of Georgia shall not serve as a member of the circuit public defender ~~selection~~ supervisory panel after July 1, 2005. On and after July 1, 2008, no employees of the council shall serve as a member of the circuit public defender supervisory panel. Members of the circuit public defender ~~selection~~ supervisory panel shall reside in the judicial circuit in which they serve. The circuit public defender ~~selection~~ supervisory panel members shall serve for a term of five years. Any vacancy for an appointed member shall be filled by the appointing authority.

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

(2) By majority vote of its membership, the circuit public defender ~~selection~~ supervisory panel shall appoint the circuit public defender in the circuit as provided in this article. The first such appointments shall be made to take office on January 1, 2005, for terms of up

to four years. The initial appointments shall be for a term of up to four years. A circuit public defender may be appointed for successive terms but shall not be reappointed if he or she was removed pursuant to subsection (c) of this Code section.

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

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

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

SECTION 28.

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

"17-12-22.

(a) The council shall establish a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest. ~~This~~ Such procedure ~~be by~~ may include, but shall not be limited to, the appointment of individual counsel on a case-by-case basis or ~~by the establishment of a conflict defender office in those circuits where the volume of cases may warrant a separate conflict defender office~~ the utilization of another circuit public defender office when feasible. It is the intent of the General Assembly that the council consider the most efficient and effective system to provide legal representation where the circuit public defender office has a conflict of interest.

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

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

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

SECTION 29.

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

"(b) In each of the actions and proceedings enumerated in subsection (a) of this Code section, entitlement to the services of counsel begins ~~as soon as is feasible and no~~ not more than ~~72 hours~~ five business days after the indigent person is taken into custody or service is made upon him or her of the charge, petition, notice, or other initiating process and such person makes an application for counsel to be appointed."

"(d) A city or county may contract with the circuit public defender office for the provision of criminal defense for indigent persons accused of violating city or county ordinances or

state laws. If a city or county does not contract with the circuit public defender office, the city or county shall be subject to all applicable rules, regulation, policies, and standards adopted by the council for representation of indigent persons in this state.″

SECTION 30.

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

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

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

SECTION 31.

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

″17-12-25.

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

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

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

SECTION 32.

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

″17-12-26.

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

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

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

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

~~(3) In determining the travel budget for each judicial circuit, the council shall consider the budget request submitted by the circuit public defender of each judicial circuit, the geographic size and the caseload of each circuit, and other facts as may be relevant. The council is authorized to establish a contingency reserve of not more than 3 percent of the total amount appropriated by the General Assembly in order to meet any expenses which could not be reasonably anticipated. The council shall submit to each circuit public defender, the state auditor, and the legislative budget analyst a monthly report showing the budget amount of expenditures made under the travel budget. The council may~~

~~periodically review and adjust the travel budget as may be necessary to carry out the purposes of this subsection.~~

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

SECTION 33.

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

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

SECTION 34.

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

″17-12-31.

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

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

SECTION 35.

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

″17-12-33.

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

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

SECTION 36.

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

″(2) The council, by majority vote of the entire council, determines that the delivery system meets or exceeds its <u>rules, regulations, policies, and</u> standards, including, without limitation, caseload standards, as the council adopts;″

SECTION 37.

Said chapter is further amended by adding a new subsection to Code Section 17-12-36, relating to alternative delivery systems and annual review of operations by the council, to read as follows:

″(h) An approved alternative delivery system shall be paid by the council, from funds available to the council, in an amount equal to the amount that would have been allocated to the judicial circuit for the minimum salary of the circuit public defender, the assistant circuit public defenders, the investigator, and the administrative staff, exclusive of benefits, if the judicial circuit was not operating an alternative delivery system.″

SECTION 38.

Said chapter is further amended by revising Code Section 17-12-50, relating to definitions, as follows:

″17-12-50.

As used in this article, the term:

(1) 'Paid in part' means payment by a county or municipality for a part of the cost of the provision of indigent defense services pursuant to a contract with a circuit public defender office as set forth in subsection (d) of Code Section 17-12-23. The term ~~does~~ shall not include payment by a county or municipality for office space and other supplies as set forth in Code Section 17-12-34.

(2) 'Public defender' means an attorney employed by a circuit public defender office~~, an attorney who is a conflict defender,~~ or any other attorney who is paid from public funds to represent an indigent person in a criminal case.″

SECTION 39.

Said chapter is further amended by revising subsection (c) of Code Section 17-12-51, relating to the repayment of attorney´s fees as a condition of probation, as follows:

″(c) If a defendant who is represented by a public defender, who is paid for entirely by the state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted, the court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other costs of the defense if the payment does not impose a financial hardship upon such defendant or ~~the~~ such defendant´s dependent or dependents. Such ~~The~~ defendant shall make ~~the~~ such payment through the probation department to the Georgia Public Defender Standards Council for payment to the general fund of the state treasury. ~~It is the intent of the General Assembly that all funds collected under this subsection shall be made available through the general appropriations process and may be appropriated for purposes of funding indigent defense.~~″

SECTION 40.

Said chapter is further amended by revising Article 4, relating to mental health advocacy for insane, as follows:

″ARTICLE 4

17-12-80.

~~As used in this article, the term 'office' means the office of mental health advocacy created by this article.~~

(a) Each governing authority that receives funding for implementation of this chapter shall create a verification system to determine if an applicant qualifies as an indigent person, and in order to retain funding as provided in Code Sections 15-21-74 and 15-21A-6, a governing authority shall have an approved indigent person verification system. Each governing authority shall establish the methodology for verification and fund such process.

Each governing authority shall produce auditable information to the council to substantiate its verification process as requested by the council or its director.

(b) The council shall establish rules and regulations to determine approval of an indigent person verification system and shall annually provide written notification to the Georgia Superior Court Clerks´ Cooperative Authority as to whether or not a governing authority has an approved indigent person verification system.

(c) The governing authority shall advise the circuit public defender of the name of each person who has applied for legal services and provide identifying information for those persons who are financially eligible for services within one business day of such person´s application for services.

~~17-12-81.~~

~~There is created the office of mental health advocacy for the purpose of undertaking the representation of indigent persons found not guilty by reason of insanity at the time of the crime in any court in this state. The office shall serve all counties of this state. The office shall be a direct successor of the mental health advocacy division of the Georgia Indigent Defense Council created by former Code Section 17-12-45 and all powers, duties, and obligations of such division shall become the powers, duties, and obligations of the office. The employees, assets, and resources of the mental health advocacy division of the Georgia Indigent Defense Council shall be transferred to the office. All references in this Code to the mental health advocacy division of the Georgia Indigent Defense Council shall be deemed to be references to the office.~~

~~17-12-82.~~

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

~~17-12-83.~~

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

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

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

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

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

~~17-12-84.~~

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

~~17-12-85.~~

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

~~17-12-86.~~

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

~~17-12-87.~~

~~(a) Whenever any person has been found not guilty by reason of insanity at the time of the crime pursuant to Code Section 17-7-131 and has been determined to be indigent, as provided in Article 1 of this chapter, the court in which such charges are pending shall notify the office and the office may assume the defense and representation of such persons in all matters pursuant to Code Section 17-7-131 if the resources, funding, and staffing of the office allow; provided, however, that the circuit public defender or other attorney who represented the indigent at the time of the finding of not guilty by reason of insanity at the time of the crime shall have the option to retain responsibility for the representation of any such person.~~

~~(b) Nothing in this Code section shall prevent the circuit public defender, the court, or the court appointed attorney from requesting the participation of the office prior to a finding of not guilty by reason of insanity at the time of the crime. The circuit public defender, the~~

~~court, or the court appointed attorney may request that the office assist in the case prior to a plea being entered and accepted by the court.~~

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

~~17-12-88.~~

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

SECTION 41.

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

″~~ARTICLE 6~~

~~17-12-120.~~

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

~~17-12-121.~~

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

~~17-12-122~~.

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

~~17-12-123.~~

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

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

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

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

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

~~17-12-124.~~

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

~~17-12-125~~.

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

~~17-12-126.~~

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

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

~~17-12-127~~.

~~(a) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be indigent, as provided in Article 2 of this chapter, the court in which the charges are pending shall notify the office, and the office shall assume the defense of the person if there is no conflict of interest.~~

~~(b) If for any reason the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the presiding judge of the superior court in which the case is pending shall appoint counsel to represent the defendant. A maximum~~

~~of two attorneys shall be paid by the council at an hourly rate established by the council with state funds appropriated to the council for use by the office. The council with the assistance of the office shall establish guidelines for attorney´s fees and expense requests. A county governing authority may provide supplemental compensation to appointed counsel. The presiding judge may appoint not more than one additional attorney to represent the defendant; provided, however, that such attorney shall be paid by the county governing authority with county funds at a rate established by the council.~~

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

~~17-12-127.1.~~

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

~~17-12-128.~~

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

SECTION 42.

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

SECTION 43.

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