

Senate Bill 42

By: Senators Smith of the 52nd, Wiles of the 37th, Hill of the 4th, Hamrick of the 30th and Hill of the 32nd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the "Georgia  
2 Indigent Defense Act of 2003," so as to extensively revise said Act; to reconstitute the  
3 Georgia Public Standards Council with new membership; to change the powers and duties  
4 of the council and provide that it shall be an advisory body; to provide for the Georgia Public  
5 Standards Agency as an agency of the state; to provide for its director and the powers and  
6 duties and operations of the agency and the director; to provide that the director shall have  
7 the control and management of the agency and shall exercise supervision with respect to  
8 circuit public defenders and carry out other duties formerly vested in the council; to provide  
9 for other related matters; to provide for effective dates; to repeal conflicting laws; and for  
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the 'Georgia Indigent  
14 Defense Act of 2003,' is amended by revising Code Sections 17-12-1 through 17-12-10.1,  
15 which Code sections relate to the Georgia Public Standards Council and its director and  
16 operations, as follows:

17 "7-12-1.

18 (a) This chapter shall be known and may be cited as the 'Georgia Indigent Defense Act of  
19 2003.'

20 (b) The Georgia Public Defender Standards Council shall be an ~~independent agency~~  
21 advisory body within the executive branch of state government.

22 (c) The Georgia Public Defender Agency shall be an independent agency within the  
23 executive branch of state government. The ~~council~~agency shall be responsible for assuring  
24 that adequate and effective legal representation is provided, independently of political

25 considerations or private interests, to indigent persons who are entitled to representation  
26 under this chapter.

27 17-12-2.

28 As used in this chapter, the term:

29 (0.5) 'Agency' means the Georgia Public Defender Agency under the direction of the  
30 director.

31 (1) 'Assistant public defender' means an attorney who is employed by any circuit public  
32 defender.

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

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

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

38 (5) 'Director' means the director of the Georgia Public Defender Agency Standards  
39 Council.

40 (6) 'Indigent person' or 'indigent defendant' means:

41 (A) A person charged with a misdemeanor, violation of probation, or a municipal or  
42 county offense punishable by imprisonment who earns less than 100 percent of the  
43 federal poverty guidelines unless there is evidence that the person has other resources  
44 that might reasonably be used to employ a lawyer without undue hardship on the person  
45 or his or her dependents;

46 (B) A juvenile charged with a delinquent act or a violation of probation punishable by  
47 detention whose parents earn less than 125 percent of the federal poverty guidelines  
48 unless there is evidence that the juvenile or his or her parents have other resources that  
49 might reasonably be used to employ a lawyer without undue hardship on the juvenile,  
50 his or her parents, or the parent's dependents; and

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

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

59 (7) 'Legislative oversight committee' means the Legislative Oversight Committee for the  
60 Georgia Public Defender Standards Council Agency.

61       (8) 'Public defender' means an attorney who is employed in a circuit public defender  
62       office or who represents an indigent person pursuant to this chapter.

63       17-12-3.

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

66       (b) Effective July 1, 2009, the council shall be reconstituted as a new advisory body with  
67       new members appointed in 2009. The members serving on the council immediately prior  
68       to July 1, 2009, shall cease to serve on that date, but such prior members shall be eligible  
69       for reappointment in 2009 to succeed themselves or to fill another position on the council.

70       Ten members of the council shall be appointed as follows:

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

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

86       (A) For the initial appointments in 2009:

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

89           (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
90       administration district 3 and, one person who resides in judicial administration district  
91       4, one person who resides in judicial administration district 7, and one person who  
92       resides in judicial administration district 8; and

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

97 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who  
98 resides in judicial administration district 7 and one person who resides in judicial  
99 administration district 8, except that on and after July 1, 2008, the Lieutenant  
100 Governor shall make such appointments; and

101 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who  
102 resides in judicial administration district 9 and one person who resides in judicial  
103 administration district 10, except that on and after July 1, 2008, the Speaker of the  
104 House of Representatives shall make such appointments;

105 (B) For the first subsequent council appointments:

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

108 (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
109 administration district 5, and one person who resides in judicial administration district  
110 6, one person who resides in judicial administration district 9, and one person who  
111 resides in judicial administration district 10; and

112 (iii) The Speaker of the House of Representatives shall appoint one person who  
113 resides in judicial administration district 1, one person who resides in judicial  
114 administration district 2, one person who resides in judicial administration district 7,  
115 and one person who resides in judicial administration district 8;.

116 (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who  
117 resides in judicial administration district 9 and one person who resides in judicial  
118 administration district 10, except that on and after July 1, 2008, the Lieutenant  
119 Governor shall make such appointments; and

120 (v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who  
121 resides in judicial administration district 1 and one person who resides in judicial  
122 administration district 2, except that on and after July 1, 2008, the Speaker of the  
123 House of Representatives shall make such appointments;

124 (C) For the second subsequent council appointments:

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

127 (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
128 administration district 1, one person who resides in judicial administration district 2,  
129 one person who resides in judicial administration district 7, and one person who  
130 resides in judicial administration district 8; and

131 (iii) The Speaker of the House of Representatives shall appoint one person who  
132 resides in judicial administration district 3, one person who resides in judicial

133       administration district 4, one person who resides in judicial administration district 9,  
134       and one person who resides in judicial administration district 10;.

135       (iv) ~~The Chief Justice of the Supreme Court of Georgia shall appoint one person who~~  
136       ~~resides in judicial administration district 1 and one person who resides in judicial~~  
137       ~~administration district 2, except that on and after July 1, 2008, the Lieutenant~~  
138       ~~Governor shall make such appointments; and~~

139       (v) ~~The Chief Judge of the Georgia Court of Appeals shall appoint one person who~~  
140       ~~resides in judicial administration district 3 and one person who resides in judicial~~  
141       ~~administration district 4, except that on and after July 1, 2008, the Speaker of the~~  
142       ~~House of Representatives shall make such appointments;~~

143       (D) For the third subsequent council appointments:

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

146           (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
147       administration district 3, one person who resides in judicial administration district 4,  
148       one person who resides in judicial administration district 9, and one person who  
149       resides in judicial administration district 10;

150           (iii) The Speaker of the House of Representatives shall appoint one person who  
151       resides in judicial administration district 1, and one person who resides in judicial  
152       administration district 2, one person who resides in judicial administration district 5,  
153       and one person who resides in judicial administration district 6.

154           (iv) ~~The Chief Justice of the Supreme Court of Georgia shall appoint one person who~~  
155       ~~resides in judicial administration district 3 and one person who resides in judicial~~  
156       ~~administration district 4, except that on and after July 1, 2008, the Lieutenant~~  
157       ~~Governor shall make such appointments; and~~

158           (v) ~~The Chief Judge of the Georgia Court of Appeals shall appoint one person who~~  
159       ~~resides in judicial administration district 5 and one person who resides in judicial~~  
160       ~~administration district 6, except that on and after July 1, 2008, the Speaker of the~~  
161       ~~House of Representatives shall make such appointments; and~~

162       (E) For the fourth subsequent council appointments:

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

165           (ii) The Lieutenant Governor shall appoint one person who resides in judicial  
166       administration district 1 and, one person who resides in judicial administration district  
167       2, one person who resides in judicial administration district 5, and one person who  
168       resides in judicial administration district 6;

169       (iii) The Speaker of the House of Representatives shall appoint one person who  
170       resides in judicial administration district 3 ~~and~~, one person who resides in judicial  
171       administration district 4~~;~~, one person who resides in judicial administration district 7,  
172       and one person who resides in judicial administration district 8.

173       (iv) ~~The Chief Justice of the Supreme Court of Georgia shall appoint one person who~~  
174       ~~resides in judicial administration district 5 and one person who resides in judicial~~  
175       ~~administration district 6, except that on and after July 1, 2008, the Lieutenant~~  
176       ~~Governor shall make such appointments; and~~

177       (v) ~~The Chief Judge of the Georgia Court of Appeals shall appoint one person who~~  
178       ~~resides in judicial administration district 7 and one person who resides in judicial~~  
179       ~~administration district 8, except that on and after July 1, 2008, the Speaker of the~~  
180       ~~House of Representatives shall make such appointments.~~

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

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

188       (3.1) Four members of the council shall be county commissioners who have been elected  
189       and are serving as members of a county governing authority in this state. The county  
190       commissioner councilmembers shall be appointed by the Governor on or before July 1,  
191       ~~2008~~ 2009, and shall be from different geographic regions of this state. The Governor  
192       may solicit recommendations for such appointees from the Association County  
193       Commissioners of Georgia. Each county commissioner councilmember shall serve terms  
194       of four years; provided, however, that the initial appointments shall be for one, two, three,  
195       and four years, respectively, as designated by the Governor for each appointment, and  
196       thereafter, such members shall serve terms of four years. A county commission  
197       councilmember shall be eligible to serve so long as he or she retains the office by virtue  
198       of which he or she is serving on the council;

199       (4) Except as provided in paragraph (3.1) of this subsection, all initial appointments shall  
200       be made to become members of the council on July 1, ~~2003~~ 2009, and their successors  
201       shall become members of the council on July 1 following their appointment. ~~The initial~~  
202       ~~appointees from the even-numbered judicial administration circuits shall serve until June~~  
203       ~~30, 2009. Notwithstanding the provisions of paragraph (3) of this subsection, the initial~~  
204       ~~member representing the circuit public defenders shall be made by the Supreme Court of~~

205     Georgia. The person representing the circuit defender position on the initial council shall  
206     be engaged on a full-time basis in the provision of criminal defense to the indigent;  
207     (5) Any vacancy for a member appointed pursuant to paragraphs (1), (2), and (3.1) of  
208     this subsection shall be filled by the appointing authority, and such appointee shall serve  
209     the balance of the vacating member's unexpired term; and  
210     (6) Any vacancy for a member appointed pursuant to paragraph (3) of this subsection  
211     shall be the successor to the circuit public defender as set forth in subsection (e) of Code  
212     Section 17-12-20.

213     (c) In making the appointments for ten members of the council as provided in  
214     paragraph (2) of subsection (b) of this Code section, the appointing authorities shall seek  
215     to identify and appoint persons who represent a diversity of backgrounds and experience  
216     and shall solicit suggestions from the State Bar of Georgia, state and local bar associations,  
217     the Georgia Association of Criminal Defense Lawyers, the councils representing the  
218     various categories of state court judges in Georgia, and the Prosecuting Attorneys' Council  
219     of the State of Georgia, as well as from the public and other interested organizations and  
220     individuals within this state. The appointing authorities shall not appoint a prosecuting  
221     attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a  
222     prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the  
223     State of Georgia to serve on the council.

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

226     17-12-4.

227     (a) The council agency:  
228         (1) Shall be a legal entity;  
229         (2) Shall have perpetual existence;  
230         (3) May contract;  
231         (4) May own property;  
232         (5) May accept funds, grants, and gifts from any public or private source, which shall be  
233         used to defray the expenses incident to implementing its purposes;  
234         (6) May adopt and use an official seal;  
235         (7) May establish a principal office;  
236         (8) May hire such administrative and clerical personnel as may be necessary and  
237         appropriate to fulfill its purposes; and  
238         (9) Shall have such other powers, privileges, and duties as may be reasonable and  
239         necessary for the proper fulfillment of its purposes.

240       (b) The ~~council director~~ shall establish auditing procedures as may be required in  
241 connection with the handling of public funds. The state auditor shall be authorized and  
242 directed to make an annual audit of the transactions of the ~~council agency~~ and to make a  
243 complete report of the same to the General Assembly. The annual audit shall disclose all  
244 moneys received by the ~~council agency~~ and all expenditures made by the ~~council agency~~  
245 by revenue source, including all programs and special projects itemized in the General  
246 Appropriations Act. The annual audit shall include an itemization by revenue source of  
247 encumbered and reserved money. Revenue sources shall include each county governing  
248 authority's expenditures which are made pursuant to Code Sections 17-12-31 and 17-12-32  
249 and city or county expenditures which are made pursuant to subsection (d) of Code Section  
250 17-12-23. The state auditor shall also make an audit of the affairs of the ~~council agency~~  
251 at any time when requested to do so by ~~a majority of the council~~ ~~the director~~ or by the  
252 Governor or General Assembly.

253       (c) The ~~council agency~~ may not provide compensation from its funds to any administrative  
254 or clerical personnel employed by the ~~council agency~~ if the personnel are then receiving  
255 retirement compensation from any retirement or pension fund created by Title 47 to  
256 provide compensation for past services as a judicial officer, prosecuting attorney, indigent  
257 defense attorney, court officer, or law enforcement officer except for county or municipal  
258 retirement funds.

259       17-12-5.

260       (a) To be eligible for appointment as the director, a candidate shall be a member in good  
261 standing of the State Bar of Georgia with at least seven years' experience in the practice of  
262 law. ~~The director shall be selected on the basis of training and experience and such other~~  
263 ~~qualifications as the council deems appropriate.~~ The director shall be appointed by the  
264 Governor and shall serve at the pleasure of the Governor.

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

274       (2) The director may establish divisions within the office to administer the services and  
275       programs as may be necessary to fulfill the purposes of this chapter. The director shall  
276       establish a mental health advocacy division and the Georgia capital defender division.  
277       (3) The director may hire and supervise such staff employees and may contract with  
278       outside consultants on behalf of the office as may be necessary to provide the services  
279       contemplated by this chapter.

280       (c) The director shall have and may exercise the following power and authority:

281           (1) The power and authority to take or cause to be taken any or all action necessary to  
282       perform any indigent defense services or otherwise necessary to perform any duties,  
283       responsibilities, or functions which the ~~council agency~~ is authorized by law to perform  
284       or to exercise any power or authority which the ~~council agency~~ is authorized by law to  
285       exercise; and

286           (2) The power and authority to make, promulgate, enforce, or otherwise require  
287       compliance with any and all rules, regulations, procedures, or directives necessary to  
288       perform any indigent defense services, to carry into effect the minimum standards and  
289       procedures promulgated by the ~~council agency~~, or otherwise necessary to perform any  
290       duties, responsibilities, or functions which the ~~council agency~~ is authorized by law to  
291       perform, ~~or to exercise any power or authority which the council is authorized by law to~~  
292       ~~exercise;~~ and

293           (3) ~~The power and authority to assist the council in the performance of its duties,~~  
294       ~~responsibilities, and functions and the exercise of its power and authority.~~

295       (d) The director shall:

296           (1) Prepare and submit ~~to the council a proposed~~ the budget for the ~~council agency~~. The  
297       director shall also prepare and submit an annual report containing pertinent data on the  
298       operations, costs, and needs of the ~~council agency~~ and such other information as the  
299       ~~council Governor~~ may require;

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

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

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

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

- 311 (6) Coordinate the services of the ~~council agency~~ with any federal, county, or private  
312 programs established to provide assistance to indigent persons in cases subject to this  
313 chapter and consult with professional bodies concerning the implementation and  
314 improvement of programs for providing indigent services;
- 315 (7) Provide for the training of attorneys and other staff involved in the legal  
316 representation of persons subject to this chapter;
- 317 (8) Attend all council meetings, ~~except those meetings or portions thereof that address~~  
318 ~~the question of appointment or removal of the director~~;
- 319 (9) Ensure that the expenditures of the ~~council agency~~ are not greater than the amounts  
320 budgeted or available from other revenue sources;
- 321 (10) Hire, ~~with the pending approval of the council~~, a mental health advocate who shall  
322 serve as director of the division of the office of mental health advocacy;
- 323 (11) Hire, ~~with the pending approval of the council~~, the capital defender who shall serve  
324 as the director of the division of the office of the Georgia capital defender; and
- 325 (12) Evaluate each circuit public defender's job performance, ~~and communicate his or~~  
326 ~~her findings to the council~~; and
- 327 (13) Perform other duties as the council may assign.

328 17-12-6.

- 329 (a) The ~~council agency~~ shall assist the public defenders throughout the state in their efforts  
330 to provide adequate legal defense to the indigent. Assistance may include:
- 331 (1) The preparation and distribution of a basic defense manual and other educational  
332 materials;
- 333 (2) The preparation and distribution of model forms and documents employed in indigent  
334 defense;
- 335 (3) The promotion of and assistance in the training of indigent defense attorneys;
- 336 (4) The provision of legal research assistance to public defenders; and
- 337 (5) The provision of such other assistance to public defenders as may be authorized by  
338 law.
- 339 (b) The ~~council director~~:
- 340 (1) Shall be the fiscal officer for the circuit public defender offices and shall account for  
341 all moneys received from each governing authority; and
- 342 (2) Shall collect, maintain, review, and publish records and statistics for the purpose of  
343 evaluating the delivery of indigent defense representation in Georgia.

344 17-12-7.

345 (a) All members of the council shall at all times act in the best interest of indigent  
346 defendants who are receiving legal representation under the provisions of this chapter.

347 (b) All members of the council shall be entitled to vote on any matter coming before the  
348 council unless otherwise provided by law or by rules adopted by the council concerning  
349 conflicts of interest.

350 (c) Each member of the council shall serve until a successor has been appointed. Removal  
351 of council members shall be for cause and shall be in accordance with policies and  
352 procedures adopted by the council.

353 (d) Unless otherwise provided in this article, a quorum shall be a majority of the members  
354 of the council who are then in office, and decisions of the council shall be by majority vote  
355 of the members present, ~~except that a majority of the entire council must approve the~~  
356 ~~appointment or removal of the chairperson or removal of a circuit public defender for cause~~  
357 ~~pursuant to Code Section 17-12-20 and an alternative delivery system pursuant to Code~~  
358 ~~Section 17-12-36 and other matters as set forth in Code Section 17-12-36.~~

359 (e) The council shall meet at least quarterly and at such other times and places as it deems  
360 necessary or convenient for the performance of its duties.

361 (f) The council shall elect a chairperson and such officers from the members of the council  
362 as it deems necessary and shall adopt such rules for the transaction of its business as it  
363 desires. The chairperson and officers shall serve for a term of two years and may be  
364 removed without cause by a vote of two-thirds of the members of the entire council and for  
365 cause by a majority vote of the entire council. The chairperson shall retain a vote on all  
366 matters except those in which the chairperson has a conflict of interest or the removal of  
367 the chairperson for cause. The council shall keep and maintain minutes of all council  
368 meetings.

369 (g) The members of the council shall receive no compensation for their services but shall  
370 be reimbursed for their actual expenses incurred in the performance of their duties as  
371 members of the council. Any expenses incurred by the council shall be paid from the  
372 general operating budget of the council agency.

373 17-12-8.

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

376 (b) The council shall ~~approve and implement~~ recommend programs, services, rules,  
377 policies, procedures, regulations, and standards as may be necessary to fulfill the purposes  
378 and provisions of this chapter and to comply with all applicable laws governing the rights  
379 of indigent persons accused of violations of criminal law.

380 (c) All rules, regulations, policies, and standards that are ~~promulgated recommended~~ by  
381 the council ~~and adopted, with or without changes, by the director~~ shall be publicly available  
382 for review and shall be posted on the ~~council's agency's~~ website. Each rule, regulation,  
383 policy, and standard shall identify the date upon which such rule, regulation, policy, and  
384 standard took effect.

385 17-12-9.

386 The ~~council agency~~ shall be authorized to conduct or approve for credit or reimbursement,  
387 or both, basic and continuing legal education courses or other appropriate training  
388 programs for the circuit public defenders or their staff members. The ~~council agency~~, in  
389 accordance with such rules as ~~it the director~~ shall adopt, shall be authorized to provide  
390 reimbursement, in whole or in part, for the actual expenses incurred by any circuit public  
391 defender or their staff members in attending any approved course or training program from  
392 funds as may be appropriated or otherwise made available to the ~~council agency~~. The  
393 circuit public defenders or their staff members shall be authorized to receive  
394 reimbursement for actual expenses incurred in attending approved courses or training  
395 programs. The ~~council director~~ shall adopt rules governing the approval of courses and  
396 training programs for credit or reimbursement as may be necessary to administer this Code  
397 section properly.

398 17-12-10.

399 (a) The ~~council director~~ shall prepare annually a report of ~~its the agency's~~ activities in  
400 order to provide the General Assembly, the Governor, and the Supreme Court of Georgia  
401 with an accurate description and accounting of the preceding year's expenditures and  
402 revenue, including moneys received from cities and county governing authorities. Such  
403 report shall include a three-year cost projection and anticipated revenues for all programs  
404 defined in the General Appropriations Act.

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

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

414 17-12-10.1.

415 (a) There is created the Legislative Oversight Committee for the Georgia Public Defender  
416 Agency Standards Council which shall be composed of eight persons: three members of  
417 the House of Representatives appointed by the Speaker of the House of Representatives,  
418 three members of the Senate appointed by the Senate Committee on Assignments or such  
419 person or entity as established by Senate rule, and one member of the House of  
420 Representatives and one member of the Senate appointed by the Governor. The members  
421 of such committee shall be selected within ten days after the convening of the General  
422 Assembly in each odd-numbered year and shall serve until their successors are appointed.  
423 (b) The Speaker of the House of Representatives shall appoint a member of such  
424 committee to serve as chairperson, and the Senate Committee on Assignments or such  
425 person or entity as established by Senate rule shall appoint one member of the committee  
426 to serve as vice chairperson during each even-numbered year. The Senate Committee on  
427 Assignments or such person or entity as established by Senate rule shall appoint a member  
428 of such committee to serve as chairperson, and the Speaker of the House of Representatives  
429 shall appoint one member to serve as vice chairperson during each odd-numbered year.  
430 Such committee shall meet at least three times each year and, upon the call of the  
431 chairperson, at such additional times as deemed necessary by the chairperson.

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

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

441 (d) The council and director shall cooperate with such committee and provide such  
442 information or reports as requested by the committee for the performance of its functions.  
443 (e) The council director shall submit its the agency's budget estimate to the director of the  
444 Office of Planning and Budget in accordance with subsection (a) of Code Section  
445 45-12-78.

446 (f) The legislative oversight committee shall make an annual report of its activities and  
447 findings to the membership of the General Assembly and the Governor within one week  
448 of the convening of each regular session of the General Assembly. The chairperson of such  
449 committee shall deliver written executive summaries of such report to the members of the  
450 General Assembly prior to the adoption of the General Appropriations Act each year.

451 (g) The members of such committee shall receive the allowances authorized for legislative  
452 members of legislative committees. The funds necessary to pay such allowances shall  
453 come from funds appropriated to the House of Representatives and the Senate.  
454 (h) The legislative oversight committee shall be authorized to request that a performance  
455 audit of the ~~council agency~~ be conducted."

456 **SECTION 2.**

457 Said chapter is further amended by revising Code Sections 17-12-12.1, relating to the capital  
458 defender division, and 17-12-13, relating to effective date, as follows:

459 "17-12-12.1.

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

466 (b) A maximum of two attorneys shall be paid by the ~~council agency~~ pursuant to a  
467 contractual agreement or at an hourly rate established by the ~~council director~~ with state  
468 funds appropriated to the ~~council agency~~. State funds shall be appropriated to the ~~council~~  
469 ~~agency~~ for use by the Georgia capital defender division for the first \$150,000.00 paid for  
470 each death penalty case. Funding for attorney's fees and expenses between \$150,000.01  
471 and \$250,000.00 for each death penalty case shall be paid through state appropriations for  
472 75 percent of such attorney's fees and expenses, and the county governing authority where  
473 the indictment was returned shall pay 25 percent of such attorney's fees and expenses.  
474 Funding for all attorney's fees and expenses in excess of \$250,000.00 for each death  
475 penalty case shall be paid through state appropriations for 50 percent of such attorney's fees  
476 and expenses, and the county governing authority where the indictment was returned shall  
477 pay 50 percent of such attorney's fees and expenses.

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

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

484 17-12-13.

485 ~~Reserved. This article shall become effective on December 31, 2003, except as specified~~  
486 ~~in Code Section 17-12-3."~~

### 487 SECTION 3.

488 Said chapter is further amended by revising subsections (b) through (e) of Code Section  
489 17-12-20, relating to selection and removal of circuit public defenders, as follows:

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

497 (2) By majority vote of its membership, the circuit public defender supervisory panel  
498 shall appoint the circuit public defender in the circuit as provided in this article. The first  
499 such appointments shall be made to take office on January 1, 2005, for terms of up to four  
500 years. The initial appointments shall be for a term of up to four years. A circuit public  
501 defender may be appointed for successive terms but shall not be reappointed if he or she  
502 was removed pursuant to subsection (c) of this Code section.

503 (c) A circuit public defender may be removed for cause by ~~a majority vote of the council~~  
504 ~~and may be removed without cause by a vote of two-thirds of the members of the entire~~  
505 ~~council the director after notice and opportunity for hearing~~.

506 (d) A circuit public defender supervisory panel may convene at any time during its circuit  
507 public defender's term of office and shall convene at least semiannually for purposes of  
508 reviewing the circuit public defender's job performance and the performance of the circuit  
509 public defender office. The council and circuit public defender shall be notified at least  
510 two weeks in advance of the convening of the circuit public defender supervisory panel.  
511 The circuit public defender shall be given the opportunity to appear before the circuit  
512 public defender supervisory panel and present evidence and testimony. The chairperson  
513 shall determine the agenda for the semiannual review process, but, at a minimum, such  
514 review shall include information collected pursuant to subsection (c) of Code Section  
515 17-12-24, usage of state and local funding, expenditures, and budgeting matters. The  
516 chairperson shall make an annual report on or before ~~the thirtieth day of September 30~~ of  
517 each year concerning the circuit public defender supervisory panel's findings regarding the  
518 job performance of the circuit public defender and his or her office to the council director  
519 on a form provided to the panel by the council director. If at any time the circuit public

520      defender supervisory panel finds that the circuit public defender is performing in a less than  
521      satisfactory manner or finds information of specific misconduct, the circuit public defender  
522      supervisory panel may by majority vote of its members adopt a resolution seeking review  
523      of their findings and remonstrative action by the ~~council director~~. Such resolution shall  
524      specify the reason for such request. All evidence presented and the findings of the circuit  
525      public defender supervisory panel shall be forwarded to the ~~council director~~ within 15 days  
526      of the adoption of the resolution. The ~~council shall initiate action on the circuit public~~  
527      ~~defender supervisory panel's resolution at its next regularly scheduled meeting and take~~  
528      ~~final action within 60 days thereafter. The council shall notify the circuit public defender~~  
529      ~~supervisory panel, in writing, of any actions taken pursuant to submission of a resolution~~  
530      ~~under this subsection.~~

531 (e) If a vacancy occurs for the position of circuit public defender, the chief judge of the  
532 superior court of the circuit shall appoint an interim circuit public defender to serve until  
533 the circuit public defender supervisory panel has appointed a replacement. The circuit  
534 public defender supervisory panel shall appoint a replacement circuit public defender  
535 within three months of the occurring of the vacancy. The replacement circuit public  
536 defender shall not be any individual who has been removed by the council pursuant to  
537 subsection (c) of this Code section."

## SECTION 4.

539 Said chapter is further amended by revising subsections (a) and (b) of Code Section  
540 17-12-22, relating to provision of counsel in event of a conflict of interests, as follows:

541       "(a) The ~~council~~ director shall establish a procedure for providing legal representation in  
542 cases where the circuit public defender office has a conflict of interest. Such procedure  
543 may include, but shall not be limited to, the appointment of individual counsel on a  
544 case-by-case basis or the utilization of another circuit public defender office when feasible.  
545 It is the intent of the General Assembly that the ~~council~~ director consider the most efficient  
546 and effective system to provide legal representation where the circuit public defender office  
547 has a conflict of interest.

548 (b) The circuit public defender shall establish a method for identifying conflicts of interest  
549 at the earliest possible opportunity. If there is a conflict of interest such that the circuit  
550 public defender office cannot represent a defendant and an attorney who is not employed  
551 by the circuit public defender office is appointed, such attorney shall have a contractual  
552 relationship with the council agency to represent indigent persons in conflict of interest  
553 cases, and such relationship may include, but shall not be limited to, a flat fee structure."

554

**SECTION 5.**

555 Said chapter is further amended by revising subsection (d) of Code Section 17-12-23, relating  
556 to representation by circuit public defenders, as follows:

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

562

**SECTION 6.**

563 Said chapter is further amended by revising subsection (c) of Code Section 17-12-24, relating  
564 to operations of circuit public defenders, as follows:

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

570

**SECTION 7.**

571 Said chapter is further amended by revising Code Section 17-12-26, relating to budget  
572 estimates, as follows:

573 "17-12-26.

574 The ~~council director~~ shall prepare and submit to the director of the Office of Planning and  
575 Budget ~~its a~~ budget estimate necessary for fulfilling the purposes of this chapter in  
576 accordance with Code Section 45-12-78. The ~~council agency~~ shall be authorized to seek,  
577 solicit, apply for, and utilize funds from any public or private source to use in fulfilling the  
578 purposes of this chapter."

579

**SECTION 8.**

580 Said chapter is further amended by revising paragraph (2) of subsection (a), subsection (b),  
581 and subsection (h) of Code Section 17-12-27, relating to public defender staff, as follows:

582 "(2) Subject to funds being appropriated by the General Assembly or otherwise available,  
583 additional assistant public defenders as may be authorized by the ~~council director~~. In  
584 authorizing additional assistant public defenders, the ~~council director~~ shall consider the  
585 caseload, present staff, and resources available to each circuit public defender and shall  
586 make authorizations as will contribute to the efficiency of individual circuit public

defenders and the effectiveness of providing adequate legal defense for indigent defendants.

589 (b) Each assistant public defender appointed pursuant to subsection (a) of this Code  
590 section shall be classified based on education, training, and experience. The jobs of  
591 assistant public defenders and the minimum qualifications required for appointment or  
592 promotion to each job shall be established by the council agency based on education,  
593 training, and experience and in accordance with the provisions of Code Sections 17-12-30  
594 and 17-12-34."

595       "(h) Notwithstanding the provisions of subsection (g) of this Code section, an employee  
596       of a local public defender office who was an employee of the office on June 30, 2004, and  
597       who becomes a circuit public defender or an employee of a circuit public defender office  
598       before July 1, 2005, may elect, with the consent of the former employer and the consent  
599       of the council agency, to remain an employee of the entity for which the employee worked  
600       as a local public defender; and such entity shall be his or her employer for all purposes,  
601       including, without limitation, compensation and employee benefits. The right to make an  
602       election pursuant to this subsection shall expire on July 1, 2005. The council agency shall  
603       reimburse the appropriate entity for compensation, benefits, and employer contributions  
604       under the federal Social Security Act, but the total payment from the council agency to the  
605       entity on behalf of the employee shall not exceed the amount otherwise payable to or for  
606       the employee under the circumstance where the employee had become a state employee."

## SECTION 9.

608 Said chapter is further amended by revising subsection (a) of Code Section 17-12-28, relating  
609 to circuit public defender investigators, as follows:

610       "(a) Subject to the provisions of this Code section, the circuit public defender in each  
611 judicial circuit is authorized to appoint one investigator to assist the circuit public defender  
612 in the performance of his or her official duties in the preparation of cases for trial. Subject  
613 to funds being appropriated by the General Assembly or otherwise available, the circuit  
614 public defender in each judicial circuit may appoint additional investigators as may be  
615 authorized by the ~~council~~ director. In authorizing additional investigators, the ~~council~~  
616 director shall consider the caseload, present staff, and resources available to each circuit  
617 public defender and shall make authorizations as will contribute to the efficiency of  
618 individual circuit public defenders and the effectiveness of circuit public defenders  
619 throughout the state in providing adequate legal defense for indigent defendants."

620

**SECTION 10.**

621 Said chapter is further amended by revising subsection (a) of Code Section 17-12-29, relating  
622 to circuit public defender personnel, as follows:

623 "(a) Each circuit public defender is authorized to employ administrative, clerical, and  
624 paraprofessional personnel as may be authorized by the ~~council director~~ based on funds  
625 appropriated by the General Assembly or otherwise available; provided, however, that each  
626 circuit public defender shall be authorized not less than two such personnel. In authorizing  
627 administrative, clerical, and paraprofessional personnel, the ~~council director~~ shall consider  
628 the caseload, present staff, and resources available to each circuit public defender and shall  
629 make authorizations as will contribute to the efficiency of individual circuit public  
630 defenders in providing effective criminal defense for indigent defendants."

631

**SECTION 11.**

632 Said chapter is further amended by revising paragraphs (1) through (5) of subsection (c) of  
633 Code Section 17-12-30, relating to classification and compensation of public defender staff,  
634 as follows:

635 "(c)(1) The ~~council director~~ shall establish salary ranges for each state paid position  
636 authorized by this article or any other provision of law. Salary ranges shall be similar to  
637 the state-wide and senior executive ranges adopted by the State Merit System of  
638 Personnel Administration and shall provide for minimum, midpoint, and maximum  
639 salaries not to exceed the maximum allowable salary. In establishing the salary ranges,  
640 all amounts will be rounded off to the nearest whole dollar. The ~~council director~~ may,  
641 from time to time, revise the salary ranges to include across-the-board increases which  
642 the General Assembly may from time to time authorize in the General Appropriations  
643 Act.

644 (2) The circuit public defender shall fix the compensation of each state paid employee  
645 appointed pursuant to this article in accordance with the job to which the person is  
646 appointed and the appropriate salary range.

647 (3) All salary advancements shall be based on quality of work, training, and  
648 performance. The salary of state paid personnel appointed pursuant to this article may  
649 be increased at the first of the calendar month following the annual anniversary of the  
650 person's appointment. No employee's salary shall be advanced beyond the maximum  
651 established in the applicable pay range.

652 (4) Any reduction in salary shall be made in accordance with the salary range for the  
653 position and the policies, rules, or regulations adopted by the ~~council director~~.

654 (5) The compensation of state paid personnel appointed pursuant to this article shall be  
655 paid in equal installments by the ~~council agency~~ as provided by this subsection from

656 funds appropriated for such purpose. The ~~council~~ director may authorize employees  
657 compensated pursuant to this Code section to participate in voluntary salary deductions  
658 as provided by Article 3 of Chapter 7 of Title 45."

659 **SECTION 12.**

660 Said chapter is further amended by revising Code Section 17-12-32, relating to local  
661 government contracts for personnel, as follows:

662 "17-12-32.

663 The governing authority of any county or municipality within the judicial circuit which  
664 provides additional personnel for the office of circuit public defender may contract with  
665 the ~~council~~ agency to provide such additional personnel in the same manner as is provided  
666 for state paid personnel in this article. Any such personnel shall be considered state  
667 employees and shall be entitled to the same fringe benefits as other state paid personnel  
668 employed by the circuit public defender pursuant to this article. The governing authority  
669 of such county or municipality shall transfer to the ~~council~~ agency such funds as may be  
670 necessary to cover the compensation, benefits, travel, and other expenses for such  
671 personnel."

672 **SECTION 13.**

673 Said chapter is further amended by revising Code Section 17-12-36, relating to alternative  
674 service delivery systems, and Code Section 17-12-37, relating to effective date, as follows:

675 "17-12-36.

676 (a) ~~The council may permit a~~ A judicial circuit composed of a single county ~~to~~ may  
677 continue in effect an alternative delivery system if approved to do so under the law in effect  
678 prior to July 1, 2009. ~~to the one set forth in this article if:~~

679 (1) ~~The delivery system:~~

680 ~~(A) Has a full-time director and staff and had been fully operational for at least two~~  
681 ~~years on July 1, 2003, or~~

682 ~~(B) Is administered by the county administrative office of the courts or the office of the~~  
683 ~~court administrator of the superior court and had been fully operational for at least two~~  
684 ~~years on July 1, 2003;~~

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

688 ~~(3) The governing authority of the county comprising the judicial circuit enacts a~~  
689 ~~resolution expressing its desire to continue its delivery system and transmits a copy of~~  
690 ~~such resolution to the council not later than September 30, 2004, and~~

691       (4) The governing authority of the county comprising the judicial circuit enacts a  
692 resolution agreeing to fully fund its delivery system.

693       (b) A judicial circuit composed of a single county may request an alternative delivery  
694 system only one time; provided, however, that if such judicial circuit's request for an  
695 alternative delivery system was disapproved on or before December 31, 2004, such judicial  
696 circuit may make one further request on or before September 1, 2005. The council shall  
697 allow such judicial circuit to have a hearing on such judicial circuit's request.

698       (c) The council shall make a determination with regard to continuation of an alternative  
699 delivery system not later than December 1, 2005, and if the council determines that such  
700 judicial circuit's alternative delivery system does not meet the standards as established by  
701 the council, the council shall notify such judicial circuit of its deficiencies in writing and  
702 shall allow such judicial circuit an opportunity to cure such deficiencies. The council shall  
703 make a final determination with regard to continuation of an alternative delivery system  
704 on or before December 31, 2005. Initial and subsequent approvals of alternative delivery  
705 systems shall be by a majority vote of the entire council.

706       (d) Any circuit whose alternative delivery system is disapproved at any time shall be  
707 governed by the provisions of this article other than this Code section.

708       (e)(b) In the event an alternative delivery system is approved, the council in operation, the  
709 director shall annually review the operation of such system and determine whether such  
710 system is meeting the standards as established by the council director and is eligible to  
711 continue operating as an approved alternative delivery system. In the event the council  
712 director determines that such system is not meeting the standards as established by the  
713 council director, the council director shall provide written notice to such system of the  
714 deficiencies and shall provide such system an opportunity to cure such deficiencies.

715       (f)(c) In the event an alternative delivery system is approved in operation, it shall keep and  
716 maintain appropriate records; which shall include the number of persons represented; the  
717 offenses charged; the outcome of each case; the expenditures made in providing services;  
718 and any other information requested by the council director.

719       (g)(d) In the event the council director disapproves an alternative delivery system either  
720 in its initial application or on annual review, such system may appeal such decision to the  
721 Supreme Court of Georgia under such rules and procedures as shall be prescribed by the  
722 Supreme Court.

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

728 17-12-37.

729 ~~Reserved. This article shall become effective on January 1, 2005; provided, however, that~~  
730 ~~the council and the circuit public defender selection panels shall be authorized to take~~  
731 ~~administrative actions as may be necessary or appropriate to prepare for and phase-in full~~  
732 ~~implementation of this article on or after December 31, 2003."~~

733 **SECTION 14.**

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

736 "(c) If a defendant who is represented by a public defender, who is paid for entirely by the  
737 state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted,  
738 the court may impose as a condition of probation repayment of all or a portion of the cost  
739 for providing legal representation and other costs of the defense if the payment does not  
740 impose a financial hardship upon such defendant or such defendant's dependent or  
741 dependents. Such defendant shall make such payment through the probation department  
742 to the Georgia Public Defender ~~Standards Council Agency~~ for payment to the general fund  
743 of the state treasury."

744 **SECTION 15.**

745 Said chapter is further amended by revising Code Section 17-12-80, relating to determination  
746 of indigency, as follows:

747 "17-12-80.

748 (a) In order to retain funding as provided in Code Sections 15-21-74 and 15-21A-6, a  
749 governing authority shall verify that the applicant qualifies as an indigent person. The  
750 governing authority shall establish the methodology for verification and fund such process.  
751 The governing authority shall produce auditable information to the ~~council agency~~ to  
752 substantiate its verification process as requested by the ~~council or its~~ director.

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

757 (c) The governing authority shall advise the circuit public defender, if applicable, or the  
758 administrator of the indigent defense system for the jurisdiction of the name of each person  
759 who has applied for legal services and provide identifying information for those persons  
760 who are financially eligible for services within one business day of such person's  
761 application for services."

762

**SECTION 16.**

763 This Act shall become effective July 1, 2009, except that for purposes of making the initial  
764 appointments called for by this Act, it shall become effective upon its approval by the  
765 Governor or upon its becoming law without such approval.

766

**SECTION 17.**

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