

## House Bill 238

By: Representatives Golick of the 34<sup>th</sup>, Lindsey of the 54<sup>th</sup>, Hatfield of the 177<sup>th</sup>, Willard of the 49<sup>th</sup>, Ramsey of the 72<sup>nd</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal  
2 defense for indigents, so as to change certain provisions relative to the powers and duties of  
3 the council; to change certain provisions relating to the director and the director's  
4 responsibilities; to change provisions relating to councilmembers' responsibilities; to provide  
5 for the director to appoint circuit public defenders; to change certain annual reporting  
6 requirements; to repeal an obsolete effective date Code section; to change provisions relating  
7 to the circuit public defender supervisory panel; to change provisions relating to appointing  
8 attorneys in conflict of interest cases; to provide for related matters; to provide an effective  
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense  
13 for indigents, is amended by revising subsection (a) of Code Section 17-12-4, relating to the  
14 authority of the Georgia Public Defender Standards Council, as follows:

15 "(a) The council:

- 16 (1) Shall be a legal entity;
- 17 (2) Shall have perpetual existence;
- 18 (3) May contract;
- 19 (4) May own property;
- 20 (5) May accept funds, grants, and gifts from any public or private source, which shall be  
21 used to defray the expenses incident to implementing its purposes;
- 22 (6) May adopt and use an official seal; and
- 23 (7) May establish a principal office;
- 24 ~~(8) May hire such administrative and clerical personnel as may be necessary and~~  
25 ~~appropriate to fulfill its purposes; and~~

26 ~~(9) Shall have such other powers, privileges, and duties as may be reasonable and~~  
 27 ~~necessary for the proper fulfillment of its purposes."~~

28 **SECTION 2.**

29 Said title is further amended by revising subsections (a) and (d) of Code Section 17-12-5,  
 30 relating to the director and the director's responsibilities, as follows:

31 "(a) To be eligible for appointment as the director, a candidate shall be a member in good  
 32 standing of the State Bar of Georgia with at least seven years' experience in the practice of  
 33 law. The director shall be selected on the basis of training and experience and such other  
 34 qualifications as the council deems appropriate. The director shall be both appointed and  
 35 removed by the council, subject to the approval of the Governor ~~and shall serve at the~~  
 36 ~~pleasure of the Governor."~~

37 "(d) The director shall:

- 38 (1) Prepare and submit to the council a proposed budget for the council. The director  
 39 shall also prepare and submit an annual report containing pertinent data on the operations,  
 40 costs, and needs of the council and such other information as the council may require;
- 41 (2) Develop such rules, policies, procedures, regulations, and standards as may be  
 42 necessary to carry out the provisions of this chapter and comply with all applicable laws,  
 43 standards, and regulations, and submit these to the council ~~for approval~~;
- 44 (3) Administer and coordinate the operations of the council and supervise compliance  
 45 with rules, policies, procedures, regulations, and standards adopted by the council;
- 46 (4) Maintain proper records of all financial transactions related to the operation of the  
 47 council;
- 48 (5) At the director's discretion, solicit and accept on behalf of the council any funds that  
 49 may become available from any source, including government, nonprofit, or private  
 50 grants, gifts, or bequests;
- 51 (6) Coordinate the services of the council with any federal, county, or private programs  
 52 established to provide assistance to indigent persons in cases subject to this chapter and  
 53 consult with professional bodies concerning the implementation and improvement of  
 54 programs for providing indigent services;
- 55 (7) Provide for the training of attorneys and other staff involved in the legal  
 56 representation of persons subject to this chapter;
- 57 (8) Attend all council meetings, except those meetings or portions thereof that address  
 58 the question of appointment or removal of the director;
- 59 (9) Ensure that the expenditures of the council are not greater than the amounts budgeted  
 60 or available from other revenue sources;

- 61 (10) Hire, ~~with the pending approval of the council,~~ a mental health advocate who shall  
 62 serve as director of the division of the office of mental health advocacy;
- 63 (11) Hire, ~~with the pending approval of the council,~~ the capital defender who shall serve  
 64 as the director of the division of the office of the Georgia capital defender; and
- 65 (12) Hire each circuit public defender, who shall serve at the pleasure of the director, and  
 66 evaluate Evaluate each circuit public defender's job performance ~~and communicate his~~  
 67 ~~or her findings to the council; and~~
- 68 (13) ~~Perform other duties as the council may assign."~~

69 **SECTION 3.**

70 Said chapter is further amended by revising subsection (d) of Code Section 17-12-7, relating  
 71 to councilmembers and responsibilities, as follows:

72 "(d) Unless otherwise provided in this article, a quorum shall be a majority of the members  
 73 of the council who are then in office, and decisions of the council shall be by majority vote  
 74 of the members present, except that a majority of the entire council ~~must~~ shall be required  
 75 to approve the appointment or removal of the chairperson for cause or removal of a circuit  
 76 public defender for cause pursuant to Code Section 17-12-20 and for annual approval of  
 77 an alternative delivery system pursuant to Code Section 17-12-36 and other matters as set  
 78 forth in Code Section 17-12-36. The vote of two-thirds of the members of the entire  
 79 council shall be required to remove the chairperson of the council without cause or to  
 80 overturn the director's decision regarding the removal of a circuit public defender."

81 **SECTION 4.**

82 Said chapter is further amended by revising subsection (c) of Code Section 17-12-10, relating  
 83 to annual reporting, as follows:

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

89 **SECTION 5.**

90 Said chapter is further amended by revising subsection (f) of Code Section 17-12-10.1,  
 91 relating to the legislative oversight committee, as follows:

92 "(f) The legislative oversight committee shall make an annual report of its activities and  
 93 findings to the membership of the General Assembly, the Chief Justice of the Supreme  
 94 Court, and the Governor within one week of the convening of each regular session of the

95 General Assembly. The chairperson of such committee shall deliver written executive  
 96 summaries of such report to the members of the General Assembly prior to the adoption  
 97 of the General Appropriations Act each year."

98 **SECTION 6.**

99 Said chapter is further amended by repealing Code Section 17-12-13, relating to the effective  
 100 date of the article, which reads as follows:

101 "17-12-13.

102 This article shall become effective on December 31, 2003, except as specified in Code  
 103 Section 17-12-3."

104 **SECTION 7.**

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

108 "17-12-20.

109 (a) On and after July 1, ~~2008~~ 2011, there is created in each judicial circuit in this state a  
 110 circuit public defender supervisory panel to be composed of ~~seven~~ three members, all of  
 111 whom shall be attorneys who regularly practice in that particular judicial circuit. The  
 112 ~~Lieutenant Governor, the Speaker of the House of Representatives, and the~~ chief judge of  
 113 the superior court of the circuit shall ~~each~~ appoint one member. The Governor shall  
 114 ~~appoint four members, two of which shall be members of the governing authority of the~~  
 115 ~~counties within the judicial circuit for which such member is appointed to serve. A~~  
 116 ~~member of a governing authority shall be eligible to serve so long as he or she retains the~~  
 117 ~~office by virtue of which he or she is serving on the panel. Other than the county~~  
 118 ~~commissioner, members~~ one member. In a single county judicial circuit, the chairperson  
 119 of the governing authority shall appoint one member; in multicounty judicial circuits, the  
 120 chairpersons of the governing authorities shall caucus and appoint one member. Members  
 121 of the circuit public defender supervisory panel shall be individuals with significant  
 122 experience working in the criminal justice system or who have demonstrated a strong  
 123 commitment to the provision of adequate and effective representation of indigent  
 124 defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51,  
 125 any employee of a prosecuting attorney's office, or an employee of the Prosecuting  
 126 Attorneys' Council of the State of Georgia shall not serve as a member of the circuit public  
 127 defender supervisory panel after July 1, 2005. On and after July 1, 2008, no employees of  
 128 the council shall serve as a member of the circuit public defender supervisory panel.  
 129 Members of the circuit public defender supervisory panel shall reside in the judicial circuit

130 in which they serve. The circuit public defender supervisory panel members shall serve  
 131 for a term of five years. Any vacancy for an appointed member shall be filled by the  
 132 appointing authority.

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

140 (2) By majority vote of its membership, the circuit public defender supervisory panel  
 141 shall ~~appoint~~ nominate three people to serve as the circuit public defender in the circuit  
 142 ~~as provided in this article. The first such appointments shall be made to take office on~~  
 143 ~~January 1, 2005, for terms of up to four years. The initial appointments shall be for a~~  
 144 ~~term of up to four years. The director shall select the circuit public defender from the~~  
 145 ~~panel's list of nominees.~~ A circuit public defender shall serve a term for up to four years  
 146 and may be appointed for successive terms but shall not be reappointed if he or she was  
 147 removed pursuant to subsection (c) of this Code section.

148 (c) A circuit public defender may be removed ~~for cause by a majority vote of the council~~  
 149 ~~and may be removed without cause by a vote of two-thirds of the members of the entire~~  
 150 ~~council~~ the director. If a circuit public defender wants to appeal such removal, he or she  
 151 may appeal the decision to the council. By a vote of two-thirds of the members of the  
 152 entire council, the council may overturn the director's decision. Any appeal regarding a  
 153 removal request shall be submitted to the council within 15 days of the effective date of the  
 154 removal, and the council shall take action in hearing the appeal at its next regularly  
 155 scheduled meeting and take final action within 30 days thereafter. A circuit public  
 156 defender who has been removed by the director who has filed an appeal with the council  
 157 shall continue to serve as the circuit public defender until the council reaches a decision on  
 158 the appeal.

159 (d) A circuit public defender supervisory panel may convene at any time during its circuit  
 160 public defender's term of office and shall convene ~~at least semiannually~~ annually for  
 161 purposes of reviewing the circuit public defender's job performance and the performance  
 162 of the circuit public defender office. The ~~council~~ director and circuit public defender shall  
 163 be notified at least two weeks in advance of the convening of the circuit public defender  
 164 supervisory panel. The circuit public defender shall be given the opportunity to appear  
 165 before the circuit public defender supervisory panel and present evidence and testimony.  
 166 The chairperson shall determine the agenda for the ~~semiannual~~ annual review process, but,

167 at a minimum, such review shall include information collected pursuant to subsection (c)  
 168 of Code Section 17-12-24, usage of state and local funding, expenditures, and budgeting  
 169 matters. The chairperson shall make an annual report on or before the thirtieth day of  
 170 September of each year concerning the circuit public defender supervisory panel's findings  
 171 regarding the job performance of the circuit public defender and his or her office to the  
 172 ~~council director~~ on a form provided to the panel by the ~~council director~~. If at any time the  
 173 circuit public defender supervisory panel finds that the circuit public defender is  
 174 performing in a less than satisfactory manner or finds information of specific misconduct,  
 175 the circuit public defender supervisory panel may by majority vote of its members adopt  
 176 a resolution seeking review of their findings and remonstrative action by the ~~council~~  
 177 ~~director~~. Such resolution shall specify the reason for such request. All evidence presented  
 178 and the findings of the circuit public defender supervisory panel shall be forwarded to the  
 179 ~~council director~~ within 15 days of the adoption of the resolution. The ~~council director~~ shall  
 180 initiate action on the circuit public defender supervisory panel's resolution ~~at its next~~  
 181 ~~regularly scheduled meeting and take final action within 60 30 days thereafter of receiving~~  
 182 ~~the resolution~~. The ~~council director~~ shall notify the circuit public defender supervisory  
 183 panel, in writing, of any actions taken pursuant to submission of a resolution under this  
 184 subsection.

185 (e) If a vacancy occurs for the position of circuit public defender, the ~~chief judge of the~~  
 186 ~~superior court of the circuit director~~ shall appoint an interim circuit public defender to serve  
 187 until the ~~circuit public defender supervisory panel director~~ has appointed a replacement.  
 188 The circuit public defender supervisory panel shall ~~appoint~~ nominate three people to serve  
 189 as a replacement circuit public defender within three months of the occurring of the  
 190 vacancy. The director shall select the replacement circuit public defender. The  
 191 ~~replacement circuit public defender shall not be any individual who has been removed by~~  
 192 ~~the council pursuant to subsection (c) of this Code section."~~

193 **SECTION 8.**

194 Said chapter is further amended by revising subsection (a) of Code Section 17-12-22, relating  
 195 to the procedure for appointment of attorneys for indigent defendants in the event a public  
 196 defender's office has a conflict of interest, as follows:

197 "(a) The ~~council director~~ shall establish a procedure for providing legal representation in  
 198 cases where the circuit public defender office has a conflict of interest. Such procedure  
 199 may include, but shall not be limited to, the appointment of individual counsel on a  
 200 case-by-case basis or the utilization of another circuit public defender office. Whatever  
 201 procedure the ~~council director~~ establishes for each circuit's conflict of interest cases shall  
 202 be adhered to by the circuit public defender office. It is the intent of the General Assembly

203 that the ~~council~~ director consider the most efficient and effective system to provide legal  
204 representation where the circuit public defender office has a conflict of interest."

205 **SECTION 9.**

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

208 **SECTION 10.**

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