

The House Committee on Judiciary Non-civil offers the following substitute to HB 238:

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 and clarify certain provisions relative to the powers and
3 duties of the council and director; to clarify the council's responsibility to set policy and
4 standards and the director's responsibility to develop rules and regulations to efficiently
5 administer the provisions of this chapter; to change provisions relating to councilmembers'
6 responsibilities; to provide for the director to appoint circuit public defenders; to change
7 certain annual reporting requirements; to repeal an obsolete effective date Code section; to
8 change provisions relating to the circuit public defender supervisory panel; to change
9 provisions relating to appointing attorneys in conflict of interest cases; to provide for related
10 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

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

16 "(a) The council:

17 (1) Shall be a legal entity;

18 (2) Shall have perpetual existence;

19 (3) May contract;

20 (4) May own property;

21 (5) May accept funds, grants, and gifts from any public or private source, which shall be
22 used to defray the expenses incident to implementing its purposes;

23 (6) May adopt and use an official seal; and

24 (7) May establish a principal office;

25 ~~(8) May hire such administrative and clerical personnel as may be necessary and~~
26 ~~appropriate to fulfill its purposes; and~~

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

29 **SECTION 2.**

30 Said title is further amended by revising subsections (a), (c), and (d) of Code Section
 31 17-12-5, relating to the director and the director's responsibilities, as follows:

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

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

39 (1) The power and authority to take or cause to be taken any or all action necessary to
 40 perform any indigent defense services or otherwise necessary to perform any duties,
 41 responsibilities, or functions which the ~~council~~ director is authorized by law to perform
 42 ~~or~~ and to exercise any power or authority which the council is authorized by law to
 43 exercise;

44 (2) The power and authority to make, promulgate, enforce, or otherwise require
 45 compliance with any and all rules, regulations, procedures, or directives necessary to
 46 perform any indigent defense services; ~~to carry into effect the minimum standards and~~
 47 ~~procedures policies promulgated by the council, or otherwise necessary; and~~ to perform
 48 any duties, responsibilities, or functions which the council is authorized by law to
 49 perform or to exercise any power or authority which the council is authorized by law to
 50 exercise; and

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

53 (d) The director shall:

54 (1) Prepare and submit to the council a proposed budget for the council. The director
 55 shall also prepare and submit an annual report containing pertinent data on the operations,
 56 costs, and needs of the council and such other information as the council may require;

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

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

- 63 (4) Maintain proper records of all financial transactions related to the operation of the
64 council;
- 65 (5) At the director's discretion, solicit and accept on behalf of the council any funds that
66 may become available from any source, including government, nonprofit, or private
67 grants, gifts, or bequests;
- 68 (6) Coordinate the services of the council with any federal, county, or private programs
69 established to provide assistance to indigent persons in cases subject to this chapter and
70 consult with professional bodies concerning the implementation and improvement of
71 programs for providing indigent services;
- 72 (7) Provide for the training of attorneys and other staff involved in the legal
73 representation of persons subject to this chapter;
- 74 (8) Attend all council meetings, except those meetings or portions thereof that address
75 the question of appointment or removal of the director;
- 76 (9) Ensure that the expenditures of the council are not greater than the amounts budgeted
77 or available from other revenue sources;
- 78 (10) Hire, ~~with the pending approval of the council,~~ a mental health advocate who shall
79 serve as director of the division of the office of mental health advocacy;
- 80 (11) Hire, ~~with the pending approval of the council,~~ the capital defender who shall serve
81 as the director of the division of the office of the Georgia capital defender; and
- 82 (12) Evaluate each circuit public defender's job performance ~~and communicate his or her~~
83 ~~findings to the council;~~ and
- 84 (13) ~~Perform other duties as the council may assign."~~

85 **SECTION 3.**

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

88 "(d) Unless otherwise provided in this article, a quorum shall be a majority of the members
89 of the council who are then in office, and decisions of the council shall be by majority vote
90 of the members present, except that a majority of the entire council ~~must~~ shall be required
91 to approve the appointment or removal of the chairperson or removal of a circuit public
92 defender for cause pursuant to Code Section 17-12-20 and for annual approval of an
93 alternative delivery system pursuant to Code Section 17-12-36 and other matters as set
94 forth in Code Section 17-12-36. The vote of two-thirds of the members of the entire
95 council shall be required to remove the chairperson of the council or to overturn the
96 director's decision regarding the removal of a circuit public defender."

97 **SECTION 4.**

98 Said chapter is further amended by revising subsections (b) and (c) of Code Section 17-12-8,
 99 relating to approval by council of programs for representation of indigents, as follows:

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

104 (c) All ~~rules, regulations~~, policies; and standards that are promulgated by the council shall
 105 be publicly available for review and shall be posted on the council's website. Each ~~rule~~,
 106 ~~regulation~~, policy; and standard shall identify the date upon which such ~~rule, regulation~~,
 107 policy; and standard took effect."

108 **SECTION 5.**

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

111 "17-12-9.

112 The council shall be authorized to conduct or approve for credit or reimbursement, or both,
 113 basic and continuing legal education courses or other appropriate training programs for the
 114 circuit public defenders or their staff members. The council, in accordance with such ~~rules~~
 115 policies as it shall adopt, shall be authorized to provide reimbursement, in whole or in part,
 116 for the actual expenses incurred by any circuit public defender or their staff members in
 117 attending any approved course or training program from funds as may be appropriated or
 118 otherwise made available to the council. The circuit public defenders or their staff
 119 members shall be authorized to receive reimbursement for actual expenses incurred in
 120 attending approved courses or training programs. The council shall adopt ~~rules~~ policies
 121 governing the approval of courses and training programs for credit or reimbursement as
 122 may be necessary to administer this Code section properly."

123 **SECTION 6.**

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

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

131 **SECTION 7.**

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

134 "(f) The legislative oversight committee shall make an annual report of its activities and
 135 findings to the membership of the General Assembly, the Chief Justice of the Supreme
 136 Court, and the Governor within one week of the convening of each regular session of the
 137 General Assembly. The chairperson of such committee shall deliver written executive
 138 summaries of such report to the members of the General Assembly prior to the adoption
 139 of the General Appropriations Act each year."

140 **SECTION 8.**

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

143 "17-12-13.

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

146 **SECTION 9.**

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

150 "17-12-20.

151 (a) On and after July 1, ~~2008~~ 2011, there is created in each judicial circuit in this state a
 152 circuit public defender supervisory panel to be composed of ~~seven~~ three members, all of
 153 whom shall be attorneys who regularly practice in that particular judicial circuit. The
 154 ~~Lieutenant Governor, the Speaker of the House of Representatives, and the chief judge of~~
 155 the superior court of the circuit shall ~~each~~ appoint one member. The Governor shall
 156 appoint ~~four~~ members, ~~two of which shall be members of the governing authority of the~~
 157 ~~counties within the judicial circuit for which such member is appointed to serve.~~ A
 158 ~~member of a governing authority shall be eligible to serve so long as he or she retains the~~
 159 ~~office by virtue of which he or she is serving on the panel.~~ Other than the county
 160 ~~commissioner, members~~ one member. In a single county judicial circuit, the chairperson
 161 of the governing authority or sole commissioner shall appoint one member; in multicounty
 162 judicial circuits, the chairpersons of the governing authorities or sole commissioners shall
 163 caucus and appoint one member. When a caucus is needed to appoint a member of the
 164 supervisory panel, the chairperson or sole commissioner of the largest county by population
 165 in the judicial circuit shall convene the caucus. Members of the circuit public defender

166 supervisory panel shall be individuals with significant experience working in the criminal
167 justice system or who have demonstrated a strong commitment to the provision of adequate
168 and effective representation of indigent defendants. A prosecuting attorney as defined in
169 paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office,
170 or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not
171 serve as a member of the circuit public defender supervisory panel after July 1, 2005. On
172 and after July 1, 2008, no employees of the council shall serve as a member of the circuit
173 public defender supervisory panel. Members of the circuit public defender supervisory
174 panel shall reside in the judicial circuit in which they serve. The circuit public defender
175 supervisory panel members shall serve for a term of five years. Any vacancy for an
176 appointed member shall be filled by the appointing authority within 60 days of the vacancy
177 occurring.

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

185 (2) By majority vote of its membership, the circuit public defender supervisory panel
186 shall ~~appoint~~ nominate not more than five people to serve as the circuit public defender
187 ~~in the circuit as provided in this article. The first such appointments shall be made to take~~
188 ~~office on January 1, 2005, for terms of up to four years. The initial appointments shall~~
189 ~~be for a term of up to four years. The director shall select the circuit public defender~~
190 from the panel's list of nominees. A circuit public defender shall serve a term for up to
191 four years and may be appointed for successive terms but shall not be reappointed if he
192 or she was removed pursuant to subsection (c) of this Code section.

193 (c) A circuit public defender may be removed for cause by ~~a majority vote of the council~~
194 ~~and may be removed without cause by a vote of two-thirds of the members of the entire~~
195 ~~council~~ the director. If a circuit public defender wants to appeal such removal, he or she
196 may appeal the decision to the council. By a vote of two-thirds of the members of the
197 entire council, the council may overturn the director's decision. Any appeal regarding a
198 removal request shall be submitted to the council within 15 days of the effective date of the
199 removal, and the council shall take action in hearing the appeal at its next regularly
200 scheduled meeting and take final action within 30 days thereafter. A circuit public
201 defender who has been removed by the director who has filed an appeal with the council

202 shall continue to serve as the circuit public defender until the council reaches a decision on
 203 the appeal.

204 (d) A circuit public defender supervisory panel may convene at any time during its circuit
 205 public defender's term of office and shall convene at least ~~semiannually~~ annually for
 206 purposes of reviewing the circuit public defender's job performance and the performance
 207 of the circuit public defender office. The ~~council~~ director and circuit public defender shall
 208 be notified at least two weeks in advance of the convening of the circuit public defender
 209 supervisory panel. The circuit public defender shall be given the opportunity to appear
 210 before the circuit public defender supervisory panel and present evidence and testimony.
 211 The chairperson shall determine the agenda for the ~~semiannual~~ annual review process, but,
 212 at a minimum, such review shall include information collected pursuant to subsection (c)
 213 of Code Section 17-12-24, usage of state and local funding, expenditures, and budgeting
 214 matters. The chairperson shall make an annual report on or before the thirtieth day of
 215 September of each year concerning the circuit public defender supervisory panel's findings
 216 regarding the job performance of the circuit public defender and his or her office to the
 217 ~~council~~ director on a form provided to the panel by the ~~council~~ director. If at any time the
 218 circuit public defender supervisory panel finds that the circuit public defender is
 219 performing in a less than satisfactory manner or finds information of specific misconduct,
 220 the circuit public defender supervisory panel may by majority vote of its members adopt
 221 a resolution seeking review of their findings and remonstrative action by the ~~council~~
 222 director. Such resolution shall specify the reason for such request. All evidence presented
 223 and the findings of the circuit public defender supervisory panel shall be forwarded to the
 224 ~~council~~ director within 15 days of the adoption of the resolution. The ~~council~~ director shall
 225 initiate action on the circuit public defender supervisory panel's resolution ~~at its next~~
 226 ~~regularly scheduled meeting and take final action~~ within ~~60~~ 30 days ~~thereafter~~ of receiving
 227 the resolution. The ~~council~~ director shall notify the circuit public defender supervisory
 228 panel, in writing, of any actions taken pursuant to submission of a resolution under this
 229 subsection.

230 (e) If a vacancy occurs for the position of circuit public defender, the ~~chief judge of the~~
 231 ~~superior court of the circuit~~ director shall appoint an interim circuit public defender to serve
 232 until the ~~circuit public defender supervisory panel~~ director has appointed a replacement.
 233 ~~Within 30 days of the vacancy occurring, the~~ The circuit public defender supervisory panel
 234 ~~shall appoint~~ meet and nominate not more than five people to serve as a replacement circuit
 235 ~~public defender within three months of the occurring of the vacancy. The replacement~~
 236 ~~circuit public defender shall not be any individual who has been removed by the council~~
 237 ~~pursuant to subsection (c) of this Code section. The director shall select the replacement~~
 238 circuit public defender from the panel's list of nominees."

239

SECTION 10.

240 Said chapter is further amended by revising subsections (a) and (c) of Code Section
 241 17-12-22, relating to the procedure for appointment of attorneys for indigent defendants in
 242 the event a public defender's office has a conflict of interest, as follows:

243 "(a) The director, with input from the council, shall establish a procedure for providing
 244 legal representation in cases where the circuit public defender office has a conflict of
 245 interest. Such procedure may include, but shall not be limited to, the appointment of
 246 individual counsel on a case-by-case basis or the utilization of another circuit public
 247 defender office. Whatever procedure the ~~council~~ director establishes for each circuit's
 248 conflict of interest cases shall be adhered to by the circuit public defender office. It is the
 249 intent of the General Assembly that the ~~council~~ director consider the most efficient and
 250 effective system to provide legal representation where the circuit public defender office has
 251 a conflict of interest."

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

256

SECTION 11.

257 Said chapter is further amended by revising subsection (d) of Code Section 17-12-23, relating
 258 to cases in which public defender representation is required, as follows:

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

264

SECTION 12.

265 Said chapter is further amended by revising paragraph (4) of subsection (c) of Code Section
 266 17-12-30, relating to classification of personnel, as follows:

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

269

SECTION 13.

270 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
 271 17-12-36, relating to alternate delivery systems, as follows:

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

275 **SECTION 14.**

276 Said chapter is further amended by revising subsection (b) of Code Section 17-12-80, relating
277 to verification of indigency required, as follows:

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

282 **SECTION 15.**

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

285 **SECTION 16.**

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