

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

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

14 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense
15 for indigents, is amended by repealing in its entirety Code Section 17-12-3, relating to the
16 creation of the Georgia Public Defender Standards Council, and enacting a new Code Section
17 17-12-3 to read as follows:
18

19 "17-12-3.

20 (a) There is created the Georgia Public Defender Standards Council to be composed of
21 nine members. Other than county commission members, members of the council shall be
22 individuals with significant experience working in the criminal justice system or who have
23 demonstrated a strong commitment to the provision of adequate and effective
24 representation of indigent defendants.

25 (b) Effective July 1, 2011, the council shall be reconstituted. The members serving on the
26 council immediately prior to July 1, 2011, shall cease to serve on that date, but such prior

27 members shall be eligible for reappointment to succeed themselves or to fill another
28 position on the council.

29 (c) The nine members of the council shall be appointed as follows:

30 (1) Five members shall be appointed by the Governor. The Governor shall appoint three
31 county commissioners who have been elected and are serving as members of a county
32 governing authority in this state. The county commissioner councilmembers appointed
33 by the Governor shall be from different geographic regions of this state. The Governor
34 may solicit recommendations for such appointees from the Association County
35 Commissioners of Georgia. Each county commissioner councilmember shall serve a
36 term of four years; provided, however, that the initial appointments shall be for one, two,
37 and three years, respectively, as designated by the Governor for each appointment, and
38 thereafter, such members shall serve terms of four years. A county commission
39 councilmember shall be eligible to serve so long as he or she retains the office by virtue
40 of which he or she is serving on the council. The Governor shall appoint two other
41 members to the council, one of whom shall be a circuit public defender, who shall serve
42 terms of four years;

43 (2) Two members shall be appointed by the Lieutenant Governor and each shall serve
44 terms of four years; provided, however, that the initial appointments shall be for one and
45 four years, respectively, as designated by the Lieutenant Governor for each appointment,
46 and thereafter, such members shall serve terms of four years; and

47 (3) Two members shall be appointed by the Speaker of the House of Representatives and
48 each shall serve terms of four years; provided, however, that the initial appointments shall
49 be for two and three years, respectively, as designated by the Speaker of the House of
50 Representatives for each appointment, and thereafter, such members shall serve terms of
51 four years.

52 (d) All initial terms shall begin on July 1, 2011, and their successors' terms shall begin on
53 July 1 following their appointment. Any vacancy for a member shall be filled by the
54 appointing authority, and such appointee shall serve the balance of the vacating member's
55 unexpired term. Any member of the council may be appointed to successive terms.

56 (e) In making the appointments of members of the council who are not county
57 commissioners, the appointing authorities shall seek to identify and appoint persons who
58 represent a diversity of backgrounds and experience and shall solicit suggestions from the
59 State Bar of Georgia, local bar associations, the Georgia Association of Criminal Defense
60 Lawyers, the councils representing the various categories of state court judges in Georgia,
61 and the Prosecuting Attorneys' Council of the State of Georgia, as well as from the public
62 and other interested organizations and individuals within this state. The appointing
63 authorities may solicit recommendations for county commissioners from the Association

64 County Commissioners of Georgia. The appointing authorities shall not appoint a
 65 prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee
 66 of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of
 67 the State of Georgia to serve on the council."

68 **SECTION 2.**

69 Said chapter is further amended by revising subsection (a) of Code Section 17-12-4, relating
 70 to the authority of the Georgia Public Defender Standards Council, as follows:

71 "(a) The council:

- 72 (1) Shall be a legal entity;
- 73 (2) Shall have perpetual existence;
- 74 (3) May contract;
- 75 (4) May own property;
- 76 (5) May accept funds, grants, and gifts from any public or private source, which shall be
 77 used to defray the expenses incident to implementing its purposes;
- 78 (6) May adopt and use an official seal; and
- 79 (7) May establish a principal office;
- 80 ~~(8) May hire such administrative and clerical personnel as may be necessary and~~
 81 ~~appropriate to fulfill its purposes; and~~
- 82 ~~(9) Shall have such other powers, privileges, and duties as may be reasonable and~~
 83 ~~necessary for the proper fulfillment of its purposes."~~

84 **SECTION 3.**

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

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

- 88 (1) The power and authority to take or cause to be taken any or all action necessary to
 89 perform any indigent defense services or otherwise necessary to perform any duties,
 90 responsibilities, or functions which the ~~council~~ director is authorized by law to perform
 91 ~~or and~~ to exercise any power or authority which the council is authorized by law under
 92 subsection (a) of Code Section 17-12-4 to exercise;
- 93 (2) The power and authority to ~~make, promulgate, enforce, or otherwise require~~
 94 ~~compliance with any and all rules, regulations, procedures, or directives necessary to~~
 95 ~~perform any indigent defense services;~~ to carry into effect the minimum standards and
 96 ~~procedures~~ policies promulgated by the council, or otherwise necessary; and to perform
 97 any duties, responsibilities, or functions which the council is authorized by law under

98 subsection (a) of Code Section 17-12-4 to perform or to exercise ~~any power or authority~~
 99 ~~which the council is authorized by law to exercise~~; and

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

102 (d) The director shall:

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

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

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

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

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

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

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

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

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

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

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

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

133 ~~(13) Perform other duties as the council may assign."~~

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SECTION 4.

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

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

SECTION 5.

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

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

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

SECTION 6.

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

"17-12-9.

The council shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the circuit public defenders or their staff members. The council, in accordance with such ~~rules~~ policies as it shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by any circuit public defender or their staff members in attending any approved course or training program from funds as may be appropriated or otherwise made available to the council. The circuit public defenders or their staff members shall be authorized to receive reimbursement for actual expenses incurred in

169 attending approved courses or training programs. The council shall adopt ~~rules~~ policies
 170 governing the approval of courses and training programs for credit or reimbursement as
 171 may be necessary to administer this Code section properly."

172 **SECTION 7.**

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

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

180 **SECTION 8.**

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

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

189 **SECTION 9.**

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

192 "17-12-13.

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

195 **SECTION 10.**

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

199 "17-12-20.

200 (a) On and after July 1, ~~2008~~ 2011, there is created in each judicial circuit in this state a
 201 circuit public defender supervisory panel to be composed of ~~seven~~ three members, all of

202 whom shall be attorneys who regularly practice in that particular judicial circuit. The
 203 ~~Lieutenant Governor, the Speaker of the House of Representatives, and the chief judge of~~
 204 ~~the superior court of the circuit shall each appoint one member. The Governor shall~~
 205 ~~appoint four members, two of which shall be members of the governing authority of the~~
 206 ~~counties within the judicial circuit for which such member is appointed to serve. A~~
 207 ~~member of a governing authority shall be eligible to serve so long as he or she retains the~~
 208 ~~office by virtue of which he or she is serving on the panel. Other than the county~~
 209 ~~commissioner, members~~ one member. In a single county judicial circuit, the chairperson
 210 of the governing authority or sole commissioner shall appoint one member; in multicounty
 211 judicial circuits, the chairpersons of the governing authorities or sole commissioners shall
 212 caucus and appoint one member. When a caucus is needed to appoint a member of the
 213 supervisory panel, the chairperson or sole commissioner of the largest county by population
 214 in the judicial circuit shall convene the caucus. Members of the circuit public defender
 215 supervisory panel shall be individuals with significant experience working in the criminal
 216 justice system or who have demonstrated a strong commitment to the provision of adequate
 217 and effective representation of indigent defendants. A prosecuting attorney as defined in
 218 paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office,
 219 or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not
 220 serve as a member of the circuit public defender supervisory panel after July 1, 2005. On
 221 and after July 1, 2008, no employees of the council shall serve as a member of the circuit
 222 public defender supervisory panel. Members of the circuit public defender supervisory
 223 panel shall reside in the judicial circuit in which they serve. The circuit public defender
 224 supervisory panel members shall serve for a term of five years. Any vacancy for an
 225 appointed member shall be filled by the appointing authority within 60 days of the vacancy
 226 occurring.

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

234 (2) By majority vote of its membership, the circuit public defender supervisory panel
 235 shall ~~appoint~~ nominate not more than five people to serve as the circuit public defender
 236 ~~in the circuit as provided in this article. The first such appointments shall be made to take~~
 237 ~~office on January 1, 2005, for terms of up to four years. The initial appointments shall~~
 238 ~~be for a term of up to four years. The director shall select the circuit public defender~~

239 from the panel's list of nominees. A circuit public defender shall serve a term for up to
 240 four years and may be appointed for successive terms but shall not be reappointed if he
 241 or she was removed pursuant to subsection (c) of this Code section.

242 (c) A circuit public defender may be removed for cause by ~~a majority vote of the council~~
 243 ~~and may be removed without cause by a vote of two-thirds of the members of the entire~~
 244 ~~council~~ the director. If a circuit public defender wants to appeal such removal, he or she
 245 may appeal the decision to the council. By a vote of two-thirds of the members of the
 246 entire council, the council may overturn the director's decision. Any appeal regarding a
 247 removal request shall be submitted to the council within 15 days of the effective date of the
 248 removal, and the council shall take action in hearing the appeal at its next regularly
 249 scheduled meeting and take final action within 30 days thereafter. A circuit public
 250 defender who has been removed by the director who has filed an appeal with the council
 251 shall continue to serve as the circuit public defender until the council reaches a decision on
 252 the appeal.

253 (d) A circuit public defender supervisory panel may convene at any time during its circuit
 254 public defender's term of office and shall convene at least ~~semiannually~~ annually for
 255 purposes of reviewing the circuit public defender's job performance and the performance
 256 of the circuit public defender office. The ~~council~~ director and circuit public defender shall
 257 be notified at least two weeks in advance of the convening of the circuit public defender
 258 supervisory panel. The circuit public defender shall be given the opportunity to appear
 259 before the circuit public defender supervisory panel and present evidence and testimony.
 260 The chairperson shall determine the agenda for the ~~semiannual~~ annual review process, but,
 261 at a minimum, such review shall include information collected pursuant to subsection (c)
 262 of Code Section 17-12-24, usage of state and local funding, expenditures, and budgeting
 263 matters. The chairperson shall make an annual report on or before the thirtieth day of
 264 September of each year concerning the circuit public defender supervisory panel's findings
 265 regarding the job performance of the circuit public defender and his or her office to the
 266 ~~council~~ director on a form provided to the panel by the ~~council~~ director. If at any time the
 267 circuit public defender supervisory panel finds that the circuit public defender is
 268 performing in a less than satisfactory manner or finds information of specific misconduct,
 269 the circuit public defender supervisory panel may by majority vote of its members adopt
 270 a resolution seeking review of their findings and remonstrative action by the ~~council~~
 271 director. Such resolution shall specify the reason for such request. All evidence presented
 272 and the findings of the circuit public defender supervisory panel shall be forwarded to the
 273 ~~council~~ director within 15 days of the adoption of the resolution. The ~~council~~ director shall
 274 initiate action on the circuit public defender supervisory panel's resolution ~~at its next~~
 275 ~~regularly scheduled meeting and take final action within 60~~ 30 days thereafter of receiving

276 the resolution. The ~~council~~ director shall notify the circuit public defender supervisory
 277 panel, in writing, of any actions taken pursuant to submission of a resolution under this
 278 subsection.

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

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SECTION 11.

289 Said chapter is further amended by revising subsections (a) and (c) of Code Section
 290 17-12-22, relating to the procedure for appointment of attorneys for indigent defendants in
 291 the event a public defender's office has a conflict of interest, as follows:

292 "(a) The director, with input from the council, shall establish a procedure for providing
 293 legal representation in cases where the circuit public defender office has a conflict of
 294 interest. Such procedure may include, but shall not be limited to, the appointment of
 295 individual counsel on a case-by-case basis or the utilization of another circuit public
 296 defender office. Whatever procedure the ~~council~~ director establishes for each circuit's
 297 conflict of interest cases shall be adhered to by the circuit public defender office. It is the
 298 intent of the General Assembly that the ~~council~~ director consider the most efficient and
 299 effective system to provide legal representation where the circuit public defender office has
 300 a conflict of interest."

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

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SECTION 12.

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

308 "(d) A city or county may contract with the circuit public defender office for the provision
 309 of criminal defense for indigent persons accused of violating city or county ordinances or
 310 state laws. If a city or county does not contract with the circuit public defender office, the

311 city or county shall be subject to all applicable ~~rules, regulation,~~ policies; and standards
312 adopted by the council for representation of indigent persons in this state."

313 **SECTION 13.**

314 Said chapter is further amended by revising paragraph (4) of subsection (c) of Code Section
315 17-12-30, relating to classification of personnel, as follows:

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

318 **SECTION 14.**

319 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
320 17-12-36, relating to alternate delivery systems, as follows:

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

324 **SECTION 15.**

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

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

331 **SECTION 16.**

332 This Act shall become effective on July 1, 2011.

333 **SECTION 17.**

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