House Bill 366 (AS PASSED HOUSE AND SENATE)

By: Representatives Murphy of the 23rd, Knox of the 24th, Amerson of the 9th, Hill of the 21st, Byrd of the 20th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense for indigents, so as to allow alternative delivery systems to opt out from having a public defender system under certain circumstances; to change provisions relating to alternative delivery systems; to provide for appeal; to change certain provisions relating to the Georgia Public Defender Standards Council development of standards; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense for indigents, is amended by striking Code Section 17-12-8, relating to approval by council for representation of indigents and development of standards, and inserting in lieu thereof the following:

"17-12-8.

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

(b) The council shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this article and to comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law. Standards shall include, but shall not be limited to, the following:

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

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

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

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

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

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

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

(8) Standards for determining indigence and for assessing and collecting the costs of legal representation and related services;

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

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

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

(12) Standards for accepting contractual indigent defense representation.

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

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

SECTION 2.

Said chapter is further amended by striking Code Section 17-12-36, relating to alternative delivery systems, and inserting in lieu thereof the following:

″17-12-36.

(a) The council may permit a judicial circuit composed of a single county to continue in effect an alternative delivery system to the one set forth in this article if:

(1) The delivery system:

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

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

(2) The council, by majority vote of the entire council, determines that the delivery system meets or exceeds its standards, including, without limitation, caseload standards, as the council adopts;

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

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

(b) A judicial circuit composed of a single county may request an alternative delivery system only one time~~, which request shall be made on or before September 30, 2004~~; provided, however, that if such judicial circuit´s request for an alternative delivery system was disapproved on or before December 31, 2004, such judicial circuit may make one further request on or before September 1, 2005. The council shall allow such judicial circuit to have a hearing on such judicial circuit´s request.

(c) The council shall make a ~~final~~ determination with regard to continuation of an alternative delivery system not later than ~~December 31, 2004~~ December 1, 2005, and if the council determines that such judicial circuit´s alternative delivery system does not meet the standards as established by the council, the council shall notify such judicial circuit of its deficiencies in writing and shall allow such judicial circuit an opportunity to cure such

deficiencies. The council shall make a final determination with regard to continuation of an alternative delivery system on or before December 31, 2005. Initial and subsequent approvals of alternative delivery systems shall be by a majority vote of the entire council.

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

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

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

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

SECTION 3.

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

SECTION 4.

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