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## CRIMINAL PROCEDURE Legal Defense of Indigents: Provide Indigent Defense Funds to Defend Indigent Juveniles

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## CRIMINAL PROCEDURE

### *Legal Defense of Indigents: Provide Indigent Defense Funds to Defend Indigent Juveniles*

CODE SECTION: O.C.G.A. § 17-12-38.1 (new)  
BILL NUMBER: HB 1254  
ACT NUMBER: 811  
SUMMARY: The Act allows money given to counties for indigent defense to be used for the appointment of attorneys for juveniles as well as for adults involved in juvenile proceedings.  
EFFECTIVE DATE: July 1, 1994

#### *History*

Prior to the passage of HB 1254, it was unclear whether counties could use money received for indigent defense for the defense of indigent juveniles<sup>1</sup> or for indigent adults involved in juvenile matters such as deprivation proceedings and termination of parental rights proceedings.<sup>2</sup> In addition, juveniles would often waive their right to an attorney because they were unaware of the importance of having counsel represent them at proceedings.<sup>3</sup> This bill was proposed to clarify that money given to counties for indigent defense may also be used for legal representation of indigent juveniles<sup>4</sup> as well as adults involved in juvenile proceedings.<sup>5</sup>

#### *HB 1254*

The Act amends title 17, chapter 12 of the Code by adding section 17-12-38.1.<sup>6</sup> The Act provides that the funds received by a county may be used for any indigent who commits a felony or misdemeanor in which the accused is guaranteed the right to counsel in superior, state, and magistrate courts.<sup>7</sup> Additionally, funds may be used for legal representation in actions and proceedings in the juvenile courts in

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1. Telephone Interview with Rep. Charles Thomas, House District No. 100 (Mar. 25, 1994) [hereinafter Thomas Interview].

2. Telephone Interview with Eric G. Kocher of the Indigent Defense Council in Atlanta, Georgia (Sept. 1, 1994) [hereinafter Kocher Interview].

3. Telephone Interview with Jane Mee of the Indigent Defense Council in Atlanta, Georgia (Mar. 25, 1994) [hereinafter Mee Interview].

4. Thomas Interview, *supra* note 1.

5. Kocher Interview, *supra* note 2.

6. O.C.G.A. § 17-12-38.1 (Supp. 1994).

7. *Id.*

which the accused is entitled to legal representation under the Constitution of the United States or the Constitution or laws of the State of Georgia.<sup>8</sup> The areas in which funds for legal representation may be used under the Act include, but are not limited to, delinquency, unruliness, incorrigibility, deprivation, and termination of parental rights.<sup>9</sup> The Act does not in any way expand a person's right to counsel. It simply clarifies that the money given for indigent defense can be used to provide legal representation and juvenile proceedings, and in criminal cases, superior, state, and magistrate courts.<sup>10</sup>

The Act explicitly states that the Code section does not apply to guardians ad litem.<sup>11</sup> This provision was not included in the original bill,<sup>12</sup> but was added by the Committee on Judiciary to insure that the Code would not be interpreted to include guardians ad litem.<sup>13</sup>

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8. *Id.*

9. *Id.*

10. Mee Interview, *supra* note 3. Georgia counties spend \$23 million a year on indigent defense. In separate legislation, the state appropriated \$2 million which is twice as much as the amount received for indigent defense in the past. The Act also expands the Indigent Defense Council's role when a person pleads "Not guilty by reason of insanity." *Id.*

11. O.C.G.A. § 17-12-38.1 (Supp. 1994).

12. *See* HB 1254, as introduced, 1994 Ga. Gen. Assem.

13. Kocher Interview, *supra* note 2; *See* HB 1254 (HCS), 1994 Ga. Gen. Assem.