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CRIMINAL PROCEDURE Indigent Defense: Amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the “Georgia Indigent Defense Act of 2003,” so as to Extensively Revise Said Act; Reconstitute the Georgia Public Defender Standards Council with New Membership; Change the Powers and Duties of the Council and Provide That It Shall Be an Advisory Body; Provide for the Georgia Public Defender Standards Agency As an Agency of the State; Provide for Its Director and the Powers and Duties and Operations of the Agency and the Director; Provide That the Director Shall Have the Control

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and Management of the Agency and Shall Exercise Supervision with Respect to Circuit Public Defenders and Carry out Other Duties Formerly Vested in the Council; Provide for Procedures for the Removal of a Circuit Public Defender from Office; Provide for Other Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes.

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CRIMINAL PROCEDURE

Indigent Defense: Amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the “Georgia Indigent Defense Act of 2003,” so as to Extensively Revise Said Act; Reconstitute the Georgia Public Defender Standards Council with New Membership; Change the Powers and Duties of the Council and Provide That It Shall Be an Advisory Body; Provide for the Georgia Public Defender Standards Agency As an Agency of the State; Provide for Its Director and the Powers and Duties and Operations of the Agency and the Director; Provide That the Director Shall Have the Control and Management of the Agency and Shall Exercise Supervision with Respect to Circuit Public Defenders and Carry out Other Duties Formerly Vested in the Council; Provide for Procedures for the Removal of a Circuit Public Defender from Office; Provide for Other Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTIONS:	O.C.G.A. §§ 17-12-1 through 17-12-10.1 (amended); O.C.G.A. §§ 17-12-11 through 17-12-12.1 (amended); O.C.G.A. § 17-12-20 (amended); O.C.G.A. § 17-12-20.1 (new); O.C.G.A. §§ 17-12-22 through 17-12-24 (amended); O.C.G.A. §§ 17-12-26 through 17-12-30 (amended); O.C.G.A. § 17-12-32 (amended); O.C.G.A. §§ 17-12-36 through 17-12-37 (amended); O.C.G.A. § 17-12-51 (amended); O.C.G.A. § 17-12-80 (amended)
BILL NUMBER:	SB 42
ACT NUMBER:	N/A
GEORGIA LAWS:	N/A
SUMMARY:	The bill would have removed the Georgia Public Defender Standards Council’s authority over the public defender system and changed it to an advisory body only. The public

defender system itself would have changed from an independent entity to a state agency named the Georgia Public Defender Agency.

EFFECTIVE DATE: N/A

History

The Georgia Indigent Defense Act of 2003 created a state-wide public defender system.¹ The 2003 Act was passed in response to a Georgia Supreme Court commission report that the state frequently did not provide adequate representation for indigent defendants.² Additionally, the Southern Center for Human Rights sued the Cordele Judicial Circuit on behalf of thirty-one indigent defendants.³ The suit, which alleged that the circuit was not providing appropriate legal representation to indigent defendants, was later joined by the NAACP.⁴

The 2003 Act created public defender offices in each of Georgia's forty-nine judicial circuits.⁵ The 2003 Act also created the eleven-member Georgia Public Defender Standards Council to oversee the new system.⁶ In 2004, Governor Sonny Perdue convened a special session of the General Assembly to pass a bill to provide funding for the new public defender system.⁷ The legislation increased criminal fines and court filing fees to provide revenue to pay for most of the \$44 million public defender system budget.⁸

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1. Alison Couch, *Criminal Procedure*, 20 GA. ST. U. L. REV. 105, 114 (2003).
 2. Bill Rankin, *Funding Focus of Ga. Indigent Defense Panel, New System's Cost to Counties Remains Unclear*, ATLANTA J.-CONST., Aug. 23, 2003, at E3.
 3. Bill Rankin, *NAACP Joins Indigent Defendants' Suit*, ATLANTA J.-CONST., Oct. 23, 2003, at F1.
 4. *Id.*
 5. Nancy Badertscher, *Indigent Defense Measure Now Law*, ATLANTA J.-CONST., Jun. 16, 2004, at D1.
 6. Couch, *supra* note 1, at 114.
 7. Bill Rankin, *House Passes Indigent Bill, Committee in Senate Also Gives It a Nod*, ATLANTA J.-CONST., May 6, 2004, at C2.
 8. Badertscher, *supra* note 5.

But in 2008, controversy erupted over the high cost of prosecuting Fulton County Courthouse shooter Brian Nichols.⁹ Faced with a prosecution list of hundreds of potential witnesses, the Nichols' legal team spent nearly \$2 million of indigent defense funds on his case.¹⁰ The outcry over the high cost of the Nichols defense highlighted the on-going tension between the Georgia Public Defender Standards Council and the General Assembly over the Council's budget.¹¹ The General Assembly criticized the Council for spending too much money, while the Council argued that the legislature had never fully funded the system, withholding a portion of the funds collected from the higher fines and court fees.¹²

In February 2009, Senator Preston Smith (R-52nd) introduced SB 42 to revise the Georgia Indigent Defense Act.¹³ The bill would have removed the Georgia Public Defender Standards Council's authority over the public defender system and changed it to an advisory body.¹⁴ The public defender system itself would have changed from an independent entity to a state agency named the Georgia Public Defender Agency.¹⁵

Bill Tracking of Senate Bill 42

Consideration and Passage by the Senate

Senators Preston Smith (R-52nd), John Wiles (R-37th), Jack Hill (R-4th), Bill Hamrick (R-30th), and Judson Hill (R-32nd),

9. Cynthia Tucker, *Nichols Trial Made Mockery of Justice System*, ATLANTA J.-CONST., Dec. 17, 2008, at A16.

10. Jeffrey Scott & Rhonda Cook, *Former Nichols Judge Critical of DA*, ATLANTA J.-CONST., Aug. 10, 2008, at D3.

11. Mary Lou Pickel, *Gold Dome Live*, ATLANTA J.-CONST., Feb. 19, 2009, at C3.

12. Mary Lou Pickel, *Senate Bill Would Take Power, Funds from Public Defender Council*, ATLANTA J.-CONST., Feb. 20, 2009, at C3; Bill Rankin, *Public Defender Council Seeks Money*, ATLANTA J.-CONST., Feb. 3, 2009, at C6.

13. See SB 42, as introduced, 2009 Ga. Gen. Assem.; see also Video Recording of Senate Proceedings, Feb. 19, 2009 at 1 hr., 37 min., 35 sec. (remarks by Sen. Preston Smith (R-52nd)), http://www.georgia.gov/00/article/0,2086,4802_6107103_129987583,00.html [hereinafter Senate Floor Video].

14. Pickel, *supra* note 11, at C3.

15. *Id.*

respectively, sponsored SB 42.¹⁶ The Senate read the bill for the first time on January 26, 2009, referring the bill to the Senate Judiciary Committee.¹⁷

The bill called for extensive revisions to the Georgia Indigent Defense Act of 2003 by reconstituting the Georgia Public Standards Council with new membership, changing the Council to an advisory-only body, and establishing a new agency, the Georgia Public Defender Standards Agency, that would have the power and authority previously held by the Georgia Public Standards Council.¹⁸ As introduced, the changes in the bill would become effective on July 1, 2009.¹⁹ Senator Seth Harp (R-29th) proposed a committee substitute, which the Senate Judiciary Committee adopted, that changed the proposed effective date, making it effective “upon the signature of the Governor.”²⁰ In his presentation of the bill to the Senate, Senator Smith indicated that the change was made to more quickly address concerns about the Council’s spending plans during next few months.²¹ Senator Smith stated that the Council’s recent actions—which included ordering the director, Mack Crawford, to spend “all of the money, acknowledging they would run out of money again . . .” and submitting a budget requesting a 33% increase for 2010—caused the Senate to expedite the effective date of the bill so that it would be effective immediately upon passage and signature.²² The Senate committee substitute changed only the effective date of the bill so that it would have become effective upon signature by the governor.²³

The Senate also adopted a floor amendment to the bill.²⁴ Senator Smith explained to the Senate that the floor amendment “looks at

16. SB 42, as introduced, 2009 Ga. Gen. Assem.

17. State of Georgia Final Composite Status Sheet, SB 42, Apr. 3, 2009.

18. *See* SB 42, as introduced, 2009 Ga. Gen. Assem.

19. *See id.*

20. Senate Floor Video, *supra* note 13, at 2 hr., 57 min., 40 sec. (remarks by Sen. Preston Smith (R-52nd)) (explaining that two recent decisions by the Council triggered the decision to change the effective dates).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 3 hr., 00 min., 49 sec. (Senate Chairperson Casey Cagle announcing adoption of the amendment).

references to July 1 [in the bill], and it changes those to the [new] effective date of the bill.”²⁵ The floor amendment adjusted the effective dates throughout the bill so that all references to an effective date consistently reflected that date as the day the Governor would have signed the bill.²⁶

The Senate Committee on Judiciary favorably reported on the bill by substitute on January 30, 2009.²⁷ The Senate read SB 42 for the second time on February 2, 2009, and again, for the third time on February 19, 2009.²⁸ On February 19, 2009, the Senate considered the bill on the floor.²⁹ After calling for objections to the committee substitute and the floor amendment, and receiving no objections, the Chair put the main question to a vote.³⁰ SB 42 passed in the Senate by a vote of 32 to 21.³¹

Consideration by the House

On February 24, 2009, the House first read SB 42.³² The bill was read for the second time on February 25, 2009 and was assigned to the House Judiciary Non-Civil Committee.³³ The House Committee favorably reported the bill on March 30, 2009.³⁴

House members expressed concern about the handling of conflict cases, which are cases involving more than one defendant or where a professional conflict is outlined in the Georgia Rules of Professional Conduct.³⁵ In response to these concerns, on March 27, 2009,

25. *Id.* at 2 hr., 57 min., 40 sec.

26. Senate Floor Video, *supra* note 13, at 2 hr., 57 min., 40 sec.

27. State of Georgia Final Composite Status Sheet, SB 42, Apr. 3, 2009.

28. *Id.*

29. Senate Floor Video, *supra* note 13, at 1 hr., 36 min., 6 sec. (introduction of the bill by Sen. Preston Smith (R-52nd)).

30. *Id.*

31. *Id.*

32. State of Georgia Final Composite Status Sheet, SB 42, Apr. 3, 2009.

33. *Id.*

34. *Id.*

35. Video Recording of House of Representatives Judiciary Non-Civil Committee Meeting, Mar. 27, 2009 at 15 min., 00 sec. (remarks by Rep. Rich Golick (R-34th)), http://www.legis.state.ga.us/legis/2009_10/house/Committees/judiciaryNonCivil/judyncArchives.htm [hereinafter House Video of March 27, 2009]); Greg Land, *How PD Council Survived—and What Will Happen Next*, FULTON COUNTY DAILY REP., Apr. 7, 2009, at 1.

Representative Edward H. Lindsey, Jr. (R-54th) authored a substitute bill that was cosponsored and introduced by Representative Rich Golick (R-34th). Representative Golick stated that the substitute was not “glaringly different” than the Senate version; however, the proposed provision addressing the issue of conflict cases provided for the creation of a new, separate office within the agency.³⁶ This new office was to be called the Office of Alternative Defense Counsel and would have been led by an executive director.³⁷ The substitute provided for its duties and responsibilities, budgeting, and annual accounting.³⁸ Representative Golick referred to the new agency as a “sort of an agency within an agency . . . but it is under one umbrella for executive agency purposes,” such that the director of the new office would be accountable to the director of the larger agency.³⁹ The substitute was called a compromise by its author, Representative Lindsey, Jr. (R-54th).⁴⁰

Though the creation of the Office of Alternative Defense Counsel was the major provision in the substitute, the House substitute also provided that members of the Georgia Public Defender Standards Agency (formerly the Georgia Public Defender Standards Council) would not have standing to sue the council, agency, or office.⁴¹ Additionally, the substitute provided for the use of third-year law students, addressed issues of contract attorney billing by providing that bills submitted later than 45 days after the month in which the work billed for occurred would not be reimbursed, and provided procedural protections for circuit public defenders by requiring certain steps be taken before termination.⁴²

36. House Video of March 27, 2009, *supra* note 35, at 14 min., 34 sec. (remarks by Rep. Rich Golick).

37. *Id.*

38. *Id.*; Greg Land, *PD Council to Learn Fate Today*, FULTON COUNTY DAILY REP., Apr. 3, 2009, at 1.

39. House Video of March 27, 2009, *supra* note 35, at 14 min., 46 sec. (remarks by Rep. Rich Golick).

40. Land, *supra* note 35.

41. House Video of March 27, 2009, *supra* note 35, at 15 min., 30 sec. (remarks by Rep. Rich Golick).

42. *Id.* at 16 min., 30 sec.

On April 1, 2009, the House postponed action on the bill.⁴³ On April 3, 2009, the last day of the session, consideration of the bill was “postponed.”⁴⁴ Senator Preston Smith (R-52nd), the bill’s Senate sponsor, commented that “changes made in the House Judiciary committee had caused concerns by some of the chamber’s more conservative members.”⁴⁵ House Judiciary Non-Civil Committee Chairperson, Representative Rich Golick (R-34th), explained that he, along with Representatives Ed Lindsey (R-54th), Stacey Abrams (D-84th), and Stephanie Benefield (D-85th), authored an amendment on the last day of the session to address “a late concern that the Committee substitute would not enjoy broad based support on the Floor”⁴⁶ Representative Golick stated that the amendment was distributed on the final day of the session, but the bill was never called.⁴⁷ Senator Smith said that he first received a copy of that amendment after 11 p.m. on the final day of the session.⁴⁸ The bill did not come to a vote and did not pass in the 2009 legislative session, leaving the Georgia Public Defender Standards Council with its power and membership intact.⁴⁹ The House committee substitute’s author, Representative Lindsey said he “expects the amended bill to provide a framework for ongoing efforts to reshape the agency.”⁵⁰ Calling the work done this session “a pretty good template,” Representative Lindsey added that because “[t]his is a two-year term[,] . . . [t]his is definitely something that we are going to pursue.”⁵¹

43. State of Georgia Final Composite Status Sheet, SB 42, Apr. 3, 2009; Land, *supra* note 38.

44. E-mail from Rep. Rich Golick, House of Representatives Judiciary Non-Civil Committee Chair, to author (Apr. 10, 2009) [hereinafter Golick E-mail] (on file with author); Aaron Gould Sheinin & Mary Lou Pickel, *Bills’ Status at the Final Bell*, ATLANTA J.-CONST., Apr. 5, 2009, at A18.

45. Land, *supra* note 35.

46. Golick E-mail, *supra* note 44.

47. *Id.*

48. Land, *supra* note 35.

49. *Id.*

50. *Id.*

51. *Id.*

The Bill

The bill would have amended Chapter 12 of Title 17 of the Official Code of Georgia Annotated, the Georgia Indigent Defense Act.⁵² Because the Bill did not come to a vote in the House, this section will discuss the version passed by the Senate.

Section 1 of the bill would have revised Code sections 17-12-1 through 17-12-10.1. The primary effect of the revised Code section 17-12-1 would have been to change the Georgia Public Defender Standards Council from an independent agency to an advisory body and to move its prior authority to the newly created Georgia Public Defender Agency.⁵³ Code section 17-12-2 would have added “Agency” to its list of defined terms to replace “Standards Council” in subsequent provisions granting the Agency the authority to oversee indigent defense in Georgia.⁵⁴

Code section 17-12-3 would have provided for the appointment of new council board members within 60 days of passage of the bill. The terms of all members currently serving on the council would end at the effective date of the bill, although those members would be eligible for re-appointment to the council in its new advisory capacity.⁵⁵

Code section 17-12-4 would have taken the authority for auditing and expenditures away from the council and placed that authority in the director of the agency.⁵⁶ Code section 17-12-5 would have taken away the council’s power to set the hiring qualifications for the director of the agency.⁵⁷ Code section 17-12-5 also would have stripped the council of the authority to approve the agency’s budget, administer and coordinate the agency’s operations, approve the hiring of director of the mental health advocacy division and the director of

52. SB 42, as passed Senate, 2009 Ga. Gen. Assem.

53. SB 42 (CSFA), § 1, p. 1, ln. 18–27.

54. *Id.* § 1, p. 2–3, ln. 28–63.

55. *Id.* § 1, p. 3–7, ln. 64–228. This Code section had been revised by Act 729 in 2008 to eliminate the appointments of some council slots by the Chief Justice of the Georgia Supreme Court and the Chief Judge of the Georgia Court of Appeals. 2008 Ga. Laws 846, § 16, at 855–59.

56. SB 42 (CSFA), § 1, p. 7–8, ln. 229–61, 2009 Ga. Gen. Assem.

57. *Id.* § 1, p. 8–9, ln. 262–97.

the Georgia capital defender division, and hear the director's evaluations of the circuit defenders' job performances.⁵⁸

Code section 17-12-6 would have eliminated the council's role in providing assistance to public defenders in Georgia.⁵⁹ Code section 17-12-6 also would have eliminated the council's role as the fiscal authority for each of the circuit public defender's offices and moved those responsibilities to the director.⁶⁰ Code section 17-12-7 would have eliminated the council's ability to remove the council's chairperson or any of the circuit public defenders.⁶¹

Code section 17-12-8 would have removed the council's power to approve the development or improvement of programs, services, rules, policies, procedures, regulations, and standards, leaving the council only the ability to recommend such changes.⁶² Code section 17-12-9 would have taken away the council's authority to approve expenses or reimbursements for the circuit public defenders or their staff.⁶³ That authority, in addition to the authority to approve training programs, would have moved to the director of the agency.⁶⁴

Code section 17-12-10 would have given the director, rather than the council, the responsibility to prepare an annual report of the agency's activities and expenditures for presentation to the General Assembly, the Governor, and the Georgia Supreme Court.⁶⁵ Code section 17-12-10 also would have transferred to the director the council's grant application duties and annual assessment of the agency's operations.⁶⁶ Code section 17-12-10.1 simply would have been revised to change the language from "council" to "agency" to reflect the transfer of authority in the other provisions.⁶⁷

Sections 1A and 1B would have revised Code sections 17-12-11 and 17-12-12 to move authority over the mental health advocacy

58. *Id.* § 1, p. 9–10, ln. 298–330.

59. *Id.* § 1, p. 10, ln. 331–41.

60. *Id.* § 1, p. 10, ln. 342–46.

61. *Id.* § 1, p. 11, ln. 347–75.

62. SB 42 (CSFA), § 1, p. 11–12, ln. 377–87, 2009 Ga. Gen. Assem.

63. *Id.* § 1, p. 12, ln. 388–98.

64. *Id.* § 1, p. 12, ln. 398–400.

65. *Id.* § 1, p. 12, ln. 401–07.

66. *Id.* § 1, p. 12, ln. 408–16.

67. *Id.* § 1, p. 13–14, ln. 417–58.

division and Georgia capital defender division, and any assets or resources of either, to the agency.⁶⁸

Section 2 would have revised Code section 17-12-12.1 to move the authority for the capital defender division from the council to the agency and its director.⁶⁹

Section 3 would have revised Code section 17-12-20 regarding the selection and removal of circuit public defenders to reflect the change from “council” to “agency,” and to indicate that the director, not the council, would be responsible for the circuit public defenders’ performance evaluations.⁷⁰

Section 4 would have added a new Code section, 17-12-20.1, to provide procedures for investigations into allegations of misconduct by and removal of circuit public defenders.⁷¹ Senator Smith (R-52nd) said that “[t]he circuit defenders came to us and asked us to include some due process protections against firing in case of personality conflicts with whoever the future director might be.”⁷² He added that the procedures were modeled after the removal procedures for sheriffs and clerks in Georgia.⁷³

According to these procedures, the director would direct allegations of misconduct to the governor, who would then appoint two other circuit public defenders and a member of the council to conduct an investigation.⁷⁴ If suspension was recommended by the investigating committee, the governor would have been authorized to suspend the circuit public defender for up to ninety days.⁷⁵ The governor would also be authorized to appoint a special prosecutor to bring a removal petition against the circuit public defender.⁷⁶ The grounds for removal would have been “sufficient cause, including criminal charges, misconduct in office, or incapacity to perform the

68. SB 42 (CSFA), § 1, p. 14, ln. 459–76, 2009 Ga. Gen. Assem.

69. *Id.* § 2, p. 14–15, ln. 477–504.

70. *Id.* § 3, p. 15–17, ln. 508–78.

71. *Id.* § 4, p. 17–18, ln. 579–607.

72. See Telephone Interview with Sen. Preston Smith (R-52nd) (Mar. 24, 2009) [hereinafter Smith Interview].

73. *Id.*

74. SB 42 (CSFA), § 4, p. 17–18, ln. 582–86, 2009 Ga. Gen. Assem.

75. *Id.* § 4, p. 17–18, ln. 593–95.

76. *Id.* § 4, p. 18, ln. 596–99.

functions of the office.”⁷⁷ The removal petition would have been filed with the superior court of the county of the public circuit defender’s residence, and heard by a superior court judge, or, if requested by the circuit public defender, a jury.⁷⁸

Section 5 would have revised Code section 17-12-22 relating to the procedure for providing legal representation when a circuit public defender has a conflict of interest to reflect the change in authority from the council to the director.⁷⁹

Sections 6 through 13 contain only minor language revisions that would have updated Code sections 17-12-23 through 17-12-32 to reflect the change in authority from “council” to “agency” or “director” as applicable.⁸⁰

Section 14 would have revised Code Sections 17-12-36 and 17-12-37 to permit a county to opt out of the state public defense system if the county had already opted out by the effective date of the subsection.⁸¹ Approval of an alternate delivery system would have moved from the council to the agency director.⁸²

Section 15 would have revised Code section 17-12-51 to direct repayment of attorney’s fees as a condition of probation to the Georgia Public Defender Agency instead of the Standards Council.⁸³

Section 16 would have revised Code section 17-12-80 to move authority to determine a defendant’s indigence from the council to the agency or its director.⁸⁴

Analysis

Ultimately, the bill failed to pass the House due to concerns about how to best handle cases with multiple defendants.⁸⁵ The House Judiciary Non-Civil Committee added a provision to create an Office

77. *Id.* § 4, p. 18, ln. 600–05.

78. *Id.* § 4, p. 18, ln. 605–07.

79. *Id.* § 5, p. 18, ln. 608–29.

80. SB 42 (CSFA), §§ 6–13, p. 19–22, ln. 630–747, 2009 Ga. Gen. Assem.

81. *Id.* § 14, p. 22–23, ln. 748–54.

82. *Id.* § 14, p. 23–24, ln. 784–804.

83. *Id.* § 15, p. 24, ln. 809–19.

84. *Id.* § 16, p. 24, ln. 821–37.

85. *See Land, supra* note 38.

of Alternative Defense Counsel to supervise the defense of such cases.⁸⁶ But the dispute over conflict cases caused a delay in the House's consideration of the bill, and the session ended before the bill could be re-called.⁸⁷

During his introduction of SB 42 on the Senate floor, Senator Smith (R-52nd) spoke at length about budgetary conflicts with the Georgia Public Defender Standards Council.⁸⁸ However, he later said that his motivation was not primarily budget-oriented.⁸⁹

The problem we had was getting the transparency we needed to understand and adequately fund the program. That was a big concern. It wasn't about fiscal expediency, but about how to work with the agency in a way that allows the appropriators to understand what was needed."⁹⁰

Though Senator Smith may have had non-budgetary concerns, at least one group's opposition to the bill was motivated by control over the purse strings. Sixty percent of the indigent defense system is funded by Georgia counties and four county commissioners are members of the Council.⁹¹ The Association of County Commissioners of Georgia pointed out that by removing the authority of the Council, SB 42 effectively denied the counties "meaningful input" into the expenditure of county funds.⁹²

Senator Smith argued that "governing by committee isn't working" and said "the problems were embedded in the structure" of the Council.⁹³ "There has been tension and acrimony between the council and its staff, the council and the legislature, the Council and its

86. *Id.*

87. Golick E-mail, *supra* note 44.

88. Senate Floor Video, *supra* note 13, at 1 hr., 36 min., 6 sec. (introduction of the bill by Sen. Preston Smith (R-52nd)).

89. *See* Smith Interview, *supra* note 72.

90. *Id.*

91. Land, *supra* note 38 (quoting Kelly J. Pridgen, assistant general counsel to the Association County Commissioners of Georgia).

92. *Id.*

93. *See* Smith Interview, *supra* note 72.

director that affected the ability to design programs and support programs,” he said.⁹⁴ “The council would not allow the director to speak on behalf of the council,” Smith said, explaining that “the Director would come to the legislature wanting to expand programs and create new programs, but the council wouldn’t let him do it because they were stuck on one way of doing it.”⁹⁵

Senator Smith said the Council, in its pursuit of achieving an “academic ideal” of indigent defense, “had failed to manage its budget or staff properly, which was “evidenced by its performance.”⁹⁶ Smith said that he wanted to leave the structure of the public defender circuit system intact, noting that “[w]e wanted to take the Georgia model and maintain the work that had gone into it, and what was unique about it.”⁹⁷ He noted that fourteen other states have systems that place authority in a single director,⁹⁸ and that “[w]e looked to other states, and saw that they were able to make it work.”⁹⁹

But Senator Kasim Reed (D-35th) objected:

[T]he notion that placing this authority within the executive branch is not a conflict simply does not stand scrutiny, and I don’t care if twenty-five other states are doing it. The executive branch is the chief law enforcement authority of the state of Georgia. Placing this entity in that bosom, which is subject to a political environment, is wrong.”¹⁰⁰

Georgia Public Defender Standards Council Chairman C. Wilson Dubose also argued against removing the Council’s authority, saying that “over the long term, an agency managed by an independent policy-making board is more likely to produce satisfactory results than a structure that places total authority in one person who could be

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See Smith Interview, *supra* note 72.

100. Senate Floor Video, *supra* note 13, at 2 hr., 45 min., 48 sec. (remarks by Sen. Kasim Reed (D-35th)).

removed at the whim of the governor and be replaced by succeeding governors strictly for political reasons.”¹⁰¹

Stephen Bright of the Southern Center for Human Rights also warned against removing the Council’s authority, pointing out that “[t]he Council has tried to do what it could to insure the quality of representation with less than a fourth of the funds necessary to operate a state-wide public defender system.”¹⁰² He also said that “[t]he legislature has simply refused to appropriate the funds necessary to have a comprehensive public defender system with reasonable caseloads for circuit public defender offices and adequate representation in capital and conflict cases. Then some legislators have berated the council for not being able to do an impossible job.”¹⁰³ Bright also noted that the legislature has never allocated the full amount raised by the hike in fines and court filing fees, thus depriving the Council of funds that were designated for indigent defense.¹⁰⁴ He also pointed out that counties supplement the Council’s budget in varying amounts, resulting in “great inconsistency” in the quality of representation throughout the state.¹⁰⁵

Regarding Smith’s criticism, Bright said that the Council “has been the victim of a great deal of political demagoguery by a state senator who has made unfounded accusations about the council and the program in general.”¹⁰⁶ Bright charged that “[t]he responsibility to provide lawyers to poor people accused of crimes is a constitutional responsibility which Georgia has been violating in one way or another ever since the Supreme Court announced its decision in *Gideon v. Wainwright* in 1963,” adding that the SCHR continues to file lawsuits on behalf of indigent defendants who are not represented by counsel.¹⁰⁷

Lisa Caucci & Shannon Creasy

101. Land, *supra* note 38.

102. Electronic Mail Interview with Stephen Bright, President and Senior Counsel, Southern Center for Human Rights (Apr. 14, 2009) [hereinafter Bright E-mail].

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*