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CRIMINAL PROCEDURE Legal Defense of Indigents: Create the Georgia Public Defender Standards Council to Set State-Wide Standards for the Legal Representation of Indigent Defendants and Provide Budget Authority to Such Council

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CRIMINAL PROCEDURE

Legal Defense of Indigents: Create the Georgia Public Defender Standards Council to Set State-Wide Standards for the Legal Representation of Indigent Defendants and Provide Budget Authority to Such Council

CODE SECTIONS:	O.C.G.A. §§ 15-6-76.1, 15-7-49, 15-9-18, 15-10-240, 15-16-27, 16-13-49, 17-12-1 to -13 (amended), -20 to -29 (new), -30 to -37, -40 to -45 (amended), -80 to -88, -100 to -108, -120 to -128 (new), 35-6A-3, 36-32-1 (amended)
BILL NUMBER:	HB 770
ACT NUMBER:	32
GEORGIA LAWS:	2003 Ga. Laws 191
SUMMARY:	The Georgia Indigent Defense Act creates a state-wide public defender system overseen by the Georgia Public Defender Standards Council. The Council will establish guidelines to ensure consistent and quality legal representation of all indigent defendants. The Act addresses qualification and training, caseload size, performance and compensation standards, as well as the criteria for determining indigence. The Act eliminates the former practice of having each of the 159 counties operate independently and reorganizes the system into 49 judicial circuits. The Act allows some circuits currently operating within the mandated standards to opt out of the new system. The Act does not address funding for the new system except to the extent it

forecloses nonparticipating circuits from state assistance.

EFFECTIVE DATE:

O.C.G.A. §§ 15-6-76.1, 15-7-49, 15-9-18, 15-10-240, 15-16-27, 16-13-49, 35-6A-3, 17-12-1 to -2, -4 to -13, -80 to -88, -101 to -108, December 31, 2003; O.C.G.A. § 17-12-3, July 1, 2003; O.C.G.A. §§ 17-12-20 to -37, -40 to -45, -120 to -128, 36-32-1, January 1, 2005

History

The Sixth Amendment of the Constitution provides a right to adequate legal representation in criminal cases.¹ The U.S. Supreme Court held that this right applied to the states.² The Georgia Constitution further supports this guarantee by stating that “[e]very person charged with an offense against the laws of this state shall have the privilege and benefit of counsel.”³

The Georgia Indigent Defense Act responds to a growing concern in the legal community about an existing system described as “shameful”⁴ and “fundamentally unjust.”⁵ Inadequacies in funding and staffing plagued the system that governed the legal representation of indigent defendants.⁶ The lack of political popularity and motivation prevented reform of the indigent defense system.⁷ Nevertheless, the increasing number of lawsuits against county programs and the threat of federal intervention aroused the legislators’ interest and moved the state supreme court to commission

1. See U.S. CONST. amend. VI.

2. See *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963).

3. GA. CONST. art. I, § I, ¶ XIV.

4. Bill Rankin, *Public Defender System's Approval Called 'Giant Step'*, ATLANTA J. CONST., Apr. 26, 2003, at 4G (quoting Stephen Bright, Director of the Southern Center for Human Rights) [hereinafter *Giant Step*].

5. Bill Rankin, *Justice Delayed: Georgia's Indigent Defense System a Patchwork that Provides Little Protection*, ATLANTA J. CONST., Apr. 21, 2002, at 1A (quoting Emmet Bondurant, an Atlanta criminal defense lawyer) [hereinafter *Justice Delayed*].

6. Georgia Supreme Court, *Executive Summary*, at <http://www.georgiacourts.org/aoc/idcreports.html> [hereinafter *Executive Summary*].

7. See Bill Rankin, *Indigent Defense Moves Up Agenda*, ATLANTA J. CONST., Apr. 14, 2003, at B1.

a study of the problem.⁸ The Commission's objective was "to study the status of indigent defense in Georgia, to develop a strategic plan and to set a timetable for its implementation."⁹ The Commission heard testimony from a variety of groups and individuals from the legal and civil rights communities.¹⁰ It considered the effectiveness of the different approaches employed by the counties, as well as the needs and problems unique to rural and urban areas.¹¹ The Commission set forth its findings, premised on two primary conclusions: (1) The state was not providing adequate funding, and (2) No statewide system to ensure accountability and oversight existed.¹² These problems jeopardized the constitutional right to counsel.¹³ The information compiled revealed that the indigent defense system needed an overhaul.¹⁴

The system was actually not a system at all, but rather three very different approaches employed haphazardly and almost entirely independently by the state's 159 counties.¹⁵ The only state interaction was through the Georgia Indigent Defense Council's ("GIDC") efforts.¹⁶ The GIDC oversees the distribution of state and federal funds and makes recommendations to guide proper handling of indigent cases.¹⁷ In an effort to improve the state's criminal justice system, the GIDC also provides educational opportunities and training for attorneys handling indigent cases.¹⁸ Nevertheless, the county governments have carried the weight of providing services and funding for indigent defense.¹⁹ Because the state provided only nominal support, the counties were largely on their own, which led to wide variations between counties in operation and quality of

8. *See id.*

9. Georgia Judicial Branch, *Frequently Asked Questions—Indigent Defense*, at www.georgiacourts.org/aoc/idcreports [hereinafter *Frequently Asked Questions*].

10. *See Executive Summary*, *supra* note 6.

11. *Id.*

12. *See id.*

13. *See id.*

14. *See Executive Summary*, *supra* note 6.

15. *Id.*; see also Bill Rankin, *Three Systems, Is One Superior?*, ATLANTA J. CONST., Apr. 19, 2002, at A21 [hereinafter *Three Systems*].

16. The GIDC was created by the Georgia General Assembly in 1979. *See* 1979 Ga. Laws 367, § 4, at 369 (formerly found at O.C.G.A. § 17-12-32 (1997)).

17. 1979 Ga. Laws 367, § 5, at 370 (formerly found at O.C.G.A. § 17-12-33 (1997)).

18. GIDC, *Georgia Indigent Defense Council Goals*, at www.gidc.com/goals.html.

19. *See Executive Summary*, *supra* note 6.

service.²⁰ Each county handled indigent defense either through (1) a contract system, (2) an appointed attorney system, or (3) a county public defender's office.²¹ The lack of state-imposed standards resulted in these inconsistent methods and prevented adequate representation of indigent defendants.²²

Under the contract system, the county took bids from local attorneys.²³ The county awarded the lowest bidder all of its indigent defense work.²⁴ Greene County employed this system with one attorney handling more than 400 indigent defense cases.²⁵ Overwhelming caseloads, as well as small budgets, were downfalls of this approach.²⁶ Additionally, most of the lawyers kept their private practices, requiring indigent defendants to compete with paying clients for the lawyers' time.²⁷ Many lawyers dealt with these shortcomings by encouraging clients to plead guilty.²⁸ As described by one attorney in Dougherty County, "[y]ou get a deal and you move on . . . you're crunching numbers at that point."²⁹ The Georgia Supreme Court's study also reflected this increased chance of conviction.³⁰

Under the appointed attorney approach, counties paid lawyers flat fees to take appointed cases.³¹ Though inconsistencies were widespread, almost half of Georgia's 159 counties used this approach.³² The approach was successful in large counties with adequate operating budgets and experienced attorneys.³³ However, smaller counties paid only a fraction of what the case would have cost to adequately defend it.³⁴ Furthermore, some counties would not subsidize fees for investigators and experts.³⁵ Stephen Lawson, a

20. *See id.*; *Three Systems*, *supra* note 15.

21. *See Three Systems*, *supra* note 15.

22. *Id.*

23. *See id.*; *see also Executive Summary*, *supra* note 6.

24. *See Three Systems*, *supra* note 15.

25. *See id.*

26. *See id.*

27. *Id.*

28. *Id.*

29. *See Three Systems*, *supra* note 15.

30. *See Executive Summary*, *supra* note 6.

31. *See Three Systems*, *supra* note 15.

32. *See Executive Summary*, *supra* note 6.

33. *See Three Systems*, *supra* note 15.

34. *See id.*; *see also Justice Delayed*, *supra* note 5.

35. *See Three Systems*, *supra* note 15.

lawyer appointed by Jones County, stated that “the indigent defendants [do not] get a fair shake [under the appointed attorney approach], especially if the defense lawyers are worried in the back of their minds about a trial and how much it could harm them financially.”³⁶ Mr. Lawson lost a murder and child cruelty case after the court repeatedly denied him the additional funding needed to properly present his case.³⁷

Under the county public defender’s office approach, counties relied on a public defender’s office to handle the indigent defendants’ legal representation.³⁸ A downfall of this approach is the inability to obtain funding from county commissions.³⁹

The implementation of a much-needed statewide system was overdue. In addition to the inconsistencies between the three county-level approaches, administrative differences within counties employing the same approach also existed.⁴⁰ For example, some counties only provided indigent defense to felony defendants.⁴¹ Georgia ranks in the bottom ten of U.S. states in indigent defense funding.⁴² Furthermore, human and civil rights activists have filed suit against a number of county programs threatening to have the state’s system put under federal judicial control.⁴³

The Georgia General Assembly set aside the indigent defense’s political unpopularity and put forth a valiant effort that resulted in landmark legislation.⁴⁴ The issue was not an easy one for the legislators, who took up the cause during a session dominated by concerns over the state flag and budget. Although each chamber had a different idea about how to address the indigent defense issue, both agreed that they needed to entirely overhaul the existing system.⁴⁵

36. *See id.*

37. *See id.*

38. *See id.*; *see also Executive Summary, supra* note 6. Some advocate this approach as one upon which to model a reformed system. *See Three Systems, supra* note 15; *see also Executive Summary, supra* note 6. Twenty-one counties relied on this approach. *See Executive Summary, supra* note 6.

39. *See Three Systems, supra* note 15.

40. *See id.*

41. *See Frequently Asked Questions, supra* note 9.

42. *See Justice Delayed, supra* note 5.

43. *See id.*

44. *Giant Step, supra* note 4.

45. *See* Interview with Michele NeSmith, Legal Aide to Rep. Terry Coleman (Apr. 16, 2003) [hereinafter NeSmith Interview]; *see also* Electronic Mail Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (May 1, 2003) [hereinafter Meyer von Bremen Interview].

House Speaker Terry Coleman led efforts in the House.⁴⁶ However, early controversy stemmed from Representative Coleman's proposal, which included a platform of public defender elections.⁴⁷ Representative Coleman sought to have a uniform, statewide system of standards for indigent defense while retaining local selection of the public defender.⁴⁸ Florida and Tennessee are the only two states that elect public defenders.⁴⁹ In the initial research stages, Representative Coleman considered both of these states as guides, given their similarity to Georgia in the number of districts.⁵⁰ Ultimately, the proposal met opposition from those who believed electing public defenders would be difficult.⁵¹ This belief was largely based on the perceived unpopularity of the job and the lack of public interest.⁵² In efforts to overcome this opposition, Representative Coleman introduced a substitute bill that allowed local selection panels to appoint the public defender in their circuits.⁵³ This system of appointments, premised on meeting state standards, would allow for some type of local input originally sought in the proposed election process.⁵⁴

Senator Michael Meyer von Bremen of the 12th district played an integral role in drafting the Senate version of legislation to reform Georgia's indigent defense system.⁵⁵ The Senator served on the Supreme Court Blue Ribbon Commission and the GIDC, and he worked closely with the Dougherty County's indigent defense efforts in the late 1980s.⁵⁶ His experience led him to propose an addition to the bill allowing counties meeting state standards to opt out of the state-run program.⁵⁷ This provision presented a "major snag" in the

46. See Bill Rankin, *Indigent Defense Clears Hurdle: Compromise Bill To Be Voted On Friday*, ATLANTA J. CONST., Apr. 25, 2003, at 1C.

47. See HB 770, as introduced, 2003 Ga. Gen. Assem.; Editorial, *Legislative Remedy Will Benefit Poor Defendants*, ATLANTA J. CONST., Mar. 24, 2003, at 8A [hereinafter *Legislative Remedy Will Benefit Poor Defendants*].

48. Electronic Mail Interview with Michele NeSmith, Legal Aide to Rep. Terry Coleman (Oct. 22, 2003) [hereinafter NeSmith Interview Two].

49. See *Legislative Remedy Will Benefit Poor Defendants*, *supra* note 47.

50. See NeSmith Interview, *supra* note 45.

51. See NeSmith Interview Two, *supra* note 48.

52. See *id.*

53. See *id.*

54. See *id.*

55. See NeSmith Interview, *supra* note 45.

56. See *id.*

57. See *id.* Several counties also pushed for this addition. See Bill Rankin, *Indigent Defense Bill Beats the Odds*, ATLANTA J. CONST., Apr. 27, 2003, at C9 [hereinafter *Beats the Odds*].

compromise process.⁵⁸ The House ultimately agreed to its inclusion coupled with a denial of state funding if a county opts out.⁵⁹

The neglected cause finally found a voice and triumphed in the midst of a turbulent session. The bill's sponsors were pleased with the result, calling it "a landmark piece of legislation"⁶⁰ that "giv[es] meaning to the Constitution."⁶¹ As described by Representative Tom Bordeaux of the 125th district, "[i]t's like finding a pristine porcelain doll in the middle of a wartorn [sic] battlefield."⁶²

HB 770

Consideration by the House

Representatives Terry Coleman, DuBose Porter, Barry Fleming, Calvin Smyre, and Jimmy Skipper of the 118th, 119th, 79th, 111th, and 116th districts, respectively, introduced HB 770 on March 25, 2003.⁶³ House Speaker Coleman assigned the bill to the House Judiciary Committee, which favorably reported the bill by substitute.⁶⁴ The House Committee substitute version eliminated the provisions that would have implemented an election system for public defenders.⁶⁵ The House Committee proposed creating the Public Defender Standards Council.⁶⁶

Representative Porter initiated the floor discussion by outlining the bill, emphasizing its importance, and explaining the need for mandating a state funded public defender system.⁶⁷ The discussion that ensued addressed funding.⁶⁸ Representative Bordeaux reiterated that a separate bill would address the budgetary aspects and funding

58. *See id.*

59. *See id.*; O.C.G.A. § 17-12-36(a)(4) (2003).

60. *See Giant Step, supra* note 4 (remarks by Rep. DuBose Porter).

61. *See id.* (remarks by Sen. Charles Clay).

62. *See Beats the Odds, supra* note 57.

63. *See* HB 770, as introduced, 2003 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003.

64. *See* State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003.

65. *Compare* HB 770, as introduced, 2003 Ga. Gen. Assem., with HB 770 (HCS), 2003 Ga. Gen. Assem.

66. *See* HB 770 (HCS), 2003 Ga. Gen. Assem.

67. *See* Audio Recording of House Proceedings, Apr. 7, 2003 (remarks by Rep. DuBose Porter), at <http://state.ga.us/services/leg/audio/2003archive.html> [hereinafter House Audio One].

68. *See id.*

concerns.⁶⁹ Representatives supporting the bill reminded the floor that federal intervention was almost certain if they did not pass the legislation.⁷⁰ Representative Barbara J. Mobley of the 58th district proposed an amendment to the House Committee substitute that would have required public defenders to have a minimum of three years experience in criminal defense.⁷¹ The amendment failed, in part because of Representative David E. Lucas, Sr. of the 105th district's concern that this restriction would exclude otherwise qualified applicants.⁷² Representative Mobley introduced a second amendment that, in order to prevent conflicts, would have precluded a person who had previously worked at a district attorney's office from holding a public defender position.⁷³ This amendment also failed, with Representative Bordeaux noting that there were ethical rules in place that more appropriately addressed these conflicts.⁷⁴ The House ultimately passed the bill, as substituted, by a vote of 130 to 42.⁷⁵

Consideration by the Senate

On April 8, 2003, HB 770 was referred to the Senate Judiciary Committee.⁷⁶ The Senate Committee, having already drafted its own version of indigent defense legislation,⁷⁷ favorably reported the bill and recommended passage by Committee substitute.⁷⁸ The substitute offered by the Committee was a replicate of the previously defeated SB 102.⁷⁹ Senator Charles C. Clay of the 37th district spoke to the floor and indicated that this effort was intended to be the means through which HB 770 would reach a Conference Committee.⁸⁰

69. *See id.*

70. *See id.* (remarks by Reps. Barry Fleming, Mack Crawford, and Brooks Coleman).

71. *See id.*; Failed House Floor Amendment to HB 770, introduced by Rep. Barbara J. Mobley, Apr. 7, 2003.

72. *See House Audio One, supra* note 67 (remarks by Rep. David Lucas, Sr.).

73. *See id.*; Failed House Floor Amendment to HB 770, introduced by Rep. Barbara J. Mobley, Apr. 7, 2003.

74. *See House Audio One, supra* note 67 (remarks by Rep. Tom Bordeaux).

75. *See Georgia House of Representatives Voting Record, HB 770 (Apr. 7, 2003); House Audio One, supra* note 67.

76. *See State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003.*

77. *See SB 102, as introduced, 2003 Ga. Gen. Assem.*

78. *See State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003.*

79. *Compare SB 102, as introduced, 2003 Ga. Gen. Assem., with HB 770 (SCS), 2003 Ga. Gen. Assem.*

80. *See Audio Recording of Senate Proceedings, Apr. 14, 2003 (remarks by Sen. Charles Clay), at <http://state.ga.us/services/leg/audio/2003archive.html> [hereinafter Senate Audio One].*

Senator Meyer von Bremen offered an amendment that would have restored the Georgia Supreme Court's authority to appoint a majority of the members to the newly-created Georgia Public Defender Standards Council.⁸¹ Senator Clay urged the Senate to defeat the amendment, reasoning that it would result in legislation more closely resembling the House version, which could jeopardize the Senate's negotiating power in a Conference Committee.⁸² The Senate rejected the amendment by a 24-to-29 vote but unanimously adopted the Committee substitute.⁸³

Reconsideration by the House

On April 17, 2003, the House took up motions regarding the Senate substitute.⁸⁴ Representative Porter argued that the Senate eliminated everything under the House version; he then moved to disagree with the substitute.⁸⁵ Representative Porter emphasized the need to have a Conference Committee with both chambers in order to reach a compromise.⁸⁶ Representative Lynn Westmoreland of the 86th district followed Representative Porter, moving to agree with the Senate version.⁸⁷ In accordance with legislative procedure, the motion to agree took precedence over the motion to disagree.⁸⁸ Representative Porter spoke to the floor regarding his conversations with Senator Clay, who was allegedly anticipating a defeat of the Senate version, which would result in a Conference Committee.⁸⁹ Representative Bordeaux further urged support for a motion to disagree because the Senate version would not accomplish the House's intended goals concerning local control.⁹⁰ The motion to agree with the Senate substitute was defeated by a vote of 60 to

81. See *id.*; Failed Senate Floor Amendment to HB 770, introduced by Sen. Michael Meyer von Bremen, Apr. 14, 2003.

82. See Senate Audio One, *supra* note 80 (remarks by Sen. Charles Clay).

83. See Georgia Senate Voting Record, HB 770 (Apr. 14, 2003); Senate Audio One, *supra* note 80.

84. See State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003; Audio Recording of House Proceedings, Apr. 17, 2003 (remarks by Rep. DuBose Porter), at <http://state.ga.us/services/leg/audio/2003archive.html> [hereinafter House Audio Two].

85. See House Audio Two, *supra* note 84.

86. See *id.*

87. See *id.* (remarks by Rep. Lynn Westmoreland).

88. See Rules of the Georgia House of Representatives, Rule 118.

89. See House Audio Two, *supra* note 84.

90. See *id.*

112.⁹¹ Thus, the bill was sent to a Conference Committee, which proposed a compromise bill to both chambers on April 25, 2003, the final day of the session.⁹²

Adoption of the Conference Committee Report

Both chambers considered the Conference Committee version. The Senate unanimously adopted the Conference Committee Report,⁹³ and the bill also passed the House by a vote of 160 to 14.⁹⁴ Governor Sonny Perdue signed the bill into law on May 22, 2003.⁹⁵

The Act

The Act abolishes the GIDC and creates the Georgia Public Defender Standards Council.⁹⁶ Eleven sections comprise the Act, with one section striking an entire Chapter.⁹⁷ The Act is the result of a Conference Committee and reflects a compilation of ideas from both the Senate and the House.⁹⁸ Both chambers sought to completely overhaul the piecemeal system governing legal representation of indigent defendants.⁹⁹

The Act's first section strikes Chapter 12 of Title 17 in its entirety.¹⁰⁰ The Act breaks the text into six articles. The first article covers Code sections 17-12-1 to 17-12-12 and provides for the creation of the Georgia Public Defender Standards Council.¹⁰¹ The Council is a state-wide, independent entity that serves to ensure the effective and uniform representation of indigent defendants in every state judicial circuit.¹⁰² Eleven members comprise the Council, with ten positions arising from various appointments and the remaining

91. See Georgia House of Representatives Voting Record, HB 770 (Apr. 17, 2003); House Audio Two, *supra* note 84.

92. See State of Georgia Final Composite Status Sheet, HB 770, Apr. 25, 2003.

93. See Georgia Senate Voting Record, HB 770 (Apr. 25, 2003).

94. See Georgia House of Representatives Voting Record, HB 770 (Apr. 25, 2003).

95. 2003 Ga. Laws 191.

96. Compare 1979 Ga. Laws 367, § 4, at 367 (formerly found at O.C.G.A. § 17-12-30 (2001)), with O.C.G.A. § 17-12-1 (2003).

97. See 2003 Ga. Laws 191.

98. See House Audio Two, *supra* note 84.

99. See NeSmith Interview, *supra* note 45.

100. See 2003 Ga. Laws 191.

101. See O.C.G.A. §§ 17-12-1 to -12 (2003).

102. See O.C.G.A. § 17-12-1 (2003).

position filled by a circuit public defender.¹⁰³ The Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Georgia Supreme Court, and the Chief Judge of the Georgia Court of Appeals appoint two members each to designated rotating districts; the members serve a four-year term.¹⁰⁴ For example, the Governor initially appoints one person from the 1st district and another person from the 2nd district.¹⁰⁵ When the time for appointments arises again, the Governor appoints one person from the 3rd district and another person from the 4th district.¹⁰⁶ In making the appointments, the respective authorities look for diverse backgrounds and experiences.¹⁰⁷ The law considers the Council a legal entity with perpetual existence and reasonably necessary power to ensure uniform and effective representation of indigent defendants.¹⁰⁸ The Act sets forth several techniques for assisting public defenders in providing adequate legal representation to indigents, such as distributing educational materials, preparing model forms, promoting legal training, providing legal research assistance, and providing other types of support.¹⁰⁹ The Council meets at least once quarterly, and decisions must be made by a majority vote.¹¹⁰ Council members are not compensated for their services, but expenses incurred are reimbursed by the general operating budget.¹¹¹ Code section 17-12-8 provides the Council's objectives of developing, approving, and implementing the Act's standards.¹¹² A non-inclusive list provides some areas in which the Council should have standards in place, including: (1) maintenance and operation of circuit defenders' offices, (2) training and qualifications of defenders,

103. See O.C.G.A. § 17-12-3 (2003).

104. See O.C.G.A. § 17-12-3(b)(1) to (4) (2003). The manner in which appointments are made was a topic of debate among legislators. Some argued for appointments to be made exclusively by the judiciary, while others urged that the legislative and the executive branches should make the appointments on the premise that these branches control the funding of these programs. See Audio Recording of Senate Proceedings, Feb. 17, 2003 (remarks by Sen. Charles Clay), at <http://state.ga.us/services/leg/audio/2003archive.html>.

105. See O.C.G.A. § 17-12-3(b)(2)(A)(i) (2003).

106. See O.C.G.A. § 17-12-3(b)(2)(B)(ii) (2003).

107. See O.C.G.A. § 17-12-3(b) (2003).

108. See O.C.G.A. § 17-12-4(a)(10) (2003).

109. See O.C.G.A. § 17-12-6(a)(1) to (5) (2003).

110. See O.C.G.A. § 17-12-7(d) (2003). A quorum constitutes a majority except in (1) decisions regarding the appointment or removal of the chairperson of the Council or (2) the appointment or removal of a circuit public defender. See O.C.G.A. § 17-12-7(e) (2003).

111. See O.C.G.A. § 17-12-7(g) (2003).

112. See O.C.G.A. § 17-12-8(a) (2003).

(3) caseload maximums, (4) compensation guidelines, (5) procedures for appointing counsel when a conflict of interests exists, and (6) standards for determining indigence.¹¹³ The Act transfers to the new Council “all powers, duties, and obligations” formerly held by the GIDC.¹¹⁴

Article 2 creates a five-member circuit public defender selection panel in each judicial circuit.¹¹⁵ This panel appoints circuit public defenders to serve four-year terms.¹¹⁶ Appointees must be at least 25 years old, be licensed to practice law in the superior court for at least three years, and be in good standing with the State Bar of Georgia.¹¹⁷ Upon appointment, the circuit public defender provides representation in (1) a superior court action that may result in a “sentence of imprisonment or probation or a suspended sentence of imprisonment”; (2) a superior court “hearing on a revocation of probation”; (3) a juvenile court case in which the result may be “confinement, commitment, or probation”; and (4) “[a]ny direct appeal of any of the proceedings” mentioned in one through three.¹¹⁸ Additionally, the circuit public defender may be contracted to provide legal representation for actions not in superior or juvenile court.¹¹⁹ The Act provides for the Council to determine the circuit public defender’s annual salary, which should be supplemented for cost-of-living-adjustments.¹²⁰ The Act also precludes the circuit public defender from private practice.¹²¹ The salaries and other expenses are derived from the Council’s budget, which is submitted to the Judicial Council annually.¹²² Article 2 also provides that each circuit public defender may appoint an assistant.¹²³ Multiple assistants are subject to the availability of funds and an assessment of whether the caseload

113. See O.C.G.A. § 17-12-8(b) (2003).

114. See O.C.G.A. § 17-12-11(a) (2003).

115. See O.C.G.A. § 17-12-20(a) (2003). The panel is appointed in a similar manner to the Public Defender Standards Council, with the Governor, the Lieutenant Governor, the Speaker of the House, the Chief Justice of the Georgia Supreme Court, and the chief judge of the superior court of the circuit each making one appointment. See *id.*

116. See O.C.G.A. § 17-12-20(b) (2003).

117. See O.C.G.A. § 17-12-21 (2003).

118. See O.C.G.A. § 17-12-23(a) (2003).

119. See O.C.G.A. § 17-12-23(d) (2003).

120. See O.C.G.A. § 17-12-25(a) (2003).

121. See O.C.G.A. § 17-12-25(c) (2003).

122. Compare 1968 Ga. Laws 999, § 4, at 1002 (formerly found at O.C.G.A. § 17-12-5 (2001)), with O.C.G.A. § 17-12-26 (2003).

123. See O.C.G.A. § 17-12-27(a) (2003).

and resources require the addition.¹²⁴ The assistant public defenders are paid in accordance with the Act's salary schedule and specified salary advancements.¹²⁵ In addition to assistant defenders, the circuit public defender may appoint at least one investigator for trial preparation.¹²⁶ The Act only limits what the state will provide and does not prevent local authorities from providing additional personnel and resources.¹²⁷

Article 3 authorizes third-year law students to assist in criminal proceedings, provided that documents reflecting the students' enrollment status and academic standing are on file.¹²⁸

Article 4 creates the Office of Mental Health Advocacy.¹²⁹ The Office facilitates the legal "representation of indigent persons found not guilty by reason of insanity."¹³⁰ The Office serves all Georgia counties and is not differentiated by judicial circuits.¹³¹ The circuit public defenders may request the assistance of the mental health advocate at any time prior to a court's finding of not guilty by reason of insanity.¹³²

Article 5 creates the Office of the Multicounty Public Defender, which provides legal representation to indigent defendants charged with capital felonies in which the prosecution seeks the death penalty.¹³³ In addition to being responsible for the Office's management, the Georgia Public Defender Standards Council is also responsible for the annual budget, the appointment of the public defender, and the employment of assistants and other necessary persons within the Office.¹³⁴ The Act provides for the appointment of other counsel in the event that the multicounty public defender is unable to take an eligible case.¹³⁵ This Article is effective until December 31, 2004.¹³⁶ After that time, Article 6 takes effect, and

124. See O.C.G.A. § 17-12-27(a)(2) (2003).

125. See O.C.G.A. § 17-12-27(c) (2003).

126. See O.C.G.A. § 17-12-28(a) (2003).

127. See 2003 Ga. Laws 191.

128. See O.C.G.A. §§ 17-12-40 to -45 (2003).

129. See O.C.G.A. § 17-12-81 (2003).

130. See *id.*

131. See *id.*

132. See O.C.G.A. § 17-12-87(b) (2003).

133. See O.C.G.A. § 17-12-101 (2003).

134. See O.C.G.A. §§ 17-12-103 to -106 (2003).

135. See O.C.G.A. § 17-12-107(b) (2003).

136. See O.C.G.A. § 17-12-108 (2003).

Article 6 covers cases previously covered under Article 5.¹³⁷ Article 6 creates the Office of the Georgia Capital Defender¹³⁸ and charges the multicounty public defender with submitting a proposed budget of representation for all indigent persons for whom the death penalty is sought for the fiscal year 2005.¹³⁹

Sections 2 through 8 provide for technical changes within various Code sections by replacing the GIDC with the Georgia Public Defender Standards Council.¹⁴⁰

Section 9 adds new subsections at the end of Code section 36-32-1, which pertains to municipal courts.¹⁴¹ The Act requires municipal and county courts to provide indigent defendants free legal representation.¹⁴² The court may contract with the Office of the Circuit Public Defender to provide this defense.¹⁴³

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137. *See id.*

138. *See* O.C.G.A. § 17-12-121 (2003).

139. *See* O.C.G.A. § 17-12-124 (2003).

140. *Compare* 1993 Ga. Laws 982, § 3, at 983 (formerly found at O.C.G.A. § 15-6-76.1 (2001)), with O.C.G.A. § 15-6-76.1 (2003); *compare* 1993 Ga. Laws 982, § 4, at 985 (formerly found at O.C.G.A. § 15-6-49 (2001)), with O.C.G.A. § 15-6-49 (2003); *compare* 2000 Ga. Laws 1306, § 1, at 1306 (formerly found at O.C.G.A. § 15-9-18 (2001)), with O.C.G.A. § 15-9-18 (2003); *compare* 1993 Ga. Laws 982, § 3, at 985 (formerly found at O.C.G.A. § 15-10-240 (2001)), with O.C.G.A. § 15-10-240 (2003); *compare* 1993 Ga. Laws 982, § 3, at 983 (formerly found at O.C.G.A. § 15-16-27 (2001)), with O.C.G.A. § 15-16-27 (2003).

141. *See* O.C.G.A. § 36-32-1(g) to (h) (2003).

142. *See* O.C.G.A. § 36-32-1(b) (2003).

143. *See* O.C.G.A. § 36-32-1(c) (2003).