

GEORGIA INDIGENT DEFENSE ACT OF 2003

(Revised during 2004 Session, 2004 Special Session, and 2005 Session; 2005 changes indicated by strikes and underlining; effective date of change indicated in *italics*; and repealed provisions indicated by double strikethrough.)

CHAPTER 12

ARTICLE 1

17-12-1.

- (a) This chapter shall be known and may be cited as the 'Georgia Indigent Defense Act of 2003.'
- (b) The Georgia Public Defender Standards Council shall be an independent agency within the judicial branch of state government.
- (c) The council shall be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter.

17-12-2.

As used in this chapter, the term:

- (1) 'Assistant public defender' means an attorney who is employed by any circuit public defender or conflict defender office.
- (2) 'Circuit public defender' means the head of a public defender office providing indigent defense representation within any given judicial circuit of this state.
- (3) 'Circuit public defender office' means the office of any of the several circuit public defenders.
- (4) 'Council' means the Georgia Public Defender Standards Council.
- (5) 'Public defender' means an attorney who is employed in a circuit public defender office or conflict defender office or who represents an indigent person pursuant to this chapter.

17-12-3.

- (a) There is created the Georgia Public Defender Standards Council to be composed of 11 members.
- (b) The membership of the council shall be appointed as follows:
 - (1) Two members shall be appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in paragraph (2) of this subsection. The members of the council shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the

provision of adequate and effective representation of indigent defendants.

These members shall serve terms of four years;

(2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen so that each of the ten judicial administration districts in the state is represented and so that each appointing authority shall rotate the particular judicial administration district for which he or she is responsible for appointing.

The appointments shall be as follows:

(A) For the initial appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(B) For the first subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(C) For the second subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial

administration district 5 and one person who resides in judicial administration district 6;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(D) For the third subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; and

(E) For the fourth subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one

person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8.

All subsequent appointments shall continue on, with the entire cycle starting over again as specified in subparagraph (A) of this paragraph;

(3) In addition, there shall be one circuit public defender who shall serve on the council. After the initial appointments as set forth in paragraph (4) of this subsection, the circuit public defender to serve on the council shall be elected by a majority vote of all the circuit public defenders. The circuit public defender councilmember shall serve terms of two years;

(4) All initial appointments shall be made to become members of the council on July 1, 2003, and their successors shall become members of the council on July 1 following their appointment. Notwithstanding the provisions of paragraph (3) of this subsection, the initial member representing the circuit public defenders shall be made by the Supreme Court of Georgia. The person representing the circuit defender position on the initial council shall be engaged on a full-time basis in the provision of criminal defense to the indigent;

(5) Any vacancy for a member appointed pursuant to paragraphs (1) and (3) of this subsection shall be filled by the appointing authority; and

(6) Any vacancy for a member appointed pursuant to paragraph (2) of this subsection shall be the successor to the circuit public defender as set forth in subsection (d) of Code Section 17-12-21.

(c) In making these appointments, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience; and shall solicit suggestions from the State Bar of Georgia, state and local bar associations, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys' Council of the State of Georgia, as well as from the public and other interested organizations and individuals within the state. The appointing authorities shall not appoint a prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of Georgia to serve on the council.

(d) This Code section shall become effective on July 1, 2003, for purposes of making the initial appointments to the council.

17-12-4.

(a) The council:

(1) Shall be a legal entity;

- (2) Shall have perpetual existence;
 - (3) May contract;
 - (4) May own property;
 - (5) May accept funds, grants, and gifts from any public or private source, which shall be used to defray the expenses incident to implementing its purposes;
 - (6) May adopt and use an official seal;
 - (7) May establish a principal office;
 - (8) Shall appoint a director;
 - (9) May hire such administrative and clerical personnel as may be necessary and appropriate to fulfill its purposes; and
 - (10) Shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.
- (b) The council shall establish auditing procedures as may be required in connection with the handling of public funds. The state auditor is authorized and directed to make an annual audit of the transactions of the council and to make a complete report of the same to the General Assembly. The report shall disclose all moneys received by the council and all expenditures made by the council, including administrative expense. The state auditor shall also make an audit of the affairs of the council at any time when requested to do so by a majority of the council or by the Chief Justice of the Supreme Court of Georgia.
- (c) The council may not provide compensation from its funds to any administrative or clerical personnel employed by the council if the personnel are then receiving retirement compensation from any retirement or pension fund created by Title 47 to provide compensation for past services as a judicial officer, prosecuting attorney, indigent defense attorney, court officer, or law enforcement officer except for county or municipal retirement funds.

17-12-5.

(a) To be eligible for appointment as the council's director, a candidate shall be a member in good standing of the State Bar of Georgia with at least three years' experience in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the council deems appropriate. The director shall serve at the pleasure of the council and may be removed by a majority vote of the entire council. The council shall establish the director's salary.

(b)(1) The director shall work with and provide support services and programs for circuit public defender offices and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this chapter. Such services and programs shall include, but shall not

be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; and assistance with appellate advocacy.

(2) The director, with the consent of the council, may establish divisions within the office to administer the services and programs as may be necessary to fulfill the purposes of this chapter.

(3) The director may hire such staff employees and may contract with outside consultants on behalf of the office as may be necessary to provide the services contemplated by this chapter.

(c) The director shall:

(1) Prepare and submit to the council a proposed budget for the council. Said budget shall not contain any request for funding for the operation of the circuit public defender offices until the budget submission for Fiscal Year 2005. The director shall also prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the council and such other information as the council may require;

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

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

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

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

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

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

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

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

(10) Perform other duties as the council may assign.

17-12-6.

(a) The council shall assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent. Assistance may include:

- (1) The preparation and distribution of a basic defense manual and other educational materials;
- (2) The preparation and distribution of model forms and documents employed in indigent defense;
- (3) The promotion of and assistance in the training of indigent defense attorneys;
- (4) The provision of legal research assistance to public defenders; and
- (5) The provision of such other assistance to public defenders as may be authorized by law.

(b) The council:

- (1) Shall be the fiscal officer for the circuit public defender offices; and
- (2) Shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in Georgia.

17-12-7.

(a) All members of the council shall at all times act in the best interest of indigent defendants who are receiving legal representation under the provisions of this chapter.

(b) All members of the council shall be entitled to vote on any matter coming before the council unless otherwise provided by law or by rules adopted by the council concerning conflicts of interest.

(c) Each member of the council shall serve until a successor has been appointed. Removal of council members shall be for cause and shall be in accordance with policies and procedures adopted by the council.

(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 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 an alternative delivery system pursuant to Code Section 17-12-36 and other matters as set forth in Code Section 17-12-36.

(e) The council shall meet at least quarterly and at such other times and places as it deems necessary or convenient for the performance of its duties.

(f) The council shall elect a chairperson and such officers from the members of the council as it deems necessary and shall adopt such rules for the transaction

of its business as it desires. The chairperson and officers shall serve for a term of two years and may be removed without cause by a vote of two-thirds of the members of the entire council and for cause by a majority vote of the entire council. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest or the removal of the chairperson for cause. The council shall keep and maintain minutes of all council meetings.

(g) The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. Any expenses incurred by the council shall be paid from the general operating budget of the council.

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.

[Effective upon the Governor's signature.]

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 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. Notwithstanding any other provision of law, the circuit public defenders or their staff members shall

be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs, provided that no person shall be entitled to claim reimbursement under both this Code section and Code Section 17-12-26. The council shall adopt rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this Code section properly.

17-12-10.

(a) The council shall prepare annually a report of its activities in order to provide the General Assembly, the Governor, and the Supreme Court of Georgia with an accurate description and accounting of the preceding year's expenditures and accomplishments.

(b) The council shall also provide to the General Assembly, the Governor, and the Supreme Court of Georgia a detailed analysis of all grants and funds, whether public or private, applied for or granted, together with how and in what manner the same are to be utilized and expended.

17-12-10.1.

(a) There is created the General Oversight Committee for the Georgia Public Defender Standards Council which shall be composed of eight persons: three members of the House of Representatives appointed by the Speaker of the House of Representatives, three members of the Senate appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule, and one member of the House of Representatives and one member of the Senate appointed by the Governor. The members of such committee shall be selected within ten days after the convening of the General Assembly in each odd-numbered year and shall serve until their successors are appointed.

(b) The Speaker of the House of Representatives shall appoint a member of the committee to serve as chairperson and the Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint one member of the committee to serve as vice chairperson during each even-numbered year. The Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint a member of the committee to serve as chairperson and the Speaker of the House of Representatives shall appoint one member to serve as vice chairperson during each odd-numbered year. Such committee shall meet at least six times each year and, upon the call of the chairperson, at such additional times as deemed necessary by the chairperson.

(c) It shall be the duty of such committee to review and evaluate the following:

- (1) Information on new programs submitted by the council;
- (2) Information on standards proposed by the council;

- (3) The strategic plans for the council;
 - (4) Program evaluation reports and budget recommendations of the council;
 - (5) The fiscal impact of fees and fines on counties;
 - (6) The reports submitted pursuant to Code Section 15-21A-7 in order to identify, among other things, opportunities to reduce or consolidate fees, fines, and surcharges; and
 - (7) Such other information or reports as deemed necessary by such committee.
- (d) The council shall cooperate with such committee and provide such information or reports as requested by the committee for the performance of its functions.
- (e) Notwithstanding subsection (c) of Code Section 45-12-78, the council shall submit its budget estimate to the director of the Office of Planning and Budget prior to submitting its budget estimate to the Judicial Council of Georgia. The council's budget estimate included in the Governor's budget report as provided in subsection (d) of Code Section 45-12-78 shall be as submitted by the Judicial Council of Georgia; provided, however, that the Governor shall be authorized to analyze the council's budget estimate and include such analysis as a part of the Governor's budget report.
- (f) The committee shall make an annual report of its activities and findings to the membership of the General Assembly and the Governor within one week of the convening of each regular session of the General Assembly. The chairperson of the committee shall deliver written executive summaries of such report to the members of the General Assembly prior to the adoption of the General Appropriations Act each year.
- (g) The members of the committee shall receive the allowances authorized for legislative members of legislative committees. The funds necessary to pay such allowances shall come from funds appropriated to the House of Representatives and the Senate.
- (h) The committee shall be authorized to request that a performance audit of the council be conducted.

17-12-10.2.

The members of the council as created by this article, the members of the circuit public defender selection panel created by Article 2 of this chapter, and other policy-making or administrative personnel acting in a policy-making or administrative capacity shall not be subject to civil liability resulting from any act or failure to act in the implementation and carrying out of the purposes of this article and Article 2 of this chapter.

17-12-11.

(a) On December 31, 2003, the Georgia Public Defender Standards Council shall assume all powers, duties, and obligations of the Georgia Indigent Defense Council created by former Code Section 17-12-31, and all references in this Code to the Georgia Indigent Defense Council shall be deemed to be references to the Georgia Public Defender Standards Council. Such powers shall include, without limitation, making grants and distributions to the counties.

(b) At least 90 percent of all state appropriated funds to the former Georgia Indigent Defense Council or the Georgia Public Defender Standards Council for grants to counties shall be distributed to counties for the January 1, 2004, through December 31, 2004, time period, based upon previous year expenditures for the provision of defense services at the local level.

(c) On December 31, 2003, the employees in good standing, assets, and resources of the Georgia Indigent Defense Council shall be transferred to the Georgia Public Defender Standards Council, and the council shall assume any executory contractual obligations of the Georgia Indigent Defense Council, provided that allocated funding resources for such obligations are also transferred. All full-time employees of the Georgia Public Defender Standards Council shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all of the benefits of appointed state employees provided by law.

17-12-12.

From January 1, 2005, through December 31, 2005, the Georgia Public Defender Standards Council shall coordinate the transition from the procedures for providing criminal defense to indigent persons in effect on December 31, 2004, in each county to the procedures provided in Article 1 of this chapter. On and after January 1, 2005, the provisions of Article 1 of this chapter shall govern the public provision of criminal defense to indigent persons in the courts of this state.

17-12-13.

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

ARTICLE 1A

[Repealed on December 31, 2004.]

~~17-12-19.1.~~

~~As used in this article, the term:~~

~~(1) 'County governing authority' means the judge of the probate court, board of~~

~~county commissioners, or other authority in a county which by law has the duty to levy taxes and provide funds for the operation of the courts in the county.~~

~~(2) 'Court concerned' means a court having, or anticipated as having, with respect to crime, jurisdiction over a proceeding in which an indigent person is a party or over the detention of an indigent person. When a superior court has prescribed an arrangement under paragraph (1) of subsection (a) of Code Section 17-12-19.3, it shall also be a 'court concerned.'~~

~~(3) 'Criminal proceedings' means any proceedings in which a person is charged with a violation of a local ordinance or state law; and, because of the violation, the person may be incarcerated in any jail or other penal institution in this state.~~

~~(4) 'Defending attorney' means an assigned attorney, an attorney attached to the staff of a nonprofit legal aid agency, a public defender, or an attorney attached to the staff of a public defender.~~

~~(5) 'Indigent person' means a person who is unable, without undue hardship, to employ the legal services of an attorney or to defray the necessary expenses of legal representation, determined as provided for in this article.~~

~~17-12-19.2.~~

~~When there are more than two judges of the superior court in a county or circuit, any action required under this article, in the form of a rule of the court, must be taken by at least a majority of the judges of that court. Where there are only two judges, the action must be concurred in by both judges.~~

~~17-12-19.3.~~

~~(a) All courts of this state having jurisdiction of proceedings of a criminal nature shall, by rule of court, provide for the representation of indigent persons in criminal proceedings in such court. After ascertaining that the defendant is in fact indigent, it shall provide this representation by:~~

~~(1) An arrangement whereby a judge of the court concerned will assign attorneys on an equitable basis through a systematic, coordinated defender plan under delegation to and supervision of the clerk or deputy clerk of the superior court, the clerk or deputy clerk of the court concerned, or of an administrator appointed by the superior court for such purpose;~~

~~(2) An arrangement whereby a nonprofit legal aid agency or agencies will be assigned to provide the representation; or~~

~~(3) An arrangement whereby a combination of the above arrangements indicated in paragraphs (1) and (2) of this subsection will provide the representation.~~

~~(b) Until the superior court in a county has by rule prescribed an appropriate arrangement, any court concerned may assign attorneys to provide the representation. In this event, any court concerned may, by its own rule,~~

~~prescribe an arrangement whereby attorneys will be assigned on an equitable basis through a systematic, coordinated plan under delegation to and supervision of the clerk or deputy clerk of that court.~~

~~(c) Any arrangement under subsection (a) of this Code section may be made applicable to one, or more, or all counties within the same superior court circuit when promulgated by a rule of the superior court of the circuit.~~

~~(d) If the superior court in a county for any reason does not provide for an arrangement prescribed in subsection (a) of this Code section, the county governing authority may perform the functions ascribed to the superior court in this Code section.~~

~~17-12-19.4:~~

~~(a) When a superior court prescribes an arrangement under Code Section 17-12-19.3 which involves the assignment of attorneys, it shall prescribe the compensation of the defending attorneys whom it assigns as provided for in this article and approve the expenses necessarily incurred by them in the defense of indigents under this article. The county governing authority shall recommend the limits for attorney fees for the several courts in the county that may be prescribed by the courts for the defense of indigents and such investigation expenses as may be necessary and approved by the court.~~

~~(b) Notwithstanding subsection (a) of this Code section, in extraordinary circumstances the trial court may approve the payment of such additional compensation in excess of the limits prescribed in subsection (a) of this Code section as the trial court may determine and find to be necessary to provide for compensation for protracted representation.~~

~~(c) The county governing authority shall pay assigned attorneys the amounts prescribed in this Code section from public funds available for the operation of the courts in the county.~~

~~17-12-19.5:~~

~~(a) When a nonprofit legal aid agency is involved in providing legal services to an indigent person under this article, the court concerned may allow to the legal aid agency an amount equivalent to the compensation and direct expenses otherwise allowable to an assigned attorney. In this event the county governing authority shall pay to the legal aid agency the amount so determined from public funds available for the operation of the courts in the county.~~

~~(b) The county governing authority may, in lieu of compensation allowable under subsection (a) of this Code section, contract with a nonprofit legal aid agency on an annual basis for rendering all or part of the legal services contemplated under this article.~~

~~17-12-19.6:~~

~~(a) In addition to the arrangements authorized under Code Section 17-12-19.3, the superior court of a county, with the concurrence of the county governing authority, may establish and maintain an office of public defender to provide indigent persons with the representation contemplated under this article.~~

~~(b) If an office of public defender is established for a county, the superior court of that county shall appoint a person to serve as public defender for a term of two years. The public defender must be licensed to practice law in this state and must be competent to counsel and defend a person charged with a crime. During his or her incumbency the public defender may not engage in the practice of criminal law other than in the discharge of the duties of his or her office unless he or she is approved in writing to practice criminal law by the senior judge of the superior court of his or her judicial circuit. The superior court, with the concurrence of the county governing authority, shall determine whether the public defender is to be employed on a full-time or a part-time basis and shall determine his or her compensation.~~

~~(c) If an office of public defender is established, the public defender may employ, in the manner and at the compensation prescribed by the superior court and concurred in by the county governing authority, as many assistant public defenders, clerks, investigators, stenographers, and other persons as may be necessary for carrying out his or her responsibilities under this article. A person employed under this subsection serves at the pleasure of the public defender, unless his or her position is under a civil service system in which he or she may be removed only for cause.~~

~~(d) If an office of public defender is established, the county governing authority shall provide appropriate facilities, including office space, furniture, equipment, books, postage, supplies, and interviewing facilities in the jail, necessary for carrying out the public defender's responsibilities under this article or shall grant the public defender an allowance in place of such facilities.~~

~~(e) If an office of public defender is established, his or her compensation, expenses and allowances, and the expense necessary to establish, maintain, and support his or her office shall be paid by the county governing authority out of public funds available for the operation of the courts in the county.~~

~~(f) The superior court of a circuit, with the concurrence of the county governing authority of two or more counties within the same circuit, may establish and maintain a joint office of public defender under this Code section; or a single governing authority may contract with a public defender of another county within the same circuit for the services of his or her office to serve as the public defender, provided the superior court of the circuit and the governing authority of the county concur in the contract.~~

~~17-12-19.7.~~

~~No person may be assigned the primary responsibility of representing an indigent person unless he or she is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime. Competence shall be determined by the court concerned at the first court proceeding after the assignment of counsel. A person authorized to practice legal aid under Chapter 20 of Title 15 is competent to represent an indigent person, provided that in any trial a person authorized to practice law in this state is also present.~~

~~17-12-19.8.~~

~~At any stage of the criminal proceedings, including appeal or other post-conviction proceedings, the court concerned may for good cause assign a substitute attorney. The substitute attorney shall have the same functions with respect to the indigent person as the attorney for whom he or she is substituted. If the substitute attorney is not employed in the office of the public defender or in a nonprofit legal aid agency serving under this article, the court shall prescribe reasonable compensation for him or her and approve the expenses necessarily incurred by him or her in the defense of the indigent person, as provided in Code Section 17-12-4.~~

~~17-12-19.9.~~

- ~~(a) When a superior court prescribes an arrangement for providing representation under this article, it may also prescribe a standard to govern the determination of indigency by all courts concerned within the county. The superior court may prescribe the requirements for a proper showing of material factors relating to ability to pay for legal services and the proper form and authentication thereof. In establishing an indigency standard, the superior court shall consider such factors as income, property owned, expenses, outstanding obligations, and the number and ages of dependents. Release on bail shall not necessarily preclude a person from being considered indigent, nor shall it be necessary that a person be destitute or a pauper to be considered indigent.~~
- ~~(b) In a proceeding to determine indigency under this Code section, any person who makes a false statement, under oath, concerning any material factor related to his, her, or another's ability to pay for legal services commits the crime of perjury.~~
- ~~(c) To the extent that a person covered under this Code section is able to provide for the employment of an attorney, the other necessary services and facilities of representation, and court costs, the court concerned may order him or her to provide for this payment or reimbursement.~~

~~17-12-19.10.~~

- ~~(a) The county may recover payment or reimbursement, as the case may be,~~

~~from each person who has received legal assistance or another benefit under this article:~~

~~(1) To which he or she was not entitled;~~

~~(2) With respect to which he or she was not an indigent person when he or she received it; or~~

~~(3) With respect to which he or she has failed to make payment or reimbursement ordered under subsection (c) of Code Section 17-12-19.9 and for which he or she refuses to pay or reimburse.~~

~~(b) An action must be brought within four years after the date on which the aid was received.~~

~~(c) The county may recover payment or reimbursement, as the case may be, from each person, other than a person covered by subsection (a) of this Code section, who has received legal assistance under this article and who, on the date on which the action is brought, is financially able but refuses to pay or reimburse the county for the assistance according to the standards of ability to pay applicable under this article. The action must be brought within four years after the date on which the benefit was received.~~

~~17-12-19.11.~~

~~(a) A defending attorney shall keep appropriate records respecting each indigent person whom he or she represents under this article.~~

~~(b) The public defender, legal aid agency, or person administering a court prescribed defender plan shall submit an annual report to the county governing authority, which report shall show the number of persons represented under this article, the crimes involved, the outcome of each case, and the expenditures (totaled by kind) made in carrying out the responsibilities imposed by this article. A copy of the report shall also be submitted to each court having criminal jurisdiction in the county or counties which the program serves.~~

~~17-12-19.12.~~

~~(a) For each fiscal year, the county governing authority in each county shall include in its annual budget for the operations of the courts in the county an additional amount to finance the costs and expenses necessary for the implementation of this article.~~

~~(b) The county governing authority in each county may accept private contributions for the support of the administration of this article.~~

~~17-12-19.13.~~

~~This article applies only to counties that were operating local indigent defense programs under former Article 1 of this chapter, 'The Georgia Criminal Justice Act,' as it existed immediately prior to December 31, 2003, for representation in the courts of this state, except that it does not prohibit a defending attorney~~

~~from representing an indigent person in a federal court of the United States if:
(1) The matter arises out of or is related to an action pending or recently pending in a court of criminal jurisdiction of this state; or
(2) Representation is under an approved plan of the United States District Court as required by the Criminal Justice Act of 1964 (18 U.S.C. 3006A).~~

~~17-12-19.14.~~

~~This article shall be repealed in its entirety on December 31, 2004.~~

ARTICLE 2

17-12-20.

(a) There is created in each judicial circuit in the state a circuit public defender selection panel to be composed of five members. The membership shall be composed of one member each appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of Georgia, and the chief judge of the superior court of the circuit. Members of the circuit public defender selection panel shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not serve as a member of the circuit public defender selection panel after July 1, 2005. Members of the circuit public defender selection panel shall reside in the judicial circuit in they serve. The circuit public defender selection panel members shall serve for a term of five years. Any vacancy for an appointed member shall be filled by the appointing authority.

(b) By majority vote of its membership, the circuit public defender selection panel shall appoint the circuit public defender in the circuit as provided in this article. The first such appointments shall be made to take office on January 1, 2005, for terms of up to four years. The initial appointments shall be for a term of up to four years.

(c) A circuit public defender may be removed for cause by a majority vote of the council.

(d) If a vacancy occurs for the position of circuit public defender, the chief judge of the superior court of the circuit shall appoint an interim circuit public defender to serve until the circuit public defender selection panel has appointed a replacement to serve out the unexpired term of office. The circuit public defender selection panel shall appoint a replacement circuit public defender within three months of the occurring of the vacancy.

17-12-21.

To be eligible to fill the position of circuit public defender, a person must:

- (1) Have attained the age of 25 years;
- (2) Have been duly admitted and licensed to practice law in the superior courts for at least three years;
- (3) Be a member in good standing of the State Bar of Georgia; and
- (4) If previously disbarred from the practice of law, have been reinstated as provided by law.

17-12-22.

(a) The council shall establish a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest. This procedure may be by appointment of individual counsel on a case-by-case basis or by the establishment of a conflict defender office in those circuits where the volume of cases may warrant a separate conflict defender office.

(b) Attorneys who seek appointment in conflict cases must have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which they are appointed and must meet such qualifications and standards for the representation of indigent defendants as are established by the council.

(c) The circuit public defender shall establish a method for identifying conflicts of interest at the earliest possible opportunity.

17-12-23.

(a) The circuit public defender shall provide representation in the following actions and proceedings:

- (1) Any case prosecuted in a superior court under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or a suspended sentence of imprisonment may be adjudged;
- (2) A hearing on a revocation of probation in a superior court;
- (3) Any juvenile court case where the juvenile may face a disposition of confinement, commitment, or probation; and
- (4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3) of this subsection.

(b) In each of the actions and proceedings enumerated in subsection (a) of this Code section, entitlement to the services of counsel begins as soon as is feasible and no more than 72 hours after the indigent person is taken into custody or service is made upon him or her of the charge, petition, notice, or other initiating process.

(c) Each circuit public defender shall establish a juvenile division within the circuit public defender office to specialize in the defense of juveniles.

(d) A city, county, or consolidated government may contract with the circuit public defender office for the provision of criminal defense for indigent persons accused of violating city, county, or consolidated government ordinances or state laws. If a city, county, or consolidated government does not contract with the circuit public defender office, the city, county, or consolidated government shall be subject to all applicable standards adopted by the council for representation of indigent persons in this state.

17-12-24.

(a) The council shall establish guidelines for determining the financial eligibility of persons claiming indigence, and the circuit public defender and any other person or entity providing indigent defense services shall use the guidelines to determine the financial eligibility of any person or juvenile arrested, detained, or charged in any manner that would entitle him or her to representation under this article.

(b) The circuit public defenders shall administer and coordinate the day-to-day operations of their respective offices and shall supervise the assistant public defenders and other staff serving in the office.

(c) The circuit public defender shall keep and maintain appropriate records, which shall include the number of persons represented under this article, including cases assigned to other counsel based on conflict of interest; the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and any other information requested by the council.

17-12-25.

(a) Each circuit public defender shall receive an annual salary of \$87,593.58 and cost-of-living adjustments as may from time to time be granted to employees of the executive, judicial, and legislative branches of government from state funds.

(b) The county or counties comprising the judicial circuit may supplement the salary of the circuit public defender in an amount as is or may be authorized by local Act or in an amount as may be determined by the governing authority of the county or counties, whichever is greater.

(c) No circuit public defender shall engage in the private practice of law for profit.

17-12-26.

(a) The council shall prepare and submit to the Judicial Council of Georgia an annual proposed budget necessary for fulfilling the purposes of this article in accordance with Code Section 45-12-78. The budget request shall be based on the previous year's expenditures and budget requests submitted by each circuit

public defender, the multicounty public defender office or its successor, and the office of the mental health advocate. The council's total budget request for funding for the operations of the circuit public defender offices and the council's programs shall not exceed the amount of funds collected for indigent defense pursuant to Code Sections 15-21-73 and 15-21A-6. For fiscal years beginning prior to July 1, 2006, such funds collected for indigent defense may be estimated by the council based on actual monthly collections received prior to the council's budget request submission. The council is also authorized to seek, solicit, apply for, and utilize funds from any public or private source to use in fulfilling the purposes of this article.

(b) The budget of the council shall include the budget of all circuit public defenders and other offices and entities, including conflict defender offices and appointed attorneys providing indigent defense representation under the authority of this article and the multicounty public defender office and the office of the mental health advocate.

(c)(1) Subject to the provisions of paragraphs (3) and (4) of this subsection, expenses paid by the council pursuant to this Code section shall be paid out of funds as may be appropriated by the General Assembly.

(2) On or before June 1 of each year, the council shall establish and furnish to each circuit public defender and the state auditor the travel budget for each judicial circuit based on the amount appropriated by the General Assembly for travel.

(3) In determining the travel budget for each judicial circuit, the council shall consider the budget request submitted by the circuit public defender of each judicial circuit, the geographic size and the caseload of each circuit, and other facts as may be relevant. The council is authorized to establish a contingency reserve of not more than 3 percent of the total amount appropriated by the General Assembly in order to meet any expenses which could not be reasonably anticipated. The council shall submit to each circuit public defender, the state auditor, and the legislative budget analyst a monthly report showing the budget amount of expenditures made under the travel budget. The council may periodically review and adjust the travel budget as may be necessary to carry out the purposes of this subsection.

(4) Neither the circuit public defender nor any personnel compensated by the state pursuant to the provisions of this article shall be reimbursed from state funds for any expenses for which the person has been reimbursed from funds other than state funds; provided, however, that the governing authority of the county or counties comprising the judicial circuit are authorized to provide travel advances or to reimburse expenses which may be incurred by the person in the performance of his or her official duties to the extent the expenses are not reimbursed by the state as provided in this Code section.

17-12-27.

(a) Subject to the provisions of this Code section, the circuit public defender in each judicial circuit is authorized to appoint:

(1) One assistant public defender for each superior court judge authorized for the circuit, excluding the chief judge and senior judges; and

(2) Subject to funds being appropriated by the General Assembly or otherwise available, additional assistant public defenders as may be authorized by the council. In authorizing additional assistant public defenders the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of providing adequate legal defense for indigent defendants.

(b) Each assistant public defender appointed pursuant to subsection (a) of this Code section shall be classified based on education, training, and experience.

The jobs of assistant public defenders and the minimum qualifications required for appointment or promotion to each job shall be established by the council based on education, training, and experience and in accordance with the provisions of Code Sections 17-12-30 and 17-12-34.

(c) Each assistant public defender appointed pursuant to this Code section shall be compensated based on a salary range established in accordance with subsection (c) of Code Section 17-12-30. The salary range for each job established in accordance with subsection (b) of this Code section shall be as follows:

(1) Assistant public defender I. Not less than \$38,124.00 nor more than 65 percent of the compensation of the circuit public defender;

(2) Assistant public defender II. Not less than \$40,884.00 nor more than 70 percent of the compensation of the circuit public defender;

(3) Assistant public defender III. Not less than \$45,108.00 nor more than 80 percent of the compensation of the circuit public defender; and

(4) Assistant public defender IV. Not less than \$52,176.00 nor more than 90 percent of the compensation of the circuit public defender.

(d) All personnel actions involving attorneys appointed pursuant to this Code section shall be made by the circuit public defender in writing in accordance with the provisions of Code Section 17-12-30.

(e)(1) All salary advancements shall be based on quality of work, education, and performance.

(2) The salary of an assistant public defender appointed pursuant to this Code section may be increased at the first of the calendar month following the anniversary of his or her appointment.

(3) The salary of any assistant public defender who, subsequent to his or her

appointment pursuant to this Code section, is awarded an LL.M. or S.J.D. degree by a law school recognized by the State Bar of Georgia from which a graduate of or student enrolled therein is permitted to take the bar examination or by a law school accredited by the American Bar Association or the Association of American Law Schools may be increased effective on the first day of the calendar month following the award of the degree, provided that such advancement does not exceed the maximum of the salary range applicable to the attorney's job classification.

(f) Any assistant public defender appointed pursuant to this Code section may be promoted to the next highest job at any time the attorney meets the minimum qualifications for such job, but in order to be eligible for promotion, the attorney shall have served not less than 12 months in the job from which the attorney is to be promoted. When an assistant public defender is promoted to the next highest job, the assistant public defender shall enter the higher job at an annual salary greater than; the annual salary the assistant public defender was receiving immediately prior to the promotion.

(g) All full-time state paid employees of the office of the circuit public defender shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all benefits of such appointed state employees as provided by law.

(h) Notwithstanding the provisions of subsection (g) of this Code section, an employee of a local public defender office who was an employee of the office on June 30, 2004, and who becomes a circuit public defender or an employee of a circuit public defender office before July 1, 2005, may elect, with the consent of the former employer and the consent of the council, to remain an employee of the entity for which the employee worked as a local public defender; and such entity shall be his or her employer for all purposes, including, without limitation, compensation and employee benefits. The right to make an election pursuant to this subsection shall expire on July 1, 2005. The council shall reimburse the appropriate entity for compensation, benefits, and employer contributions under the federal Social Security Act, but the total payment from the council to the entity on behalf of the employee shall not exceed the amount otherwise payable to or for the employee under the circumstance where the employee had become a state employee.

17-12-28.

(a) Subject to the provisions of this Code section, the circuit public defender in each judicial circuit is authorized to appoint one investigator to assist the circuit public defender in the performance of his or her official duties in the preparation of cases for trial. Subject to funds being appropriated by the General Assembly or otherwise available, the circuit public defender in each

judicial circuit may appoint additional investigators as may be authorized by the council. In authorizing additional investigators, the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of circuit public defenders throughout the state in providing adequate legal defense for indigent defendants.

(b) An investigator appointed pursuant to this Code section shall be not less than 21 years of age and shall serve at the pleasure of the circuit public defender.

(c) An investigator appointed pursuant to this Code section shall:

(1) Assist the attorneys within the office of the circuit public defender in the preparation of cases for preliminary hearings, pretrial hearings, and trial; and

(2) Perform other duties as are required by the circuit public defender.

(d) Each investigator appointed pursuant to this Code section shall be compensated based on a salary range established pursuant to Code Section 17-12-30. The salary range for the investigator appointed pursuant to this Code section shall be not less than \$30,828.00 nor more than 70 percent of the compensation of the circuit public defender from state funds.

(e)(1) Except as otherwise provided in this subsection, an investigator appointed pursuant to this Code section shall be appointed initially to the entry grade of the job on the state-wide pay ranges.

(2) Any person who is employed in a nonstate paid investigator's position within the office of the circuit public defender may be transferred to a state paid position. Such transfer shall be to the job and salary range commensurate with the education and experience of the employee.

(3) Any person who is employed as a peace officer by an agency of the executive branch of state government who is appointed as an investigator pursuant to this Code section without a break in service may be appointed to an annual salary at least equal to the annual salary the person received on the last day of employment immediately preceding said appointment.

(4) Any person who was a certified peace officer employed on a full-time basis by this state, the United States or any of the several states, or a political subdivision or authority thereof, may be appointed to the salary that gives the officer credit for experience as a full-time certified peace officer.

(f) Personnel appointed pursuant to this Code section shall be reimbursed for actual expenses incurred in the performance of their official duties in accordance with the provisions of Code Section 17-12-26.

17-12-29.

(a) Each circuit public defender is authorized to employ administrative, clerical,

and paraprofessional personnel as may be authorized by the council based on funds appropriated by the General Assembly or otherwise available; provided, however, that each circuit public defender shall be authorized not less than two such personnel. In authorizing administrative, clerical, and paraprofessional personnel, the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders in providing effective criminal defense for indigent defendants.

(b) Personnel appointed pursuant to this Code section shall be compensated based on a salary range developed in accordance with Code Section 17-12-30.

(c) All personnel actions involving personnel appointed pursuant to this Code section shall be in accordance with the provisions of Code Section 17-12-30.

17-12-30.

(a) All state paid personnel employed by the circuit public defenders pursuant to this article shall be employees of the judicial branch of state government in accordance with Article VI, Section VIII of the Constitution of Georgia and shall be in the unclassified service of the State Merit System of Personnel Administration.

(b) Personnel employed by the circuit public defenders pursuant to this article shall have the authority, duties, powers, and responsibilities as are authorized by law or as assigned by the circuit public defender and shall serve at the pleasure of the circuit public defender.

(c)(1) The council shall establish salary ranges for each state paid position authorized by this article or any other provision of law. Salary ranges shall be similar to the state-wide and senior executive ranges adopted by the State Merit System of Personnel Administration and shall provide for a minimum, midpoint, and maximum salaries not to exceed the maximum allowable salary. In establishing the salary ranges, all amounts will be rounded off to the nearest whole dollar. The council may, from time to time, revise the salary ranges to include across-the-board increases which the General Assembly may from time to time authorize in the General Appropriations Act.

(2) The circuit public defender shall fix the compensation of each state paid employee appointed pursuant to this article in accordance with the job to which the person is appointed and the appropriate salary range.

(3) All salary advancements shall be based on quality of work, training, and performance. The salary of state paid personnel appointed pursuant to this article may be increased at the first of the calendar month following the annual anniversary of the person's appointment. No employee's salary shall be advanced beyond the maximum established in the applicable pay range.

(4) Any reduction in salary shall be made in accordance with the salary range

for the position and the policies, rules, or regulations adopted by the council.

(5) The compensation of state paid personnel appointed pursuant to this article shall be paid in equal installments by the Department of Administrative Services or the Administrative Office of the Courts, as determined by the council, as provided by this subsection from funds appropriated for such purpose. The council may, with the consent of the Department of Administrative Services or the Administrative Office of the Courts, authorize employees compensated pursuant to this Code section to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title 45.

(6) The governing authority of the county or counties comprising a judicial circuit may supplement the salary or fringe benefits of any state paid position appointed pursuant to this article.

(7) The governing authority of any municipality within the judicial circuit may, with the approval of the circuit public defender, supplement the salary or fringe benefits of any state paid position appointed pursuant to this article.

17-12-31.

(a) The circuit public defender in each judicial circuit may employ additional assistant circuit public defenders, deputy circuit public defenders, or other attorneys, investigators, paraprofessionals, clerical assistants, and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county or counties comprising the judicial circuit. The circuit public defender shall define the duties and fix the title of any attorney or other employee of the office of the circuit public defender.

(b) Personnel employed by the circuit public defender pursuant to this Code section shall serve at the pleasure of the circuit public defender and shall be compensated by the county or counties comprising the judicial circuit, the manner and amount of compensation to be paid to be fixed either by local Act or by the circuit public defender with the approval of the county or counties comprising the judicial circuit.

17-12-32.

The governing authority of any county or municipality within the judicial circuit which provides additional personnel for the office of circuit public defender may contract with the Department of Administrative Services to provide such additional personnel in the same manner as is provided for state paid personnel in this article. Any such personnel shall be considered state employees and shall be entitled to the same fringe benefits as other state paid personnel employed by the circuit public defender pursuant to this article. The governing authority of such county or municipality shall transfer to the

department such funds as may be necessary to cover the compensation, benefits, travel, and other expenses for such personnel.

17-12-33.

(a) Any assistant public defender or other attorney at law employed full time by the circuit public defender who is compensated in whole or in part by state funds shall not engage in the private practice of law for profit.

(b) Any assistant public defender or any other attorney at law employed by the circuit public defender shall be a member of the State Bar of Georgia and shall be admitted to practice before the appellate courts of this state. The assistant public defender shall serve at the pleasure of the circuit public defenders and shall have such authority, powers, and duties as may be assigned by the circuit public defender.

17-12-34.

The governing authority of the county shall provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner. The provisions of an office, utilities, telephone expenses, materials, and supplies shall be subject to the budget procedures required by Article 1 of Chapter 81 of Title 36.

17-12-35.

A circuit public defender office may contract with and may accept funds and grants from any public or private source.

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. [Effective upon signature of Governor.]

17-12-37.

This article shall become effective on January 1, 2005; provided, however, that the council and the circuit public defender selection panels shall be authorized to take administrative actions as may be necessary or appropriate to prepare for and phase-in full implementation of this article on or after December 31, 2003.

ARTICLE 3

17-12-40.

As used in this article, the term:

- (1) 'Circuit public defender' means any circuit public defender of this state or assistants of such officer.
- (2) 'Criminal proceeding' means any investigation, trial, juvenile proceeding, adjudicatory hearing, or other legal proceeding by which a person's liability for a crime is investigated or determined, commencing with the investigation and including the final disposition of the case.
- (3) 'Law school' means a law school within or outside this state which is approved by the American Bar Association or which is authorized to operate under Code Section 20-3-250.8.
- (4) 'Staff instructor' means a full-time professional staff instructor of a law school in this state who has been admitted to the bar of another state but who has not yet been admitted to the bar of this state.
- (5) 'Third-year law student' means a student regularly enrolled and in good standing in a law school within or outside this state who has satisfactorily completed at least two-thirds of the requirements for the first professional degree in law (J.D. or its equivalent) in not less than four semesters or six quarters of residence.

17-12-41.

An authorized third-year law student or staff instructor, when under the supervision of a circuit public defender, may assist in criminal proceedings within this state as if admitted and licensed to practice law in this state except that all pleadings and other entries of record must be signed by a circuit public defender or by his or her duly appointed assistant and that, in the conduct of a trial or other criminal proceeding, a circuit public defender or his or her duly appointed assistant must be physically present.

17-12-42.

A third-year law student or staff instructor may be authorized to assist a circuit public defender in such form and manner as the judge of the court may

prescribe, taking care that the requirements of this article and the good moral character of the third-year law student or staff instructor are properly certified by the dean of the law school.

17-12-43.

As to each third-year law student or staff instructor authorized to assist a circuit public defender, there shall be kept on file in the office of the clerk of the court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under Code Section 17-12-42. The authority to assist a circuit public defender as allowed under this Code section shall extend for no longer than 18 months. If during this period any change occurs in the status of the student or instructor at the law school in which he or she was enrolled or employed, that is, if the student ceases his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her employment or is released by the school, any such authority shall terminate and be revoked.

17-12-44.

Any third-year law student or staff instructor authorized to assist a circuit public defender under this Code section is not required to possess the qualifications for appointment to the office of circuit public defender or appointment as an assistant circuit public defender as provided in Article 1 of this chapter.

17-12-45.

This article shall become effective on January 1, 2005.

ARTICLE 4

17-12-80.

As used in this article, the term 'office' means the office of mental health advocacy created by this article.

17-12-81.

There is created the office of mental health advocacy for the purpose of undertaking the representation of indigent persons found not guilty by reason of insanity at the time of the crime in any court in this state. The office shall serve all counties of this state. The office shall be a direct successor of the mental health advocacy division of the Georgia Indigent Defense Council created by former Code Section 17-12-45 and all powers, duties, and obligations of such division shall become the powers, duties, and obligations of the office. The employees, assets, and resources of the mental health advocacy division of the

Georgia Indigent Defense Council shall be transferred to the office. All references in this Code to the mental health advocacy division of the Georgia Indigent Defense Council shall be deemed to be references to the office.

17-12-82.

The office shall be a legal entity; shall have perpetual existence; may contract; may own property; may accept funds, grants, and gifts from any public or private source, which funds shall be used to defray the expenses incident to implementing its purposes; and may establish a principal office.

17-12-83.

The council shall be responsible for management of the office. Managerial duties shall include, but are not limited to, the following:

- (1) Appointment of the mental health advocate;
- (2) Establishing the salaries of the mental health advocate and the office's staff;
- (3) Approving the level of staffing and establishing policy consistent with the intent of this chapter; and
- (4) Preparing an annual budget for the office, administering the funds made available to the office, and overseeing the expenditure of such funds.

17-12-84.

The council shall prepare an annual budget showing all anticipated expenses of the office for the following fiscal year, which shall be the same as the fiscal year of this state. Such budget shall be submitted by the mental health advocate to the council.

17-12-85.

The mental health advocate shall be appointed by and shall serve at the pleasure of the council. The mental health advocate must be a member in good standing of the State Bar of Georgia with at least three years' experience in the practice of law and must be competent to counsel and represent a person found not guilty by reason of insanity at the time of the crime. The salary of the mental health advocate shall be established by the council.

17-12-86.

The mental health advocate shall employ, with the advice and consent of the council and in the manner and at the compensation prescribed by the council, as many assistant attorneys, clerks, investigators, paraprofessionals, administrative assistants, and any other persons as may be necessary for carrying out the responsibilities assigned to the office by law. A person employed under this Code section serves at the pleasure of the mental health advocate.

17-12-87.

(a) Whenever any person has been found not guilty by reason of insanity at the time of the crime pursuant to Code Section 17-7-131 and has been determined to be indigent, as provided in Article 1 of this chapter, the court in which such charges are pending shall notify the office and the office may assume the defense and representation of such persons in all matters pursuant to Code Section 17-7-131 if the resources, funding, and staffing of the office allow; provided, however, that the circuit public defender or other attorney who represented the indigent at the time of the finding of not guilty by reason of insanity at the time of the crime shall have the option to retain responsibility for the representation of any such person.

(b) Nothing in this Code section shall prevent the circuit public defender, the court, or the court appointed attorney from requesting the participation of the office prior to a finding of not guilty by reason of insanity at the time of the crime. The circuit public defender, the court, or the court appointed attorney may request that the office assist in the case prior to a plea being entered and accepted by the court.

(c) If for any reason the office is unable to represent any indigent person found not guilty by reason of insanity at the time of the crime, such representation shall be provided as otherwise provided by law.

17-12-88.

This article shall become effective on December 31, 2003.

ARTICLE 5 *[Repealed]*

~~17-12-100.~~

~~As used in this article, the term 'office' means the office of the multicounty public defender created by this article.~~

~~17-12-101.~~

~~There is created the office of the multicounty public defender to undertake the defense of all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state. The office shall serve all counties of this state.~~

~~17-12-102.~~

~~The office of the multicounty public defender shall be a legal entity, shall have perpetual existence, may contract, may own property, may accept funds, grants, and gifts from any public or private source, which funds shall be used to defray~~

~~the expenses incident to implementing its purposes, and may establish a principal office.~~

~~17-12-103.~~

~~The council shall be responsible for management of the office. Managerial duties shall include, but not be limited to, the following:~~

- ~~(1) Appointing the multicounty public defender;~~
- ~~(2) Establishing the salaries of the multicounty public defender and the office's staff;~~
- ~~(3) Approving the level of staffing and establishing policy consistent with the intent of this article; and~~
- ~~(4) Preparing an annual budget for the office, and administering the funds made available to the office, and overseeing the expenditure of such funds.~~

~~17-12-104.~~

~~The council shall prepare an annual budget showing all anticipated expenses of the office for the following fiscal year, which shall be the same as the fiscal year of this state. Such budget shall be submitted by the multicounty public defender to the council.~~

~~17-12-105.~~

~~The multicounty public defender shall be appointed by and shall serve at the pleasure of the council. The multicounty public defender must have been licensed to practice law in this state for at least five years and must be competent to counsel and defend a person charged with a capital felony. The salary of the multicounty public defender shall be established by the council.~~

~~17-12-106.~~

- ~~(a) The multicounty public defender shall employ, with the advice and consent of the council and in the manner and at the compensation prescribed by the council, as many assistant attorneys, clerks, investigators, paraprofessionals, administrative assistants, and other persons as may be necessary for carrying out his or her responsibilities under this article. A person employed under this Code section serves at the pleasure of the multicounty public defender.~~
- ~~(b) No person may be assigned the primary responsibility of representing an indigent person accused of a capital offense for which the death penalty is sought unless such person is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a capital felony.~~

~~17-12-107.~~

~~(a) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be indigent, as provided in Article 2 of this chapter, the court in which such charges are pending shall notify the office, and the office shall assume the defense of such person if the resources, funding, and staffing of the office allow.~~

~~(b) If for any reason the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the presiding judge of the superior court in which the case is pending shall appoint one or more attorneys for the defendant. Each attorney appointed shall receive reasonable compensation for his or her services plus all reasonable and necessary expenses as determined in the discretion of the court incurred in the preparation and investigation of the case.~~

~~(c) In any capital felony case where an attorney or attorneys were appointed pursuant to subsection (b) of this Code section and where there has been a conviction and a defendant desires to appeal to the Georgia Supreme Court and the defendant is indigent and unable to obtain an attorney to pursue his or her appeal, the court shall:~~

~~(1) Where the defendant has been represented by an appointed attorney, authorize the attorney to pursue the appeal or appoint another attorney to pursue the appeal; or~~

~~(2) Where the defendant has not been previously represented by an appointed attorney, appoint an attorney or attorneys to pursue the appeal.~~

~~(d) Upon completion of all services by an attorney appointed under subsection (b) or (c) of this Code section, the attorney shall submit to the court an affidavit containing an accurate statement of all services rendered and expenses incurred. The court, upon examination of the affidavit and approval thereof, shall discharge the attorney and shall enter an order directing the county treasurer of the county in which the defendant was indicted to pay to the attorney such amount for compensation and expenses as the court orders.~~

~~(e) The office shall be responsible for the defense of any person referred to it pursuant to subsection (a) of this Code section if the resources, funding, and staffing of the office allow. Such defense shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. The office shall not assist with any petition for a writ of habeas corpus in federal court.~~

~~17-12-108.~~

~~This article shall become effective on December 31, 2003, and shall apply to all cases except as provided in Article 6 of this chapter. This article shall be repealed by operation of law effective at 11:59 P.M. on December 31, 2004.~~

ARTICLE 6

17-12-120.

As used in this article, the term 'office' means the Office of the Georgia Capital Defender created by this article.

17-12-121.

There is created the Office of the Georgia Capital Defender to undertake the defense of all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state and to be the successor to the office of the multicounty public defender. The office shall serve all counties of this state.

17-12-122.

The Office of the Georgia Capital Defender shall be a legal entity, shall have perpetual existence, may contract, may own property, may accept funds, grants, and gifts from any public or private source, which funds shall be used to defray the expenses incident to implementing its purposes, and may establish a principal office.

17-12-123.

The council shall be responsible for management of the office. Managerial duties shall include, but not be limited to, the following:

- (1) Appointing the capital defender;
- (2) Establishing the salaries of the capital defender and the office's staff;
- (3) Approving the level of staffing and establishing policy consistent with the intent of this article; and
- (4) Preparing an annual budget for the office, administrating the funds made available to the office, and overseeing the expenditure of such funds.

17-12-124.

The council shall prepare an annual budget showing all anticipated expenses of the office for the following fiscal year, which shall be the same as the fiscal year of this state. The budget shall be submitted by the capital defender to the council and for Fiscal Year 2005 shall include the proposed budget for representation of all indigent persons accused of a capital felony for which the death penalty is or is likely to be sought.

17-12-125.

The capital defender shall be appointed by and shall serve at the pleasure of the council. The capital defender must have been licensed to practice law in this state for at least five years and must be competent to counsel and defend a

person charged with a capital felony. The salary of the capital defender shall be established by the council.

17-12-126.

(a) The capital defender shall employ, with the advice and consent of the council and in the manner and at the compensation prescribed by the council, as many assistant attorneys, clerks, investigators, paraprofessionals, administrative assistants, and other persons as may be necessary for carrying out his or her responsibilities under this article. A person employed under this Code section serves at the pleasure of the capital defender.

(b) No person may be assigned the primary responsibility of representing an indigent person accused of a capital offense for which the death penalty is sought unless the person is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a capital felony.

17-12-127.

(a) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be indigent, as provided in Article 2 of this chapter, the court in which the charges are pending shall notify the office, and the office shall assume the defense of the person if there is no conflict of interest.

(b) If for any reason the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the presiding judge of the superior court in which the case is pending shall appoint an attorney or attorneys to represent the defendant. Counsel appointed pursuant to this subsection shall be paid with state funds appropriated to the council for use by the office. The council with the assistance of the office shall establish guidelines for attorney's fees and expense requests.

(c) The office or appointed counsel's defense of a defendant shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. Neither the office nor appointed counsel shall assist with any petition for a writ of habeas corpus in federal court.

17-12-127.1

On and after the effective date of this Article, any attorney appointed pursuant to Article 5 shall continue to represent a defendant under this Article and shall be paid for services pursuant to this Article.

17-12-128.

This article shall become effective on January 1, 2005.