

Memo

To: Members of the Advisory Committee on Legislation and Board of Governors

From: Georgia Public Defender Standards Council Staff

Re: Contents of H.B. 1 EX

Date: September 8, 2004

BACKGROUND:

H.B. 1 EX relating to indigent defense was introduced on Monday May 3, 2004 in the 2004 Special Session of the Georgia General Assembly. This legislation was introduced to revise and to fund the Georgia Indigent Defense Act of 2003. Speaker Terry Coleman, Rep. DuBose Porter, Rep. Curtis Jenkins, Rep. Randal Mangham, and Rep. Larry O'Neal were the authors of HB 1EX. The House Special Judiciary Committee met on Monday and Tuesday, May 3 and 4, 2004, and made some changes to H.B. 1 EX. At its Tuesday meeting the committee voted H.B. 1 EX out of committee with a do pass recommendation by committee substitute. The House passed H.B. 1 EX on Wednesday May 5, 2004 by a vote of 167-4. On Wednesday the bill was read for a first time in the Senate and the Senate Judiciary Committee voted the bill out of committee with a due pass recommendation without change. On Friday May 7, 2004 H.B.1 EX was passed by the Senate without change by a vote of 53-2. The Governor signed it into law on June 15, 2004.

SUMMARY:

The following is a summary of the bills:

(1) Article 4 of Chapter 21 of O.C.G.A. Title 15 is amended creating the Peace Officer, Prosecutor and Indigent Defense Funding Act and providing a 10% fee on fines and a fee of 10% up to \$50 on criminal bonds to fund indigent defense. These fees are collected by the Superior Court Clerks' Cooperative Authority. The 10% fee on fines for ordinance violations only applies to fines for the violation of criminal ordinances.

(2) O.C.G.A. § 15-21A-6 is added providing for a \$15 fee on all civil filings and a \$50 application fee for applicants for indigent defense services to fund indigent defense. The provision regarding application fees allows lower courts to retain the application fee. The public entity providing services in courts not covered by the new system keeps that application fee.

(3) O.C.G.A. § 17-12-10.1 is added creating a General Oversight Committee for the Standards Council composed of 3 members of the House appointed by the Speaker, 3

members of the Senate appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule, 1 member of the House appointed by the Governor, and 1 member of the Senate appointed by the Governor.

(4) O.C.G.A. § 17-12-8 is amended by adding a new subsection designated subsection (c) providing that a minimum standard adopted by the Standards Council which is determined by the General Oversight Committee to have a fiscal impact is a guideline until the minimum standard is enacted by the General Assembly and not vetoed by the Governor.

(5) O.C.G.A. § 17-12-10.1 (e) is added providing that the Standards Council shall submit its budget to the director of the Office of Planning and Budget prior to submitting it to the Judicial Council and gives the Governor the authority to include in the Governor's budget report an analysis of the Standards Council's budget.

(6) O.C.G.A. § 17-12-26 is amended limiting the Standards Council's budget request to the amount of funds collected from the new revenue sources.

(7) O.C.G.A. § 17-12-36 (a) is amended allowing the Standards Council to permit single circuit counties to opt out of the new State system if the circuit had an indigent defense system in operation for two years on July 1, 2003 and has a system administered by the county administrative office of the courts or the court administrator of the superior court.

(8) O.C.G.A. § 15-21-77 (c) is added providing that opt-out counties shall receive funds from the council in the amount the Standards Council would have spent in the circuit for the minimum salary for number of employees a circuit public defender office in the circuit would have been entitled to have. The funds for opt-out counties may come from the new fines and fees too and will be appropriated through the general appropriations process just like the funds for the circuit public defender offices.

(9) O.C.G.A. § 17-12-3 is amended prohibiting a prosecuting attorney from being appointed to the Standards Council.

(10) O.C.G.A. § 17-12-20 is amended prohibiting a prosecuting attorney from serving on a circuit public defender selections panel after July 1st, 2005.

(11) O.C.G.A. § 17-12-25 (a) is amended to provide the annual State-paid salary of the circuit public defender is \$87,593.58. (The bill does not state it, but this figure is 90% of the State salary for a D.A.).

(12) Chapter 21A of O.C.G.A. Title 15 is added providing for the establishment of the Superior Court Clerks' Cooperative Authority as the agency to collect state fees and surcharges and to monitor the collections of all court fees and surcharges,

(13) O.C.G.A. § 15-6-94 is amended changing the composition of the Superior Court Clerks' Cooperative Authority. The terms of current members are continued. The authority will ultimately consist of 10 members: 3 members appointed by the Council of Superior Court Clerks; 4 members appointed by the Governor; 1 member appointed by the Speaker; 1 member will be appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule; and 1 member appointed by the Chief Justice. Two of the Council of Superior Court Clerks appointees, 1 of the Governor's appointees and the House and Senate appointees are superior court clerks. One of the Governor's appointees is a county commissioner. The Chief Justice's appointee is a superior court judge.

(14) O.C.G.A. §§ 15-6-77.4, 15-9-60.1, 15-21-113, 15-21-132, 15-21-150, and 42-8-34 are amended providing for the collection of the funds involved by the Superior Court Clerk's Cooperative Authority. (Provisions made obsolete by the new collection system are deleted: O.C.G.A. §§ 15-9-60.1 (b), 15-21-75, 15-21-76, 15-21-114, 15-21-133, 15-21-151)

(15) O.C.G.A. § 15-6-95 is amended placing the indigent defense fees in superior court as the 5th priority for payment when a partial payment is received. The priority for the surcharge in DUI cases for the state crime victim compensation in the Code Section is clarified to cover all victims of crime and not just victims of a DUI offense.

(16) Technical amendments to the Georgia Indigent Defense Act of 2003 are included:

(a) O.C.G.A. § 17-12-10.2 providing immunity from civil liability for the Standards Council and its staff.

(b) O.C.G.A. § 17-12-11 providing that 90% of the funds appropriated for grants to counties shall be distributed to counties.

(c) Article 1A of O.C.G.A. Chapter 17 reinstating prior law for 6 months to authorize non-GIDC/GPDSC counties to continue to operate an indigent defense program until December 1, 2005.

(d) O.C.G.A. § 17-12-26 eliminating references to the Administrative Office of the Courts.

(e) O.C.G.A. § 17-12-27 adding a new subsection (h) allowing current public defenders to become part of the new state system without losing their local retirement benefits by permitting them to elect retirement system.

(f) O.C.G.A. §§ 17-12-27, 17-12-28, 17-12-29, 17-12-30 deleting obsolete State Merit System language.

(17) O.C.G.A. § 17-12-30 (c) (5) was amended to include the Administrative Office of the Courts as an alternative to the Department of Administrative Services for administrative support services.

(18) Chapter 6 of O.C.G.A. Title 35 is added creating the State Victim Service Commission.