

FISCAL NOTE TO
[Third Reprint]
ASSEMBLY, No. 2720

STATE OF NEW JERSEY

DATED: JUNE 3, 1997

Assembly Bill No. 2720 (3R) of 1997 requires each municipality to have a municipal public defender to represent indigent defendants in certain municipal court proceedings. The bill requires that each municipal court have at least one municipal public defender appointed by the municipal governing body.

Municipal public defenders would be appointed for a term of one year and be compensated by the municipality. Municipalities may appoint more than one municipal public defender. If a municipality does appoint more than one municipal defender, a chief municipal public defender, who would have authority over the others, would be designated by the municipality. If there is a vacancy in the office of municipal public defender, if the municipal public defender is temporarily unavailable or if a conflict of interest precludes a municipal public defender from handling a case, the municipal court may appoint any qualified attorney to provide representation. Unless rates are otherwise established by the municipality, the attorney shall be entitled to compensation in the same rate as the rate used in conflict cases in the public defender office.

The municipal public defender is required to represent any indigent defendant charged in municipal court with an offense where there is a likelihood that the person, if convicted, will be subject to imprisonment. The bill specifies means by which, in appropriate cases, the municipal attorney may recover all or part of the money in connection with the representation. This bill also provides that the municipal attorney may file a notice setting forth services rendered to the defendant and the reasonable value thereof with the Clerk of the Superior Court. The filing of the notice with the Clerk of the Superior Court would constitute a lien on property for a period of 10 years from the date of filing.

The bill would permit municipalities to enact ordinances requiring a person applying for representation by a municipal public defender to pay an application fee of not more than \$200.00. The municipal court may waive any application fee, in whole or in part, if the court determines, upon a clear and convincing showing by the applicant, that the fee represents an unreasonable burden on the person. The bill, as amended, also provides that a municipality may only set its application fee at an amount necessary to pay the costs of public defender services and that a court could order a defendant to pay the application fee over a specific period of time not to exceed four months. These

application fees are to be deposited in a dedicated fund to be used for the costs of providing public defender services. If during an annual review of a municipality's budget, it is determined that the amount of the money in the dedicated fund exceeds by more than 25% the amount which the municipality expended during the prior year on municipal public defender services, the amount in excess of the amount expended for public defender services would be transferred to the Victims of Crime Compensation Board.

The Administrative Office of the Courts (AOC) states that based on a study conducted in 1996 concerning the use of public defenders, about 86,000 public defender assignments were made during FY 1995. Based on that number, if municipalities charged the maximum amount allowable for public defender applications, a potential revenue of \$17.2 million per year would be generated.

The AOC further notes that municipalities currently pay public defenders varying rates, ranging from \$37.61 per case to \$67.32 per case. Based on these figures, it can be estimated that the annual cost for public defender services could range between \$3.24 million and \$5.79 million. As a result, it appears that the proposed \$200 public defender application fee would be sufficient to fund the cost of public defender services.

The Office of Legislative Services concurs.

This fiscal note has been prepared pursuant to P.L.1980, c.67.