

ASSEMBLY, No. 2720

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1997

By Assemblymen RUSSO and CARABALLO

1 AN ACT concerning the appointment and funding of municipal public
2 defenders, amending N.J.S.22A:3-4, supplementing Title 2B of the
3 New Jersey Statutes and repealing N.J.S.2B:12-28.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) The Legislature finds and declares:

9 a. Municipal public defenders are a critical component of New
10 Jersey's system for the administration of justice and the effective, fair
11 and equal representation of the poor.

12 b. As the New Jersey Supreme Court stated in Rodriguez v.
13 Rosenblatt, 58 N.J.281 (1971), "as a matter of simple justice, no
14 indigent defendant should be subjected to a conviction entailing
15 imprisonment in fact or other consequences of magnitude without first
16 having had due and fair opportunity to have counsel assigned without
17 cost."

18 c. The appointment of municipal public defenders increases the
19 efficiency and effectiveness of the system and the professionalism of
20 the municipal courts.

21 d. Not all municipalities employ municipal public defenders, and in
22 order to ensure the uniform and proper administration of justice, it is
23 essential to require the appointment of municipal public defenders by
24 each municipal government in the State.

25
26 2. (New section) As used in this act:

27 "Indigent defendant" means a person who is entitled to be
28 represented by a municipal public defender pursuant to this act, and
29 does not have the present financial ability to secure competent legal
30 representation, as determined by section 9 of this act.

31 "Intermunicipal court" means a municipal court established by two
32 or more municipalities in accordance with statutes authorizing
33 municipalities to combine for the purposes of establishing a single
34 court with jurisdiction over the territory of the participating

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 municipalities.

2 "Municipal court" means a municipal or intermunicipal court
3 established pursuant to statute.

4 "Municipal public defender" means a person, as defined in section
5 4 of this act, appointed to represent indigent defendants in proceedings
6 over which the municipal court has jurisdiction.

7 "Municipal Public Defender Fund" means the fund established
8 pursuant to section 18 of this act.

9

10 3. (New section) Each municipal court in this State shall have at
11 least one municipal public defender appointed by the governing body
12 of the municipality in accordance with applicable laws, ordinances and
13 resolutions. Any municipal court with two or more municipal public
14 defenders shall have a "chief municipal public defender" who shall be
15 appointed by the governing body of the municipality. The chief
16 municipal public defender of an intermunicipal court shall be appointed
17 upon the concurrence of the governing bodies of each municipality.
18 The chief municipal public defender shall have authority over other
19 municipal public defenders serving that court with respect to the
20 performance of their duties.

21

22 4. (New section) a. A municipal public defender shall be an
23 attorney-at-law of this State in good standing, and shall serve for a
24 term of three years from the date of his appointment, and may
25 continue to serve in office pending re-appointment or appointment of
26 a successor. A municipal public defender may be appointed to that
27 position in one or more municipal courts. The provisions of this act
28 shall apply to each such position held. A municipal public defender
29 need not reside in the municipality where he acts as a municipal public
30 defender.

31 b. A municipal public defender of an intermunicipal court shall be
32 appointed upon the concurrence of the governing bodies of each of the
33 municipalities in accordance with applicable laws, ordinances or
34 resolutions.

35 c. In accordance with applicable laws, ordinances and resolutions,
36 a municipality may appoint additional municipal public defenders as
37 necessary to administer justice in a timely and effective manner in its
38 municipal court. Additional appointments shall be subject to the
39 provisions of this act, including appointments in an intermunicipal
40 court.

41 d. Appointments to fill vacancies in the position of municipal public
42 defender shall be made in accordance with the provisions of this act
43 as soon as practicable.

44 e. In addition to any other means provided by law for the removal
45 from office of a public official, a municipal public defender may be
46 removed by the governing body of a municipality for good cause

1 shown and after a public hearing, and upon due notice and an
2 opportunity to be heard.

3 f. The municipal public defenders may represent private clients in
4 any municipality, including the municipality where they act as a
5 municipal public defender, subject to the Attorney Rules of
6 Professional Conduct.

7

8 5. (New section) A municipal public defender shall be paid annual
9 compensation to be fixed and paid by the municipality served. In the
10 case of an intermunicipal court, participating municipalities, by similar
11 ordinances, shall enter into an agreement fixing the compensation of
12 the municipal public defender and providing for payment. The
13 compensation of a municipal public defender for services rendered
14 pursuant to the provisions of this act shall be in lieu of any and all
15 other compensation by the municipality. The ordinance, resolution or
16 agreement setting compensation shall set forth any additional
17 compensation to be paid for interlocutory appeals in the Superior
18 Court.

19

20 6. (New section) a. It shall be the duty of the municipal public
21 defender to represent, except in the case of temporary unavailability
22 or conflict of interest, any defendant charged with an offense in
23 municipal court who is an indigent municipal defendant entitled to
24 representation pursuant to this act. All necessary services and
25 facilities of representation, including both expert and lay investigation
26 and testimony as well as other preparations, shall be provided in every
27 case. The municipality shall be responsible for payment for services
28 pursuant to this section. The factors of need and real value to a
29 defendant may be weighed against the financial constraints of the
30 municipality in determining the necessary services and facilities of
31 representation. The final determination as to necessity for services
32 required pursuant to this section shall be made by the court.

33 b. A municipal public defender shall be responsible for handling all
34 phases of the defense, including but not limited to discovery, pretrial
35 and post-trial hearings, motions, removals to federal district court and
36 other collateral functions reasonably related to the defense. As used
37 in this subsection, "post-trial hearing" shall not include de novo
38 appeals in Superior Court.

39

40 7. (New section) a. The municipal public defender shall represent
41 an indigent defendant charged in municipal court with a disorderly
42 persons or petty disorderly persons offense or with a crime as specified
43 in N.J.S.2B:12-18 or with the violation of any statute, ordinance or
44 regulation of a penal nature where there is a likelihood that the person,
45 if convicted, will be subject to imprisonment or, in the opinion of the
46 municipal court, any other consequence of magnitude as set forth in

1 law.

2 b. If there is a vacancy in the office of municipal public defender,
3 if the municipal public defender is temporarily unavailable or if a
4 finding of conflict of interest precludes the municipal public defender
5 from representing an indigent defendant, the municipal prosecutor may
6 prosecute the offense if the municipal court engages a qualified
7 attorney to represent the indigent defendant. Unless rates are
8 otherwise established by the municipality, the attorney shall be entitled
9 to compensation at the same rate as attorneys hired by the Office of
10 the Public Defender in conflict cases, with payment to be made within
11 30 days. No attorney shall be appointed to represent an indigent
12 defendant without the attorney's prior consent. Once engaged, the
13 attorney shall carry out all duties of the municipal public defender in
14 connection with the case that is the subject of the appointment.

15

16 8. (New section) All communications between the indigent
17 defendant and the municipal public defender or any other attorney
18 engaged to act as a municipal public defender shall be fully protected
19 by the attorney-client privilege to the same extent and degree as
20 though counsel has been privately engaged. This shall not preclude
21 the use by the municipal public defender of privileged material for the
22 preparation and disclosure of statistical, case study and other
23 sociological data, provided that in any such use there shall be no
24 disclosure of the identity of or means for discovery of the identity of
25 particular defendants.

26

27 9. (New section) Eligibility for services of the municipal public
28 defender shall be determined by the municipal court on the basis of the
29 need of the defendant, except as provided in section 11 of this act.
30 Need shall be measured according to section 14 of P.L.1967, c.43
31 (C.2A:158A-14).

32 In the event that a determination of eligibility cannot be made
33 before the time when the first services are to be rendered, or if an
34 initial determination is found to be erroneous, the municipal court shall
35 refer the defendant to the municipal public defender provisionally, and
36 if subsequently it is determined that the defendant is ineligible the
37 municipal court shall inform the defendant, and the defendant shall be
38 obliged to engage his own counsel and to reimburse the municipality
39 for the cost of the services rendered to that time.

40

41 10. (New section) The municipal court shall make an
42 investigation of the financial status of each defendant seeking
43 representation pursuant to this act and shall have the authority to
44 require a defendant to execute and deliver written requests or
45 authorizations required under applicable law to provide the court with
46 access to records of public or private sources, otherwise confidential,

1 as may be of aid in evaluating eligibility. The court is authorized to
2 obtain information from any public record office of the State or of any
3 subdivision or agency thereof on request and without payment of the
4 fees ordinarily required by law.

5
6 11. (New section) Whenever a person entitled to representation by
7 a municipal public defender pursuant to this act, is under the age of 18
8 years, the eligibility for services shall be determined on the basis of the
9 financial circumstances of the individual and the financial
10 circumstances of the individual's parents or legal guardians. The
11 municipality shall be entitled to recover the cost of legal services from
12 the parents or legal guardians as provided in section 16 of this act and
13 the municipal court shall have authority to require parents or legal
14 guardians to execute and deliver the written requests or authorization
15 required under applicable law in order to provide the court with access
16 to records of public or private sources, otherwise confidential, as may
17 be of aid to it in evaluating eligibility.

18
19 12. (New section) If the defendant has or reasonably expects to
20 have means to meet some part, though not all, of the cost of the
21 services rendered, the defendant shall be required to reimburse the
22 municipality, either by a single payment or in installments in such
23 amounts as he can reasonably be expected to pay; but no default or
24 failure in making payment shall affect or reduce the rendering of
25 services.

26
27 13. (New section) a. A municipality shall have a lien on any
28 property to which the defendant shall have or acquire an interest for
29 an amount equal to the reasonable value of the services rendered to a
30 defendant pursuant to this act as calculated at the same rate as the
31 Office of the Public Defender bills clients at that time.

32
33 b. To effectuate such a lien for the municipality, the municipal
34 attorney shall file a notice setting forth services rendered to the
35 defendant and the reasonable value thereof with the Clerk of the
36 Superior Court. The filing of the notice with the Clerk of the
37 Superior Court shall constitute a lien on property for a period of 10
38 years from the date of filing, unless discharged sooner, and, except for
39 such time limitations, shall have the force and effect of a judgment.
40 Within 10 days of the filing of the notice, the municipal attorney shall
41 send by certified mail, or serve personally, a copy of the notice with a
42 statement of the date of the filing to or upon the defendant at the
43 defendant's last known address. If the municipal attorney shall fail to
44 give notice, the lien is void.

45
46 14. (New section) The municipal attorney is authorized to

1 compromise and settle any claim for services performed pursuant to
2 this act whenever the financial circumstances of the person receiving
3 the services are such that, in the judgment of the municipal attorney,
4 the best interest of the State will be served by compromise and
5 settlement.

6

7 15. (New section) The Clerk of the Superior Court shall provide
8 separate books for the recording of liens established pursuant to
9 section 13 of this act, which books shall be properly indexed in the
10 name of the judgment debtor. The municipal attorney shall not be
11 required to pay filing or recording fees.

12

13 16. (New section) The municipal attorney in the name of the
14 municipality may do all things necessary to collect any money due to
15 the municipality by way of reimbursement for services rendered by a
16 municipal public defender pursuant to this act. The municipal attorney
17 may enter into arrangements with any State or county agency to
18 handle collections on a cost basis. The municipal attorney shall have
19 all the remedies and proceedings available for collection which are
20 available for or upon the recovery of a judgment in a civil action. In
21 any such proceeding or action, the defendant may contest the value of
22 the services rendered by the municipal public defender.

23

24 17. (New section) A municipality may require a person applying
25 for representation by a municipal public defender to pay an application
26 fee of not more than \$100.00. The municipal court may waive any
27 required application fee, in whole or in part, if the court determines,
28 in its discretion, that the application fee represents an unreasonable
29 burden on the person seeking representation. If the funds collected
30 pursuant to this section are insufficient for the municipality to meet the
31 costs incurred in providing a public defender, the municipality may
32 seek additional funding from the "Municipal Public Defender Fund"
33 established pursuant to section 18 of this act.

34

35 18. (New section) There is created the "Municipal Public Defender
36 Fund." The fund shall be a dedicated fund within the General Fund
37 and administered by the Administrative Office of the Courts. The fund
38 shall be the repository of moneys realized from the \$5.00 court cost
39 assessment imposed pursuant to N.J.S.22A:3-4 and any other moneys
40 made available for the purposes of the fund.

41 b. A municipal court shall assess \$5.00 against every person
42 convicted of violating any statute or ordinance as provided in
43 N.J.S.22A:3-4. This court cost assessment shall be collected by the
44 municipal court administrator and forwarded for deposit in the
45 Municipal Public Defender Fund

46 c. The Supreme Court may issue Rules of Court governing the

1 procedures for applications by municipalities for disbursement of
2 moneys from the "Municipal Public Defender Fund."

3

4 19. N.J.S. 22A:3-4 is amended to read as follows:

5 22A:3-4. Fees for criminal proceedings.

6 The fees provided in the following schedule, and no other charges
7 whatsoever, shall be allowed for court costs in any proceedings of a
8 criminal nature in the municipal courts but no charge shall be made for
9 the services of any salaried police officer of the State, county or
10 municipal police.

11 For violations of Title 39 of the Revised Statutes, or of traffic
12 ordinances, at the discretion of the court, up to but not exceeding
13 \$30.00.

14 For all other cases, at the discretion of the court, up to but not
15 exceeding \$30.00.

16 In municipal court proceedings, the court shall impose court costs
17 within the maximum limits authorized by this section, as follows:

18 a. For every violation of any statute or ordinance the sum of \$2.00.
19 The court shall not suspend the collection of this \$2.00 court cost
20 assessment. These court cost assessments shall be collected by the
21 municipal court administrator for deposit into the Automated Traffic
22 System Fund, created pursuant to N.J.S.2B:12-30.

23 b. For each fine, penalty and forfeiture imposed and collected
24 under authority of law for any violation of the provisions of Title 39
25 of the Revised Statutes or any other motor vehicle or traffic violation
26 in this State the sum of \$.50. The court shall not suspend the
27 collection of this \$.50 court cost assessment. These court cost
28 assessments shall be collected by the municipal court administrator for
29 deposit into the "Emergency Medical Technician Training Fund"
30 established pursuant to P.L.1992, c.143 (C.26:2K-54 et al.).

31 c. For every violation of any statute or ordinance the sum of \$5.00.
32 The court shall not suspend the collection of this \$5.00 court cost
33 assessment. This court cost assessment shall be collected by the
34 municipal court administrator for deposit in the "Municipal Public
35 Defender Fund" established by section 18 of P.L. _____ c. _____
36 (C. _____)(now pending before the Legislature as this bill)..

37 The provisions of this act shall not prohibit the taxing of additional
38 costs when authorized by R.S.39:5-39.

39 For certificate of judgment \$4.00

40 For certified copy of paper filed with the court as a public record:

41 First page \$4.00

42 Each additional page or part thereof \$1.00

43 For copy of paper filed with the court as a public record:

44 First page \$2.00

45 Each additional page or part thereof \$1.00

46 In addition to any fine imposed, when a supplemental notice is sent

1 for failure to appear on a return date the cost shall be \$10.00 per
2 notice, unless satisfactory evidence is presented to the court that the
3 notice was not received.

4 CONSTABLES OR OTHER OFFICERS

5

6 From the fees allowed for court costs in the foregoing schedule, the
7 clerk of the court shall pay the following fees to constables or other
8 officers:

9 Serving warrant or summons, \$1.50.

10

11 Serving every subpoena, \$0.70.

12

13 Serving every execution, \$1.50.

14

15 Advertising property under execution, \$0.70.

16

17 Sale of property under execution, \$1.00.

18

19 Serving every commitment, \$1.50.

20

21 Transport of defendant, actual cost.

22

23 Mileage, for every mile of travel in serving any warrant, summons,
24 commitment, subpoena or other process, computed by counting the
25 number of miles in and out, by the most direct route from the place
26 where such process is returnable, exclusive of the first mile, \$0.20.

27 If defendant is found guilty of the charge laid against him, he shall
28 pay the costs herein provided, but if, on appeal, the judgment is
29 reversed, the costs shall be repaid to defendant. If defendant is found
30 not guilty of the charge laid against him, the costs shall be paid by the
31 prosecutor, except when the Director of the Division of Motor
32 Vehicles, a peace officer, or a police officer shall have been
33 prosecutor.

34 (cf: P.L.1993, c.293, s.4)

35

36 20. N.J.S.2B:12-28 is repealed.

37

38 21. This act shall take effect on the 180th day after enactment.

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STATEMENT

42

43 The bill requires each municipality to engage a municipal public
44 defender to represent indigent defendants in certain municipal court
45 proceedings. The bill defines the role, responsibilities and duties of the
46 office, and provides a mechanism for funding.

1 The bill requires that each municipal court shall have a least one
2 municipal public defender appointed by the municipal governing body.
3 Municipal public defenders would be appointed for a term of three
4 years and they would be compensated at an annual salary fixed by the
5 municipality. Municipalities may appoint more than one municipal
6 public defender. If a municipality does appoint more than one
7 municipal defender, a chief municipal public defender who would have
8 authority over the others, would be designated by the municipality.

9 If there is a vacancy in the office of municipal public defender, if the
10 municipal public defender is temporarily unavailable or if a conflict of
11 interest precludes a municipal public defender from handling a
12 proceeding, the municipal court may request any qualified attorney to
13 provide representation. Unless rates are otherwise established by the
14 municipality, the attorney shall be entitled to compensation in the same
15 rate as the rate used in conflict cases in the public defender office. No
16 attorney shall be required to accept a case without the attorney's prior
17 consent. The attorney shall meet all requirements and carry out all the
18 duties of the municipal public defender for the case that is the subject
19 of the appointment.

20 A municipal public defender may be removed by the municipal
21 governing body for good cause upon due notice and an opportunity to
22 be heard.

23 The municipal public defender is required to represent, except in
24 cases of temporary unavailability or conflict of interest, any indigent
25 defendant charged in municipal court with an offense where there is a
26 likelihood that the person, if convicted, will be subject to
27 imprisonment or other consequences of magnitude. Eligibility is
28 determined on the basis of need in accordance with specific factors.
29 The act specifies means by which, in appropriate cases, the municipal
30 attorney may recover all or part of the money in connection with the
31 representation. The bill provides that the municipal attorney may file
32 a notice setting forth services rendered to the defendant and the
33 reasonable value thereof with the Clerk of the Superior Court. The
34 filing of the notice with the Clerk of the Superior Court shall
35 constitute a lien on property for a period of 10 years from the date of
36 filing.

37 The bill repeals N.J.S.2B:12-28 but recompiles the portion of that
38 statute which provides for an application fee in section 17 of the bill.
39 A municipality may require a person applying for representation by a
40 municipal public defender to pay an application fee of not more than
41 \$100.00. The municipal court may waive any required application fee,
42 in whole or in part, if the court determines, that the application fee
43 represents an unreasonable burden on the person seeking
44 representation.

45 The bill establishes a \$5.00 court assessment fee to be imposed for
46 every violation of any statute or ordinance in municipal court. The

1 court shall not suspend the collection of this \$5.00 assessment. This
2 court cost assessment shall be collected by the municipal court
3 administrator for deposit in the "Municipal Public Defender Fund"
4 established by section 18 of this bill to reimburse municipalities for
5 costs associated with employing a municipal public defender. The
6 Supreme Court may enact rules to develop the procedures associated
7 with administration of the fund.

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13 Requires the appointment of a municipal public defender in each
14 municipality; establishes a fund.