

[First Reprint]
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, ¹[amending N.J.S.22A:3-4,]¹ supplementing Title 2B of
3 the 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 ¹["Intermunicipal court" means a municipal court established by

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted February 10, 1997.

1 two or more municipalities in accordance with statutes authorizing
2 municipalities to combine for the purposes of establishing a single
3 court with jurisdiction over the territory of the participating
4 municipalities.]¹

5 "Municipal court" means a municipal ¹central¹ or ¹[intermunicipal]
6 joint municipal¹ court established pursuant to ¹[statute] N.J.S.2B:12-
7 1¹.

8 "Municipal public defender" means a person, as defined in section
9 4 of this act, appointed to represent indigent defendants in proceedings
10 over which the municipal court has jurisdiction.

11 ¹["Municipal Public Defender Fund" means the fund established
12 pursuant to section 18 of this act.]¹

13

14 3. (New section) Each municipal court in this State shall have at
15 least one municipal public defender appointed by the governing body
16 of the municipality in accordance with applicable laws, ordinances and
17 resolutions. Any municipal court with two or more municipal public
18 defenders shall have a "chief municipal public defender" who shall be
19 appointed by the governing body of the municipality. The chief
20 municipal public defender of ¹[an intermunicipal] a joint municipal¹
21 court shall be appointed upon the concurrence of the governing bodies
22 of each municipality. The chief municipal public defender shall have
23 authority over other municipal public defenders serving that court with
24 respect to the performance of their duties.

25

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

35 b. A municipal public defender of ¹[an intermunicipal] a joint
36 municipal¹ court shall be appointed upon the concurrence of the
37 governing bodies of each of the municipalities in accordance with
38 applicable laws, ordinances or resolutions.

39 c. In accordance with applicable laws, ordinances and resolutions,
40 a municipality may appoint additional municipal public defenders as
41 necessary to administer justice in a timely and effective manner in its
42 municipal court. Additional appointments shall be subject to the
43 provisions of this act, including appointments in ¹[an intermunicipal]
44 a joint municipal¹ court.

45 d. Appointments to fill vacancies in the position of municipal public
46 defender shall be made in accordance with the provisions of this act

1 as soon as practicable.

2 e. In addition to any other means provided by law for the removal
3 from office of a public official, a municipal public defender may be
4 removed by the governing body of a municipality for good cause
5 shown and after a public hearing, and upon due notice and an
6 opportunity to be heard.

7 f. The municipal public defenders may represent private clients in
8 any municipality, including the municipality where they act as a
9 municipal public defender, subject to the ¹[Attorney Rules of
10 Professional Conduct] Rules of Court Governing the Conduct of
11 Lawyers, Judges and Court Personnel¹.

12

13 5. (New section) A municipal public defender shall be paid annual
14 compensation to be fixed and paid by the municipality served. In the
15 case of ¹[an intermunicipal] a joint municipal¹ court, participating
16 municipalities, by similar ordinances, shall enter into an agreement
17 fixing the compensation of the municipal public defender and providing
18 for payment. The compensation of a municipal public defender for
19 services rendered pursuant to the provisions of this act shall be in lieu
20 of any and all other compensation by the municipality. The ordinance,
21 resolution or agreement setting compensation shall set forth any
22 additional compensation to be paid for interlocutory appeals in the
23 Superior Court.

24

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

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

44

45 7. (New section) a. The municipal public defender shall represent
46 an indigent defendant charged in municipal court with a disorderly

1 persons or petty disorderly persons offense or with a crime as specified
2 in N.J.S.2B:12-18 or with the violation of any statute , ordinance or
3 regulation ¹[of a penal nature]¹ where there is a ¹[likelihood that the
4 person, if convicted, will be subject to imprisonment or, in the opinion
5 of the municipal court, any other]¹ consequence of magnitude as set
6 forth in law.

7 b. If there is a vacancy in the office of municipal public defender,
8 if the municipal public defender is temporarily unavailable or if a
9 finding of conflict of interest precludes the municipal public defender
10 from representing an indigent defendant, the municipal prosecutor may
11 prosecute the offense if the municipal court ¹[engages] appoints¹ a
12 qualified attorney to represent the indigent defendant. Unless rates are
13 otherwise established by the municipality, the attorney shall be entitled
14 to compensation at the same rate as attorneys hired by the Office of
15 the Public Defender in conflict cases, with payment to be made within
16 30 days. ¹[No attorney shall be appointed to represent an indigent
17 defendant without the attorney's prior consent.]¹ Once ¹[engaged]
18 appointed¹, the attorney shall carry out all duties of the municipal
19 public defender in connection with the case that is the subject of the
20 appointment.

21

22 8. (New section) All communications between the indigent
23 defendant and the municipal public defender or any other attorney
24 ¹[engaged] appointed¹ to act as a municipal public defender shall be
25 fully protected by the attorney-client privilege to the same extent and
26 degree as though counsel has been privately engaged. This shall not
27 preclude the use by the municipal public defender of privileged
28 material for the preparation and disclosure of statistical, case study
29 and other sociological data, provided that in any such use there shall
30 be no disclosure of the identity of or means for discovery of the
31 identity of particular defendants.

32

33 9. (New section) Eligibility for services of the municipal public
34 defender shall be determined by the municipal court on the basis of the
35 need of the defendant, except as provided in section 11 of this act.
36 Need shall be measured according to section 14 of P.L.1967, c.43
37 (C.2A:158A-14) ¹and guidelines promulgated by the New Jersey
38 Supreme Court¹.

39 In the event that a determination of eligibility cannot be made
40 before the time when the first services are to be rendered, or if an
41 initial determination is found to be erroneous, the municipal court shall
42 refer the defendant to the municipal public defender provisionally, and
43 if subsequently it is determined that the defendant is ineligible the
44 municipal court shall inform the defendant, and the defendant shall be
45 obliged to engage his own counsel and to reimburse the municipality
46 for the cost of the services rendered to that time.

1 10. (New section) The municipal court shall make an
2 investigation of the financial status of each defendant seeking
3 representation pursuant to this act and shall have the authority to
4 require a defendant to execute and deliver written requests or
5 authorizations required under applicable law to provide the court with
6 access to records of public or private sources, otherwise confidential,
7 as may be of aid in evaluating eligibility. The court is authorized to
8 obtain information from any public record office of the State or of any
9 subdivision or agency thereof on request and without payment of the
10 fees ordinarily required by law.

11

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

24

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

32

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

38 b. To effectuate such a lien for the municipality, the municipal
39 attorney shall file a notice setting forth services rendered to the
40 defendant and the reasonable value thereof with the Clerk of the
41 Superior Court. The filing of the notice with the Clerk of the Superior
42 Court shall constitute a lien on property for a period of 10 years from
43 the date of filing, unless discharged sooner, and, except for such time
44 limitations, shall have the force and effect of a judgment. Within 10
45 days of the filing of the notice, the municipal attorney shall send by
46 certified mail, or serve personally, a copy of the notice with a

1 statement of the date of the filing to or upon the defendant at the
2 defendant's last known address. If the municipal attorney shall fail to
3 give notice, the lien is void.

4
5 14. (New section) The municipal attorney is authorized to
6 compromise and settle any claim for services performed pursuant to
7 this act whenever the financial circumstances of the person receiving
8 the services are such that, in the judgment of the municipal attorney,
9 the best interest of the State will be served by compromise and
10 settlement.

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

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

28
29 17. (New section) A municipality may require ¹by ordinance¹ a
30 person applying for representation by a municipal public defender to
31 pay an application fee of not more than \$100.00. The municipal court
32 may waive any required application fee, in whole or in part, if the
33 court determines, in its discretion, that the application fee represents
34 an unreasonable burden on the person seeking representation. ¹[If
35 the]The¹ funds collected pursuant to this section are ¹[insufficient for
36 the municipality]¹ to meet the costs incurred in providing a
37 ¹municipal¹ public defender ¹[, the municipality may seek additional
38 funding from the "Municipal Public Defender Fund" established
39 pursuant to section 18 of this act]¹.

40
41 ¹[18. (New section) There is created the "Municipal Public
42 Defender Fund." The fund shall be a dedicated fund within the
43 General Fund and administered by the Administrative Office of the
44 Courts. The fund shall be the repository of moneys realized from the
45 \$5.00 court cost assessment imposed pursuant to N.J.S.22A:3-4 and
46 any other moneys made available for the purposes of the fund.

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

6 c. The Supreme Court may issue Rules of Court governing the
 7 procedures for applications by municipalities for disbursement of
 8 moneys from the "Municipal Public Defender Fund."¹

9
 10 ¹[19. N.J.S. 22A:3-4 is amended to read as follows:

11 22A:3-4. Fees for criminal proceedings.

12 The fees provided in the following schedule, and no other charges
 13 whatsoever, shall be allowed for court costs in any proceedings of a
 14 criminal nature in the municipal courts but no charge shall be made for
 15 the services of any salaried police officer of the State, county or
 16 municipal police.

17 For violations of Title 39 of the Revised Statutes, or of traffic
 18 ordinances, at the discretion of the court, up to but not exceeding
 19 \$30.00.

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

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

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

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

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

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

45 For certificate of judgment \$4.00

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

- 1 First page \$4.00
- 2 Each additional page or part thereof \$1.00
- 3 For copy of paper filed with the court as a public record:
- 4 First page \$2.00
- 5 Each additional page or part thereof \$1.00

6 In addition to any fine imposed, when a supplemental notice is sent
7 for failure to appear on a return date the cost shall be \$10.00 per
8 notice, unless satisfactory evidence is presented to the court that the
9 notice was not received.

10 CONSTABLES OR OTHER OFFICERS

11

12 From the fees allowed for court costs in the foregoing schedule, the
13 clerk of the court shall pay the following fees to constables or other
14 officers:

15 Serving warrant or summons, \$1.50.

16

17 Serving every subpoena, \$0.70.

18

19 Serving every execution, \$1.50.

20

21 Advertising property under execution, \$0.70.

22

23 Sale of property under execution, \$1.00.

24

25 Serving every commitment, \$1.50.

26

27 Transport of defendant, actual cost.

28

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

33 If defendant is found guilty of the charge laid against him, he shall
34 pay the costs herein provided, but if, on appeal, the judgment is
35 reversed, the costs shall be repaid to defendant. If defendant is found
36 not guilty of the charge laid against him, the costs shall be paid by the
37 prosecutor, except when the Director of the Division of Motor
38 Vehicles, a peace officer, or a police officer shall have been
39 prosecutor.

40 (cf: P.L.1993, c.293, s.4)]¹

41

42 ¹[20.] 18.¹ N.J.S.2B:12-28 is repealed.

43

44 ¹[21.] 19.¹ This act shall take effect on the 180th day after
45 enactment.

1

2

3 Requires the appointment of a municipal public defender in each
4 municipality.