

[Third 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 ³[consequences] consequence³ of
16 magnitude without first having had due and fair opportunity to have
17 counsel assigned without 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.

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.

² Assembly floor amendments adopted February 27, 1997.

³ Assembly floor amendments adopted May 8, 1997.

1 ¹["Intermunicipal court" means a municipal court established by
2 two or more municipalities in accordance with statutes authorizing
3 municipalities to combine for the purposes of establishing a single
4 court with jurisdiction over the territory of the participating
5 municipalities.]¹

6 "Municipal court" means a municipal ¹central¹ or ¹[intermunicipal]
7 joint municipal¹ court established pursuant to ¹[statute] N.J.S.2B:12-
8 1¹.

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

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

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

26
27 4. (New section) a. A municipal public defender shall be an
28 attorney-at-law of this State in good standing, and shall serve for a
29 term of ²[three years] one year² from the date of his appointment, and
30 may continue to serve in office pending re-appointment or
31 appointment of a successor. A municipal public defender may be
32 appointed to that position in one or more municipal courts. The
33 provisions of this act shall apply to each such position held. A
34 municipal public defender need not reside in the municipality where he
35 acts as a municipal public defender.

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

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

46 d. Appointments to fill vacancies in the position of municipal public

1 defender shall be made in accordance with the provisions of this act
2 as soon as practicable.

3 e. In addition to any other means provided by law for the removal
4 from office of a public official, a municipal public defender may be
5 removed by the governing body of a municipality for good cause
6 shown and after a public hearing, and upon due notice and an
7 opportunity to be heard. ²Failure to reappoint a municipal public
8 defender for a second or subsequent term does not constitute a
9 “removal from office” within the meaning of this subsection.²

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

15
16 5. (New section) A municipal public defender shall ²[be paid
17 annual] receive² compensation ²[to be fixed and paid by] , either on an
18 hourly, per diem, annual or other basis as² the municipality ²[served]
19 may provide². In the case of ¹[an intermunicipal] a joint municipal¹
20 court, participating municipalities, by similar ordinances, shall enter
21 into an agreement fixing the compensation of the municipal public
22 defender and providing for payment. The compensation of a municipal
23 public defender for services rendered pursuant to the provisions of this
24 act shall be in lieu of any and all other compensation by the
25 municipality. The ordinance, resolution or agreement setting
26 compensation shall set forth any additional compensation to be paid
27 for interlocutory appeals in the Superior Court.

28
29 6. (New section) a. It shall be the duty of the municipal public
30 defender to represent, except in the case of temporary unavailability
31 or conflict of interest, any defendant charged with an offense in
32 municipal court who is an indigent municipal defendant entitled to
33 representation pursuant to this act. All necessary services and
34 facilities of representation ²[, including both expert and lay
35 investigation and testimony as well as other preparations,]²
36 ³, including both expert and lay investigation and testimony as well as
37 other preparations,³ shall be provided in every case. ²[The
38 municipality shall be responsible for payment for services pursuant to
39 this section.]² ³The municipality shall be responsible for payment for
40 services pursuant to this section.³ The factors of need and real value
41 to a defendant may be weighed against the financial constraints of the
42 municipality in determining the necessary services and facilities of
43 representation. ²[The final determination as to necessity for services
44 required pursuant to this section shall be made by the court.]² ³The
45 final determination as to necessity for services required pursuant to
46 this section shall be made by the court.³

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

7 ³c. Nothing in this section shall be deemed to require a municipality
8 to pay for expert and lay investigation or testimony for a period of one
9 year after the effective date of P.L. , c. (C.) (now pending
10 before the Legislature as this bill).³

11

12 7. (New section) a. ³[The municipal public defender shall
13 represent an indigent defendant charged in municipal court with a
14 disorderly persons or petty disorderly persons offense or with a crime
15 as specified in N.J.S.2B:12-18 or with the violation of any statute ,
16 ordinance or regulation ¹[of a penal nature]¹ ²of a penal nature²
17 where ²in the opinion of the municipal court,² there is a ¹[likelihood
18 that the person, if convicted, will be subject to imprisonment or, in the
19 opinion of the municipal court, any other]¹ ²[consequence of
20 magnitude as set forth in law] likelihood that the person, if convicted,
21 will be subject to imprisonment.²]³

22 ³The municipal public defender shall represent an indigent
23 defendant charged in municipal court with a crime as specified in
24 N.J.S.2B:12-18 or, if in the opinion of the municipal court there is a
25 likelihood that the defendant, if convicted, of any other offense will be
26 subject to imprisonment or other consequence of magnitude, the
27 municipal public defender shall represent an indigent defendant.³

28 b. If there is a vacancy in the office of municipal public defender,
29 if the municipal public defender is temporarily unavailable or if a
30 finding of conflict of interest precludes the municipal public defender
31 from representing an indigent defendant, the municipal prosecutor may
32 prosecute the offense if the municipal court ¹[engages] appoints¹ a
33 qualified attorney to represent the indigent defendant. Unless rates are
34 otherwise established by the municipality, the attorney shall be entitled
35 to compensation at the same rate as attorneys hired by the Office of
36 the Public Defender in conflict cases, with payment to be made within
37 30 days. ¹[No attorney shall be appointed to represent an indigent
38 defendant without the attorney's prior consent.]¹ Once ¹[engaged]
39 appointed¹, the attorney shall carry out all duties of the municipal
40 public defender in connection with the case that is the subject of the
41 appointment.

42

43 8. (New section) All communications between the indigent
44 defendant and the municipal public defender or any other attorney
45 ¹[engaged] appointed¹ to act as a municipal public defender shall be
46 fully protected by the attorney-client privilege to the same extent and

1 degree as though counsel has been privately engaged. This shall not
2 preclude the use by the municipal public defender of privileged
3 material for the preparation and disclosure of statistical, case study
4 and other sociological data, provided that in any such use there shall
5 be no disclosure of the identity of or means for discovery of the
6 identity of particular defendants.

7
8 9. (New section) Eligibility for services of the municipal public
9 defender shall be determined by the municipal court on the basis of the
10 need of the defendant, except as provided in section 11 of this act.
11 Need shall be measured according to section 14 of P.L.1967, c.43
12 (C.2A:158A-14) and guidelines promulgated by the New Jersey
13 Supreme Court¹.

14 In the event that a determination of eligibility cannot be made
15 before the time when the first services are to be rendered, or if an
16 initial determination is found to be erroneous, the municipal court shall
17 refer the defendant to the municipal public defender provisionally, and
18 if subsequently it is determined that the defendant is ineligible the
19 municipal court shall inform the defendant, and the defendant shall be
20 obliged to engage his own counsel and to reimburse the municipality
21 for the cost of the services rendered to that time.

22
23 10. (New section) The municipal court shall make an
24 investigation of the financial status of each defendant seeking
25 representation pursuant to this act and shall have the authority to
26 require a defendant to execute and deliver written requests or
27 authorizations required under applicable law to provide the court with
28 access to records of public or private sources, otherwise confidential,
29 as may be of aid in evaluating eligibility. The court is authorized to
30 obtain information from any public record office of the State or of any
31 subdivision or agency thereof on request and without payment of the
32 fees ordinarily required by law.

33
34 11. (New section) Whenever a person entitled to representation by
35 a municipal public defender pursuant to this act, is under the age of 18
36 years, the eligibility for services shall be determined on the basis of the
37 financial circumstances of the individual and the financial
38 circumstances of the individual's parents or legal guardians. The
39 municipality shall be entitled to recover the cost of legal services from
40 the parents or legal guardians as provided in section 16 of this act and
41 the municipal court shall have authority to require parents or legal
42 guardians to execute and deliver the written requests or authorization
43 required under applicable law in order to provide the court with access
44 to records of public or private sources, otherwise confidential, as may
45 be of aid to it in evaluating eligibility.

46

1 12. (New section) If the defendant has or reasonably expects to
2 have means to meet some part, though not all, of the cost of the
3 services rendered, the defendant shall be required to reimburse the
4 municipality, either by a single payment or in installments in such
5 amounts as he can reasonably be expected to pay; but no default or
6 failure in making payment shall affect or reduce the rendering of
7 services.

8
9 13. (New section) a. A municipality shall have a lien on any
10 property to which the defendant shall have or acquire an interest for
11 an amount equal to the reasonable value of the services rendered to a
12 defendant pursuant to this act as calculated at the same rate as the
13 Office of the Public Defender bills clients at that time.

14 b. To effectuate such a lien for the municipality, the municipal
15 attorney shall file a notice setting forth services rendered to the
16 defendant and the reasonable value thereof with the Clerk of the
17 Superior Court. The filing of the notice with the Clerk of the Superior
18 Court shall constitute a lien on property for a period of 10 years from
19 the date of filing, unless discharged sooner, and, except for such time
20 limitations, shall have the force and effect of a judgment. Within 10
21 days of the filing of the notice, the municipal attorney shall send by
22 certified mail, or serve personally, a copy of the notice with a
23 statement of the date of the filing to or upon the defendant at the
24 defendant's last known address. If the municipal attorney shall fail to
25 give notice, the lien is void.

26
27 14. (New section) The municipal attorney is authorized to
28 compromise and settle any claim for services performed pursuant to
29 this act whenever the financial circumstances of the person receiving
30 the services are such that, in the judgment of the municipal attorney,
31 the best interest of the State will be served by compromise and
32 settlement.

33
34 15. (New section) The Clerk of the Superior Court shall provide
35 separate books for the recording of liens established pursuant to
36 section 13 of this act, which books shall be properly indexed in the
37 name of the judgment debtor. The municipal attorney shall not be
38 required to pay filing or recording fees.

39
40 16. (New section) The municipal attorney in the name of the
41 municipality may do all things necessary to collect any money due to
42 the municipality by way of reimbursement for services rendered by a
43 municipal public defender pursuant to this act. The municipal attorney
44 may enter into arrangements with any State or county agency to
45 handle collections on a cost basis. The municipal attorney shall have
46 all the remedies and proceedings available for collection which are

1 available for or upon the recovery of a judgment in a civil action ²and
2 shall also be permitted to collect counsel fees and costs from the
3 defendant for such collection action so that same are not borne by the
4 municipality². ²[In any such proceeding or action, the defendant may
5 contest the value of the services rendered by the municipal public
6 defender.]²

7
8 17. (New section) ³a.³ A municipality may require ¹by ordinance¹
9 a person applying for representation by a municipal public defender ³or
10 court approved counsel³ to pay an application fee of not more than
11 ³[\$100.00] \$200.00, but only in an amount necessary to pay the costs
12 of municipal public defender services³. ³[The] In accordance with
13 guidelines promulgated by the Supreme Court, the³ municipal court
14 may waive any required application fee, in whole or in part, ²only² if
15 the court determines, in its discretion, ²upon a clear and convincing
16 showing by the applicant² that the application fee represents an
17 unreasonable burden on the person seeking representation. ¹[If the]
18 ³[The¹ funds collected pursuant to this section are¹ [insufficient for the
19 municipality]¹ to meet the costs incurred in providing a ¹municipal¹
20 public defender]³ ¹[, the municipality may seek additional funding from
21 the "Municipal Public Defender Fund" established pursuant to section
22 18 of this act]¹ ³The municipal court may permit a person to pay the
23 application fee over a specific period of time not to exceed four
24 months³.

25 ³b. Funds collected pursuant to subsection a. of this section shall
26 be deposited in a dedicated fund administered by the chief financial
27 officer of the municipality or in the case of a joint municipal court in
28 a manner agreed to by the constituent municipalities. Such funds shall
29 be used exclusively to meet the costs incurred in providing the services
30 of a municipal public defender including, when required, expert and lay
31 investigation and testimony.

32 c. Beginning in 1999, if it is determined by the Division of Local
33 Government Services during its annual review of a municipal budget
34 that the amount of money in a dedicated fund established pursuant to
35 this section exceeds by more than 25% the amount which the
36 municipality expended during the prior year providing the services of
37 a municipal public defender, the amount in excess of the amount
38 expended shall be forwarded to the Criminal Disposition and Review
39 Collection Fund administered by Victims of Crime Compensation
40 Board.³

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

1 any other moneys made available for the purposes of the fund.

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

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

10

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

12 22A:3-4. Fees for criminal proceedings.

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

18 For violations of Title 39 of the Revised Statutes, or of traffic
19 ordinances, at the discretion of the court, up to but not exceeding
20 \$30.00.

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

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

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

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

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

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

46 For certificate of judgment \$4.00

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

2 First page \$4.00

3 Each additional page or part thereof \$1.00

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

5 First page \$2.00

6 Each additional page or part thereof \$1.00

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

11 **CONSTABLES OR OTHER OFFICERS**

12

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

16 Serving warrant or summons, \$1.50.

17

18 Serving every subpoena, \$0.70.

19

20 Serving every execution, \$1.50.

21

22 Advertising property under execution, \$0.70.

23

24 Sale of property under execution, \$1.00.

25

26 Serving every commitment, \$1.50.

27

28 Transport of defendant, actual cost.

29

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

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

41 (cf: P.L.1993, c.293, s.4)]¹

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

2

3 ¹[21.] 19.¹ This act shall take effect on ³January 1, 1998 or on³
4 the 180th day after enactment ³, whichever is later except that sections
5 17 and 18 of this act shall take effect on the 90th day after enactment³.

6

7

8

9

10 Requires the appointment of a municipal public defender in each
11 municipalit-y.