

Title 2B.  
Chapter 24 (New)  
Municipal Public  
Defenders  
§§1-17  
C. 2B:24-1 To  
2B:24-17  
§18  
Repealer  
§19  
Note To §§1-18

P.L. 1997, CHAPTER 256, *approved September 23, 1997*  
Senate, No. 1886 (*First Reprint*)  
(CORRECTED COPY)

1 **AN ACT** concerning the appointment and funding of municipal public  
2 defenders, supplementing Title 2B of the New Jersey Statutes and  
3 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. 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 <sup>1</sup>[consequences] consequence<sup>1</sup> 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. 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

**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:**

<sup>1</sup> Senate SJU committee amendments adopted May 8, 1997.

1 does not have the present financial ability to secure competent legal  
2 representation, as determined by section 9 of this act.

3 "Municipal court" means a municipal, central or joint municipal  
4 court established pursuant to N.J.S.2B:12-1.

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

8

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

20

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

29 b. A municipal public defender of a joint municipal court shall be  
30 appointed upon the concurrence of the governing bodies of each of the  
31 municipalities in accordance with applicable laws, ordinances or  
32 resolutions.

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

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

42 e. In addition to any other means provided by law for the removal  
43 from office of a public official, a municipal public defender may be  
44 removed by the governing body of a municipality for good cause  
45 shown and after a public hearing, and upon due notice and an  
46 opportunity to be heard. Failure to reappoint a municipal public

1 defender for a second or subsequent term does not constitute a  
2 "removal from office" within the meaning of this subsection.

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 Rules of Court Governing  
6 the Conduct of Lawyers, Judges and Court Personnel.

7

8 5. A municipal public defender shall receive compensation, either  
9 on an hourly, per diem, annual or other basis as the municipality may  
10 provide. In the case of a joint municipal court, participating  
11 municipalities, by similar ordinances, shall enter into an agreement  
12 fixing the compensation of the municipal public defender and providing  
13 for payment. The compensation of a municipal public defender for  
14 services rendered pursuant to the provisions of this act shall be in lieu  
15 of any and all other compensation by the municipality. The ordinance,  
16 resolution or agreement setting compensation shall set forth any  
17 additional compensation to be paid for interlocutory appeals in the  
18 Superior Court.

19

20 6. a. It shall be the duty of the municipal public defender to  
21 represent, except in the case of temporary unavailability or conflict of  
22 interest, any defendant charged with an offense in municipal court who  
23 is an indigent municipal defendant entitled to representation pursuant  
24 to this act. All necessary services and facilities of representation <sup>1</sup>,  
25 including both expert and lay investigation and testimony as well as  
26 other preparations, <sup>1</sup> shall be provided in every case. <sup>1</sup>The municipality  
27 shall be responsible for payment for services pursuant to this section. <sup>1</sup>  
28 The factors of need and real value to a defendant may be weighed  
29 against the financial constraints of the municipality in determining the  
30 necessary services and facilities of representation. <sup>1</sup>The final  
31 determination as to necessity for services required pursuant to this  
32 section shall be made by the court. <sup>1</sup>

33

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

40 <sup>1</sup>c. Nothing in this section shall be deemed to require a municipality  
41 to pay for expert and lay investigation or testimony for a period of one  
42 year after the effective date of P.L. , c. (C. ) (now pending  
43 before the Legislature as this bill) <sup>1</sup>.

44

45 7. a. <sup>1</sup>[The municipal public defender shall represent an indigent  
46 defendant charged in municipal court with a disorderly persons or  
petty disorderly persons offense or with a crime as specified in

1 N.J.S.2B:12-18 or with the violation of any statute , ordinance or  
2 regulation of a penal nature where, in the opinion of the municipal  
3 court, there is a likelihood that the person, if convicted, will be  
4 subject to imprisonment.]

5 The municipal public defender shall represent an indigent defendant  
6 charged in municipal court with a crime as specified in N.J.S.2B:12-18  
7 or, if in the opinion of the municipal court there is a likelihood that  
8 the defendant, if convicted, of any other offense will be subject to  
9 imprisonment or other consequence of magnitude, the municipal public  
10 defender shall represent an indigent defendant.<sup>1</sup>

11 b. If there is a vacancy in the office of municipal public defender,  
12 if the municipal public defender is temporarily unavailable or if a  
13 finding of conflict of interest precludes the municipal public defender  
14 from representing an indigent defendant, the municipal prosecutor may  
15 prosecute the offense if the municipal court appoints a qualified  
16 attorney to represent the indigent defendant. Unless rates are  
17 otherwise established by the municipality, the attorney shall be entitled  
18 to compensation at the same rate as attorneys hired by the Office of  
19 the Public Defender in conflict cases, with payment to be made within  
20 30 days. Once appointed, the attorney shall carry out all duties of the  
21 municipal public defender in connection with the case that is the  
22 subject of the appointment.

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

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

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

1 for the cost of the services rendered to that time.

2

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

13

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

26

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

33

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

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

1 certified mail, or serve personally, a copy of the notice with a  
2 statement of the date of the filing to or upon the defendant at the  
3 defendant's last known address. If the municipal attorney shall fail to  
4 give notice, the lien is void.

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

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

17  
18 16. The municipal attorney in the name of the municipality may do  
19 all things necessary to collect any money due to the municipality by  
20 way of reimbursement for services rendered by a municipal public  
21 defender pursuant to this act. The municipal attorney may enter into  
22 arrangements with any State or county agency to handle collections on  
23 a cost basis. The municipal attorney shall have all the remedies and  
24 proceedings available for collection which are available for or upon the  
25 recovery of a judgment in a civil action and shall also be permitted to  
26 collect counsel fees and costs from the defendant for such collection  
27 action so that the same are not borne by the municipality.

28  
29 17. <sup>1</sup>a.<sup>1</sup> A municipality may require by ordinance a person applying  
30 for representation by a municipal public defender <sup>1</sup>or court approved  
31 counsel<sup>1</sup> to pay an application fee of not more than [\$100.00]  
32 \$200.00, but only in an amount necessary to pay the costs of municipal  
33 public defender services<sup>1</sup>. <sup>1</sup>[The] In accordance with guidelines  
34 promulgated by the Supreme Court, the<sup>1</sup> municipal court may waive  
35 any required application fee, in whole or in part, only if the court  
36 determines, in its discretion, upon a clear and convincing showing by  
37 the applicant that the application fee represents an unreasonable  
38 burden on the person seeking representation. <sup>1</sup>[The funds collected  
39 pursuant to this section are to meet the costs incurred in providing a  
40 municipal public defender] The municipal court may permit a person  
41 to pay the application fee over a specific period of time not to exceed  
42 four months<sup>1</sup>.

43 <sup>1</sup>b. Funds collected pursuant to subsection a. of this section shall  
44 be deposited in a dedicated fund administered by the chief financial  
45 officer of the municipality or in the case of a joint municipal court in  
46 a manner agreed to by the constituent municipalities. Such funds shall

1 be used exclusively to meet the costs incurred in providing the services  
2 of a municipal public defender including, when required, expert and lay  
3 investigation and testimony.

4 c. Beginning in 1999, if it is determined by the Division of Local  
5 Government Services during its annual review of a municipal budget  
6 that the amount of money in a dedicated fund established pursuant to  
7 this section exceeds by more than 25% the amount which the  
8 municipality expended during the prior year providing the services of  
9 a municipal public defender, the amount in excess of the amount  
10 expended shall be forwarded to the Criminal Disposition and Review  
11 Collection Fund administered by Victims of Crime Compensation  
12 Board.<sup>1</sup>

13

14 18. N.J.S.2B:12-28 is repealed.

15

16 19. This act shall take effect on <sup>1</sup>January 1, 1998 or on<sup>1</sup> the 180th  
17 day after enactment <sup>1</sup>, whichever is later except that sections 17 and  
18 18 of this act shall take effect on the 90th day after enactment<sup>1</sup>.

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22

23 Requires the appointment of a municipal public defender in each  
24 municipality.