

SENATE, No. 1886

STATE OF NEW JERSEY

INTRODUCED MARCH 10, 1997

By Senator MARTIN

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:

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

33 "Municipal public defender" means a person, as defined in section
34 4 of this act, appointed to represent indigent defendants in proceedings
35 over which the municipal court has jurisdiction.

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37 3. Each municipal court in this State shall have at least one

1 municipal public defender appointed by the governing body of the
2 municipality in accordance with applicable laws, ordinances and
3 resolutions. Any municipal court with two or more municipal public
4 defenders shall have a "chief municipal public defender" who shall be
5 appointed by the governing body of the municipality. The chief
6 municipal public defender of a joint municipal court shall be appointed
7 upon the concurrence of the governing bodies of each municipality.
8 The chief municipal public defender shall have authority over other
9 municipal public defenders serving that court with respect to the
10 performance of their duties.

11

12 4. a. A municipal public defender shall be an attorney-at-law of
13 this State in good standing, and shall serve for a term of one year from
14 the date of his appointment, and may continue to serve in office
15 pending re-appointment or appointment of a successor. A municipal
16 public defender may be appointed to that position in one or more
17 municipal courts. The provisions of this act shall apply to each such
18 position held. A municipal public defender need not reside in the
19 municipality where he acts as a municipal public defender.

20 b. A municipal public defender of a joint municipal court shall be
21 appointed upon the concurrence of the governing bodies of each of the
22 municipalities in accordance with applicable laws, ordinances or
23 resolutions.

24 c. In accordance with applicable laws, ordinances and resolutions,
25 a municipality may appoint additional municipal public defenders as
26 necessary to administer justice in a timely and effective manner in its
27 municipal court. Additional appointments shall be subject to the
28 provisions of this act, including appointments in a joint municipal
29 court.

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

33 e. In addition to any other means provided by law for the removal
34 from office of a public official, a municipal public defender may be
35 removed by the governing body of a municipality for good cause
36 shown and after a public hearing, and upon due notice and an
37 opportunity to be heard. Failure to reappoint a municipal public
38 defender for a second or subsequent term does not constitute a
39 "removal from office" within the meaning of this subsection.

40 f. The municipal public defenders may represent private clients in
41 any municipality, including the municipality where they act as a
42 municipal public defender, subject to the Rules of Court Governing
43 the Conduct of Lawyers, Judges and Court Personnel.

44

45 5. A municipal public defender shall receive compensation, either
46 on an hourly, per diem, annual or other basis as the municipality may

1 provide. In the case of a joint municipal court, participating
2 municipalities, by similar ordinances, shall enter into an agreement
3 fixing the compensation of the municipal public defender and providing
4 for payment. The compensation of a municipal public defender for
5 services rendered pursuant to the provisions of this act shall be in lieu
6 of any and all other compensation by the municipality. The ordinance,
7 resolution or agreement setting compensation shall set forth any
8 additional compensation to be paid for interlocutory appeals in the
9 Superior Court.

10

11 6. a. It shall be the duty of the municipal public defender to
12 represent, except in the case of temporary unavailability or conflict of
13 interest, any defendant charged with an offense in municipal court who
14 is an indigent municipal defendant entitled to representation pursuant
15 to this act. All necessary services and facilities of representation shall
16 be provided in every case. The factors of need and real value to a
17 defendant may be weighed against the financial constraints of the
18 municipality in determining the necessary services and facilities of
19 representation.

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

26

27 7. a. The municipal public defender shall represent an indigent
28 defendant charged in municipal court with a disorderly persons or
29 petty disorderly persons offense or with a crime as specified in
30 N.J.S.2B:12-18 or with the violation of any statute, ordinance or
31 regulation of a penal nature where, in the opinion of the municipal
32 court, there is a likelihood that the person, if convicted, will be
33 subject to imprisonment.

34 b. If there is a vacancy in the office of municipal public defender,
35 if the municipal public defender is temporarily unavailable or if a
36 finding of conflict of interest precludes the municipal public defender
37 from representing an indigent defendant, the municipal prosecutor may
38 prosecute the offense if the municipal court appoints a qualified
39 attorney to represent the indigent defendant. Unless rates are
40 otherwise established by the municipality, the attorney shall be entitled
41 to compensation at the same rate as attorneys hired by the Office of
42 the Public Defender in conflict cases, with payment to be made within
43 30 days. Once appointed, the attorney shall carry out all duties of the
44 municipal public defender in connection with the case that is the
45 subject of the appointment.

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1 8. All communications between the indigent defendant and the
2 municipal public defender or any other attorney appointed to act as a
3 municipal public defender shall be fully protected by the attorney-client
4 privilege to the same extent and degree as though counsel has been
5 privately engaged. This shall not preclude the use by the municipal
6 public defender of privileged material for the preparation and
7 disclosure of statistical, case study and other sociological data,
8 provided that in any such use there shall be no disclosure of the
9 identity of or means for discovery of the identity of particular
10 defendants.

11

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

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

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

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

1 public or private sources, otherwise confidential, as may be of aid to
2 it in evaluating eligibility.

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

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

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

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

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

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

1 proceedings available for collection which are available for or upon the
2 recovery of a judgment in a civil action and shall also be permitted to
3 collect counsel fees and costs from the defendant for such collection
4 action so that the same are not borne by the municipality.

5
6 17. A municipality may require by ordinance a person applying for
7 representation by a municipal public defender to pay an application fee
8 of not more than \$100.00. The municipal court may waive any
9 required application fee, in whole or in part, only if the court
10 determines, in its discretion, upon a clear and convincing showing by
11 the applicant that the application fee represents an unreasonable
12 burden on the person seeking representation. The funds collected
13 pursuant to this section are to meet the costs incurred in providing a
14 municipal public defender.

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

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18 19. This act shall take effect on the 180th day after enactment.

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21 STATEMENT

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23 The bill requires each municipality to have a municipal public
24 defender to represent indigent defendants in certain municipal court
25 proceedings. The bill defines the role, responsibilities and duties of the
26 office, and provides a mechanism for funding.

27 The bill requires that each municipal court shall have a least one
28 municipal public defender appointed by the municipal governing body.
29 Municipal public defenders would be appointed for a term of one year
30 and they would be compensated by the municipality. Municipalities
31 may appoint more than one municipal public defender. If a
32 municipality does appoint more than one municipal defender, a chief
33 municipal public defender who would have authority over the others,
34 would be designated by the municipality.

35 If there is a vacancy in the office of municipal public defender, if the
36 municipal public defender is temporarily unavailable or if a conflict of
37 interest precludes a municipal public defender from handling a
38 proceeding, the municipal court may appoint any qualified attorney to
39 provide representation. Unless rates are otherwise established by the
40 municipality, the attorney shall be entitled to compensation in the same
41 rate as the rate used in conflict cases in the public defender office.
42 The attorney shall meet all requirements and carry out all the duties of
43 the municipal public defender for the case that is the subject of the
44 appointment.

45 A municipal public defender may be removed by the municipal
46 governing body for good cause upon due notice and an opportunity to

1 be heard.

2 The municipal public defender is required to represent, except in
3 cases of temporary unavailability or conflict of interest, any indigent
4 defendant charged in municipal court with an offense where there is a
5 likelihood that the person, if convicted, will be subject to
6 imprisonment. Eligibility is determined on the basis of need in
7 accordance with specific factors. The bill specifies means by which,
8 in appropriate cases, the municipal attorney may recover all or part of
9 the money in connection with the representation. The bill provides
10 that the municipal attorney may file a notice setting forth services
11 rendered to the defendant and the reasonable value thereof with the
12 Clerk of the Superior Court. The filing of the notice with the Clerk of
13 the Superior Court shall constitute a lien on property for a period of
14 10 years from the date of filing.

15 The bill repeals N.J.S.2B:12-28 but recompiles the portion of that
16 statute which provides for an application fee in section 17 of the bill.
17 A municipality by ordinance may require a person applying for
18 representation by a municipal public defender to pay an application fee
19 of not more than \$100.00. The municipal court may waive any
20 required application fee, in whole or in part, if the court determines,
21 upon a clear and convincing showing by the applicant that the
22 application fee represents an unreasonable burden on the person
23 seeking representation.

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28 Requires the appointment of a municipal public defender in each
29 municipality.