

[Passed Both Houses]

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**SENATE, No. 1886**

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**STATE OF NEW JERSEY**

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INTRODUCED MARCH 10, 1997

**By Senator MARTIN, Assemblymen Russo and Caraballo**

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:

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

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

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

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

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

31 b. A municipal public defender of a joint municipal 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 a joint municipal  
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. Failure to reappoint a municipal public  
3 defender for a second or subsequent term does not constitute a  
4 "removal from office" within the meaning of this subsection.

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

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

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

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

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

45  
46 7. a. <sup>1</sup>[The municipal public defender shall represent an indigent

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

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

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

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

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

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

1 municipal court shall inform the defendant, and the defendant shall be  
2 obliged to engage his own counsel and to reimburse the municipality  
3 for the cost of the services rendered to that time.

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

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

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

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

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

1 limitations, shall have the force and effect of a judgment. Within 10  
2 days of the filing of the notice, the municipal attorney shall send by  
3 certified mail, or serve personally, a copy of the notice with a  
4 statement of the date of the filing to or upon the defendant at the  
5 defendant's last known address. If the municipal attorney shall fail to  
6 give notice, the lien is void.

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

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

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

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

45 <sup>1</sup>b. Funds collected pursuant to subsection a. of this section shall  
46 be deposited in a dedicated fund administered by the chief financial

1 officer of the municipality or in the case of a joint municipal court in  
2 a manner agreed to by the constituent municipalities. Such funds shall  
3 be used exclusively to meet the costs incurred in providing the services  
4 of a municipal public defender including, when required, expert and lay  
5 investigation and testimony.

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

15

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

17

18 19. This act shall take effect on January 1, 1998 or on<sup>1</sup> the 180th  
19 day after enactment <sup>1</sup>, whichever is later except that sections 17 and  
20 18 of this act shall take effect on the 90th day after enactment<sup>1</sup>.

21

22

23

24

25 Requires the appointment of a municipal public defender in each  
26 municipality.