

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 1886**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MAY 8, 1997

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1886.

This bill requires each municipality to have a municipal public defender to represent indigent defendants in certain municipal court proceedings.

This bill requires that each municipal court shall have at least one municipal public defender appointed by the municipal governing body. Municipal public defenders would be appointed for a term of one year. They would be compensated on an hourly, per diem, annual or other basis as provided by the municipality. Municipalities may appoint more than one municipal public defender. If a municipality does appoint more than one municipal defender, a chief municipal public defender, who would have authority over the others, would be designated by the municipality.

If there is a vacancy in the office of municipal public defender, if the municipal public defender is temporarily unavailable or if a conflict of interest precludes a municipal public defender from handling a case, the municipal court may appoint any qualified attorney to provide representation. Unless rates are otherwise established by the municipality, the attorney shall be entitled to compensation in the same rate as the rate used in conflict cases in the public defender office.

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

The municipal public defender is required to represent any indigent defendant charged in municipal court with an offense where there is a likelihood that the person, if convicted, will be subject to imprisonment. The bill specifies means by which, in appropriate cases, the municipal attorney may recover all or part of the money in connection with the representation. This bill also provides that the municipal attorney may file a notice setting forth services rendered to the defendant and the reasonable value thereof with the Clerk of the Superior Court. The filing of the notice with the Clerk of the Superior Court would constitute a lien on property for a period of 10 years from the date of filing.

As amended by the committee, this bill would permit municipalities to enact ordinances requiring a person applying for representation by a municipal public defender to pay an application fee of not more than \$200.00. The municipal court may waive any application fee, in whole or in part, if the court determines, upon a clear and convincing showing by the applicant, that the fee represents an unreasonable burden on the person. The bill, as amended, also provides that a municipality may only set its application fee at an amount necessary to pay the costs of public defender services and that a court could order a defendant to pay the application fee over a specific period of time not to exceed four months.

The committee amendments further provided that application fees are to be deposited in a dedicated fund and that monies in this fund could only be used to meet the costs of providing public defender services. If during an annual review of a municipality's budget, it is determined that the amount of the money in the dedicated fund exceeds by more than 25% the amount which the municipality expended during the prior year on municipal public defender services, the amount in excess of the amount expended for public defender services would be transferred to the Victims of Crime Compensation Board.

In order to provide start-up costs for municipalities which currently do not have a municipal public defender and to assist other municipalities which already provide public defender services, the committee adopted amendments providing that the provisions of the bill dealing with application fees would take effect ninety days prior to the effective date of the remainder of the bill's provisions.

In addition to the amendments dealing with the application fee, the amendments clarify the types of cases for which an indigent defendant would be entitled to the services of a public defender. Lastly, the amendments clarified that the public defender services included lay and expert investigation and testimony, if deemed necessary by the municipal court. Nothing, in the bill, however, is to be construed to require a municipal to pay for lay and expert assistance for a period of one year following the bill's enactment.