



SPONSOR: Rep. Spence & Rep. Scott

HOUSE OF REPRESENTATIVES

140th GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 2

TO

HOUSE BILL NO. 649

1 AMEND House Bill No. 649 by deleting lines 1 through 46 in their entirety and replacing thereto as
2 follows:

3 "Section 1. Amend Section 2506(a) of Title 29, Delaware Code by deleting the first sentence and
4 replacing it with the following:

5 "The Attorney General shall receive the same compensation as the President Judge of
6 Superior Court.'.

7 Section 2. Amend Chapter 46, Title 29, Delaware Code, generally, by substituting the term
8 'Defender General' for the term 'Public Defender' wherever it currently appears.

9 Section 3. Amend Section 4603(a), Title 29, Delaware Code, by replacing the second sentence
10 with the following sentence:

11 "The Defender General shall receive the same compensation as the President Judge of
12 Superior Court.'.

13 Section 4. Amend Section 4603(c), Title 29, Delaware Code, by adding the following language to
14 the end of the first sentence before the period:

15 ', except that in no event shall the salary paid the Chief Deputy be less than that
16 authorized for the Chief Deputy Attorney General'.

17 Section 5. Amend the first sentence of Section 4607(a) of Title 29, Delaware Code, by replacing
18 the figure of '\$50' with '\$60.00'.

19 Section 6. Further Amend the first sentence of Section 4607(a) of Title 29, Delaware Code by
20 adding the following before the period '.':

21 ‘, including juveniles in juvenile delinquency actions’.

22 Section 7. Amend Title 29 of the Delaware Code by adding a new Section to read:

23 ‘§ 4609 Civil Division of the Office of Defender General.

24 (a) There is hereby established a Civil Division of the Office of Defender
25 General. This division shall provide civil legal representation to indigent persons not
26 otherwise represented by counsel in the following cases:

- 27 (1) A parent in dependency/neglect cases; or
28 (2) A parent in termination of parental rights cases; or
29 (3) A parent in child support proceedings when incarceration is a likely sanction; or
30 (4) An incarcerated parent entitled to contest that a child or children is his or hers; or
31 (5) An allegedly infirm person in guardianship proceedings pending appointment of guardian by
32 the Court; or
33 (6) A person whose involuntary commitment to a mental institution is sought or ordered.

34 (b) The Defender General shall appoint, from practicing members of the Bar of
35 this State, a lawyer resident in this State who shall be designated as “the Chief of Legal
36 Services – Civil Division”. The Chief of Legal Services – Civil Division and staff shall
37 be responsible for the representation of Defender General clients entitled to
38 representation in civil matters under this section and shall have such other
39 responsibilities, powers and administrative duties as the Defender General shall
40 designate.

41 (c) Whenever the Defender General or his or her designee appears on behalf of
42 a party in a civil proceeding, the Court shall assess and collect from that party an
43 administrative fee in the amount of \$60.00 in addition to attorneys fees imposed pursuant
44 to this section or any other statute or court rule. The Court upon motion of any party or
45 on its own initiative may suspend all or part of this amount at any time. All sums
46 collected hereunder shall be paid into the General Fund.

47 (d) Attorney’s fees shall be assessed by the Court against a party represented by
48 the Defender General or his or her designee for all legal services performed by attorneys
49 in the Office of the Defender General. The hourly rate to be employed by the court in

50 assessing these fees shall be \$75.00. Such attorneys' fees shall be in addition to the
51 administrative fee assessed pursuant to the preceding paragraph. The Court upon motion
52 of any party or on its own initiative may suspend all or part of this amount at any time.
53 All sums collected hereunder shall be paid into the General Fund.

54 (e) The Defender General or his or her designee shall represent each indigent
55 person referenced above in (a)(1) through (a)(6) if they do not have counsel only after a
56 determination of indigence is made by the Defender General utilizing the same standards
57 employed for the determination of eligibility for representation in criminal cases.'.

58 Section 8. Funding for Section 7 shall be transferred from the Contractual Services Account under
59 the Administrative Offices of the Court for the balance of FY 2001. Any new positions needed by the
60 Department of Justice or the Defender General shall not become effective until funded as part of the FY
61 2002 Budget.

62 Section 9. Sections 1 and 3 shall become effective on July 1, 2001 as part of the FY 2002 Budget.
63 Sections 2, 4, 5, and 6 shall become effective upon enactment. Sections 7 and 8 shall become effective on
64 January 1, 2001.'.

SYNOPSIS

Similar to Rhode Island's statutory scheme, and that of Vermont's Defender General under which its Defender General oversees representation of indigent persons in criminal and certain civil matters, this legislation expands the authority and duty of the Public Defender to provide legal representation to indigent persons in non-criminal cases where important State interests and individual rights are implicated. The re-designation of the Public Defender title to Defender General reflects the expansion of the duties of the office to provide indigent persons legal representation in non-criminal matters.

The legislation provides that the Attorney General shall receive the same compensation as the President Judge of the Superior Court. The legislation also provides that the Defender General should receive the same compensation as the President Judge of Superior Court which is in keeping with the compensation standard first established by National Advisory Commission on Criminal Justice Standards and Goals (chaired by former Delaware Governor Russell W. Peterson). See Standard 13.7; See also Standard 3.2 of the National Legal Aid and Defender Association.

The legislation also provides that an administrative fee and attorneys fees shall be assessed in each case where the Defender General appears on behalf of a party in a civil proceeding. The legislation also increases the amount of the administrative fee to be assessed against all Defender General clients from \$50.00 to \$60.00. All such moneys shall be paid into the General Fund.