SPONSOR: Sen. Townsend & Rep. J. Johnson & Rep. Keeley
Sens. Blevins, Bushweller, Ennis, Henry, Peterson; Reps. Barbieri, Baumbach, Bolden, Brady, Carson, Lynn, M. Smith

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

# SENATE BILL NO. 47

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMINAL DEFENSE FOR INDIGENT PERSONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3303 Remuneration study; report.

(a) The Commission shall make a study of the salaries, emoluments, mileage, per diem, travel and other expense allowances and reimbursements (hereinafter collectively referred to as "remuneration") of the members of the General Assembly, the Governor, members of the Governor's cabinet, the Lieutenant Governor, the State Auditor, the State Treasurer, the Attorney General, the Insurance Commissioner, the Justices of the Supreme Court, the Chancellor and Vice-Chancellors of the Court of Chancery and all judges and court commissioners of the Superior Court, the Court of Common Pleas and the Family Court, the Chief Magistrate, the justices of the peace and the ~~Public~~ Chief Defender.

§ 4601. Office of ~~Public Defender~~ Defense Services.

There is created the ~~office of Public Defender.~~ Office of Defense Services, comprised of three branches: Central Administration, the Public Defender's Office and the Office of Conflicts Counsel.

§ 4602. Appointment; representation of defendants

(a) The ~~Public Defender~~ Office of Defense Services shall be headed by the Chief Defender. The Chief Defender shall be a qualified attorney licensed to practice in this State selected by the Governor. The ~~Public Defender~~ Office of Defense Services shall represent, without charge, each indigent person who is under arrest or charged with a crime, if:

(1) The defendant requests it; or

(2) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject of record the opportunity to be so represented.

(b) Before arraignment the determination of indigency may be made by the ~~Public Defender.~~ Office of Defense Services. At or after arraignment the determination shall be made by the court.

§ 4603. Term of office; compensation; assistants

~~(a) The Public Defender shall serve for a term of 6 years from the date of appointment. The Public Defender shall receive $10,000 per year as compensation.~~

~~(b) The Public Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as the Public Defender considers necessary to enable the Public Defender to carry out the responsibilities of the office. An assistant attorney must be a qualified attorney licensed to practice in this State.~~

~~(c) The compensation of persons appointed under subsection (b) of this section shall be fixed by the Public Defender.~~

~~(d) Effective January 1, 2000, the Public Defender and Chief Deputy Public Defender shall be prohibited from engaging in the practice of law outside the duties of the Office of the Public Defender.~~

(a) For appointments made after July 1, 2015, the Chief Defender shall serve for a term of 8 years from the date of appointment.

(b) The Chief Defender may appoint as many assistant attorneys, clerks, investigators, stenographers and other employees as the Chief Defender considers necessary to enable the Office of Defense Services to carry out the responsibilities of the office. Assistant Public Defenders and attorneys contracting with the Office of Conflicts Counsel must be licensed to practice in this State.

(c) The compensation of persons appointed under subsection (b) of this section shall be fixed by the Chief Defender.

(d) Salaried attorneys employed by the Office of Defense Services are prohibited from engaging in the practice of law outside the duties of the Office of Defense Services. Salaried attorneys who have already established private practices as of January 1, 2015 are exempt from the prohibition for a period of 10 years from the effective date of this statute. After 10 years from the effective date of this statute, all salaried attorneys employed by the Office of Defense Services are prohibited from engaging in private law practice.

§ 4604. Representation of indigent persons

When representing an indigent person, the ~~Public Defender~~ Office of Defense Services shall:

(1) Counsel and defend the indigent person, whether held in custody without commitment or charged with a criminal offense, at every stage of the proceedings following arrest; and

(2) Prosecute any appeals or other remedies before or after conviction that the ~~Public~~ Chief Defender considers to be in the interest of justice.

§ 4605. Appointment of additional counsel

For cause, the court may, on its own motion or upon the application of the ~~Public Defender~~ Office of Defense Services or the indigent person, appoint ~~an attorney other than~~ the ~~Public Defender~~ Office of Conflicts Counsel, or other qualified counsel, to represent the indigent person at any stage of the proceedings or on appeal. The attorneys contracting with the Office of Conflicts Counsel shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed by the ~~court and paid by the State~~ Chief Defender and paid through the Office of Conflicts Counsel.

§ 4606. Annual reports

The ~~Public Defender~~ Office of Defense Services shall make an annual report to the Governor and the General Assembly covering all cases handled by the ~~Public Defender's office~~ Office of Defense Services during the preceding year.

§ 4607. Administrative fee assessment

(a) Each court of this State shall assess an administrative fee in the amount of $100 against any defendant on whose behalf an appearance is made by ~~the Public Defender, one of the Public Defender's assistants~~ the Office of Defense Services, or any other attorney who has been appointed by a court to represent the defendant in a criminal proceeding. This fee shall be payable even though the criminal proceedings do not result in conviction but are instead terminated by a guilty plea, nolle prosequi or order of the court.

(b) Upon assessment of any administrative fee under this section, each defendant shall be directed to pay such assessment forthwith to the clerk of the court in which an entry of appearance by the ~~Public Defender, one of the Public Defender's assistants~~ Office of Defense Services or any other attorney who has been appointed by a court was entered.

(c) A defendant's present inability, failure or refusal to pay an assessment made under this section shall not operate to disqualify a defendant from legal representation.

(d) If a defendant is unable or fails to pay the administrative fee pursuant to this section, the court shall order the defendant to report to the Commissioner of the Department of Correction or a person designated by the Commissioner for work for a number and schedule of hours necessary to discharge the fine, pursuant to § 4105(b) of Title 11.

(e) In the event that any portion of an administrative fee assessed under this section shall remain unpaid at the time of sentencing, the sentencing judge shall make payment of the administrative fee an express condition of any sentence imposed.

(f) All moneys received in satisfaction of assessments under this section shall revert to the General Fund and the clerk of each court shall regularly remit all moneys received to the State Treasurer.

(g) On or before the first day of November of each year, the courts of this State in which assessments are regularly made under this section shall provide the State Auditor with a written report detailing the dollar value of assessments made in the previous fiscal year, the amount collected in the previous fiscal year as well as the balance of unpaid assessments at the open and close of the previous fiscal year.

§ 4608. Short title

This chapter may be cited as the ~~Model Defender Act.~~ Office of Defense Services Act.

§ 4714 Commission on Forensic Science.

(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the "Commission", is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of 10 members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General's designee, the ~~Public~~ Chief Defender or the ~~Public~~ Chief Defender's designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, a member of the Delaware State Troopers Association or the Fraternal Order of Police with formal training in forensic science appointed by the Secretary of the Department of Safety and Homeland Security with the concurrence of the Governor, and 2 members, appointed by the Governor, who have expertise in forensic science.

Section 2. Amend Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1008. Committee on Dispositional Guidelines for Juveniles.

(b) The members of the Committee shall include the following persons or their designees:

~~(6) Public~~ Chief Defender;

§ 1053 Appeals by the State in Family Court cases.

(a) An appeal may be taken by the State from the Family Court to an appellate court in the following instances:

(2) Appeal in the discretion of the appellate court. — The State may apply to an appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of such an appeal; but in no event shall the decision or result of the appeal affect the rights of the appellee and he or she shall not be obligated to defend the appeal, but the appellate court may require the ~~Public~~ Chief Defender of the State to defend the appeal and to argue the cause; provided, however, that if the order appealed from is an order suppressing or excluding substantial and material evidence the appellate court may permit an interlocutory appeal of any pretrial order, and if the order suppressing such evidence is reversed, the appellee may be subjected to a trial.

§ 1062. Assignment of prosecutors and public defenders.

Sufficient prosecutors and public defenders shall be assigned to the Court in each county as are required in the judgment of the Attorney General, the ~~public~~ Chief Defender and the Court.

§ 2005 Emergency sessions of court.

(a) When the Chief Justice makes the determination that a court shall conduct proceedings outside its county, the Chief Justice may order emergency sessions of court in another county. In making this determination, the Chief Justice shall make a reasonable effort to consult with the chief judge and the court administrator of the affected court, the other members of the Supreme Court, the Attorney General, and the ~~Public~~ Chief Defender.

§ 3925 Public officers and employees.

Any public officer or employee, in a criminal or civil action against the person arising from state employment, shall be entitled to petition the court for a court-appointed attorney to represent the person's interests in the matter. If the judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the judge may require, determines that the petition has merit, the judge shall appoint an attorney to represent the interests of such public officer or employee. The court-appointed attorney shall represent such person at all stages, trial and appellate, until the final determination of the matter, unless the attorney is earlier released by such person or by the court. The court may first appoint an attorney from the Department of Justice. If the court determines that the Department is unable to represent such public officer or employee, the court may appoint an attorney from the Office of ~~the Public Defender~~ Defense Services in criminal actions only, and in civil actions may appoint an attorney licensed in this State. This section shall also apply to all federal courts within this State.

§ 8601 Recoupment of costs.

(a) A court may require a convicted defendant who has utilized court-appointed attorneys or the ~~Public Defender's~~ Office of Defense Services to pay the costs of defense in that court.

§ 9903 Appeal in the discretion of the appellate court.

The State may apply to the appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of the appeal; but, in no event of such appeals shall the decision or result of the appeal affect the rights of the defendant and he or she shall not be obligated to defend the appeal, but the court may require the ~~Public Defender~~ Office of Defense Services of this State to defend the appeal and to argue the cause.

Section 3. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 787 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(k) Human Trafficking Coordinating Council. — The General Assembly hereby creates a permanent Human Trafficking Coordinating Council.

(1) The Council shall consist of the following members or his or her designee:

f. The ~~Public~~ Chief Defender;

§ 4120A Sex Offender Management Board.

(c) Creation of the Sex Offender Management Board.

(1) There is hereby created, in the Delaware Department of Safety and Homeland Security, a Sex Offender Management Board which shall consist of the following members:

l. The ~~Public~~ Chief Defender of the State of Delaware, or the ~~Public~~ Chief Defender's designee;

§ 4205A Additional penalty for serious sex offenders and pedophile offenders.

(b) A fiscal report on the financial impact of this legislation shall be submitted by the Criminal Justice Coordinator or designee to the Controller General and Chairpersons of the Joint Finance Committee no later than March 15, 2008, after consultation with the Chief Judge of Superior Court, the Commissioner of Corrections, the Attorney General and Chief ~~Public~~ Defender or their designee.

§ 6580 Established; composition; purpose.

(a) The Delaware Sentencing Accountability Commission (hereinafter referred to as the "Commission") is hereby established. The Commission shall consist of 11 members, the body of which shall be comprised as follows:

(3) The ~~Public~~ Chief Defender or the ~~Public~~ Chief Defender's designee;

§ 8513 Dissemination of criminal history record information.

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(3) The ~~State Public Defender~~ Office of Defense Services when requesting information about an individual for whom the ~~State Public Defender~~ Office of Defense Services is attorney of record.

(c) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(7) One member of the Office of ~~the Public Defender~~ Defense Services, to be designated by the ~~Public~~ Chief Defender;

§ 8603 Board of Managers — Established; purpose; composition; term of office; staff; powers.

(b) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(7) One member of the Office of ~~the Public Defender~~ Defense Services, to be designated by the ~~Public~~ Chief Defender;

§ 8701 Created; composition; compensation.

(b) The Council shall consist of 29 members as follows:

(6) The ~~Public~~ Chief Defender, or the ~~Public~~ Chief Defender's designee;

§ 9502 Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender Mediation Committee to be composed of the Attorney General, ~~Public~~ Chief Defender, Chief Magistrate, Chair of the Criminal Justice Council, State Court Administrator and the Chief Judge of Family Court or their designees to administer this chapter. No funds shall be awarded or program approved without the approval of the Victim-Offender Mediation Committee.

Section 4. Amend Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2102 Composition.

The Council shall consist of the following members:

(5) The ~~Public~~ Chief Defender;

Section 5. Amend Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 912 The Child Protection Accountability Commission.

(a) The Delaware Child Protection Accountability Commission is hereby established. The Commission shall consist of 24 members with the at-large members and the Chair appointed by the Governor, and shall be staffed by the Office of the Child Advocate. Members of the Commission serving by virtue of position may appoint a designee to serve in their stead. The Commission shall be comprised of the following:

(15) One representative from the ~~Public Defender's~~ Office of Defense Services, appointed by the ~~Public~~ Chief Defender;

Section 6. Amend Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 711 Unlawful employment practices; employer practices.

(g) (4) This subsection does not apply to any state, county or municipal police force, the Department of Correction, the Department of Justice, the ~~Public Defender's~~ Office of Defense Services, the Courts, or any position where federal or state statute requires or expressly permits the consideration of an applicant's criminal history.

SYNOPSIS

Every indigent person accused of a crime has the Constitutional right to effective, conflict-free counsel funded by the state. In Delaware, the Public Defender's Office and the Office of Conflict Counsel are charged with the responsibility of providing counsel for indigent people accused of crimes. The Public Defender's Office is a publicly funded law firm representing about 83% of all indigent defendants in Delaware. The Office of Conflicts Counsel is comprised of a group of lawyers who are independent contractors. They represent clients who cannot be represented by the Public Defender's Office due to a legally recognized conflict of interest. This bill modernizes the business model of the Public Defender's Office and the Office of Conflicts Counsel by consolidating their administrative functions while not compromising the interests of any client. The non-case related functions of both the Public Defender's Office and the Office of Conflicts Counsel will be handled by a Central Administration, all beneath the umbrella of an Office of Defense Services. In particular, the changes implemented by this bill will enhance the quality of representation by the lawyers contracting with the Office of Conflicts Counsel in the areas of IT support, training, client intake, early contact with clients and bill payments. This bill will ensure that all indigent persons accused of crime will be well represented. In addition to the modernization of the business model for delivery of indigent defense services, this bill changes the term of future Chief Defenders from 6 to 8 years.

This bill is the same as Senate Bill 28 with the addition of changes to the various references in the entire code required by the name changes.

Author: Senator Townsend