

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:158A-2 et al (Indigent defendants-- appointment of counsel-- amend law)

LAWS OF: 1987

CHAPTER: 170

Bill No: A1547

Sponsor(s): Kern

Date Introduced: Pre-filed

Committee: **Assembly:** Judiciary

Senate: Judiciary

Amended during passage: Yes

Date of Passage: **Assembly:** October 23, 1986

Senate: May 18, 1987

Date of Approval: July 8, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: **Assembly** Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping file "N.J.- Legal aid- 1985" in New Jersey Reference department for:

"Public defenders' taxed by vague rule on indigency," 12-15-85 Star Ledger.

"Public defenders investigate assets of some clients labeled 'indigent'" 12-16-85 Star Ledger.

(OVER)

"Determining eligibility in public defender cases," 12-17-85 Star Ledger.

See also newspaper clipping-- attached:

"Kean signs bill to make judges decide who gets court- appointed lawyer," 7-9-87 Star Ledger.

7 3 81
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ASSEMBLY, No. 1547

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Assemblyman KERN

AN ACT concerning the representation of indigent defendants in criminal cases and amending and supplementing P. L. 1967, c. 43 **and making an appropriation**.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1967, c. 43 (C. 2A:158A-2) is amended to
2 read as follows:

3 2. As used herein "indigent defendant" means a person who is
4 formally charged with the commission of an indictable offense, and
5 who does not have the present financial ability to secure competent
6 legal representation, *as determined by the factors in section 14 of*
7 *P. L. 1967, c. 43 (C. 2A:158A-14)*, and to provide all other necessary
8 expenses of representation.

1 2. Section 5 of P. L. 1967, c. 43 (C. 2A:158A-5) is amended to
2 read as follows:

3 5. It shall be the duty of the Public Defender to provide for the
4 legal representation of any indigent defendant who is formally
5 charged with the commission of an indictable offense.

6 All necessary services and facilities of representation (including
7 investigation and other preparation) shall be provided in every
8 case. *The factors of need and real value to a defense may be weighed*
9 *against the financial constraints of the Public Defender's office in*
10 *determining what are the necessary services and facilities of repre-*
11 *sentation.*

12 Representation as herein provided for shall include any direct
13 appeal from conviction and such post-conviction proceedings as

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Assembly committee amendments adopted May 5, 1986.**

14 would warrant the assignment of counsel pursuant to the court
15 rules.

16 Representation for indigent defendants (a) may be provided in
17 any federal court in any matter arising out of or relating to an
18 action pending or recently pending in a court of criminal jurisdic-
19 tion of this State and (b) may be provided in any federal court in
20 this State where indigent defendants are charged with the com-
21 mission of a federal criminal offense and where the representation
22 is under a plan adopted pursuant to the Criminal Justice Act of
23 1964 (18 U. S. C. 3006A).

1 3. Section 14 of P. L. 1967, c. 43 (C. 2A:158A-14) is amended to
2 read as follows:

3 14. Eligibility for the services of the Office of the Public Defender
4 shall be determined on the basis of the need of the defendant. Need
5 shall be measured according to **the**:

6 a. *The financial ability of the defendant to engage and com-*
7 *pensate competent private counsel **and**;*

8 b. *The current employment, salary and income of the defendant*
9 *including prospects for continued employment if admitted to bail;*

10 c. *The liquid assets of the defendant, including all real and per-*
11 *sonal property and bank accounts;*

12 d. *The ability of the defendant to make bail and the source of bail*
13 *posted;*

14 e. *Where appropriate the willingness and ability of the defen-*
15 *dants immediate family, friends or employer to assist the defen-*
16 *dant in meeting defense costs;*

17 f. *Where appropriate an assessment of the probable and reason-*
18 *able costs of providing a private defense, based upon the status*
19 *of the defendant, the nature and extent of the charges and the*
19A *likely issues;*

20 g. *Where appropriate, the ability of the defendant to demonstrate*
21 *convincingly that he has consulted at least three private attorneys,*
22 *none of whom would accept the case for a fee within his ability to*
23 *pay; and*

24 h. *The ability of the defendant to provide all other necessary*
25 *expenses of representation. **Such ability shall be recognized to be***
26 *a variable depending on the nature, extent and liquidity of assets*
27 *and on the disposable net income of the defendant on the one hand,*
28 *and on the nature of the charge, the effort and skill required to*
29 *gather pertinent information, render advice, conduct trial or render*
30 *other legal services, and probable expenses to be incurred, on the*
31 *other hand.*

32 In the event that a determination of eligibility cannot be made

33 before the time when the first services are to be rendered, or if an
 34 initial determination is found to be erroneous, the office shall under-
 35 take the same provisionally, and if it shall subsequently *be de-*
 36 *termined* that the defendant is ineligible it shall so inform the
 37 defendant, and the defendant shall thereupon be obliged to engage
 38 his own counsel and to reimburse the office for the cost of the
 39 services rendered to that time.

1 4. (New section) Notwithstanding the provisions of section 15
 2 of P. L. 1967, c. 43 (C. 2A:15A-15) which authorizes the Office of
 3 the Public Defender to make investigations of the financial status
 4 of each defendant, in each county the Assignment Judge shall
 5 designate a judge or court support office who shall make the deter-
 6 mination on each request by a defendant for an appointed attorney.
 7 ***【**The determination shall be final except in cases where there has
 8 been a determination to deny the services of the Public Defender.**】***
 9 A determination to **grant or** deny the services of the Public
 10 Defender shall be subject to final review by the Assignment Judge
 11 or his ***【**designee**】** **designated judge**. The court, or a desig-
 12 nated court support office shall make an investigation of the
 13 financial status of each defendant requesting an appointed at-
 14 torney, which investigation shall include the factors enumerated
 15 in section 14 of P. L. 1967, c. 43 (C. 2A:158A-14). The court, in
 16 its discretion, may ask for the assistance of the Public Defender
 17 in conducting the investigation.

18 The judge or court support office is authorized to obtain infor-
 19 mation from any public record office of the State or of any sub-
 20 division or agency thereof on request and without payment of the
 21 fees ordinarily required by law.

1 5. (New section) Within 30 days of the effective date of this
 2 section, the Administrative Office of the Courts shall establish a
 3 system in one ***【**county**】** **or more counties** and **the Assignment*
 4 *Judge, through a designated judge or court support office shall**
 5 be responsible for making eligibility determinations for the ser-
 6 vices of the Office of the Public Defender in that county. **The*
 7 *purpose of the pilot project is to enable the Judiciary to develop*
 8 *a program for Statewide implementation and to gauge the fiscal*
 9 *impact of assuming responsibility for making eligibility deter-*
 10 *minations.**

1 6. (New section) After section 4 has been in effect for three
 2 years, the Administrative Office of the Courts shall, within 60
 3 days, report to the Legislature on the use of court personnel to
 4 determine eligibility for the services of the Office of the Public
 5 Defender.

1 *7. *There is appropriated from the General Fund to the Admin-*
2 *istrative Office of the Courts a sum sufficient to effectuate the*
3 *purposes of this act.**

1 ***[7.]*** *8.* This act shall take effect on the 270th day after
2 enactment except for section 5 which shall take effect immediately.
3 Section 4 of this act shall expire five years after it becomes
4 effective.

COURTS

Revises the eligibility requirements and appointment procedures
for representation of indigent clients by public defenders.

ASSEMBLY, No. 1547

Introduced Pending Technical Review by Legislative Counsel
PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION
By Assemblyman KERN

[SENATE REPRINT]

ASSEMBLY, No. 249

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblymen KERN, FELICE, SCHUBER, FRANKS
and MARKERT

AN ACT concerning the representation of indigent defendants in
criminal cases and amending **and supplementing** P. L. 1967,
c. 43.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1967, c. 43 (C. 2A:158A-2) is amended to
2 read as follows:

3 2. As used herein "indigent defendant" means a person who is
4 formally charged with the commission of an indictable offense, and
5 who does not have the present financial ability to secure competent
6 legal representation, *as determined by the factors in section 14 of*
7 *P. L. 1967, c. 43 (C. 2A:158A-14)*, and to provide all other necessary
8 expenses of representation.

1 2. Section 5 of P. L. 1967, c. 43 (C. 2A:158A-5) is amended to
2 read as follows:

3 5. It shall be the duty of the Public Defender to provide for the
4 legal representation of any indigent defendant who is formally
5 charged with the commission of an indictable offense.

6 All necessary services and facilities of representation (including
7 investigation and other preparation) shall be provided in every
8 case. *The factors of need and real value to a defense may be weighed*
9 *against the financial constraints of the Public Defender's office in*
10 *determining what are the necessary services and facilities of repre-*
11 *sentation.*

12 Representation as herein provided for shall include any direct
13 appeal from conviction and such post-conviction proceedings as

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted March 15, 1984.

**—Senate committee amendments adopted December 13, 1984.

14 would warrant the assignment of counsel pursuant to the court
15 rules.

16 Representation for indigent defendants (a) may be provided in
17 any federal court in any matter arising out of or relating to an
18 action pending or recently pending in a court of criminal jurisdic-
19 tion of this State and (b) may be provided in any federal court in
20 this State where indigent defendants are charged with the com-
21 mission of a federal criminal offense and where the representation
22 is under a plan adopted pursuant to the Criminal Justice Act of
23 1964 (18 U. S. C. 3006A).

1 3. Section 14 of P. L. 1967, c. 43 (C. 2A:158A-14) is amended to
2 read as follows:

3 14. Eligibility for the services of the Office of the Public Defender
4 shall be determined on the basis of the need of the defendant. Need
5 shall be measured according to **[the]**:

6 a. *The financial ability of the defendant to engage and com-*
7 *pensate competent private counsel **[and]**;*

8 b. *The current employment, salary and income of the defendant*
9 *including prospects for continued employment if admitted to bail;*

10 c. *The liquid assets of the defendant, including all real and per-*
11 *sonal property and bank accounts;*

12 d. *The ability of the defendant to make bail and the source of bail*
13 *posted;*

14 e. ***[The]** **Where appropriate the* willingness and ability of*
15 *the defendant's immediate family, friends or employer to assist the*
16 *defendant in meeting defense costs;*

17 f. ***[An]** **Where appropriate an* assessment of the probable*
18 *and reasonable costs of providing a private defense, based upon the*
19 *status of the defendant, the nature and extent of the charges and*
19a *the likely issues;*

20 g. *Where appropriate, the ability of the defendant to demonstrate*
21 *convincingly that he has consulted at least three private attorneys,*
22 *none of whom would accept the case for a fee within his ability to*
23 *pay; and*

24 h. *The ability of the defendant to provide all other necessary*
25 *expenses of representation. **[Such ability shall be recognized to be***
26 *a variable depending on the nature, extent and liquidity of assets*
27 *and on the disposable net income of the defendant on the one hand,*
28 *and on the nature of the charge, the effort and skill required to*
29 *gather pertinent information, render advice, conduct trial or render*
30 *other legal services, and probable expenses to be incurred, on the*
31 *other hand.]*

32 In the event that a determination of eligibility cannot be made

33 before the time when the first services are to be rendered, or if an
 34 initial determination is found to be erroneous, the office shall under-
 35 take the same provisionally, and if it shall subsequently ****[deter-**
 36 **mine]**** ***be determined*** that the defendant is ineligible it shall
 37 so inform the defendant, and the defendant shall thereupon be
 38 obliged to engage his own counsel and to reimburse the office for
 39 the cost of the services rendered to that time.

1 ****[4. Section 15 of P. L. 1967, c. 43 (C. 2A:158A-15) is amended**
 2 to read as follows:

3 15. **[The Office of the Public Defender shall make such investiga-**
 4 **tion of the financial status of each defendant at such time or times**
 5 **as the circumstances shall warrant and in connection therewith**
 6 **shall have the authority to require a defendant to execute and**
 7 **deliver such written requests or authorizations as may be requisite**
 8 **under applicable law to provide the office with access to records of**
 9 **public or private sources, otherwise confidential, as may be of aid**
 10 **to it in evaluating eligibility.]** *In each county the Assignment Judge*
 11 *shall **[appoint one or more judges]**** ***designate a judge or court***
 12 *support office* who shall make the **[final]**** determination on each*
 13 *request by a defendant for an appointed attorney. *The determina-*
 14 *tion shall be final except in cases where there has been a determina-*
 15 *tion to deny the services of the Public Defender. A determination*
 16 *to deny the services of the Public Defender shall be subject to final*
 17 *review by the Assignment Judge or his designee.* The court, or a*
 18 *designated court support office shall make an investigation of the*
 19 *financial status of each defendant requesting an appointed attorney,*
 20 *which investigation shall include the factors enumerated in section*
 21 *14 of P. L. 1967, c. 43 (C. 2A:158A-14). The court, in its discretion,*
 22 *may ask for the assistance of the Public Defender in conducting the*
 23 *investigation.*

24 The **[office]** **judge or* court *support office** is authorized to
 25 obtain information from any public record office of the State or of
 26 any subdivision or agency thereof on request and without payment
 27 of the fees ordinarily required by law.**]****

1 ****4. (New section) Notwithstanding the provisions of section 15**
 2 **of P. L. 1967, c. 43 (C. 2A:15.1-15) which authorizes the Office of**
 3 **the Public Defender to make investigations of the financial status**
 4 **of each defendant, in each county the Assignment Judge shall**
 5 **designate a judge or court support office who shall make the deter-**
 6 **mination on each request by a defendant for an appointed attorney.**
 7 **The determination shall be final except in cases where there has**
 8 **been a determination to deny the services of the Public Defender.**
 9 **A determination to deny the services of the Public Defender shall**

10 *be subject to final review by the Assignment Judge or his designee.*
11 *The court, or a designated court support office shall make an investi-*
12 *gation of the financial status of each defendant requesting an ap-*
13 *pointed attorney, which investigation shall include the factors*
14 *enumerated in section 14 of P. L. 1967, c. 43 (C. 2A:158A-14). The*
15 *court, in its discretion, may ask for the assistance of the Public*
16 *Defender in conducting the investigation.*

17 *The judge or court support office is authorized to obtain infor-*
18 *mation from any public record office of the State or of any sub-*
19 *division or agency thereof on request and without payment of the*
20 *fees ordinarily required by law.***

1 **5. (New section) Within 30 days of the effective date of this*
2 *section, the Administrative Office of the Courts shall establish a*
3 *system in one county and be responsible for making eligibility*
4 *determinations for the services of the Office of the Public Defender*
5 *in that county.**

1 ***6. (New section) After section 4 has been in effect for three*
2 *years, the Administrative Office of the Courts shall, within 60 days,*
3 *report to the Legislature on the use of court personnel to deter-*
4 *mine eligibility for the services of the Office of the Public De-*
5 *fender.***

1 **[5.]* **[*6.*]** *7.** This act shall take effect *[September*
2 *1, 1984]* *on the 270th day after enactment except for section 5*
3 *which shall take effect immediately*. **Section 4 of this act shall*
4 *expire five years after it becomes effective.***

STATEMENT

Presently, the Office of the Public Defender itself is responsible for determining which criminal defendants are eligible to receive its services. This bill would shift responsibility for determining eligibility for a public defender to the Judiciary by requiring that in each county the Assignment Judge designate a judge or a court support office to be responsible for making the determination of whether to appoint counsel. In cases where there is a determination to deny the services of the Public Defender, the determination is to be subject to the final review of the Assignment Judge or his designee. The court is also to designate a court support office which is to conduct an investigation of a defendant's financial status. At the court's discretion, the Public Defender may be asked for assistance in conducting the investigation.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1547

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 1986

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1547.

Presently, the Office of the Public Defender itself is responsible for determining which criminal defendants are eligible to receive its services. As amended by the committee, this bill would shift responsibility for determining eligibility for a Public Defender to the Judiciary by requiring that in each county the Assignment Judge designate a judge or a court support office to be responsible for making the determination of whether to appoint counsel. In cases where there is a determination to grant or deny the services of the Public Defender, the determination is to be subject to the final review of the Assignment Judge or his designated judge. The court is also to designate a court support office which is to conduct an investigation of a defendant's financial status. As the court's discretion, the Public Defender may be asked for assistance in conducting the investigation.

The committee amended the bill to permit the Administrative Office of the Courts to test this eligibility determination system in more than one county, and to clarify that the office does not have responsibility for making determinations or requests for public defender eligibility.

The committee also amended the bill to make it clear that the purpose of the pilot project established under the bill is to develop a program for Statewide implementation and to gauge the fiscal impact of the Judiciary's assumption of responsibility for making eligibility determinations.

Finally, other committee amendments enable the Judiciary to seek an appropriation, if one is necessary, following the evaluation of the pilot projects.

This bill was pre-filed for introduction in the 1986 session pending technical review. As reported and amended, the bill includes the changes required by technical review which has been performed.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1547

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MARCH 26, 1987

The Senate Judiciary Committee reports favorably Assembly Bill No. 1547 OCR.

Presently, the Office of the Public Defender itself is responsible for determining which criminal defendants are eligible to receive its services. This bill would shift responsibility for determining eligibility for a public defender to the judiciary by requiring that in each county the Assignment Judge designate a judge or a court support office to be responsible for making the determination of whether to appoint counsel. If there is a determination to deny the services of the Public Defender, the determination is to be subject to the final review of the Assignment Judge or his designee. The court is also to designate a court support office which is to conduct an investigation of a defendant's financial status. At the court's discretion, the Public Defender may be asked for assistance in conducting the investigation.

The bill expands the criteria to be considered in determining eligibility. Presently, eligibility for the services of the Public Defender is determined on the basis of the defendant's "need". The appointment of counsel to an indigent defendant is made in consideration of "the financial ability of the defendant to engage and compensate competent private counsel and to provide all other necessary expenses of representation." The bill retains this basic concept but also details other factors which are to be investigated in ascertaining the financial status of the defendant. Among the factors to be considered are the defendant's employment, liquid assets and income from all sources. In certain cases the ability of the defendant to demonstrate convincingly that the defendant has consulted at least three private attorneys, none of whom would accept the case for a fee within the defendant's ability to pay, will also be considered in determining whether counsel is to be assigned.

The bill has language indicating that it is within the authority of the Public Defender to weigh the factors of need and real value to a defense against the financial constraints of the Public Defender's Office in determining what are the necessary services and facilities of representation.

Additionally, the bill also provides that the shift of responsibility for determining eligibility for Public Defender services to the courts be done on an experimental five year basis. After the courts have handled eligibility determinations for three years, the Administrative Office of the Courts is required to issue a report to the Legislature on these procedures.
