

2B:12-28

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

(Public defenders)

NJSA: 2B:12-28

LAWS OF: 1997 CHAPTER: 256

BILL NO: S1886

SPONSOR(S): Martin

DATE INTRODUCED: March 10, 1997

COMMITTEE: ASSEMBLY: ---

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage  
First reprint (cc) enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 5, 1997

SENATE: May 22, 1997

DATE OF APPROVAL: September 23, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

Title 2B.  
Chapter 24 (New)  
Municipal Public  
Defenders  
§§1-17  
C. 2B:24-1 To  
2B:24-17  
§18  
Repealer  
§19  
Note To §§1-18

P.L. 1997, CHAPTER 256, *approved September 23, 1997*  
Senate, No. 1886 (*First Reprint*)  
(CORRECTED COPY)

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:

27 "Indigent defendant" means a person who is entitled to be  
28 represented by a municipal public defender pursuant to this act, and

**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 does not have the present financial ability to secure competent legal  
2 representation, as determined by section 9 of this act.

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

5 "Municipal public defender" means a person, as defined in section  
6 4 of this act, appointed to represent indigent defendants in proceedings  
7 over which the municipal court has jurisdiction.

8

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

20

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

29 b. A municipal public defender of a joint municipal court shall be  
30 appointed upon the concurrence of the governing bodies of each of the  
31 municipalities in accordance with applicable laws, ordinances or  
32 resolutions.

33 c. In accordance with applicable laws, ordinances and resolutions,  
34 a municipality may appoint additional municipal public defenders as  
35 necessary to administer justice in a timely and effective manner in its  
36 municipal court. Additional appointments shall be subject to the  
37 provisions of this act, including appointments in a joint municipal  
38 court.

39 d. Appointments to fill vacancies in the position of municipal public  
40 defender shall be made in accordance with the provisions of this act  
41 as soon as practicable.

42 e. In addition to any other means provided by law for the removal  
43 from office of a public official, a municipal public defender may be  
44 removed by the governing body of a municipality for good cause  
45 shown and after a public hearing, and upon due notice and an  
46 opportunity to be heard. Failure to reappoint a municipal public

1 defender for a second or subsequent term does not constitute a  
2 "removal from office" within the meaning of this subsection.

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

7

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

19

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

33

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

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

44

45 7. a. <sup>1</sup>[The municipal public defender shall represent an indigent  
46 defendant charged in municipal court with a disorderly persons or  
petty disorderly persons offense or with a crime as specified in

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

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

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

23  
24 8. All communications between the indigent defendant and the  
25 municipal public defender or any other attorney appointed to act as a  
26 municipal public defender shall be fully protected by the attorney-client  
27 privilege to the same extent and degree as though counsel has been  
28 privately engaged. This shall not preclude the use by the municipal  
29 public defender of privileged material for the preparation and  
30 disclosure of statistical, case study and other sociological data,  
31 provided that in any such use there shall be no disclosure of the  
32 identity of or means for discovery of the identity of particular  
33 defendants.

34  
35 9. Eligibility for services of the municipal public defender shall be  
36 determined by the municipal court on the basis of the need of the  
37 defendant, except as provided in section 11 of this act. Need shall be  
38 measured according to section 14 of P.L.1967, c.43 (C.2A:158A-14)  
39 and guidelines promulgated by the New Jersey Supreme Court.

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

1 for the cost of the services rendered to that time.

2

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

13

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

26

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

33

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

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

1 certified mail, or serve personally, a copy of the notice with a  
2 statement of the date of the filing to or upon the defendant at the  
3 defendant's last known address. If the municipal attorney shall fail to  
4 give notice, the lien is void.

5  
6 14. The municipal attorney is authorized to compromise and settle  
7 any claim for services performed pursuant to this act whenever the  
8 financial circumstances of the person receiving the services are such  
9 that, in the judgment of the municipal attorney, the best interest of the  
10 State will be served by compromise and settlement.

11  
12 15. The Clerk of the Superior Court shall provide separate books  
13 for the recording of liens established pursuant to section 13 of this act,  
14 which books shall be properly indexed in the name of the judgment  
15 debtor. The municipal attorney shall not be required to pay filing or  
16 recording fees.

17  
18 16. The municipal attorney in the name of the municipality may do  
19 all things necessary to collect any money due to the municipality by  
20 way of reimbursement for services rendered by a municipal public  
21 defender pursuant to this act. The municipal attorney may enter into  
22 arrangements with any State or county agency to handle collections on  
23 a cost basis. The municipal attorney shall have all the remedies and  
24 proceedings available for collection which are available for or upon the  
25 recovery of a judgment in a civil action and shall also be permitted to  
26 collect counsel fees and costs from the defendant for such collection  
27 action so that the same are not borne by the municipality.

28  
29 17. <sup>1</sup>a.<sup>1</sup> A municipality may require by ordinance a person applying  
30 for representation by a municipal public defender <sup>1</sup>or court approved  
31 counsel<sup>1</sup> to pay an application fee of not more than ~~[\$100.00]~~  
32 \$200.00, but only in an amount necessary to pay the costs of municipal  
33 public defender services<sup>1</sup>. <sup>1</sup>[The] In accordance with guidelines  
34 promulgated by the Supreme Court, the<sup>1</sup> municipal court may waive  
35 any required application fee, in whole or in part, only if the court  
36 determines, in its discretion, upon a clear and convincing showing by  
37 the applicant that the application fee represents an unreasonable  
38 burden on the person seeking representation. <sup>1</sup>[The funds collected  
39 pursuant to this section are to meet the costs incurred in providing a  
40 municipal public defender] The municipal court may permit a person  
41 to pay the application fee over a specific period of time not to exceed  
42 four months<sup>1</sup>.

43 <sup>1</sup>b. Funds collected pursuant to subsection a. of this section shall  
44 be deposited in a dedicated fund administered by the chief financial  
45 officer of the municipality or in the case of a joint municipal court in  
46 a manner agreed to by the constituent municipalities. Such funds shall

1 be used exclusively to meet the costs incurred in providing the services  
2 of a municipal public defender including, when required, expert and lay  
3 investigation and testimony.

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

13

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

15

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

19

20

21

22

23 Requires the appointment of a municipal public defender in each  
24 municipality.



1 proceedings available for collection which are available for or upon the  
2 recovery of a judgment in a civil action and shall also be permitted to  
3 collect counsel fees and costs from the defendant for such collection  
4 action so that the same are not borne by the municipality.

5  
6 17. A municipality may require by ordinance a person applying for  
7 representation by a municipal public defender to pay an application fee  
8 of not more than \$100.00. The municipal court may waive any  
9 required application fee, in whole or in part, only if the court  
10 determines, in its discretion, upon a clear and convincing showing by  
11 the applicant that the application fee represents an unreasonable  
12 burden on the person seeking representation. The funds collected  
13 pursuant to this section are to meet the costs incurred in providing a  
14 municipal public defender.

15  
16 18. N.J.S.2B:12-28 is repealed.

17  
18 19. This act shall take effect on the 180th day after enactment.

19  
20  
21 *SPONSOR'S* STATEMENT

22  
23 The bill requires each municipality to have a municipal public  
24 defender to represent indigent defendants in certain municipal court  
25 proceedings. The bill defines the role, responsibilities and duties of the  
26 office, and provides a mechanism for funding.

27 The bill requires that each municipal court shall have a least one  
28 municipal public defender appointed by the municipal governing body.  
29 Municipal public defenders would be appointed for a term of one year  
30 and they would be compensated by the municipality. Municipalities  
31 may appoint more than one municipal public defender. If a  
32 municipality does appoint more than one municipal defender, a chief  
33 municipal public defender who would have authority over the others,  
34 would be designated by the municipality.

35 If there is a vacancy in the office of municipal public defender, if the  
36 municipal public defender is temporarily unavailable or if a conflict of  
37 interest precludes a municipal public defender from handling a  
38 proceeding, the municipal court may appoint any qualified attorney to  
39 provide representation. Unless rates are otherwise established by the  
40 municipality, the attorney shall be entitled to compensation in the same  
41 rate as the rate used in conflict cases in the public defender office.  
42 The attorney shall meet all requirements and carry out all the duties of  
43 the municipal public defender for the case that is the subject of the  
44 appointment.

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

1 be heard.

2 The municipal public defender is required to represent, except in  
3 cases of temporary unavailability or conflict of interest, any indigent  
4 defendant charged in municipal court with an offense where there is a  
5 likelihood that the person, if convicted, will be subject to  
6 imprisonment. Eligibility is determined on the basis of need in  
7 accordance with specific factors. The bill specifies means by which,  
8 in appropriate cases, the municipal attorney may recover all or part of  
9 the money in connection with the representation. The bill provides  
10 that the municipal attorney may file a notice setting forth services  
11 rendered to the defendant and the reasonable value thereof with the  
12 Clerk of the Superior Court. The filing of the notice with the Clerk of  
13 the Superior Court shall constitute a lien on property for a period of  
14 10 years from the date of filing.

15 The bill repeals N.J.S.2B:12-28 but recompiles the portion of that  
16 statute which provides for an application fee in section 17 of the bill.  
17 A municipality by ordinance may require a person applying for  
18 representation by a municipal public defender to pay an application fee  
19 of not more than \$100.00. The municipal court may waive any  
20 required application fee, in whole or in part, if the court determines,  
21 upon a clear and convincing showing by the applicant that the  
22 application fee represents an unreasonable burden on the person  
23 seeking representation.

24

25

26

27

28 Requires the appointment of a municipal public defender in each  
29 municipality.

[Passed Both Houses]

[Corrected Copy]

[First Reprint]

SENATE, No. 1886

STATE OF NEW JERSEY

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 S.H. 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  
18 appointed upon the concurrence of the governing bodies of each  
19 municipality. The chief municipal public defender shall have authority  
20 over other municipal public defenders serving that court with respect  
21 to the 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  
29 municipality shall be responsible for payment for services pursuant to  
30 this section.<sup>1</sup> The factors of need and real value to a defendant may be  
31 weighed against the financial constraints of the municipality in  
32 determining the necessary services and facilities of representation.  
33 <sup>1</sup>The final determination as to necessity for services required pursuant  
34 to this 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  
42 municipality to pay for expert and lay investigation or testimony for a  
43 period of one year after the effective date of P.L. , c. (C. )  
44 (now pending 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  
32 applying for representation by a municipal public defender <sup>1</sup>or court  
33 approved counsel<sup>1</sup> to pay an application fee of not more than  
34 <sup>1</sup>[\$100.00] \$200.00, but only in an amount necessary to pay the costs  
35 of municipal public defender services<sup>1</sup>. <sup>1</sup>~~【The】~~ In accordance with  
36 guidelines promulgated by the Supreme Court, the<sup>1</sup> municipal court  
37 may waive any required application fee, in whole or in part, only if the  
38 court determines, in its discretion, upon a clear and convincing  
39 showing by the applicant that the application fee represents an  
40 unreasonable burden on the person seeking representation. <sup>1</sup>~~【The~~  
41 ~~funds collected pursuant to this section are to meet the costs incurred~~  
42 ~~in providing a municipal public defender】~~ The municipal court may  
43 permit a person to pay the application fee over a specific period of  
44 time not to exceed 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 <sup>1</sup>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.

# 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.

# FISCAL NOTE TO

[First Reprint]

SENATE, No. 1886

## STATE OF NEW JERSEY

DATED: JUNE 9, 1997

Senate Bill No. 1886 (1R) of 1997 requires each municipality to have a municipal public defender to represent indigent defendants in certain municipal court proceedings. The bill requires that each municipal court 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 and be compensated 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.

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.

The 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. These application fees are to be deposited in a dedicated fund to be used for 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.

The Administrative Office of the Courts (AOC) states that based on a study conducted in 1996 concerning the use of public defenders, about 86,000 public defender assignments were made during FY 1995. Based on that number, if municipalities charged the maximum amount allowable for public defender applications, a potential revenue of \$17.2 million per year would be generated.

The AOC further notes that municipalities currently pay public defenders varying rates, ranging from \$37.61 per case to \$67.32 per case. Based on these figures, it can be estimated that the annual cost for public defender services could range between \$3.24 million and \$5.79 million. As a result, it appears that the proposed \$200 public defender application fee would be sufficient to fund the cost of public defender services.

The Office of Legislative Services concurs.

This fiscal note has been prepared pursuant to P.L.1980, c.67.