

January 31, 1969

~~DEPOSITORY COPY~~

LEGISLATIVE HISTORY OF R.S. 2A:158A-1 et seq.  
(Public defender)

There were numerous bills introduced from 1954 to 1964 providing for payment of counsel assigned to indigent persons. These were not public defender bills and are not included in this history. In 1964 two "Indigent Accused Systems" were proposed in bills. This history begins with these two bills.

1964 - A751

June 22 - Introduced by Wallword & 8 others.  
June 22 - Judiciary Committee.  
Died in committee.  
No amendment.  
Statement: copy attached.

COPY NO. 2

1964 - A752

June 22 - Introduced by Wallwork & 9 others.  
June 22 - Judiciary Committee.  
Died in Committee.  
No amendment.  
Statement: copy attached.

1965 - A488

February 15 - Introduced by Bressler & Rimm.  
February 15 - Judiciary Committee.  
Died in committee.  
No statement.  
No amendment.

1965 - AJR 7

January 25 - Introduced by Musto & Hauser.  
January 25 - Judiciary Committee.  
Died in committee.

1965 - S68

January 18 - Introduced by Stamler.  
January 18 - State, Co. & Mun. Govt. Committee.  
Died in committee.  
No amendment.  
Statement: copy attached.

1965 - S70

January 18 - Introduced by Stamler.  
January 18 - State, Co. & Mun. Govt. Committee.  
April 26 - Reported with committee amendment, 2nd reading.  
Statement: copy attached. Amendment: copy attached.

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1965 - SR 3

May 17 - Introduced by Stamler.  
May 17 - Passed in Senate.  
May 24 - Filed.

1966 - A49

January 18 - Introduced by Brady & 8 others.  
January 18 - Judiciary Committee.  
Died in committee.  
Statement: copy attached.  
No amendments.

1966 - A286'

February 7 - Introduced by Rimm, Sears & White.  
February 7 - Judiciary Committee.  
Died in committee.  
No statement.

1966 - A798

May 16 - Introduced by Rimm & 5 others.  
May 16 - Revision & Amendment of Law Committee.  
Statement  $\neq$  copy attached.  
No amendment.

1966 - AJR 2

January 18 - Introduced by Hauser.  
January 18 - Judiciary Committee.  
Died in committee.

1966 - S79

January 18 - Introduced by Stamler.  
January 18 - Law and Public Safety Committee.  
Died in committee.  
No statement.  
No amendment.

1966 - S189

February 14 - Introduced by Stamler.  
February 14 - Law and Public Safety Committee.  
Died in Committee.  
No statement.  
No amendment.

1966 - S406

May 23 - Introduced by Stamler.  
May 23 - Law and Public Safety Committee.  
Died in committee.  
Statement: copy attached.  
No amendment.

1966 - SJR 19

February 14 - Introduced by Musto.  
February 14 - Judiciary Committee.  
Died in committee.

1967 - A10

January 16 - Introduced by Carlton & 7 others.  
January 16 - Judiciary Committee.  
Died in committee.  
Statement: copy attached.  
No amendment.

1967 - A111

January 16 - Introduced by Perskie, Yesko & Parker  
January 16 - Judiciary Committee.  
Died in committee.  
Statement: copy attached.  
No amendment.

1967 - AJR 8

January 30 - Introduced by Hauser.  
January 30 - Judiciary Committee.  
Died in committee.

1967 - S87

January 16 - Introduced by Stamler.  
January 16 - Law and Public Safety Committee.  
Died in Committee.  
No statement.  
No amendment.

1967 - S97

January 16 - Introduced by Stahler.  
January 16 - Law & Public Safety Committee.  
Died in Committee.  
No statement.  
No amendment.

1967 - S101

January 16 - Introduced by Stamler.  
January 16 - Law and Public Safety Committee.  
Died in Committee.

The bill which became law was:

- L. 1967, Chapter 43 - S287(OCR)
  - February 6 - Introduced by Parsekian & 7others.
  - March 13 - Passed in Senate.
  - April 10 - Passed in Assembly, amended.
  - April 20 - Assembly amendment passed in Senate.
  - May 2 - Approved, Chapter 43.
  - Statement: copy of original bill with statement attached.
  - Amendment: copy attached.

To bring this up to date the following general information on 1968 bills relating to the Public Defender is included.

ACR 68 creates commission to study office of Public Defender. Passed Assembly and Senate (voice vote). Filed December 13, 1968.

S294  
Died in Committee.  
Statement. copy of orig. bill with statement attached.

S550, Chapter 371 - 1968  
Amends Chapter 13, L. 1968.  
Approved December 27, 1968.  
No statement.

*See*  
974.90 NJ Commission on the  
C866 Defense of Indigent Persons  
1966 Accused of Crime  
Report

S910, Chapter 378 - L. 1968  
Appropriates \$550,000.  
Approved December 27, 1968.  
No statement.  
Not amended during passage.

*974.90 NJ Commission on the  
C866 Defense of Indigent  
1966a Persons Accused of Crime  
Public hearing. 11/25/66*

Hearings and reports:

974.90 N.J. Joint Committee to Study Crime and the system  
C929 of criminal justice in N.J.  
1968d

v. 2; p. 201-202. Discusses expansion of jurisdiction of Public Defender.

v. 2; p. 77, 136, 140-141, 198-201. Discusses expansion of jurisdiction of the Public Defender's office and counsel for all indigents regardless of offense.

v. 4; p. 36, 37, 40-43. Discusses jurisdiction in juvenile cases - OEO or Public Defender.

[OFFICIAL COPY REPRINT]

SENATE, No. 287

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1967

By Senators PARSEKIAN, FORSYTHE, FERNICOLA,

LYNCH and KIEFER

Referred to Committee on Law and Public Safety

AN ACT concerning the representation of indigent defendants in criminal cases, creating the Office of \***Defender General**\*, *the Public Defender*\*, prescribing its functions, powers and duties, and providing for an appropriation.

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

3 1. It is hereby declared to be the policy of this State to provide  
4 for the realization of the constitutional guarantees of counsel in  
5 criminal cases for indigent defendants by means of the system and  
6 program established and authorized by this act to the end that no  
7 innocent person shall be convicted, and that the guilty, when  
8 convicted, shall be convicted only after a fair trial according to  
9 the due process of the law.

10 2. As used herein "indigent defendant" means a person who  
11 is formally charged with the commission of an indictable offense,  
12 and who does not have the present financial ability to secure  
13 competent legal representation and to provide all other necessary  
14 expenses of representation.

15 3. There is hereby established in the Executive Branch of the  
16 State Government the Office of \***Defender General**\* *the Public*  
17 *Defender*\*. For the purpose of complying with the provisions of  
18 Article V, Section IV, paragraph 1 of the New Jersey Constitu-  
19 tion, the Office of \***Defender General**\* *the Public Defender*\* is  
20 hereby allocated within the Department of Institutions and Agen-  
21 cies, but, notwithstanding said allocation, the office shall be inde-  
22 pendent of any supervision or control by the department or by any  
23 board or officer thereof.

24 4. The head of the office shall be the \***Defender General**\*  
25 *Public Defender*\*, who shall be an attorney-at-law of this State  
26 and experienced in the practice of law in this State. He shall be

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

1 appointed by the Governor with the advice and consent of the  
 2 Senate for a term of 5 years and until the appointment and qualifi-  
 3 cation of his successor. He shall devote his entire time to the duties  
 4 of his office and shall receive such salary as shall be provided by  
 5 law. Any vacancy occurring in the office of \***[Defender General]**\*  
 6 \**the Public Defender*\* shall be filled in the same manner as the  
 7 original appointment, but for the unexpired term only.

8 5. It shall be the duty of the \***[Defender General]**\* \**Public*  
 8A *Defender*\* to provide for the legal representation of any indigent  
 8B defendant who is formally charged with the commission of an in-  
 8C dictable offense.

9 All necessary services and facilities of representation (including  
 10 investigation and other preparation) shall be provided in every  
 11 case.

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

24 6. The \***[Defender General]**\* \**Public Defender*\* shall appoint  
 25 deputy \***[defenders general]**\* \**public defenders*\* and assistant  
 26 deputy \***[defenders general]**\* \**public defenders*\* in such number  
 27 as he shall require to assist him in the performance of the duties  
 28 of his office. Deputies and assistant deputies shall be attorneys-at-  
 28A law of this State, shall serve at the pleasure of the \***[Defender**  
 28B **General]**\* \**Public Defender*\* and shall receive such salaries as  
 29 he shall from time to time designate.

30 7. The \***[Defender General]**\* \**Public Defender*\* shall:

31 (a) Appoint such investigators, stenographic and clerical as-  
 32 sistants and other personnel as may be required for the conduct  
 33 of the office, subject to the provisions of Title 11, Civil Service, of  
 34 the Revised Statutes, and other applicable statutes;

35 (b) Establish and maintain suitable headquarters for the office  
 36 and such regional quarters within the State as he shall deem neces-  
 37 sary for the proper functioning of the office; said office or regional  
 38 quarters shall not be located in any municipal or county building  
 39 or office;

1 (c) Maintain one or more trial pools of lawyers who shall be  
1A available to serve as counsel on a case basis as needed;

1B (d) Engage counsel from said trial pools on a case basis as may  
1C be necessary for the proper performance of the duties of the office  
1D and compensate them for their services;

2 (e) Accept the services of volunteer workers or consultants at  
3 no compensation or at nominal or token compensation and reim-  
4 burse them for their proper and necessary expenses;

5 (f) Consult and co-operate with professional bodies and groups  
6 concerning and concerned with the causes of criminal conduct, the  
7 development of effective means for reducing and discouraging the  
8 commission of crime, the rehabilitation and correction of persons  
9 charged and convicted of crime, the administration of criminal  
10 justice and the administration and conduct of the Office of \***[De-**  
11 **fender General]**\* *\*the Public Defender\**;

12 (g) Keep and maintain proper financial records and records in  
13 respect to particular cases handled and develop records for use in  
14 the calculation of direct and indirect costs of all or any aspect of  
15 the operation of the office;

16 (h) On the basis of available data or estimates to prepare  
17 schedules of rates from time to time of amounts to be paid for  
18 services rendered other than by the staff, taking into account the  
19 nature of the services, the time involved, trouble and risk, the skill  
20 and experience required, and other pertinent factors;

21 (i) Have general responsibility for the operation of the office;

22 (j) Formulate and adopt rules and regulations as are necessary  
23 to effectuate the purposes of this act and for the efficient conduct  
24 of the work and general administration of the office, its professional  
25 staff and other employees;

26 (k) Be the request officer of the office within the meaning of such  
27 term as defined in chapter 112 of the laws of 1944.

28 (l) Have the authority to make all necessary arrangements to  
29 co-ordinate services of the office with any Federal program to  
30 provide counsel to the indigent, and to arrange for the receipt by  
31 the office, wherever possible, of sums allowable under such Federal  
32 program, whether by direct allowance, by assignment or transfer,  
33 or otherwise.

34 8. In selecting deputy \***[defenders general]**\* *\*public defenders\**  
35 and assistant deputy \***[defenders general]**\* *\*public defenders\** or  
36 lawyers to be available to represent defendants on a case basis,  
37 the \***[Defender General]**\* *\*Public Defender\** shall make his selec-  
38 tions on a basis calculated to provide the respective defendants  
39 with competent counsel in the light of the nature, complexity and

1 other characteristics of the cases, the services to be performed, the  
2 status of the matters, and other relevant factors.

3 9. To achieve a proper balance between the services to be  
4 provided pursuant to this act and the efficiency of the operation  
5 as a whole, as well as to stimulate the continual development of  
6 professional experience and interest in the administration of  
7 criminal justice, the \***[Defender General]**\* *Public Defender*\* shall  
8 divide the case workload of the office between the professional staff  
9 and the trial pool or pools. In any case where the matter involved  
10 requires some special experience or skill not available on the  
11 professional staff, the \***[Defender General]**\* *Public Defender*\*  
12 shall engage counsel on a case basis, and shall assign a suitable  
13 member of the staff to the extent feasible to assist counsel so en-  
14 gaged. Counsel shall also be engaged on a case basis whenever  
15 needed to meet case load demands, or to provide independent coun-  
16 sel to multiple defendants whose interests may be in conflict.

17 10. The \***[Defender General]**\* *Public Defender*\* is authorized  
18 to enter into contracts from time to time with private or public  
19 organizations that are equipped to provide legal services for in-  
20 digent defendants or to execute any lawful functions of the office  
21 of the \***[Defender General]**\* *Public Defender*\*, as occasion may  
22 require. Every such contract shall require that the level and quality  
23 of the work shall be at least equal to that of the office of the \***[De-**  
24 **fender General]**\* *Public Defender*\*, and that all services rendered  
25 thereunder shall be under the control and supervision of the  
26 \***[Defender General]**\* *Public Defender*\*.

27 11. The primary duty of all members of staff and of others  
28 engaged on a case basis shall be to the individual defendant, with  
29 like effect and to the same purpose as though privately engaged  
30 by him and without regard to the use of public funds to provide  
31 the service. This shall not preclude the designation or assignment  
32 of different individuals to perform various parts of the service from  
33 time to time, the duty in such cases to be the same as would exist  
34 in the case of a privately engaged law firm.

35 12. All communications between the individual defendant and  
36 any person in or engaged by the Office of \***[Defender General]**\*  
37 *the Public Defender*\* whether on a case basis or by contract shall  
38 be fully protected by the attorney-client privilege to the same  
39 extent and degree as though counsel has been privately engaged.  
40 This shall in no way preclude the use by the office of material in  
41 its files, otherwise privileged, for the preparation and disclosure  
42 of statistical, case study and other sociological data, provided  
43 always that in any such use there shall be no disclosure of identity  
44 or of means for discovery of identity of particular defendants.



1 13. In providing legal services to defendants pursuant to this act,  
2 the Office of \***[Defender General]**\* *\*the Public Defender\** and  
3 every attorney actually engaged in the performance of the same,  
4 whether as a member of the staff or engaged on a case basis or  
5 otherwise, shall adhere at all times to the standards and level of  
6 performance established from time to time by the Supreme Court  
7 of New Jersey in the execution of its duty to supervise the practice  
8 of law; and the office shall furnish to such court materials and data  
9 as may be requisite to the measurement of the adequacy of the  
10 performance hereunder.

11 14. Eligibility for the services of the Office of \***[Defender Gen-**  
12 **eral]**\* *\*the Public Defender\** shall be determined on the basis of  
13 the need of the defendant. Need shall be measured according to  
14 the financial ability of the defendant to engage and compensate  
15 competent private counsel and to provide all other necessary ex-  
16 penses of representation. Such ability shall be recognized to be a  
17 variable depending on the nature, extent and liquidity of assets  
18 and on the disposable net income of the defendant on the one hand,  
19 and on the nature of the charge, the effort and skill required to  
20 gather pertinent information, render advice, conduct trial or render  
21 other legal services, and probable expenses to be incurred, on the  
22 other hand. In the event that a determination of eligibility cannot  
23 be made before the time when the first services are to be rendered,  
24 or if an initial determination is found to be erroneous, the office  
25 shall undertake the same provisionally, and if it shall subsequently  
26 determine that the defendant is ineligible it shall so inform the  
27 defendant, and the defendant shall thereupon be obliged to engage  
28 his own counsel and to reimburse the office for the cost of the  
29 services rendered to that time.

30 15. The Office of \***[Defender General]**\* *\*the Public Defender\**  
31 shall make such investigation of the financial status of each de-  
32 fendant at such time or times as the circumstances shall warrant  
33 and in connection therewith shall have the authority to require a  
34 defendant to execute and deliver such written requests or authori-  
35 zations as may be requisite under applicable law to provide the  
36 office with access to records of public or private sources, otherwise  
37 confidential, as may be of aid to it in evaluating eligibility. The  
38 office is authorized to obtain information from any public record  
39 office of the State or of any subdivision or agency thereof on re-  
40 quest and without payment of the fees ordinarily required by law.

41 16. In all cases where it appears that the defendant has or  
42 reasonably expects to have means to meet some part, though not  
43 all, of the cost of the services rendered to him he shall be required

1 to reimburse the office, either by a single payment or in installments,  
2 in such amounts as he can reasonably be expected to pay; but no  
3 default or failure in the making of any such payment shall in any  
4 wise affect or reduce the rendering of the services to him.

5 17. The reasonable value of the services rendered to a defendant  
6 pursuant to this act shall in all cases be a lien on any and all  
7 property to which the defendant shall have or acquire an interest.  
8 To effectuate such lien the \***Defender General**\* \*Public De-  
9 fender\* shall submit to the court having jurisdiction in the matter  
10 an affidavit setting forth the services rendered to the defendant  
11 and the reasonable value thereof. The court shall determine and  
12 adjudge the reasonable value of said services. Upon adjudication  
13 the lien shall be filed or docketed with the Clerk of the Superior  
14 Court and from the date thereof shall constitute a lien on said  
15 property for a period of 10 years unless sooner discharged and  
16 except for such time limitation shall have the force and effect of  
17 a judgment at law.

18 18. The Clerk of the Superior Court shall provide separate books  
19 for the recording of said liens which books shall be properly indexed  
20 in the name of the judgment debtor. The \***Defender General**\*  
21 \*Public Defender\* shall not be required to pay filing or recording  
22 fees.

23 19. The \***Defender General**\* \*Public Defender\* in the name  
24 of the State shall do all things necessary and proper to collect all  
25 moneys due to the State by way of reimbursement for services  
26 rendered pursuant to this act. He may enter into arrangements  
27 with one or more agencies of the State or of the counties to handle  
28 said collections on a cost basis to the extent that such arrangements  
29 are calculated to simplify collection procedures. He shall have all  
30 the remedies and may take all of the proceedings for the collection  
31 thereof which may be had or taken for or upon the recovery of a  
32 judgment in a civil action and may institute and maintain any  
33 action or proceeding in the courts necessary therefor.

34 20. The \***Defender General**\* \*Public Defender\* is authorized  
35 to compromise and make settlement of any claim for services per-  
36 formed for any person pursuant to this act whenever the financial  
37 circumstances of said person are such that in the judgment of the  
38 \***Defender General**\* \*Public Defender\* the best interest of the  
39 State will be served by such compromise and settlement.

40 21. Notwithstanding the provisions of section 2A:168-8 of the  
41 New Jersey Statutes or of any other law, when any court which has  
42 ordered or shall order the forfeiture of a recognizance in any case  
43 in which the defendant is represented pursuant to the provisions

1 of this act, the amount whereof has been or shall be paid into the  
2 county treasury of any county in accordance with law, the county  
3 treasurer shall transmit said amount to the State Treasurer for  
4 payment into the State Treasury. If the court shall thereafter, in  
5 its discretion, order the return of the moneys so paid upon the  
6 forfeited recognizance, the State Treasurer shall thereupon repay  
7 the amount of such recognizance, less the taxed costs, if any, on  
8 the proceedings to forfeit the same, to the recognizer or recognizers  
9 or the personal representatives of any deceased recognizer, who  
10 shall have paid the same into the county treasury. Application for  
11 a return of moneys so paid shall be made to the court within 4 years  
12 after the recognizance shall have been declared forfeited.

13 22. The Office of \***Defender General**\* *the Public Defender*  
14 shall report annually to the Legislature, the Governor and the  
15 Supreme Court. Such report may be combined with that of any  
16 other body, agency or study group engaged in reviewing the ad-  
17 ministration of criminal justice. The report shall include all perti-  
18 nent data on the operations of the office, the costs, projected needs,  
19 and to the extent experience may indicate, recommendations for  
20 statutory changes, including changes in the criminal law or changes  
21 in court rules, all as may be appropriate to the improvement of  
22 the system of criminal justice, the control of crime, the rehabilita-  
23 tion of offenders, and other related objectives.

24 23. Any appointments authorized by this act may be made prior  
25 to the effective date hereof.

26 24. There is appropriated to the Office of \***Defender General**\*  
27 *the Public Defender* for the purposes of this act such sums as  
28 shall be included in any general or special appropriation act.

29 25. This act shall take effect July 1, 1967.

*Original bill*

SENATE, No. 287

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1967

By Senators PARSEKIAN, FORSYTHE, FERNICOLA,

LYNCH and KIEFER

Referred to Committee on Law and Public Safety

AN ACT concerning the representation of indigent defendants in criminal cases, creating the Office of Defender General, prescribing its functions, powers and duties, and providing for an appropriation.

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

3 1. It is hereby declared to be the policy of this State to provide  
4 for the realization of the constitutional guarantees of counsel in  
5 criminal cases for indigent defendants by means of the system and  
6 program established and authorized by this act to the end that no  
7 innocent person shall be convicted, and that the guilty, when  
8 convicted, shall be convicted only after a fair trial according to  
9 the due process of the law.

10 2. As used herein "indigent defendant" means a person who  
11 is formally charged with the commission of an indictable offense,  
12 and who does not have the present financial ability to secure  
13 competent legal representation and to provide all other necessary  
14 expenses of representation.

15 3. There is hereby established in the Executive Branch of the  
16 State Government the Office of Defender General. For the purpose  
17 of complying with the provisions of Article V, Section IV, para-  
18 graph 1 of the New Jersey Constitution, the Office of Defender  
19 General is hereby allocated within the Department of Institutions  
20 and Agencies, but, notwithstanding said allocation, the office shall  
21 be independent of any supervision or control by the department  
22 or by any board or officer thereof.

23 4. The head of the office shall be the Defender General, who shall  
24 be an attorney-at-law of this State and experienced in the practice  
25 of law in this State. He shall be appointed by the Governor with  
26 the advice and consent of the Senate for a term of 5 years and until

1 the appointment and qualification of his successor. He shall devote  
2 his entire time to the duties of his office and shall receive such salary  
3 as shall be provided by law. Any vacancy occurring in the office  
4 of Defender General shall be filled in the same manner as the  
5 original appointment, but for the unexpired term only.

6 5. It shall be the duty of the Defender General to provide for  
7 the legal representation of any indigent defendant who is formally  
8 charged with the commission of an indictable offense.

9 All necessary services and facilities of representation (including  
10 investigation and other preparation) shall be provided in every  
11 case.

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

24 6. The Defender General shall appoint deputy defenders general  
25 and assistant deputy defenders general in such number as he shall  
26 require to assist him in the performance of the duties of his office.  
27 Deputies and assistant deputies shall be attorneys-at-law of this  
28 State, shall serve at the pleasure of the Defender General and shall  
29 receive such salaries as he shall from time to time designate.

30 7. The Defender General shall:

31 (a) Appoint such investigators, stenographic and clerical as-  
32 sistants and other personnel as may be required for the conduct  
33 of the office, subject to the provisions of Title 11, Civil Service, of  
34 the Revised Statutes, and other applicable statutes;

35 (b) Establish and maintain suitable headquarters for the office  
36 and such regional quarters within the State as he shall deem neces-  
37 sary for the proper functioning of the office; said office or regional  
38 quarters shall not be located in any municipal or county building  
39 or office;

40 (c) Maintain one or more trial pools of lawyers who shall be  
41 available to serve as counsel on a case basis as needed;

42 (d) Engage counsel from said trial pools on a case basis as may  
43 be necessary for the proper performance of the duties of the office

1 and compensate them for their services;

2 (e) Accept the services of volunteer workers or consultants at  
3 no compensation or at nominal or token compensation and reim-  
4 burse them for their proper and necessary expenses;

5 (f) Consult and co-operate with professional bodies and groups  
6 concerning and concerned with the causes of criminal conduct, the  
7 development of effective means for reducing and discouraging the  
8 commission of crime, the rehabilitation and correction of persons  
9 charged and convicted of crime, the administration of criminal  
10 justice and the administration and conduct of the Office of Defender  
11 General;

12 (g) Keep and maintain proper financial records and records in  
13 respect to particular cases handled and develop records for use in  
14 the calculation of direct and indirect costs of all or any aspect of  
15 the operation of the office;

16 (h) On the basis of available data or estimates to prepare  
17 schedules of rates from time to time of amounts to be paid for  
18 services rendered other than by the staff, taking into account the  
19 nature of the services, the time involved, trouble and risk, the skill  
20 and experience required, and other pertinent factors;

21 (i) Have general responsibility for the operation of the office;

22 (j) Formulate and adopt rules and regulations as are necessary  
23 to effectuate the purposes of this act and for the efficient conduct  
24 of the work and general administration of the office, its professional  
25 staff and other employees;

26 (k) Be the request officer of the office within the meaning of such  
27 term as defined in chapter 112 of the laws of 1944.

28 (l) Have the authority to make all necessary arrangements to  
29 co-ordinate services of the office with any Federal program to  
30 provide counsel to the indigent, and to arrange for the receipt by  
31 the office, wherever possible, of sums allowable under such Federal  
32 program, whether by direct allowance, by assignment or transfer,  
33 or otherwise.

34 8. In selecting deputy defenders general and assistant deputy  
35 defenders general or lawyers to be available to represent defend-  
36 ants on a case basis, the Defender General shall make his selections  
37 on a basis calculated to provide the respective defendants with  
38 competent counsel in the light of the nature, complexity and other  
39 characteristics of the cases, the services to be performed, the status  
40 of the matters, and other relevant factors.

41 9. To achieve a proper balance between the services to be  
42 provided pursuant to this act and the efficiency of the operation  
43 as a whole, as well as to stimulate the continual development of

1 professional experience and interest in the administration of  
2 criminal justice, the Defender General shall divide the case work-  
3 load of the office between the professional staff and the trial pool  
4 or pools. In any case where the matter involved requires some  
5 special experience or skill not available on the professional staff,  
6 the Defender General shall engage counsel on a case basis, and  
7 shall assign a suitable member of the staff to the extent feasible  
8 to assist counsel so engaged. Counsel shall also be engaged on  
9 a case basis whenever needed to meet case load demands, or to  
10 provide independent counsel to multiple defendants whose interests  
11 may be in conflict.

12 10. The Defender General is authorized to enter into contracts  
13 from time to time with private or public organizations that are  
14 equipped to provide legal services for indigent defendants or to  
15 execute any lawful functions of the office of the Defender General,  
16 as occasion may require. Every such contract shall require that  
17 the level and quality of the work shall be at least equal to that of  
18 the office of the Defender General, and that all services rendered  
19 thereunder shall be under the control and supervision of the  
20 Defender General.

21 11. The primary duty of all members of staff and of others  
22 engaged on a case basis shall be to the individual defendant, with  
23 like effect and to the same purpose as though privately engaged  
24 by him and without regard to the use of public funds to provide  
25 the service. This shall not preclude the designation or assignment  
26 of different individuals to perform various parts of the service from  
27 time to time, the duty in such cases to be the same as would exist  
28 in the case of a privately engaged law firm.

29 12. All communications between the individual defendant and  
30 any person in or engaged by the Office of Defender General whether  
31 on a case basis or by contract shall be fully protected by the  
32 attorney-client privilege to the same extent and degree as though  
33 counsel had been privately engaged. This shall in no way preclude  
34 the use by the office of material in its files, otherwise privileged,  
35 for the preparation and disclosure of statistical, case study and  
36 other sociological data, provided always that in any such use there  
37 shall be no disclosure of identity or of means for discovery of  
38 identity of particular defendants.

39 13. In providing legal services to defendants pursuant to this act,  
40 the Office of Defender General and every attorney actually engaged  
41 in the performance of the same, whether as a member of the staff  
42 or engaged on a case basis or otherwise, shall adhere at all times  
43 to the standards and level of performance established from time

1 to time by the Supreme Court of New Jersey in the execution of its  
2 duty to supervise the practice of law; and the office shall furnish  
3 to such court materials and data as may be requisite to the measure-  
4 ment of the adequacy of the performance hereunder.

5 14. Eligibility for the services of the Office of Defender General  
6 shall be determined on the basis of the need of the defendant. Need  
7 shall be measured according to the financial ability of the defendant  
8 to engage and compensate competent private counsel and to provide  
9 all other necessary expenses of representation. Such ability shall  
10 be recognized to be a variable depending on the nature, extent  
11 and liquidity of assets and on the disposable net income of the  
12 defendant on the one hand, and on the nature of the charge, the  
13 effort and skill required to gather pertinent information, render  
14 advice, conduct trial or render other legal services, and probable  
15 expenses to be incurred, on the other hand. In the event that a  
16 determination of eligibility cannot be made before the time when  
17 the first services are to be rendered, or if an initial determination  
18 is found to be erroneous, the office shall undertake the same provi-  
19 sionally, and if it shall subsequently determine that the defendant  
20 is ineligible it shall so inform the defendant, and the defendant  
21 shall thereupon be obliged to engage his own counsel and to  
22 reimburse the office for the cost of the services rendered to that  
23 time.

24 15. The Office of Defender General shall make such investigation  
25 of the financial status of each defendant at such time or times as  
26 the circumstances shall warrant and in connection therewith shall  
27 have the authority to require a defendant to execute and deliver  
28 such written requests or authorizations as may be requisite under  
29 applicable law to provide the office with access to records of public  
30 or private sources, otherwise confidential, as may be of aid to it  
31 in evaluating eligibility. The office is authorized to obtain informa-  
32 tion from any public record office of the State or of any subdivision  
33 or agency thereof on request and without payment of the fees  
34 ordinarily required by law.

35 16. In all cases where it appears that the defendant has or  
36 reasonably expects to have means to meet some part, though not  
37 all, of the cost of the services rendered to him he shall be required  
38 to reimburse the office, either by a single payment or in installments,  
39 in such amounts as he can reasonably be expected to pay; but no  
40 default or failure in the making of any such payment shall in any  
41 wise affect or reduce the rendering of the services to him.

42 17. The reasonable value of the services rendered to a defendant  
43 pursuant to this act shall in all cases be a lien on any and all



1 property to which the defendant shall have or acquire an interest.  
2 To effectuate such lien the Defender General shall submit to the  
3 court having jurisdiction in the matter an affidavit setting forth  
4 the services rendered to the defendant and the reasonable value  
5 thereof. The court shall determine and adjudge the reasonable  
6 value of said services. Upon adjudication the lien shall be filed  
7 or docketed with the Clerk of the Superior Court and from the date  
8 thereof shall constitute a lien on said property for a period of 10  
9 years unless sooner discharged and except for such time limitation  
10 shall have the force and effect of a judgment at law.

11 18. The Clerk of the Superior Court shall provide separate books  
12 for the recording of said liens which books shall be properly indexed  
13 in the name of the judgment debtor. The Defender General shall  
14 not be required to pay filing or recording fees.

15 19. The Defender General in the name of the State shall do all  
16 things necessary and proper to collect all moneys due to the State  
17 by way of reimbursement for services rendered pursuant to this  
18 act. He may enter into arrangements with one or more agencies  
19 of the State or of the counties to handle said collections on a cost  
20 basis to the extent that such arrangements are calculated to simplify  
21 collection procedures. He shall have all the remedies and may  
22 take all of the proceedings for the collection thereof which may  
23 be had or taken for or upon the recovery of a judgment in a civil  
24 action and may institute and maintain any action or proceeding  
25 in the courts necessary therefor.

26 20. The Defender General is authorized to compromise and make  
27 settlement of any claim for services performed for any person  
28 pursuant to this act whenever the financial circumstances of said  
29 person are such that in the judgment of the Defender General the  
30 best interest of the State will be served by such compromise and  
31 settlement.

32 21. Notwithstanding the provisions of section 2A:168-8 of the  
33 New Jersey Statutes or of any other law, when any court which has  
34 ordered or shall order the forfeiture of a recognizance in any case  
35 in which the defendant is represented pursuant to the provisions  
36 of this act, the amount whereof has been or shall be paid into the  
37 county treasury of any county in accordance with law, the county  
38 treasurer shall transmit said amount to the State Treasurer for  
39 payment into the State Treasury. If the court shall thereafter, in  
40 its discretion, order the return of the moneys so paid upon the  
41 forfeited recognizance, the State Treasurer shall thereupon repay  
42 the amount of such recognizance, less the taxed costs, if any, on  
43 the proceedings to forfeit the same, to the recognizer or recognizers

1 or the personal representatives of any deceased recognizor, who  
2 shall have paid the same into the county treasury. Application for  
3 a return of moneys so paid shall be made to the court within 4 years  
4 after the recognizance shall have been declared forfeited.

5 22. The Office of Defender General shall report annually to the  
6 Legislature, the Governor and the Supreme Court. Such report  
7 may be combined with that of any other body, agency or study  
8 group engaged in reviewing the administration of criminal justice.  
9 The report shall include all pertinent data on the operations of the  
10 office, the costs, projected needs, and to the extent experience may  
11 indicate, recommendations for statutory changes, including changes  
12 in the criminal law or changes in court rules, all as may be appro-  
13 priate to the improvement of the system of criminal justice, the  
14 control of crime, the rehabilitation of offenders, and other related  
15 objectives.

16 23. Any appointments authorized by this act may be made prior  
17 to the effective date hereof.

18 24. There is appropriated to the Office of Defender General for  
19 the purposes of this act such sums as shall be included in any  
20 general or special appropriation act.

21 25. This act shall take effect July 1, 1967.

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#### STATEMENT

This bill is intended to implement the recommendations of the Commission on the Defense of Indigent Persons Accused of Crime contained in its report dated December 22, 1966.

ASSEMBLY COMMITTEE AMENDMENTS TO

**SENATE, No. 287**

**STATE OF NEW JERSEY**

ADOPTED APRIL 3, 1967

Amend page 1, Title, line 2, after the word "of", delete "Defender General", and insert in lieu thereof "The Public Defender".

Amend page 1, section 3, line 16, after the word "of", delete "Defender General", and insert in lieu thereof "The Public Defender".

Amend page 1, section 3, lines 18 and 19, after the words "Office of", delete "Defender General", and insert in lieu thereof "The Public Defender".

Amend page 1, section 4, line 23, after the words "shall be the", delete "Defender General", and insert in lieu thereof "Public Defender".

Amend page 2, section 4, line 4, after the word "of", delete "Defender General", and insert in lieu thereof "the Public Defender".

Amend page 2, section 5, line 6, after the word "the", delete "Defender General", and insert in lieu thereof "Public Defender".

Amend page 2, section 6, line 24, after the word "The", delete "Defender General", and insert in lieu thereof "Public Defender".

Amend page 2, section 6, line 24, after the word "deputy", delete "defenders general", and insert in lieu thereof "public defenders".

Amend page 2, section 6, line 25, after the word "deputy", delete "defenders general", and insert in lieu thereof "public defenders".

Amend page 2, section 6, line 28, after the words "pleasure of the", delete "Defender General", and insert in lieu thereof "Public Defender".

Amend page 2, section 7, line 30, after the word "The", delete "Defender General", and insert in lieu thereof "Public Defender".

Amend page 3, section 7, line 10 and 11, after the words "Office of", delete "Defender General", and insert in lieu thereof "The Public Defender".

Amend page 3, section 8, line 34, after the words “selecting deputy”, delete “defenders general”, and insert in lieu thereof “public defenders”.

Amend page 3, section 8, line 35, delete “defenders general”, and insert in lieu thereof “public defenders”.

Amend page 3, section 8, line 36, after the word “the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 9, line 2, after the words “justice, the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 9, line 6, after the word “the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 10, line 12, after the word “The”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 10, line 15, after the words “office of the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 10, line 18, after the words “office of the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 10, line 20, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 4, section 12, line 30, after the words “Office of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

Amend page 4, section 13, line 40, after the word “of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

Amend page 5, section 14, line 5, after the words “Office of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

Amend page 5, section 15, line 24, after the words “Office of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

Amend page 6, section 17, line 2, after the words “lien the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 6, section 18, line 13, after the word “The”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 6, section 19, line 15, after the word “The”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 6, section 20, line 26, after the word “The”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 6, section 20, line 29, after the words “judgment of the”, delete “Defender General”, and insert in lieu thereof “Public Defender”.

Amend page 7, section 22, line 5, after the words “Office of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

Amend page 7, section 24, line 18, after the words “Office of”, delete “Defender General”, and insert in lieu thereof “The Public Defender”.

7 the extent that the moneys in said fund may be actually applied for the pur-  
8 poses of this act. In the event that any part of the surtax imposed by "The  
9 Indigent Accused Surtax Act (1964)" shall not, at any time and for any rea-  
10 son, be made and paid over by the State Treasurer into the indigent accused  
11 fund as the same is received by him, the said surtax shall thereupon cease to  
12 be imposed and shall be suspended and inoperative until the amount so im-  
13 posed and not made and paid over shall have been so made and paid over,  
14 whereupon the same shall again be reimposed and reinstated.

12. For the purpose of this act, "indigent accused" means a person ac-  
cused of having committed a crime contrary to the law of this State, or con-  
victed thereof, whose economic resources and financial ability are such that  
he is unable to obtain private counsel and who is entitled to have counsel pro-  
vided pursuant to constitutional guarantee. In measuring the economic re-  
sources and financial ability of a person claiming to be an indigent accused,  
funds in his possession or available to him for the purpose of securing his re-  
lease on bail shall not be taken into account so long as the same are actually  
posted as bail upon condition that if returned to him, such part thereof as  
the court may direct shall be contributed by him to the qualified private de-  
fender organization providing counsel for him, or that if forfeited for fail-  
ure to appear or other breach of condition, the same shall be forfeited to such  
organization.

13. This act shall take effect simultaneously with the taking effect of  
"The Indigent Accused Surtax Act (1964)."

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#### STATEMENT

This bill establishes the mechanisms for a defender system to provide coun-  
sel to the indigent accused in accordance with constitutional guarantees, along  
the lines recommended by the Report to the Judicial Conference of June 12,  
1964.

Operations would be conducted by qualified private defender organizations  
organized and operated by competent professional staffs, pursuant to contracts

with a board of trustees established by the act. Detail administration is placed in the Commissioner of Institutions and Agencies, who will see to the intended performance by the contracting organizations. A citizen body for advisory purposes, and to audit and report on the work of the contracting organizations is also required as part of the arrangement.

This combined system includes provision for support by the legal profession either by contributions or services by contributions from others, and by such modest contributions by the accused himself as is compatible with his means, thus establishing the principle of private sharing of the public burden and encouraging economy.

The public funds to support the program are to be derived from a very modest surtax of 5% on the Transfer Inheritance Tax as now constituted. After calculating the regular tax, 5% will be added (rounded to the nearest dollar). Thus, an estate now subject to a \$100.00 tax would have a surtax of only \$5.00. Since this aspect of the program involves the raising of revenue, a separate bill dealing with it must originate in the General Assembly.

The surtax is estimated to yield about \$2. million annually. Under this bill, not more than  $\frac{3}{4}$  of the annual revenue or \$1.5 million, may be paid out for contract service, and the balance must be accumulated in the indigent accused fund so that the system and fund may in due course become self-supporting. This arrangement is similar to that enacted in 1955 to assure the eventual actuarial soundness of the Teachers' Pension and Annuity Fund.

3 a suitable organization or organizations thereunto duly authorized, of a  
4 system of providing counsel to the indigent accused in performance of the  
5 constitutional guarantees of the State and Federal constitutions and related  
6 matters in the administration of criminal justice, all in accordance with  
7 the laws of this State in respect thereto as in force from time to time.

1 5. The surtax imposed by this act shall be due and payable on all re-  
2 turns filed on and after the first day of the month next following the effective  
3 date of this act, in connection with persons dying prior thereto or thereafter.

1 6. The revenues derived from the surtax imposed by this act during  
2 the fiscal year July 1, 1964 to June 30, 1965, are hereby appropriated to  
3 the purposes for which said surtax is imposed, pursuant to law.

1 7. This act shall be known as "The Indigent Accused Surtax Act (1964)."

1 8. This act shall take effect immediately.

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STATEMENT

Decisions of the United States Supreme Court in about the past year, such as *Gideon v. Wainwright*, 372 U. S. 335 (1963), have established a public obligation to provide counsel to the indigent accused in criminal matters under the sixth and fourteenth amendments to the U. S. Constitution. A like guarantee exists under Art. 1, par. 10 of the N. J. Constitution (1947).

Until this time, the public cost of providing for such counsel in murder cases, and for meeting extraordinary expenses in all criminal cases, has been borne by the counties under existing statutes and court decisions. Under the doctrine of the recent decisions there is great likelihood that the public cost may be enlarged to include all criminal cases in the light of the constitutional guaranty of equal protection of the laws. Such a development would place an undue burden upon the counties and the property tax which forms their source of revenue.

The report of the study committee on this subject to the Judicial Conference of June 12, 1964, recommends that there be organized a combined public-private system of counsel, on a statewide basis, financed by the modest surtax



provided by this act. The surtax imposed hereby would amount to only \$5.00 in the case of an estate otherwise subject to an inheritance tax of \$100.00. Under companion legislation, the revenues from this surtax would be placed in a special fund to be invested by the Division of Investments, so that part of the revenues and earnings on investment, over and above the annual cost of operation of the program, would be accumulated to the end that the program may, in due course, be self-supporting.

At present revenue levels, the surtax is estimated to provide a yield of \$2. million per year, of which \$1.5 million is estimated for annual operation and the remaining half-million would be accumulated.

1 13. Where counsel assigned by the court to represent a defendant has  
2 been allowed compensation by the court for his services, the sum so fixed  
3 shall be paid by the county treasurer of the county where the indictment  
4 was found, upon presentation of a certificate of the judge of the Superior  
5 or County Court, as the case may be, fixing and allowing for such compen-  
6 sation, whenever the same shall be approved by the board of chosen free-  
7 holders. The amount or amounts to be expended shall not exceed the amount  
8 fixed by the board of chosen freeholders in its regular or emergency appro-  
9 priation, unless such expenditure is specifically authorized by order of the  
10 assignment judge of the Superior Court for such county.

1 14. This act shall take effect immediately.

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#### STATEMENT

This bill is sponsored by the New Jersey State Bar Association and represents over 2 years of study by the Junior Section and the Criminal Law Committee of the Association. The bill reflects the affirmative action taken by the association at its annual meeting.

The measure is designed to furnish a proven indigent defendant accused of a crime with full protection of his Constitutional rights and provides either for a full-time public defender or, in the alternative, assigned counsel who shall be compensated for their time and expenses as well as for investigative and expert services required.

Appropriate amended rules of court will be required upon adoption of this measure. Specific recommendations, along these lines, and approved by the association, will be made to the Supreme Court.

SENATE, No. 70

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1965

By Senator STAMLER

Referred to Committee on State, County and Municipal Government

AN ACT to provide for the appointment of public defenders by boards of chosen freeholders of the various counties or, in the alternative, to provide for compensation of counsel assigned by the County and Superior Courts to represent indigent defendants in criminal cases.

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

1 1. As used in this act, an "indigent defendant" is a person charged  
2 with a crime triable in the Superior or County Court who is without adequate  
3 means to retain counsel and who has filed a sworn verification thereof as  
4 required by the rules of the court.

1 2. The board of chosen freeholders of any county may appoint a public  
2 defender for the county who shall be an attorney-at-law and a citizen and  
3 resident of that county.

1 3. Every person appointed public defender shall, before entering upon  
2 the duties of his office, take and subscribe before the clerk of the county for  
3 which he has been appointed, or before a judge of the County Court of such  
4 county, the following oath:

5 "I, ....., do solemnly promise and swear (or affirm),  
6 that I will faithfully, justly and impartially execute the duties of public  
7 defender of the county of ....., to the best of my abilities  
8 and understanding. So help me God."

1 4. A public defender may be appointed on a full- or part-time basis, and  
2 shall be appointed for a term of 5 years and until the appointment and qual-  
3 ification of his successor.

1 5. Each public defender shall be paid a salary as determined by the  
2 board of chosen freeholders.

1 6. The public defender, with the approval of the board of chosen free-  
2 holders, may appoint one or more assistant public defenders, either full or  
3 part time, at such compensation as may be determined by the board of chosen  
4 freeholders, who shall hold their appointments at the pleasure of the public  
5 defender.

1 7. The public defender may recommend, from time to time, to the board  
2 of chosen freeholders, the appointment of investigators, to be known as  
3 "public defender investigators," such clerical assistants and other personnel  
4 required for the performance of the duties of the office, as the board shall  
5 deem necessary. Appointments to such positions or employment shall be  
6 made, and the persons so appointed shall hold their positions or employment,  
7 in accordance with the laws pertaining to the classified service of the civil  
8 service.

1 8. The board of chosen freeholders shall provide office space for the office  
2 of the public defender in any building owned, leased, maintained or acquired  
3 by such county together with necessary furniture, equipment and services  
4 available to county agencies.

1 9. All necessary expenses incurred by the public defender in the duties of  
2 his office shall, upon being certified to by the public defender and approved,  
3 under his hand, by a judge of the Superior Court or of the County Court for  
4 such county, be paid by the county treasurer whenever the same shall be  
5 approved by the board of chosen freeholders of such county. The amount or  
6 amounts to be expended shall not exceed the amount fixed by the board of  
7 chosen freeholders in its regular or emergency appropriation, unless such  
8 expenditure is specifically authorized by order of the assignment judge of the  
9 Superior Court for such county.

1       10. Whenever it appears to the court that any defendant charged with  
2 a crime is indigent as herein set forth, the court shall assign the public de-  
3 fender to act as counsel for such defendant with respect to such charge; pro-  
4 vided, that if in any case there are indigent defendants with such conflicting  
5 interests that they cannot all be properly represented by the same counsel,  
6 the court may appoint counsel separate from the public defender for one or  
7 more of such defendants and provide for the compensation and reimburse-  
8 ment of expenses of such counsel in the same manner as is provided for  
9 counsel appointed under section 11 of this act. It shall be the duty of the  
10 public defender to act as counsel for each defendant to whom he is assigned  
11 at every stage of the prosecution, unless after the assignment the court is  
12 satisfied that the defendant is able to employ other counsel.

1       11. In any county in which the board of chosen freeholders considers that  
2 the representation of indigent defendants in criminal cases brought in the  
3 court can be provided for more economically by the appointment of counsel  
4 in particular cases in which such representation may be deemed requisite  
5 than by the appointment of a public defender, and no public defender has  
6 been appointed by the board of chosen freeholders, the court shall appoint  
7 counsel for such indigent defendants. Counsel so appointed shall be compen-  
8 sated by the county in amounts to be determined by the court.

1       12. In any criminal case in which an indigent defendant is represented  
2 by a public defender or by counsel appointed by the court in the particular  
3 case, the public defender or such counsel, as the case may be, shall also  
4 represent him in any appeal proceeding to a court having jurisdiction of  
5 the appeal. Services of the nature specified in this section, if rendered by a  
6 public defender, shall be part of his duties and performed without other  
7 compensation than his salary. If such services are rendered by counsel  
8 appointed in the particular case, such counsel shall be compensated in an  
9 amount to be determined by the appellate court.

1       13. Where counsel assigned by the court to represent a defendant has  
2 been allowed compensation by the court for his services, the sum so fixed

*amendment from S.C. 2/10/25*

3 shall be paid by the county treasurer of the county where the indictment was  
4 found, upon presentation of a certificate of the judge fixing and allowing such  
5 compensation.

1 14. This act shall take effect immediately.

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STATEMENT

It is the purpose of this bill to implement in a more realistic fashion the constitutional rights of an indigent defendant in criminal matters.

The recent history of criminal proceedings in the various counties of the State discloses that the great bulk of matters listed on the various criminal calendars involve defendants who are without adequate financial resources to retain the services of competent attorneys to advise them as to the merits of their defense and to represent them at the time of plea, trial and sentence. Not only has this resulted in delaying the speedy disposition of criminal calendars, stimulating the maintenance of costly and prolonged appellate and prerogative proceedings, but the situation which has prevailed for the past decade, or more, has produced an intolerable burden upon the members of the bar who are qualified and available to serve as assigned defense attorneys without compensation.

The proposed statute also recognizes that in the metropolitan counties of the State it may be less expensive to the State, and more desirable from the point of view of true justice, to establish permanent offices with adequate legal staffs and investigational and clerical personnel to represent indigent defendants in criminal matters. In other States where the office of public defender has been created it has been the experience of law enforcement officials that the cause of justice has been more adequately and more efficiently served.

The proposed bill leaves it to the decision of the county board of chosen freeholders whether to adopt a public defender system on a permanent basis or to follow the assigned counsel system on a uniform basis of fees and compensation for defense attorneys and necessary investigational personnel.

The proposed bill follows the recommendations of the Junior Section and the Criminal Law Committee of the New Jersey Bar Association and several county bar associations.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 70

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STATE OF NEW JERSEY

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ADOPTED APRIL 26, 1965

Amend page 3, section 11, line 8, after "county" insert a comma; after "court" insert ", from a fund to be established and maintained by the board of chosen freeholders for payment of counsel for indigent defendants. The sums required to maintain such fund in an amount determined by the board shall be included in its regular or emergency appropriations".

Amend page 4, section 13, line 5, after "compensation" insert "but no such amount in excess of funds available in the fund for payment of counsel for indigent defendants shall be paid unless the expenditure thereof is specifically authorized by order of the assignment judge of the Superior Court for the county".

Statement from A419 of 1966

STATEMENT

This bill is designed to furnish a proven indigent defendant accused of a crime with full protection of his Constitutional rights and provides either for a full-time public defender or, in the alternative, assigned counsel who shall be compensated for their time and expenses as well as for investigative and expert services required.



29 by him, be paid by the county treasurer whenever the same shall be ap-  
30 proved by the board of chosen freeholders of such county. The amount or  
31 amounts to be expended shall not exceed the amount fixed by the board of  
32 chosen freeholders in its regular or emergency appropriation, unless such  
33 expenditure is specifically authorized by order of the assignment judge of  
34 the Superior Court for such county.

35 (h) The public defender shall keep a record of all services by him in  
36 that capacity and shall file with the board of chosen freeholders annually  
37 a written report of his services.

1 12. The provisions of this act shall be deemed to be severable and if  
2 for any reason any provision shall be determined to be unconstitutional or  
3 invalid, such determination shall not be held to affect any other provision  
4 hereof.

1 13. The Attorney General shall formulate annual budget requests for  
2 the appropriation of State funds required to meet the payments to counties  
3 to be made pursuant to section 9 of this act.

1 14. The Attorney General shall formulate a budget estimate of the  
2 amount of State funds required to meet the payments to be made to the coun-  
3 ties pursuant to section 9 of this act for the period January 1, 1967 to June  
4 30, 1967 and the same shall be included in a supplemental appropriation act.

1 15. This act shall take effect immediately.

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#### STATEMENT

The purpose of this bill is for the establishment of a public defender system with alternate plans to provide representation by lawyers for defendants, who are financially unable to obtain an adequate defense in criminal cases in the courts in the State of New Jersey, and to comply with and implement the decision of the New Jersey Supreme Court in the case of State vs. Rush, 46 N. J. 399 (1966). This bill is approved and sponsored by the New Jersey State Bar Association.

27 (g) All necessary expenses incurred by the public defender in the per-  
28 formance of the duties of his office shall, upon being approved and certified  
29 by him, be paid by the county treasurer whenever the same shall be approved  
30 by the board of chosen freeholders of such county. The amount or amounts  
31 to be expended shall not exceed the amount fixed by the board of chosen  
32 freeholders in its regular or emergency appropriation, unless such expendi-  
33 ture is specifically authorized by order of the assignment judge of the Su-  
34 perior Court for such county.

35 (h) The public defender shall keep a record of all services by him in  
36 that capacity and shall file with the board of chosen freeholders annually a  
37 written report of his services.

1 12. The provisions of this act shall be deemed to be severable and if  
2 for any reason any provision shall be determined to be unconstitutional or  
3 invalid, such determination shall not be held to affect any other provision  
4 hereof.

1 13. The Attorney General shall formulate annual budget requests for the  
2 appropriation of State funds required to meet the payments to counties to  
3 be made pursuant to section 9 of this act.

1 14. The Attorney General shall formulate a budget estimate of the  
2 amount of State funds required to meet the payments to be made to the coun-  
3 ties pursuant to section 9 of this act for the period January 1, 1967 to June  
4 30, 1967 and the same shall be included in a supplemental appropriation act.

1 15. This act shall take effect immediately.

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#### STATEMENT

The purpose of this bill is for the establishment of a public defender sys-  
tem with alternate plans to provide representation by lawyers for defendants,  
who are financially unable to obtain an adequate defense in criminal cases in  
the courts in the State of New Jersey, and to comply with and implement the  
decision of the New Jersey Supreme Court in the case of State vs. Rush 46 N. J.  
399 (1966). This bill is approved and sponsored by the New Jersey State Bar  
Association.

Statement from AIC of 1967

3

1     12. Where counsel assigned by the court to represent a defendant has  
2 been allowed compensation by the court for his services, the sum so fixed  
3 shall be paid by the county treasurer of the county where the indictment  
4 was found, upon presentation of a certificate of the judge of the Superior  
5 or County Court, as the case may be, fixing and allowing for such compen-  
6 sation, whenever the same shall be approved by the board of chosen free-  
7 holders. The amount or amounts to be expended shall not exceed the amount  
8 fixed by the board of chosen freeholders in its regular or emergency appro-  
9 priation, unless such expenditure is specifically authorized by order of the  
10 assignment judge of the Superior Court for such county.

1     13. This act shall take effect immediately.

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#### STATEMENT

This bill is designed to furnish a proven indigent defendant accused of a crime with full protection of his Constitutional rights and provides either for a full-time public defender or, in the alternative, assigned counsel who shall be compensated for their time and expenses as well as for investigative and expert services required.

30 proved by the board of chosen freeholders of such county. The amount or  
31 amounts to be expended shall not exceed the amount fixed by the board of  
32 chosen freeholders in its regular or emergency appropriation, unless such  
33 expenditure is specifically authorized by order of the assignment judge of  
34 the Superior Court for such county.

35 (h) The public defender shall keep a record of all services by him in  
36 that capacity and shall file with the board of chosen freeholders annually  
37 a written report of his services.

1 12. The provisions of this act shall be deemed to be severable and if  
2 for any reason any provision shall be determined to be unconstitutional or  
3 invalid, such determination shall not be held to affect any other provision  
4 hereof.

1 13. The Attorney General shall formulate annual budget requests for  
2 the appropriation of State funds required to meet the payments to counties  
3 to be made pursuant to section 9 of this act.

1 14. The Attorney General shall formulate annual budget estimates of the  
2 amount of State funds required to meet the payments to be made to the  
3 counties pursuant to section 9 of this act.

1 15. The Attorney General shall formulate and provide the Legislature  
2 with an estimate of State funds required to meet the payments to be made to  
3 the counties pursuant to section 9 of this act for the period January 1, 1968  
4 to June 30, 1968 and the same shall be included in a supplemental appropria-  
5 tion act.

1 16. This act shall take effect immediately.

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#### STATEMENT

The purpose of this bill is for the establishment of a public defender system with alternate plans to provide representation by lawyers for defendants, who are financially unable to obtain an adequate defense in criminal cases in the courts in the State of New Jersey, and to comply with and implement the decision of the New Jersey Supreme Court in the case of State vs. Rush, 46 N. J. 399 (1966). This bill is approved and sponsored by the New Jersey State Bar Association.

29 by him, be paid by the county treasurer whenever the same shall be approved  
30 by the board of chosen freeholders of such county. The amount or amounts  
31 to be expended shall not exceed the amount fixed by the board of chosen  
32 freeholders in its regular or emergency appropriation, unless such expendi-  
33 ture is specifically authorized by order of the assignment judge of the Su-  
34 perior Court for such county.

35 (h) The public defender shall keep a record of all services by him in  
36 that capacity and shall file with the board of chosen freeholders annually a  
37 written report of his services.

1 12. The provisions of this act shall be deemed to be severable and if  
2 for any reason any provision shall be determined to be unconstitutional or  
3 invalid, such determination shall not be held to affect any other provision  
4 hereof.

1 13. The Attorney General shall formulate annual budget requests for the  
2 appropriation of State funds required to meet the payments to counties to  
3 be made pursuant to section 9 of this act.

1 14. The Attorney General shall formulate a budget estimate of the  
2 amount of State funds required to meet the payments to be made to the coun-  
3 ties pursuant to section 9 of this act for the period January 1, 1967 to June  
4 30, 1967 and the same shall be included in a supplemental appropriation act.

1 15. This act shall take effect immediately and in addition section 9 shall  
2 be retroactive to January 1, 1967.

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#### STATEMENT

The purpose of this bill is for the establishment of a public defender system with alternate plans to provide representation by lawyers for defendants, who are financially unable to obtain an adequate defense in criminal cases in the courts in the State of New Jersey, and to comply with and implement the decision of the New Jersey Supreme Court in the case of State vs. Rush 46 N. J. 399 (1966). This bill is approved and sponsored by the New Jersey State Bar Association.

SENATE, No. 294

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1968

By Senators FORSYTHE, COFFEE, MATTURRI, DICKINSON,  
McDERMOTT, WALLWORK, WALDOR, DELTUFO, DOWD,  
GIULIANO, STOUT and SEARS

Referred to Committee on Judiciary

AN ACT to supplement "An act concerning the representation of indigent defendants in criminal cases, creating the office of the Public Defender, prescribing its functions, powers and duties, and providing for an appropriation" approved May 2, 1967 (P. L. 1967, c. 43).

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

1 1. In addition to his duties in respect to indigent defendants  
2 who are formally charged with the commission of an indictable  
3 offense, the Public Defender shall undertake the duties set forth  
4 in this act, to the extent that he is able to do so within the limits  
5 of his available appropriations.

1 2. He shall assist in the providing of competent legal representa-  
2 tion to persons not heretofore entitled to his assistance because  
3 not charged with an indictable offense, in such fashion as he may  
4 devise in order to bring to such other classes of cases the same  
5 efficiency, effectiveness and performance as is intended for indicta-  
6 ble offenses, and without in any way limiting the methods he may  
7 employ, he may use methods such as the following:

8 (a) He may have the central research staff prepare brief and  
9 informative summaries of the law applicable to various classes of  
10 cases and arrange for their publication and distribution to those  
11 who will serve as counsel;

12 (b) He may accept contributions to meet the cost of providing  
13 counsel to defendants coming within this act by assigning members  
14 of the staff or attorneys engaged on a case basis, as substitutes  
15 for others who may be otherwise assigned.

16 (c) He may enter into contracts and agreements with private  
17 or public organizations for the rendering of legal services to de-

18 defendants coming within this act for one or more designated classes  
 19 of cases, or for a specified area or areas or courts, or combinations  
 20 thereof, for a consideration reasonably estimated to meet the cost  
 21 thereof;

22 (d) He may arrange to make inquiries in respect to whether or  
 23 not the defendant in such cases is in fact indigent;

24 (e) He may arrange to serve as the central routing and record  
 25 keeping office for the gathering of data in respect to various classes  
 26 of defendants coming within this act in order that reliable esti-  
 27 mates of cost can be made on the basis of actual experience;

28 (f) He may exercise, in respect to any defendant coming within  
 29 this act, any of the powers and duties vested in him by law in re-  
 30 spect to defendants formally charged with an indictable offense,  
 31 and otherwise to do any and all things reasonably calculated to  
 32 enable his office to keep and maintain a current awareness of chang-  
 33 ing trends in the law and to provide adaptation of the services to  
 34 meet the same.

1 3. Whenever a defendant formally charged with an indictable  
 2 offense, or coming within this act, is a minor under the age of 21  
 3 years, the question of financial ability shall be measured not only  
 4 in terms of the circumstances of the defendant but also in terms  
 5 of the circumstances of the parents and others of the family to  
 6 which he belongs, and arrangements, agreements, liens and other  
 7 methods provided by law to balance degrees of indigence with the  
 8 public expenditures shall be applied to such other persons; and  
 9 such defendant, although under the age of 21 years, shall have legal  
 10 capacity to enter into contracts and agreements for the purposes  
 11 of this section.

1 4. Any and all sums received or to be received by way of con-  
 2 tribution, consideration, reimbursement or otherwise shall be pay-  
 3 able to the State of New Jersey and are appropriated to the op-  
 4 eration of the office of the Public Defender in addition to such other  
 5 appropriations as may be provided by law.

1 5. This act shall take effect immediately.

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#### STATEMENT

Since the enactment of the Public Defender law (c. 43, L. 1967) and the initiation of the office in July, 1967, rapid developments in the law have modified the scope of the public function. Aside from the July riots which deluged the staff before it could organize effectively, decisions such as *Gault* have opened up entirely new areas of constitutional law.

The *Gault* case requires the providing of counsel for juveniles in certain cases, and since these are usually not indictable offenses, the Public Defender cannot handle them under present law.

Temporarily, the result has been to force the re-establishment of the rotation assignment system which the Public Defender law was designed to replace, and its continued employment is bound to regenerate all of the difficulties and inefficiencies of the obsolete system.

There is no reliable data to measure the effect of a decision like *Gault*, assuming that it were desirable to have the juvenile courts function like the criminal courts. And time is needed to study *Gault* to determine whether juvenile courts can be revamped in ways that will enable them to accomplish their basic purpose without being obliged to duplicate the criminal court system.

This bill provides an immediate tool to the Public Defender which can both provide needed flexibility to a rotation assignment system while it exists, and equip the defender with the data needed to design constructive solutions.



STATEMENT BY ACTING GOVERNOR SIDO L. RIDOLFI  
UPON SIGNING PUBLIC DEFENDER BILL S-287

I would like to commend the Legislature for passing S-287 and thereby demonstrating once more its concern for equal justice under the law. By placing public defenders of indigent persons on a par with paid attorneys, this law will, I think, foster the ideal of equal justice for all of our citizens.

Under S-287 the State will administer and finance the public defender system, the costs of which were previously paid by our counties. In this regard I would like to quote the following from the message delivered by Governor Richard J. Hughes to the Legislature on January 10, 1967:

"It should be pointed out at this time that according to the Commission (on the Defense of Indigent Persons Accused of Crime) this program will cost the State more than \$2 million annually."

This expenditure, as Governor Hughes noted, is one of the results of a determined effort by the State government to do everything it possibly can to be of assistance to our counties, within our budgetary limitations.

At the time of this signing I would like to acknowledge the work of the members of the Commission on the Defense of Indigent Persons Accused of Crime whose report submitted on December 22, 1966, was the basis for the drafting and introduction of this bill.

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R.S. 2A:158A-1 et seq.

Amended by the following law:

L.1974 - chapter 27 - §9

See legislative history of R.S. 52:27E-1 to 52:27E-47