

**South Carolina General Assembly**  
117th Session, 2007-2008

**A108, R154, S446**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Malloy, McConnell, Ford, Rankin, Knotts, Cleary, Anderson, Vaughn, Hawkins, Scott, Williams, Drummond, Mescher, Thomas, Short, Hutto, Leatherman, Richardson, Leventis, Elliott, Patterson, Pinckney, Land, Lourie, Jackson, Peeler, Sheheen, Moore and McGill

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Introduced in the Senate on February 14, 2007

Introduced in the House on April 11, 2007

Last Amended on June 7, 2007

Passed by the General Assembly on June 7, 2007

Governor's Action: June 18, 2007, Vetoed

Legislative veto action(s): Veto overridden

Summary: Indigent Defense Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
2/14/2007	Senate	Introduced and read first time SJ-5
2/14/2007	Senate	Referred to Committee on <b>Judiciary</b> SJ-5
2/16/2007	Senate	Referred to Subcommittee: Malloy (ch), Ford, Rankin, Knotts, Cleary
4/4/2007	Senate	Committee report: Favorable with amendment <b>Judiciary</b> SJ-5
4/5/2007		Scrivener's error corrected
4/5/2007	Senate	Amended SJ-23
4/5/2007	Senate	Read second time SJ-23
4/9/2007		Scrivener's error corrected
4/10/2007	Senate	Read third time and sent to House SJ-11
4/11/2007	House	Introduced and read first time HJ-16
4/11/2007	House	Referred to Committee on <b>Judiciary</b> HJ-17
5/15/2007	House	Committee report: Favorable with amendment <b>Judiciary</b> HJ-15
5/16/2007	House	Amended HJ-144
5/16/2007	House	Read second time HJ-154
5/17/2007	House	Reconsider vote whereby read second time HJ-19
5/17/2007	House	Amended HJ-34
5/17/2007	House	Read second time HJ-36
5/17/2007	House	Unanimous consent for third reading on next legislative day HJ-36
5/18/2007	House	Read third time and returned to Senate with amendments HJ-5
5/18/2007		Scrivener's error corrected
5/22/2007	Senate	House amendment amended SJ-41
5/22/2007	Senate	Returned to House with amendments SJ-41
5/23/2007		Scrivener's error corrected
5/24/2007	House	Non-concurrence in Senate amendment HJ-51
5/29/2007	Senate	Senate insists upon amendment and conference committee appointed Rankin, Ryberg, and Malloy SJ-18
5/30/2007	House	Conference committee appointed Reps. GM Smith, WD Smith, and Rutherford HJ-11

6/7/2007	House	Conference report received and adopted HJ-78
6/7/2007	Senate	Conference report adopted SJ-27
6/7/2007	House	Ordered enrolled for ratification HJ-156
6/12/2007		Ratified R 154
6/14/2007		Scrivener's error corrected
6/18/2007		Vetoed by Governor
6/21/2007	Senate	Veto overridden by originating body Yeas-43 Nays-1
6/21/2007	House	Veto overridden Yeas-76 Nays-18 HJ-77
6/27/2007		Copies available
6/27/2007		Effective date 06/21/07
7/6/2007		Act No. 108

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## **VERSIONS OF THIS BILL**

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(A108, R154, S446)

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "INDIGENT DEFENSE ACT" BY ADDING SECTION 17-3-5 SO AS TO DEFINE CERTAIN TERMS FOR PURPOSES OF THE CHAPTER; BY ADDING ARTICLE 5 TO CHAPTER 3, TITLE 17 SO AS TO ESTABLISH CIRCUIT PUBLIC DEFENDER SELECTION PANELS, PROVIDE FOR THEIR MEMBERSHIP AND RESPONSIBILITIES RELATED TO THE APPOINTMENT OF CIRCUIT PUBLIC DEFENDERS, PROVIDE ELIGIBILITY REQUIREMENTS FOR CIRCUIT PUBLIC DEFENDERS AND ESTABLISH THEIR DUTIES, AND AUTHORIZE THE CIRCUIT PUBLIC DEFENDERS TO EMPLOY CHIEF COUNTY PUBLIC DEFENDERS AND OTHER NECESSARY PERSONNEL; TO AMEND SECTION 17-3-30, RELATING TO THE AFFIDAVIT REGARDING A PERSON'S INABILITY TO EMPLOY COUNSEL AND PAYMENT OF AN INDIGENT PERSON'S ASSETS TO THE STATE, SO AS TO PROVIDE THOSE ASSETS ARE TO BE PAID TO THE GENERAL FUND OF THE STATE; TO AMEND SECTION 17-3-50, RELATING TO FEES FOR APPOINTED COUNSEL AND PUBLIC DEFENDERS, SO AS TO DELETE OBSOLETE LANGUAGE REGARDING THE APPOINTMENT OF COUNSEL IN ACCORDANCE WITH A PLAN PROMULGATED BY THE BAR OF EACH COUNTY; TO AMEND SECTION 17-3-90, RELATING TO PAYMENT VOUCHERS FOR PRIVATE, APPOINTED COUNSEL, SO AS TO MAKE CONFORMING CHANGES AND TO AUTHORIZE THE OFFICE OF INDIGENT DEFENSE TO PRESENT THE VOUCHER TO THE TRIAL JUDGE FOR APPROVAL; TO AMEND ARTICLE 3, CHAPTER 3, TITLE 17, RELATING TO THE COMMISSION ON INDIGENT DEFENSE, SO AS TO MAKE CONFORMING CHANGES TO THE ARTICLE IN RELATION TO THE ADDITION OF ARTICLE 5; TO AMEND SECTIONS 9-8-10, AS AMENDED, 9-8-20, 9-8-40, 9-8-50, AS AMENDED, 9-8-60, AS AMENDED, 9-8-110, AS AMENDED, 9-8-120, AS AMENDED, AND 9-8-125, ALL RELATING TO THE RETIREMENT SYSTEM FOR JUDGES AND SOLICITORS, SO AS TO INCLUDE CIRCUIT PUBLIC DEFENDERS AND ALLOW CERTAIN MEMBERS OF THAT SYSTEM ELIGIBLE TO RETIRE TO RECEIVE RETIREMENT BENEFITS WHILE CONTINUING TO SERVE; AND TO REPEAL SECTION

**17-3-60 RELATING TO PROCEDURES FOR ESTABLISHING PUBLIC DEFENDER SYSTEMS IN COUNTIES AND SECTION 17-3-70 RELATING TO APPROPRIATIONS FOR MAINTENANCE OF DEFENDER CORPORATIONS AND COMPENSATION OF APPOINTED COUNSEL.**

Whereas, the General Assembly finds that it is necessary to establish a statewide unified indigent defense system to provide effective assistance of counsel to indigent criminal defendants; and

Whereas, the General Assembly believes it is necessary to establish parity in benefits and salaries between prosecution and defense systems; and

Whereas, the General Assembly desires to ensure that the system is free from undue political interference and conflict of interest; and

Whereas, the General Assembly wishes to provide for the delivery of public defender services by qualified and competent counsel in a manner that is fair and consistent throughout the State; and

Whereas, the General Assembly's ultimate goal is to ensure that adequate public funding of a statewide public defender system is provided and managed in a fiscally responsible manner. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

**Citation**

SECTION 1. This act may be cited as the "Indigent Defense Act".

**Defense of indigents, definitions**

SECTION 2. Article 1, Chapter 3, Title 17 of the 1976 Code is amended by adding:

"Section 17-3-5. As used in this chapter, the term:

- (1) 'Commission' means the Commission on Indigent Defense.
- (2) 'Division of Appellate Defense' includes all attorneys and employees in the division.
- (3) 'Assistant public defender' means an attorney who is employed by a circuit public defender office.

(4) ‘Circuit public defender’ means the head of a public defender office providing indigent defense representation within a given judicial circuit of this State.

(5) ‘Circuit public defender office’ means the office of one of the several circuit public defenders.

(6) ‘Public defender’ means an attorney who is employed in a circuit public defender office or who represents an indigent person pursuant to a contractual arrangement with a circuit public defender office.

(7) ‘Administering county’ means the county within each circuit with which the circuit public defender has an agreement for the administering of indigent defense funds distributed from the State and the counties within the circuit for the provision of indigent defender services within each circuit.

(8) ‘Chief county public defender’ means a public defender appointed by the circuit public defender to assist in managing, supervising, and providing indigent defense representation in one or more assigned counties within the circuit.”

### **Defense of indigents, circuit public defenders**

SECTION 3. Chapter 3, Title 17 of the 1976 Code is amended by adding:

#### **“Article 5**

#### **Circuit Public Defenders**

Section 17-3-510. (A) There is created in each judicial circuit in the State a Circuit Public Defender Selection Panel, the membership of which is composed of, and must be elected by, the active, licensed attorneys who reside within the counties of each judicial circuit. Each county in each judicial circuit must be represented by at least one member and the remaining members must be determined by equal weighting of county population based on the most recent decennial census and the most recent annual county appropriations to public defender operations according to the following formula:

(1) percentage of distribution of population plus the percentage of distribution of appropriations for public defender operations divided by two and rounded to the nearest whole number;

(2) the weighted values of each county multiplied by the number of remaining members in each Circuit Public Defender Selection Panel

determines the number of additional members each county must have on the panel.

Judicial circuits with three or less counties must have five members. Judicial circuits with four counties must have seven members. Judicial circuits with five counties must have nine members.

(B) A solicitor, assistant solicitor, an employee of a solicitor's office, or an employee of the South Carolina Prosecution Coordination Commission may not serve as a member of a Circuit Public Defender Selection Panel. Members of a Circuit Public Defender Selection Panel must reside in the judicial circuit in which they serve. Circuit Public Defender Selection Panel members shall serve for a term of five years. A vacancy for an appointed member must be in the same manner of the original appointment filled by the appointing authority.

(C) By majority vote of its membership, the Circuit Public Defender Selection Panel shall nominate a person to serve as the circuit public defender in the judicial circuit as provided in this article. The commission shall, by majority vote of its members, accept or reject the nomination, but may not substitute the name of another person. Initial appointments of circuit public defenders must be made in order for the first appointees to take office no later than one year from the effective date of this act, for a term of four years. A circuit public defender may be reappointed by the commission to serve successive terms following the same manner of the original appointment. The circuit public defender for each judicial circuit must be a full-time employee of the State and must be compensated and have the same benefits as the circuit solicitor. A circuit public defender may not engage in the private practice of law or another full-time business for profit.

(D) A circuit public defender may be removed for cause by a majority vote of the commission.

(E) If a vacancy occurs, by death, resignation, or otherwise, in the position of circuit public defender, the commission shall appoint an interim circuit public defender to serve until a replacement has been selected by the commission. The Circuit Public Defender Selection Panel shall nominate a replacement circuit public defender within three months of the occurrence of the vacancy. Selection of a replacement must be in the same manner as the original appointment.

Section 17-3-520. (A) In order for a person to be eligible to fill the position of circuit public defender, the person must:

- (1) be at least twenty-five years of age;
- (2) have been admitted and licensed to practice law in all courts of the State for at least five years;

(3) be a member in good standing of the South Carolina Bar, at all times; and

(4) be competent to counsel and defend a person charged with a capital felony and be certified at all times to defend capital cases in the State.

(B) A circuit public defender is responsible for:

(1) administering and coordinating the day-to-day operations of their respective offices, supervising the public defenders and other staff serving in the offices, and actively participating in the representation of clients throughout the judicial circuit;

(2) keeping and maintaining appropriate records, which includes:

(i) the number of persons represented pursuant to the provisions of this chapter, including cases assigned to other attorneys because of conflicts of interest;

(ii) the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and

(iii) other information and data as the commission may from time to time require;

(3) establishing a juvenile offender division within the circuit public defender office to specialize in the criminal defense of juveniles;

(4) preparing and submitting annually to the executive director of the commission a proposed budget for the provision of circuit-wide indigent defense services, an annual report containing pertinent data on the operation, costs, and needs of the circuit defender office, and other information as the commission or executive director may require;

(5) assisting the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to the applicable provisions of Section 17-3-330;

(6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;

(7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable;

(9) establishing processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(10) establishing administrative management procedures for circuit and county offices;

(11) establishing procedures in conformity with commission standards for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of the charges, potential punishments, and the legal skills required to provide effective assistance of counsel;

(12) establishing policies and procedures consistent with commission standards and Supreme Court Rules for assigning counsel for indigent persons in capital cases;

(13) establishing and supervising consistent commission standards, a training and performance evaluation program for attorneys and non-attorney staff members and contractors;

(14) establishing procedures consistent with commission standards to handle complaints involving indigent defense performance and to ensure that public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the rules and disciplinary jurisdiction of the South Carolina Supreme Court; and

(15) performance of other duties assigned by the commission.

Section 17-3-530. (A) Each circuit public defender may employ, assign, and supervise one or more chief county public defenders in the counties within the circuit to assist in managing, supervising, and providing indigent defense representation in the circuit.

(B) Each chief county public defender must be responsible for:

(1) managing, supervising, and providing public defender services within the assigned county or counties;

(2) performing other duties as assigned by the circuit public defender, including duties that may be assigned throughout the circuit; and

(3) keeping a record of public defender and associated services and expenses in the assigned county or counties and submitting the records to the circuit public defender as requested.

Section 17-3-540. (A) Subject to the provisions of this section, the circuit public defender in each judicial circuit may maintain offices and



employ chief county public defenders, assistant public defenders, investigators, and other staff as necessary to provide adequate and meaningful representation of indigent clients within the counties of the judicial circuit. Personnel employed pursuant to the provisions of this section serve at the pleasure of the circuit public defender and have responsibilities as the circuit public defender directs.

(B) These employees are employees of the administering county and entitled to the same fringe benefits as other personnel employed by the administering county. All personnel costs including fringe benefits must be paid by the administering county, but must be reimbursed to the administering county from operational funds provided to the circuit public defender office from county and state appropriated funds.

Section 17-3-550. No county may appropriate funds for public defender operations in a fiscal year below the amount it funded in the immediate previous fiscal year.

Section 17-3-560. Each circuit public defender shall expend the funds received from the counties in the circuit, the State, and other sources for the general operations of the circuit defenders office including reimbursement to the administering county for employee compensation and fringe benefits. Each circuit public defender shall enter into an agreement with the appropriate county within the judicial circuit to administer the funds provided pursuant to the provisions of this article and the funds must be directed to the administering county. The administering county shall account for the receipt and disbursement of the funds separately from other funds administered by the county.

Section 17-3-570. (A) All public defenders and other personnel employed by a county public defender corporation on a full-time or a part-time basis are considered employees of the circuit public defenders office in the judicial circuit in which they serve. No employee currently employed pursuant to the provisions of this section may be terminated, except for cause for a period of one year from the effective date of employment by the circuit public defender office. No employee salaries and benefits, including accrued leave, may be less than that which the employee is earning as of the effective date of employment by the circuit public defender office.

(B) Each circuit public defender is authorized to employ administrative, clerical, and paraprofessional personnel as may be authorized by the commission based on funds appropriated by the General Assembly or otherwise available provided, however, that each

circuit public defender is authorized not less than two positions as provided in this section. In authorizing administrative, clerical, and paraprofessional personnel, the commission shall consider the caseload, present staff, and resources available to each circuit public defender and shall make authorizations as will contribute to the efficiency of individual circuit public defenders in providing effective criminal defense for indigent defendants.

(C) All personnel employed by the circuit public defenders pursuant to this article shall be employees of the administering county and shall be compensated based on the unclassified service schedule of the South Carolina Merit System of Personnel Administration.

(D) Personnel employed by the circuit public defenders pursuant to this article shall have the authority, duties, powers, and responsibilities as are authorized by law or as assigned by the circuit public defender and shall serve at the pleasure of the circuit public defender.

(E) The circuit public defender shall fix the compensation of each state-paid employee appointed pursuant to this article in accordance with the class to which the person is appointed and the appropriate step of the salary schedule. All salary advancements must be based on quality of work, training, and performance. A reduction in salary must be made in accordance with the salary schedule for the position and the policies, rules, or regulations adopted by the commission.

Section 17-3-580. (A) A public defender employed full-time by the circuit public defender shall not engage in the private practice of law for profit.

(B) A public defender employed by the circuit public defender must be a member of the South Carolina Bar and must be admitted to practice before all courts of this State.

(C) A public defender shall serve at the pleasure of the circuit public defender and shall have the authority, powers, and duties as assigned by the circuit public defender.

Section 17-3-590. The governing body of the county shall provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as are necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner.

Section 17-3-600. All contracts in force on the date this legislation is effective between private attorneys and county indigent defense corporations for the provision of indigent defense services within a

county or counties shall remain in force and be recognized by the commission and circuit public defender offices until their respective expiration dates or one year from the effective date of this act, whichever is earlier.”

#### **Defense of indigents, payment of assets to the general fund**

SECTION 4. Section 17-3-30(A) and (B) of the 1976 Code is amended to read:

“(A) A person to whom counsel has been provided shall execute an affidavit that he is financially unable to employ counsel and that affidavit must set forth all his assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets to the general fund of the State.

(B) A forty dollar application fee for public defender services must be collected from every person who executes an affidavit that he is financially unable to employ counsel. The person may apply to the clerk of court or other appropriate official for a waiver or reduction in the application fee. If the clerk or other appropriate official determines that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge upon sentencing and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the state fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.”

#### **Defense of indigents, obsolete language deleted**

SECTION 5. Section 17-3-50(A) of the 1976 Code is amended to read:

“(A) When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel. The same basis must be employed to determine the value of services provided by the office of the public defender for purposes of Section 17-3-40.”

### **Defense of indigents, payment vouchers for appointed counsel**

SECTION 6. Section 17-3-90 of the 1976 Code is amended to read:

“Section 17-3-90. Private, appointed counsel shall submit a voucher to the Office of Indigent Defense setting forth all details of the appointment for purposes of remuneration pursuant to Section 17-3-50 and reimbursement of expenses pursuant to Section 17-3-80, and the public defender shall do likewise pursuant to Section 17-3-80. It is the duty of the Office of Indigent Defense to present the voucher to the trial judge for approval and to transmit the same to the Comptroller General for payment to the appropriate party.”

### **Commission on Indigent Defense, restructured**

SECTION 7. Article 3, Chapter 3, Title 17 of the 1976 Code is amended to read:

#### **“Article 3**

#### **Commission on Indigent Defense**

Section 17-3-310. (A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows:

(1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion

of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender.

(2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed.

(3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed.

(4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows:

(1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and

(2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission:

(1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article;

(2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to

be used in the determination of indigency and qualifications for services for indigent legal representation;

(3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services;

(4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to:

(a) the preparation and distribution of a basic defense manual and other educational materials;

(b) the preparation and distribution of model forms and documents employed in indigent defense;

(c) the promotion of and assistance in the training of indigent defense attorneys;

(d) the provision of legal research assistance to public defenders; and

(e) the provision of other assistance to public defenders as may be authorized by law;

(5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and

(6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission.

(7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

Section 17-3-320. (A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article.

(B) The executive director shall:

(1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission;

(2) maintain proper records of all financial transactions related to the operation of the office;

(3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services;

(4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require;

(5) coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

(6) maintain proper records of all financial transactions related to the operation of the commission;

(7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests;

(8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter;

(9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director;

(10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and

(11) perform other duties as the commission assigns.

Section 17-3-330. (A) The Office of Indigent Defense shall:

(1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for

the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes;

(2) perform those functions provided pursuant to Section 17-3-360;

(3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State;

(4) implement other duties the commission may direct; and

(5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

Section 17-3-340. (A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.



(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for:

(1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office;

(2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person;

(3) public defender and appointed counsel caseloads;

(4) the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel, based on job description, education, training, and experience;

(5) the performance of public defenders and appointed counsel representing indigent persons;

(6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment;

(7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons;

(8) determining indigence and for assessing and collecting the costs of legal representation and related services;

- (9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter;
- (10) removing a circuit public defender for cause;
- (11) a uniform definition of a 'case' for purposes of determining caseload statistics; and
- (12) accepting contractual indigent defense representation.

Section 17-3-350. The members of the commission and the Circuit Public Defender Selection Panel and other policy-making or administrative personnel acting in a policy-making or administrative capacity in connection with the commission or the panel are not subject to civil liability resulting from an act or failure to act in the implementation and carrying out of the purposes of this chapter.

Section 17-3-360. (A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities:

(1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(F)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision.

(2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first satisfied that there is arguable merit to the appeal.

(3) It shall represent indigents, other than at trial or commitment proceedings when appointed by the court.

(4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

Section 17-3-370. The provisions of this article shall not restrict a court in which an appeal is to be effected, from appointing counsel for indigent persons when the division is disqualified from representation for reasons of conflict or when the division deems it advisable that it not provide representation for the indigent person.

Section 17-3-380. The commission will be funded by appropriations to the commission in the state General Appropriations Act including federal funds as may be available.”

#### **Retirement system for judges and solicitors, circuit public defenders**

SECTION 8. A. Section 9-8-10(13) and (18) of the 1976 Code, as last amended by Act 249 of 2004, are further amended to read:

“(13) ‘Compensation’ means the total salary paid to a judge, solicitor, or circuit public defender for service rendered to the State.

(18) ‘Earned service’ means paid employment as a judge, solicitor, or circuit public defender where the judge, solicitor, or circuit public defender makes regular contributions to the system.”

B. Section 9-8-10 of the 1976 Code, as last amended by Act 249 of 2004, is further amended by adding at the end:

“(19) ‘Circuit public defender’ means a person holding the office defined in Section 17-3-5(4).”

C. Section 9-8-20 of the 1976 Code is amended to read:

“Section 9-8-20. A retirement system is created and placed under the administration of the board to provide retirement allowances and other benefits for judges, solicitors, and circuit public defenders. It has the power and privileges of a corporation and must be known as the Retirement System for Judges and Solicitors of the State of South Carolina, and by this name all of its business must be transacted, all of its funds invested, and all of its cash, securities, and other property held.”

D. Section 9-8-40 of the 1976 Code is amended to read:

“Section 9-8-40. (1) All persons who are judges or solicitors on July 1, 1979, and who have not attained age seventy-two shall become members of the system as of that date. All other persons become members of the system on taking office as judge, solicitor, or circuit public defender before attaining age seventy-two.

(2) If a member of the system ceases to be a judge, solicitor, or circuit public defender for reasons other than death or retirement, he then ceases to be a member of the system, whether or not he withdraws his accumulated contributions.”

E. Section 9-8-50(A) of the 1976 Code, as last amended by Act 249 of 2004, is further amended to read:

“(A) An active contributing member of the system may establish service credit in the system for the same types of service, and under the same conditions, that members of the South Carolina Retirement System may establish service credit in the South Carolina Retirement System pursuant to Section 9-1-1140. With the exception of nonqualified service, as defined in Section 9-1-10(20), an active contributing member may establish service credit under this section by making a payment to the system equal to the current member contribution required for earned service pursuant to Section 9-8-130 for each year of service purchased, prorated for periods of less than a year. The cost to establish nonqualified service under this section is the same as the cost for a member to establish nonqualified service in the South Carolina Retirement System pursuant to Section 9-1-1140. A member may not establish more than sixteen years of service credit in the system under this section. A judge may not establish additional service credit under this section after attaining twenty-five years of creditable

service. A solicitor or circuit public defender may not establish additional service credit under this section after attaining twenty-four years of creditable service.”

F. Section 9-8-50(D)(2)(a) of the 1976 Code, as last amended by Act 249 of 2004, is further amended to read:

“(a) return to employment as a judge, solicitor, or circuit public defender and once again become an active contributing member of the system;”

G. Section 9-8-50(E)(1) and (3) of the 1976 Code, as last amended by Act 249 of 2004, are further amended to read:

“(1) A judge is vested in the system after attaining ten years of earned service in the position of judge, a solicitor is vested in the system after attaining eight years of earned service as a solicitor, and a circuit public defender is vested in the system after attaining eight years of earned service as a circuit public defender.

(3) If a vested member who began service as a judge, solicitor, or circuit public defender after June 30, 2004, has terminated service and left contributions on deposit with the system, the member is eligible for a monthly benefit beginning at age sixty-five. The member’s benefit under this section is calculated by multiplying the member’s monthly benefit determined in accordance with Section 9-8-60 or 9-8-70, by a fraction in which the member’s total credited service in the system is the numerator and twenty-four is the denominator. The monthly benefit under this section may not exceed the member’s benefit as calculated pursuant to Section 9-8-60 or 9-8-70.”

H. Section 9-8-60(1) and (5) of the 1976 Code, as last amended by Act 249 of 2004, are further amended to read:

“(1) A member of the system may retire upon written application to the board setting forth at what time, not later than the end of the calendar year in which the member attains age seventy-two and not more than ninety days prior nor more than six months subsequent to the execution and filing thereof, the member desires to be retired, if the member at the time so specified for retirement is no longer in the service of the State, except as a member of the General Assembly or as allowed pursuant to subsection (7), and has completed ten years of earned service as a judge or eight years of earned service as a solicitor

or circuit public defender or was in service as a judge or solicitor on July 1, 1984, and has either:

(a) attained the age of sixty-five and completed at least twenty years of credited service;

(b) attained age seventy and completed at least fifteen years of credited service; or

(c) completed at least twenty-five years of credited service in the system for a judge, or twenty-four years of credited service in the system for a solicitor or circuit public defender, regardless of age. A member may retire under this section if the member was a member of this system as of June 30, 2004; attained age sixty-five with at least four years' earned service in the position of judge, solicitor, or circuit public defender; and, as of June 30, 2004, had a total of twenty-five years of credited service with the State in the South Carolina Retirement System, the Police Officers Retirement System, or the Retirement System for Members of the General Assembly.

A person is not eligible to receive a retirement allowance under this system while under employment covered by the South Carolina Retirement System and the South Carolina Police Officers Retirement System except as provided in Section 9-8-65.

A person receiving retirement allowances under this system who is elected to the General Assembly continues to receive the retirement allowances while serving in the General Assembly and must also be a member of the General Assembly Retirement System unless the person files a statement with the State Budget and Control Board on a form prescribed by the board electing not to participate in the General Assembly Retirement System while a member of the General Assembly. A person making this election shall not make contributions to the General Assembly Retirement System nor shall the State make contributions on the member's behalf and the person is not entitled to benefits from the General Assembly Retirement System after ceasing to be a member of the General Assembly.

(5) A member who retires, who has completed at least twenty-five years of credited service, or twenty-four years in the case of a solicitor or circuit public defender, shall receive a monthly retirement allowance which must be equal to one-twelfth of seventy-one and three-tenths percent of the current active salary of the respective position plus one-twelfth of two and sixty-seven hundredths percent of the current active salary of the respective position for each additional year of earned service over twenty-five, or twenty-four in the case of a solicitor or circuit public defender. The monthly retirement allowance may not

exceed one-twelfth of ninety percent of the current active salary of the respective position.”

I. Section 9-8-60 of the 1976 Code, as last amended by Act 249 of 2004, is further amended by adding a new subsection at the end to read:

“(7) A member eligible to retire and receive the maximum monthly benefit of one-twelfth of ninety percent of the current active salary of a judge, solicitor, or circuit public defender as provided in subsection (5) may retire and receive a retirement benefit while continuing to serve as judge, solicitor, or circuit public defender. The employee and employer contributions must continue to be paid as if the judge, solicitor, or circuit public defender continuing to serve pursuant to this subsection was an active contributing member, but no additional service credit accrues on account of these contributions. A judge, solicitor, or circuit public defender who retires pursuant to this subsection is not subject to the provisions of Section 9-8-120 unless he has vacated his office.”

J. Section 9-8-110(3) and (5) of the 1976 Code are amended to read:

“(3) If a member dies while in the service of the State, whether as a judge, solicitor, or circuit public defender or otherwise, and either is not married or has designated a beneficiary other than his surviving spouse, an allowance in lieu of the lump sum provided in subsection (1) is payable to the person he nominated by written designation in accordance with subsection (1) equal to the amount which would have been payable to the person as if the deceased member had retired at the time of his death and had made an effective election under Section 9-8-70 nominating the person as his contingent beneficiary.

(5) Upon receipt of proof, satisfactory to the board, of the death of a member in service as a judge, solicitor, or circuit public defender who had completed at least one full year of credited service in the system or of the death of a member in service as a result of an injury arising out of and in the course of the performance of his duties regardless of length of membership, there must be paid to his spouse unless he has nominated a beneficiary by written designation filed with the board, if the person is living at the time of the member’s death, otherwise to the member’s estate, a death benefit equal to the annual compensation of the member at the time his death occurs. The benefit must be payable apart and separate from the payment of the allowance, or the lump sum amount in lieu thereof, pursuant to the provisions of subsection (1), (2), or (3) of this section. A member may designate his estate to receive

this death benefit in lieu of his spouse, or other beneficiary nominated in subsection (1). For purposes of this subsection, a member is considered to be in service at the date of his death if his last day of earned service credit as a judge, solicitor, or circuit public defender occurred not more than ninety days before his death and he has not retired or withdrawn contributions.”

K. Section 9-8-120(1) and (2) of the 1976 Code, as last amended by Act 497 of 1994, are further amended to read:

“(1) If the return is as a solicitor or circuit public defender, he must be a contributing member of the system and must be credited with all service standing to his credit at the time of his retirement. The retirement allowance payable upon his subsequent retirement must be based on the total of his credited service rendered before and after his return to service.

(2) Except as otherwise provided below, if this return is in a position other than as a solicitor or circuit public defender, the beneficiary, upon cessation of service in the position, is entitled to apply for a retirement allowance at the same rate to which the beneficiary was previously entitled, disregarding any reduction resulting from a previous election of an option. If the beneficiary’s return is as a member of the General Assembly, retirement allowances continue as provided pursuant to Section 9-8-60(1).”

L. Section 9-8-125 of the 1976 Code, as added by Act 63 of 1995, is amended to read:

“Section 9-8-125. A member of the system who is at least sixty-five years of age and eligible to receive benefits pursuant to Chapter 9 of this title but for the member’s current employment as a judge, solicitor, or circuit public defender may elect to receive retirement benefits from the Retirement System for members of the General Assembly by written notice to the board.”

## **Repeal**

SECTION 9. Sections 17-3-60 and 17-3-70 of the 1976 Code are repealed.



## **Savings clause**

SECTION 10. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

## **Severability clause**

SECTION 11. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

## **Time effective**

SECTION 12. This act takes effect upon approval by the Governor.

Ratified the 12<sup>th</sup> day of June, 2007.

Vetoed by the Governor -- 6/18/07.

Veto overridden by Senate -- 6/21/07.

Veto overridden by House -- 6/21/07.