CHAPTER 3

Defense of Indigents

ARTICLE 1

General Provisions

**SECTION 17‑3‑5.** Definitions.

 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.

HISTORY: 2007 Act No. 108, Section 2, eff June 21, 2007.

**SECTION 17‑3‑10.** Persons entitled to counsel shall be so advised; when counsel shall be provided.

 Any person entitled to counsel under the Constitution of the United States shall be so advised and if it is determined that the person is financially unable to retain counsel then counsel shall be provided upon order of the appropriate judge unless such person voluntarily and intelligently waives his right thereto. The fact that the accused may have previously engaged and partially paid private counsel at his own expense in connection with pending charges shall not preclude a finding that he is financially unable to retain counsel.

HISTORY: 1962 Code Section 17‑281; 1969 (56) 374; 1977 Act No. 98 Section 2.

CROSS REFERENCES

Accused’s right to counsel, see Section 17‑23‑60.

Defense of indigents, see Rule 602, SCACR.

Library References

Criminal Law 1766, 1774(3).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339, 341 to 343, 364 to 365, 368, 376 to 378, 382, 384 to 388, 390 to 396, 408, 428, 430, 2358 to 2363.

RESEARCH REFERENCES

Treatises and Practice Aids

Criminal Procedure, Second Edition Section 11.2(A), Right to Appointed Counsel: Misdemeanor Prosecutions.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Criminal Law: Right to Counsel. 28 S.C. L. Rev. 294.

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

The Right to Counsel: The Argersinger‑Kirby Dichotomy. 25 S.C. L. Rev. 292.

United States Supreme Court Annotations

Miranda warnings, right to counsel, voluntary waiver, effective assistance of counsel, see Berghuis v. Thompkins, 2010, 130 S.Ct. 2250, 560 U.S. 370, 176 L.Ed.2d 1098, rehearing denied 131 S.Ct. 33, 561 U.S. 1046, 177 L.Ed.2d 1123.

Supreme Court’s views as to accused’s federal constitutional right to counsel on appeal. 102 L Ed 2d 1049.

Supreme Court’s views as to what constitutes valid waiver of accused’s federal constitutional right to counsel. 101 L Ed 2d 1017.

Attorney General’s Opinions

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender. 1978 Op Atty Gen, No 78‑110, p 140 (June 07, 1978) 1978 WL 22579.

NOTES OF DECISIONS

In general 1

Right to counsel 2

Waiver of counsel 3

1. In general

Defendant’s state court conviction for common law robbery could be used as a predicate conviction for purposes of career offender enhancement since it was not obtained in violation of his right as an indigent defendant to court‑appointed counsel; defendant failed to prove that he was financially unable to employ counsel based upon his circumstances at the time. U.S. v. McVay (C.A.4 (S.C.) 2002) 32 Fed.Appx. 661, 2002 WL 130230, Unreported, certiorari denied 122 S.Ct. 2612, 536 U.S. 933, 153 L.Ed.2d 797. Sentencing And Punishment 1318

The mere late appointment of counsel is not per se prejudicial. Gibson v. State (S.C. 1971) 257 S.C. 230, 185 S.E.2d 373. Criminal Law 1166.10(2)

2. Right to counsel

In a prosecution for murder, kidnapping, and criminal sexual conduct in the first degree, the court’s denial of brief consultation between the defendant and his attorney, during a 15 minute recess after direct examination and before cross‑examination, did not violate defendant’s constitutional right to a fair trial and right to counsel, under Section 17‑3‑10, and a new trial would not be required where normally, counsel was not permitted to confer with his defendant client between direct examination and cross‑examination, where counsel for the defendant, after direct examination, did not request the judge to declare a recess so that he might talk with his client before cross‑examination began, and where no actual prejudice was demonstrated by defendant. State v. Perry (S.C. 1983) 278 S.C. 490, 299 S.E.2d 324, certiorari denied 103 S.Ct. 1881, 461 U.S. 908, 76 L.Ed.2d 811.

Mere disagreement between defendant and his counsel as to matter of trial tactics is not sufficient cause, itself, at least after trial has begun, to require trial court to replace or offer to replace court appointed counsel with another attorney at that time. State v. Jones (S.C. 1978) 270 S.C. 587, 243 S.E.2d 461. Criminal Law 1825

Contention that defendant was denied his rights under the Defense of Indigents Act [1976 Code Section 17‑3‑10 et seq.] is not borne out by the facts where defendant, indicted for murder during the commission of a kidnapping or robbery or larceny with the use of a deadly weapon had a public defender appointed in the county in which the abduction occurred, but also had an attorney appointed at arraignment (since previously appointed counsel were not present) who was an assistant public defender; fact that the assistant public defender had practiced law less than 5 years was irrelevant; plea entered was the most advantageous plea available to any defendant. State v. Allen (S.C. 1976) 266 S.C. 468, 224 S.E.2d 881.

Defendant challenging his sentence as armed career criminal failed to overcome presumption that South Carolina state court informed him of right to counsel, as required under state statute, in his prior prosecutions for pointing and presenting firearm and strong arm robbery, where he submitted neither documentary evidence nor testimony at sentencing hearing to establish he pled guilty in absence of counsel. United States v. Weston (C.A.4 (S.C.) 2017) 681 Fed.Appx. 235, 2017 WL 937471. Sentencing and Punishment 1381(5)

3. Waiver of counsel

Evidence was insufficient to support finding that defendant understood the dangers of self‑representation and knowingly and intelligently waived his right to counsel when he plead guilty to felony trafficking of cocaine and crack cocaine; although defendant had a private attorney when he was first charged, record indicated that plea judge never acknowledged that defendant did not have counsel with him at the plea hearing, and did not inquire about why defendant had relieved his counsel, or if he wished to have counsel present, nor, in the absence of counsel, did the judge advise defendant of the crucial elements of the charged offenses, of the possible penalties if the recommended sentence was not accepted by the plea judge, or ask questions to ensure defendant’s understanding of the consequences of his plea. Gardner v. State (S.C. 2002) 351 S.C. 407, 570 S.E.2d 184. Criminal Law 1753

**SECTION 17‑3‑20.** Appointment of counsel for indigents charged with murder; compensation.

 In the event any person who shall be charged with murder shall, after investigation by the court, be determined to be unable financially to retain adequate legal counsel, the court shall appoint such qualified and experienced counsel to defend such defendant in the trial of the action.

 Such appointed counsel shall be paid such fee and costs as the court shall deem appropriate.

HISTORY: 1962 Code Section 17‑281.1; 1974 (58) 2361.

Library References

Attorney and Client 132.

Criminal Law 1766.

Westlaw Topic Nos. 45, 110.

C.J.S. Attorney and Client Sections 371 to 377.

C.J.S. Criminal Law Sections 339, 342 to 343, 364 to 365, 368, 384 to 388, 390 to 396, 2358 to 2363.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

Cowden, Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

The Right to Counsel: The Argersinger‑Kirby Dichotomy. 25 S.C. L. Rev. 292.

United States Supreme Court Annotations

Miranda warnings, right to counsel, voluntary waiver, effective assistance of counsel, see Berghuis v. Thompkins, 2010, 130 S.Ct. 2250, 560 U.S. 370, 176 L.Ed.2d 1098, rehearing denied 131 S.Ct. 33, 561 U.S. 1046, 177 L.Ed.2d 1123.

Supreme Court’s views as to what constitutes valid waiver of accused’s federal constitutional right to counsel. 101 L Ed 2d 1017.

NOTES OF DECISIONS

In general 1

1. In general

Fact that assistant public defender representing defendant accused of murder during the commission of a kidnapping or robbery or larceny with the use of a deadly weapon had practiced law less than 5 years was irrelevant to question whether defendant’s rights under the Defense of Indigents Act were denied him. State v. Allen (S.C. 1976) 266 S.C. 468, 224 S.E.2d 881.

**SECTION 17‑3‑30.** Affidavit of inability to employ counsel; payment of indigent’s assets to state; application fee; waiver or reduction of fee; disposition of fee revenues; fund for screening applicants.

 (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.

 (C) Sufficient funds shall be set aside from allocations provided for the defense of indigent to provide for adequate screening of applications for indigent assistance to ensure the applicant is qualified.

HISTORY: 1962 Code Section 17‑282; 1969 (56) 374; 1977 Act No. 219 Pt II Section 19; 1988 Act No. 356, Section 1; 1993 Act No. 164, Part II, Section 45E; 1994 Act No. 497, Part I, E23‑Section 14; 1995 Act No. 145, Part IB, E23‑Section 14; 1996 Act No. 458, Part II, Section 26B; 1999 Act No. 100, Part II, Section 17; 2007 Act No. 108, Section 4, eff June 21, 2007.

Library References

Criminal Law 1766, 1774(3).

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339, 341 to 343, 364 to 365, 368, 376 to 378, 382, 384 to 388, 390 to 396, 408, 428, 430, 2358 to 2363.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

Attorney General’s Opinions

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the cost of his representation by a public defender. 1978 Op Atty Gen, No 78‑110, p 140 (June 07, 1978) 1978 WL 22579.

NOTES OF DECISIONS

In general 1

1. In general

Defendant’s state court conviction for common law robbery could be used as a predicate conviction for purposes of career offender enhancement since it was not obtained in violation of his right as an indigent defendant to court‑appointed counsel; defendant failed to prove that he was financially unable to employ counsel based upon his circumstances at the time. U.S. v. McVay (C.A.4 (S.C.) 2002) 32 Fed.Appx. 661, 2002 WL 130230, Unreported, certiorari denied 122 S.Ct. 2612, 536 U.S. 933, 153 L.Ed.2d 797. Sentencing And Punishment 1318

**SECTION 17‑3‑40.** Creation of claim against assets and estate of person for whom counsel is provided.

 (A) The appointment of counsel, as hereinbefore provided, creates a claim against the assets and estate of the person who is provided counsel in an amount equal to the costs of representation as determined pursuant to Sections 17‑3‑50 and 17‑3‑80, less that amount that the person pays to the defender corporation of the county or counties wherein he is being represented or the judicial department as provided for in Section 17‑3‑30.

 (B) Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days’ notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.

 (C) The court may, in its discretion, order any claim or judgment waived, modified or withdrawn.

 (D) The Judicial Department shall be responsible for administering this section, and all moneys collected hereunder shall be paid over to the Judicial Department.

HISTORY: 1962 Code Section 17‑283; 1969 (56) 374; 1977 Act No. 219 Part II Section 19; 1988 Act No. 356, Section 2.

Library References

Costs 302, 325.

Westlaw Topic No. 102.

C.J.S. Criminal Law Sections 2430, 2432 to 2434, 2454 to 2455.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. False Imprisonment Section 3, False Arrest.

Attorney General’s Opinions

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender. 1978 Op Atty Gen, No 78‑110, p 140 (June 07, 1978) 1978 WL 22579.

**SECTION 17‑3‑45.** Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.

 (A) A person to whom counsel has been provided in any court in this State shall execute an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person’s 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 or a portion thereof to the Office of Indigent Defense.

 (B) A forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined 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 and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the Public Defender Application 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.

 (C) In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial status and shall be responsible for paying any fee. In juvenile matters, the parents or legal guardians of the juvenile, must be advised in writing of this requirement at the earliest stage of the proceedings against the juvenile.

 (D) Nothing contained in this section restricts or hinders a court from appointing counsel in any emergency proceedings or where there is not sufficient time for an individual to complete the application process.

 (E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense. The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days’ notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.

 (F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.

HISTORY: 2008 Act No. 353, Section 2, Pt 23I, eff July 1, 2009.

Library References

Costs 302, 325.

Criminal Law 1774(3).

Westlaw Topic Nos. 102, 110.

C.J.S. Criminal Law Sections 339, 341, 343, 376 to 378, 382, 384 to 388, 408, 428, 430, 2430, 2432 to 2434, 2454 to 2455.

**SECTION 17‑3‑50.** Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.

 (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.

 (B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant’s attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

 (C) Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred.

 (D) Nothing in this section shall be construed to alter the provisions of Section 17‑3‑10 concerning those defendants who are entitled to legal representation.

HISTORY: 1962 Code Section 17‑284; 1969 (56) 374; 1993 Act No. 164, Part II, Section 45F; 2007 Act No. 108, Section 5, eff June 21, 2007.

CROSS REFERENCES

Fees of appointed counsel and public defenders, see Rules for the Defense of indigents Act, Rules 4, 6.

Library References

Attorney and Client 132.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 371 to 377.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney and Client Section 34, Court Appointed Representation.

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Cowden, Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents act in South Carolina. 18 S.C. L. Rev. 380.

Attorney General’s Opinions

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender. 1978 Op Atty Gen, No 78‑110, p 140 (June 07, 1978) 1978 WL 22579.

Attorneys employed in the clinical programs at the Law School are private appointed counsel insofar as the Defense of Indigents Act is concerned and are not excused from compliance with the statute and Supreme Court Rules in seeking reimbursement for necessary expenses. 1975‑76 Op Atty Gen, No 4532, p 396 (November 26, 1976) 1976 WL 23149.

NOTES OF DECISIONS

In general 1

1. In general

Trial court did not abuse its discretion in limiting award for attorney fees and costs to attorneys, who were appointed to represent an indigent defendant in a criminal prosecution for murder, assault with intent to kill, and criminal conspiracy, among other charges, to $15,000 which was preapproved for attorney fees and $1,500 for costs, although attorneys expended considerable time in the underlying criminal trial and sought approximately $46,400, where the order preapproving attorney fees and costs stated that attorneys could submit for approval without further advance approval a voucher for payment of fees of up to $15,000 and costs of up to $1,500, and order was unambiguous in its requirement that further preapproval was necessary to incur fees in excess of $15,000 and costs in excess of $1,500. Ex Parte Shurling (S.C. 2014) 408 S.C. 309, 759 S.E.2d 714. Attorney and Client 132

An award of attorney’s fees in excess of the statutory cap in criminal procedure statute governing appointment of private attorneys in defense of indigents is within the sound discretion of the trial judge. Ex Parte Brown (S.C. 2011) 393 S.C. 214, 711 S.E.2d 899. Costs 308

Trial court acted within its discretion in denying court‑appointed private attorney’s request for award of attorney’s fees in excess of statutory cap in criminal procedure statute governing appointment of private attorneys in defense of indigents, based upon attorney’s unprofessional conduct throughout criminal proceeding. Ex Parte Brown (S.C. 2011) 393 S.C. 214, 711 S.E.2d 899. Costs 308

Postconviction relief judge properly conducted hearing on petitioner’s motion for payment of expert witness fees at which counsel for state was allowed to fully participate, rather than holding ex parte hearing. Thames v. State (S.C. 1996) 325 S.C. 9, 478 S.E.2d 682. Costs 302.2(2)

When defendant requests expert services for criminal trial, request is determined by judge in ex parte proceedings. Thames v. State (S.C. 1996) 325 S.C. 9, 478 S.E.2d 682. Costs 302.2(2)

**SECTION 17‑3‑55.** Carry‑forward of unpaid obligations.

 Notwithstanding any other provision of law, the Commission on Indigent Defense is authorized to carry forward unpaid obligations incurred and received for payment in one fiscal year and to pay, to the extent possible, these obligations from funds appropriated in the next year’s budget.

HISTORY: 2008 Act No. 353, Section 2, Pt 23H, eff July 1, 2009.

Library References

Attorney and Client 132.

Criminal Law 1766.

Westlaw Topic Nos. 45, 110.

C.J.S. Attorney and Client Sections 371 to 377.

C.J.S. Criminal Law Sections 339, 342 to 343, 364 to 365, 368, 384 to 388, 390 to 396, 2358 to 2363.

**SECTION 17‑3‑80.** Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations.

 In addition to the appropriation as provided by law, there is appropriated for the fiscal year commencing July 1, 1969, the sum of fifty thousand dollars for the establishment of the defense fund which must be administered by the Office of Indigent Defense. This fund must be used to reimburse private‑appointed counsel, public defenders, and assistant public defenders for necessary expenses, not to exceed two thousand dollars for each case, actually incurred in the representation of persons pursuant to this chapter, so long as the expenses are approved by the trial judge. No reimbursement may be made for travel expenses except extraordinary travel expenses approved by the trial judge. The total state funds provided by this section may not exceed fifty thousand dollars.

HISTORY: 1962 Code Section 17‑287; 1969 (56) 374; 1977 Act No. 219 Pt II Section 19; 1987 Act No. 142 Section 1; 1993 Act No. 164, Part II, Section 45G.

CROSS REFERENCES

Office of Indigent Defense, see Section 17‑3‑320.

Reimbursement for expenses of appointed counsel, see Rules for the Defense of Indigents Act, Rules 4.

Library References

Attorney and Client 132.

Criminal Law 1840.

States 129.

Westlaw Topic Nos. 45, 110, 360.

C.J.S. Attorney and Client Sections 371 to 377.

C.J.S. Criminal Law Sections 389, 427.

C.J.S. States Sections 390 to 417.

LAW REVIEW AND JOURNAL COMMENTARIES

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Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

Cowden, Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

Attorney General’s Opinions

The cost of transcripts (1) are not payable under Section 16‑3‑26(C); (2) cannot be paid under subsection 16‑3‑26(b); (3) may be paid out of the Capital Defense Fund (Section 17‑3‑80) pursuant to Rule 7(3) of the Rules of the Supreme Court. 1981 Op Atty Gen, No 81‑11, p 16 (February 09, 1981) 1981 WL 96538.

In the absence of a statute or court decision requiring same, the State is not obligated to pay for the appearance fee of a court reporter and/or the transcript costs for an indigent defendant appearing at a preliminary hearing. 1978 Op Atty Gen, No 78‑203, p 230 (December 06, 1978) 1978 WL 22671.

Certain municipal courts may order a convicted indigent defendant to reimburse the Judicial Department for the costs of his representation by a public defender. 1978 Op Atty Gen, No 78‑110, p 140 (June 07, 1978) 1978 WL 22579.

Case law is mixed as to whether public defenders are immune from liability for malpractice suits so as to make advisable their obtaining insurance. Liability insurance should also be considered for board members and employees of the defender corporation, since they are unlikely to be immune from suit if no immunity is available to the public defenders. 1976‑77 Op Atty Gen, No 77‑100, p 87 (April 08, 1977) 1977 WL 24442.

NOTES OF DECISIONS

In general 1

1. In general

In murder prosecution where record disclosed substantial question over cause of death that required expert testimony and defense could not be developed without expert assistance, trial court erred in denying defendant’s motion for appointment of an independent forensic pathologist to evaluate evidence at state expense; on remand, trial court would be instructed to appoint pathologist to investigate cause of death, and if it is established that such expert assistance was necessary to present defense and might reasonably have affected adjudication of cause of death, writ of habeas corpus would be granted subject to retrial within reasonable time. Williams v. Martin (C.A.4 (S.C.) 1980) 618 F.2d 1021.

Under a statute providing for the services of medical experts to indigent defendants, an indigent has no absolute right to have the state provide funds for expert witnesses to aid in his defense, but is only entitled to such assistance when a showing is made that it is reasonably necessary for a proper defense. State v. Williams (S.C. 1974) 263 S.C. 290, 210 S.E.2d 298. Costs 302.2(2)

Under statute providing for the services of medical experts to aid indigent defendants, a determination of entitlement to such assistance rests within the discretion of the trial judge, and the exercise of that discretion will not be disturbed on appeal unless an abuse is shown. State v. Williams (S.C. 1974) 263 S.C. 290, 210 S.E.2d 298. Costs 302.2(2); Criminal Law 1148

**SECTION 17‑3‑85.** Fiscal year‑end disposition of unexpended appropriations for payment of private appointed counsel for counties without public defender corporations.

 At the end of each fiscal year all funds appropriated for counties without public defender corporations which have not been exhausted shall be combined into one fund and any and all claims of private appointed counsel in other counties remaining unpaid by virtue of the exhaustion of appropriated funds in those respective counties shall be paid on a pro rata basis until such fund is exhausted or until all claims are satisfied. After payment of the above, any funds remaining at the end of a fiscal year maintained by the Judicial Department shall revert to the general fund of the State at the end of that fiscal year.

HISTORY: 1982 Act No. 466, Part II Section 43.

Library References

States 132.

Westlaw Topic No. 360.

C.J.S. States Sections 390 to 392, 394, 398 to 399, 401 to 402.

**SECTION 17‑3‑90.** Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.

 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.

HISTORY: 1962 Code Section 17‑288; 1969 (56) 374; 1977 Act No. 219 Pt II Section 19; 2007 Act No. 108, Section 6, eff June 21, 2007.

Library References

Attorney and Client 132.

Westlaw Topic No. 45.

C.J.S. Attorney and Client Sections 371 to 377.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

**SECTION 17‑3‑100.** Discretionary authority of judge to appoint counsel is not limited; remuneration and reimbursement.

 Nothing herein contained is designed to limit the discretionary authority of a judge to appoint counsel in any case and any such counsel shall be entitled to remuneration and reimbursement as provided in Sections 17‑3‑50 and 17‑3‑80 hereof, so long as funds appropriated herein are available therefor.

HISTORY: 1962 Code Section 17‑289; 1969 (56) 374.

Library References

Criminal Law 1766.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339, 342 to 343, 364 to 365, 368, 384 to 388, 390 to 396, 2358 to 2363.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

Cowden, Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

The Right to Counsel: The Argersinger‑Kirby Dichotomy. 25 S.C. L. Rev. 292.

Attorney General’s Opinions

Case law is mixed as to whether public defenders are immune from liability for malpractice suits so as to make advisable their obtaining insurance. Liability insurance should also be considered for board members and employees of the defender corporation, since they are unlikely to be immune from suit if no immunity is available to the public defenders. 1976‑77 Op Atty Gen, No 77‑100, p 87 (April 08, 1977) 1977 WL 24442.

NOTES OF DECISIONS

In general 1

1. In general

Trial judge may at discretion offer to appoint other counsel for defendant who no longer desires assistance of court‑appointed counsel. State v. Jones (S.C. 1978) 270 S.C. 587, 243 S.E.2d 461. Criminal Law 1826

**SECTION 17‑3‑110.** Power of Supreme Court to establish rules and regulations.

 The Supreme Court of South Carolina is hereby empowered to establish such rules and regulations as are necessary for the proper administration of this chapter.

HISTORY: 1962 Code Section 17‑290; 1969 (56) 374.

CROSS REFERENCES

Defense of Indigents, see Rule 602, SCACR.

Library References

Courts 78, 81.

Westlaw Topic No. 106.

C.J.S. Courts Sections 3 to 4, 171 to 174, 178.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional Law—Proposed South Carolina Indigent Defendant Act. 17 S.C. L. Rev. 741.

Cowden, Indigent defense services for post‑conviction relief in South Carolina: current problems and potential remedies. 42 S.C. L. Rev. 417 (Winter 1991).

The Proposed Defense of Indigents Act in South Carolina. 18 S.C. L. Rev. 380.

The Right to Counsel: The Argersinger‑Kirby Dichotomy. 25 S.C. L. Rev. 292.

Attorney General’s Opinions

Discussion of appointment of counsel for indigent criminal defendants and Alabam v. Shelton, 535 U.S. 654, 122 S.Ct. 1764 (2002). S.C. Op.Atty.Gen. (Aug. 30, 2002) 2002 WL 31341805.

In the absence of a statute or court decision requiring same, the State is not obligated to pay for the appearance fee of a court reporter and/or the transcript costs for an indigent defendant appearing at a preliminary hearing. 1978 Op Atty Gen, No 78‑203, p 230 (December 06, 1978) 1978 WL 22671.

Case law is mixed as to whether public defenders are immune from liability for malpractice suits so as to make advisable their obtaining insurance. Liability insurance should also be considered for board members and employees of the defender corporation, since they are unlikely to be immune from suit if no immunity is available to the public defenders. 1976‑77 Op Atty Gen, No 77‑100, p 87 (April 08, 1977) 1977 WL 24442.

NOTES OF DECISIONS

In general 1

1. In general

The trial judge lacked authority to interfere with the operation of a county criminal defender corporation by enjoining it from paying salaries to any of its attorney employees, since the manner of establishing the defender corporation was prescribed by the legislature, with regulatory authority vested in the Supreme Court pursuant to Section 17‑3‑110. Matter of Goodwin (S.C. 1983) 279 S.C. 274, 305 S.E.2d 578. Constitutional Law 2545(1); Criminal Law 1840

ARTICLE 3

Commission on Indigent Defense

**SECTION 17‑3‑310.** Commission created; appointment of members; terms; powers and duties.

 (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.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

CROSS REFERENCES

Portion of funds generated by courts from fines and assessments to be allocated to Office of Indigent Defense, see Sections 14‑1‑206 to 14‑1‑208.

Library References

States 45.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 17‑3‑320.** Office of Indigent Defense; executive director; appointment; duties.

 (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.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

CROSS REFERENCES

Office of Indigent Defense to administer defense fund, see Section 17‑3‑50.

Portion of funds generated by courts from fines and assessments to be allocated to Office of Indigent Defense, see Sections 14‑1‑206 to 14‑1‑208.

Library References

Criminal Law 1766, 1840.

States 45.

Westlaw Topic Nos. 110, 360.

C.J.S. Criminal Law Sections 339, 342 to 343, 364 to 365, 368, 384 to 396, 427, 2358 to 2363.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

**SECTION 17‑3‑330.** Duties of Office of Indigent Defense.

 (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.

HISTORY: 1993 Act No. 164, Part II, Section 45C; 1994 Act No. 497, Part I, E23‑Section 14; 1995 Act No. 145, Part IB, E23‑Section 14; 1996 Act No. 458, Part II, Section 26C; 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

CROSS REFERENCES

Portion of funds generated by courts from fines and assessments to be allocated to Office of Indigent Defense, see Sections 14‑1‑206 to 14‑1‑208.

Library References

States 73.

Westlaw Topic No. 360.

C.J.S. States Sections 229, 240 to 249, 253.

**SECTION 17‑3‑340.** Duties of commission.

 (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.

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

Library References

States 73.

Westlaw Topic No. 360.

C.J.S. States Sections 229, 240 to 249, 253.

**SECTION 17‑3‑350.** Immunity.

 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.

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

Library References

States 78.

Westlaw Topic No. 360.

C.J.S. States Sections 231 to 232, 234.

**SECTION 17‑3‑360.** Division of Appellate Defense created; administration and staffing; duties and responsibilities.

 (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(G)(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.

HISTORY: 2005 Act No. 103, Section 2, eff July 1, 2005; 2007 Act No. 108, Section 7, eff June 21, 2007.

Library References

States 45, 73.

Westlaw Topic No. 360.

C.J.S. States Sections 145 to 146, 157 to 161, 229, 240 to 249, 253.

**SECTION 17‑3‑370.** Appointment of counsel by court.

 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.

HISTORY: 2007 Act No. 108, Section 7, eff June 21, 2007.

Editor’s Note

Prior laws. 2005 Act No. 103, Section 2; 1976 Code Section 17‑3‑350.

Library References

Criminal Law 1766.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 339, 342 to 343, 364 to 365, 368, 384 to 388, 390 to 396, 2358 to 2363.

**SECTION 17‑3‑380.** Funding.

 The commission will be funded by appropriations to the commission in the state General Appropriations Act including federal funds as may be available.

HISTORY: 2007 Act No. 108, Section 7, eff June 21, 2007.

Editor’s Note

Prior law. 2005 Act No. 103, Section 2; 1976 Code Section 17‑3‑360.

Library References

States 129.

Westlaw Topic No. 360.

C.J.S. States Sections 390 to 417.

ARTICLE 5

Circuit Public Defenders

**SECTION 17‑3‑510.** Circuit Public Defender Selection Panel; county representation; nomination of Circuit Public Defender; election by South Carolina Prosecution Coordination Commission.

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

Attorney General’s Opinions

The language of Section 17‑3‑510 (B) is a limitation of the benefits otherwise afforded to circuit public defenders as state employees. S.C. Op.Atty.Gen. (Dec. 22, 2011) 2011 WL 6959372.

NOTES OF DECISIONS

In general 1

1. In general

Requirement in statute setting forth formula to determine membership of each judicial circuit’s circuit public defender selection panel that percentage distribution of population plus percentage of distribution of appropriations for public defender operations be divided by two and “rounded to the nearest whole number” meant rounding percentages to nearest whole number, not converting percentages to decimals, and then rounding decimal to nearest whole number. Lancaster County Bar Ass’n v. South Carolina Com’n on Indigent Defense (S.C. 2008) 380 S.C. 219, 670 S.E.2d 371. Criminal Law 1840

**SECTION 17‑3‑520.** Circuit public defender; qualifications; responsibilities.

 (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 17‑3‑310;

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

United States Supreme Court Annotations

Effective assistance, guilty plea resulting in deportation, duty of counsel with regards to deportation risk, see Padilla v. Kentucky, 2010, 130 S.Ct. 1473, 559 U.S. 356, 176 L.Ed.2d 284.

Attorney General’s Opinions

A circuit public defender is not exempt from the State’s unemployment program. S.C. Op.Atty.Gen. (July 15, 2010) 2010 WL 3048331.

**SECTION 17‑3‑530.** Chief county public defenders; responsibilities and duties.

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑540.** Maintenance and staffing of county public defender offices.

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑550.** Funding.

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

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑560.** Administration of funds.

 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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑570.** Administration of personnel.

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑580.** Public defenders; requirements as to employment.

 (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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

Attorney General’s Opinions

No conflict of interest exists when an individual serves as both county council member and public defender. S.C. Op Atty Gen. (November 12, 2015) 2015 WL 7573855.

Serving as a member of county council and as a public defender does not violate the constitutional prohibition against dual office holding. S.C. Op Atty Gen. (November 12, 2015) 2015 WL 7573855.

**SECTION 17‑3‑590.** Office space and equipment.

 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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.

**SECTION 17‑3‑600.** Existing contracts for providing indigent defense services.

 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.

HISTORY: 2007 Act No. 108, Section 3, eff June 21, 2007.

Library References

Criminal Law 1840.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 389, 427.