

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1323
Judiciary II Committee Substitute Adopted 6/20/00
House Committee Substitute Favorable 7/6/00

Short Title: Indigent Defense Services.

(Public)

Sponsors:

Referred to:

May 18, 2000

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE INDIGENT
3 DEFENSE STUDY COMMISSION TO ESTABLISH AN OFFICE OF INDIGENT
4 DEFENSE SERVICES.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. OFFICE OF INDIGENT DEFENSE SERVICES**

8
9 Section 1. Subdivision IX of Chapter 7A of the General Statutes is amended
10 by adding a new Article to read:

11 **"ARTICLE 39B.**

12 **"INDIGENT DEFENSE SERVICES ACT.**

13 **"§ 7A-498. Title.**

14 This Article shall be known and may be cited as the 'Indigent Defense Services Act of
15 2000'.

16 **"§ 7A-498.1. Purpose.**

17 Whenever a person is determined to be indigent and entitled to counsel, it is the
18 responsibility of the State under the federal and State constitutions to provide that person

1 with counsel and the other necessary expenses of representation. The purpose of this
2 Article is to:

- 3 (1) Enhance oversight of the delivery of counsel and related services
4 provided at State expense;
- 5 (2) Improve the quality of representation and ensure the independence of
6 counsel;
- 7 (3) Establish uniform policies and procedures for the delivery of services;
- 8 (4) Generate reliable statistical information in order to evaluate the services
9 provided and funds expended; and
- 10 (5) Deliver services in the most efficient and cost-effective manner without
11 sacrificing quality representation.

12 **"§ 7A-498.2. Establishment of Office of Indigent Defense Services.**

13 (a) The Office of Indigent Defense Services, which is administered by the Director
14 of Indigent Defense Services and includes the Commission on Indigent Defense Services,
15 is created within the Judicial Department. As used in this Article, 'Office' means the
16 Office of Indigent Defense Services, 'Director' means the Director of Indigent Defense
17 Services, and 'Commission' means the Commission on Indigent Defense Services.

18 (b) The Office of Indigent Defense Services shall exercise its prescribed powers
19 independently of the head of the Administrative Office of the Courts. The Office may
20 enter into contracts, own property, and accept funds, grants, and gifts from any public or
21 private source to pay expenses incident to implementing its purposes.

22 (c) The Director of the Administrative Office of the Courts shall provide general
23 administrative support to the Office of Indigent Defense Services. The term 'general
24 administrative support' includes purchasing, payroll, and similar administrative services.

25 (d) The budget of the Office of Indigent Defense Services shall be a part of the
26 Judicial Department's budget. The Commission on Indigent Defense Services shall
27 consult with the Director of the Administrative Office of the Courts, who shall assist the
28 Commission in preparing and presenting to the General Assembly the Office's budget,
29 but the Commission shall have the final authority with respect to preparation of the
30 Office's budget and with respect to representation of matters pertaining to the Office
31 before the General Assembly.

32 (e) The Director of the Administrative Office of the Courts shall not reduce or
33 modify the budget of the Office of Indigent Defense Services or use funds appropriated to
34 the Office without the approval of the Commission.

35 **"§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.**

36 (a) The Office of Indigent Defense Services shall be responsible for establishing,
37 supervising, and maintaining a system for providing legal representation and related
38 services in the following cases:

- 39 (1) Cases in which an indigent person is subject to a deprivation of liberty
40 or other constitutionally protected interest and is entitled by law to legal
41 representation;
- 42 (2) Cases in which an indigent person is entitled to legal representation
43 under G.S. 7A-451 and G.S. 7A-451.1; and

1 (3) Any other cases in which the Office of Indigent Defense Services is
2 designated by statute as responsible for providing legal representation.

3 (b) The Office of Indigent Defense Services shall develop policies and procedures
4 for determining indigency in cases subject to this Article, and those policies and
5 procedures shall be applied uniformly throughout the State. The court shall determine in
6 each case whether a person is indigent and entitled to legal representation, and counsel
7 shall be appointed as provided in G.S. 7A-452.

8 (c) In all cases subject to this Article, appointment of counsel, determination of
9 compensation, appointment of experts, and use of funds for experts and other services
10 related to legal representation shall be in accordance with rules and procedures adopted
11 by the Office of Indigent Defense Services.

12 (d) The Office of Indigent Defense Services shall allocate and disburse funds
13 appropriated for legal representation and related services in cases subject to this Article
14 pursuant to rules and procedures established by the Office.

15 **"§ 7A-498.4. Establishment of Commission on Indigent Defense Services.**

16 (a) The Commission on Indigent Defense Services is created within the Office of
17 Indigent Defense Services and shall consist of 13 members. To create an effective
18 working group, assure continuity, and achieve staggered terms, the Commission shall be
19 appointed as provided in this section.

20 (b) The members of the Commission shall be appointed as follows:

21 (1) The Chief Justice of the North Carolina Supreme Court shall appoint
22 one member, who shall be an active or former member of the North
23 Carolina judiciary.

24 (2) The Governor shall appoint one member, who shall be a nonattorney.

25 (3) The General Assembly shall appoint one member upon the
26 recommendation of the President Pro Tempore of the Senate.

27 (4) The General Assembly shall appoint one member upon the
28 recommendation of the Speaker of the House of Representatives.

29 (5) The North Carolina Public Defenders Association shall appoint one
30 member.

31 (6) The North Carolina State Bar shall appoint one member.

32 (7) The North Carolina Bar Association shall appoint one member.

33 (8) The North Carolina Academy of Trial Lawyers shall appoint one
34 member.

35 (9) The North Carolina Association of Black Lawyers shall appoint one
36 member.

37 (10) The North Carolina Association of Women Lawyers shall appoint one
38 member.

39 (11) The Commission shall appoint three members, who shall reside in
40 different judicial districts from one another. One appointee shall be a
41 nonattorney, and one appointee may be an active member of the North
42 Carolina judiciary. One appointee shall be a Native American. The

1 initial three members satisfying this subdivision shall be appointed as
2 provided in subsection (k) of this section.

3 (c) The terms of members appointed pursuant to subsection (b) of this section shall
4 be as follows:

5 (1) The initial appointments by the Chief Justice, the Governor, and the
6 General Assembly shall be for four years.

7 (2) The initial appointments by the Public Defenders Association and State
8 Bar, and one appointment by the Commission, shall be for three years.

9 (3) The initial appointments by the Bar Association and Trial Academy, and
10 one appointment by the Commission, shall be for two years.

11 (4) The initial appointments by the Black Lawyers Association and Women
12 Lawyers Association, and one appointment by the Commission, shall be
13 for one year.

14 At the expiration of these initial terms, appointments shall be for four years and shall
15 be made by the appointing authorities designated in subsection (b) of this section. No
16 person shall serve more than two consecutive four-year terms plus any initial term of less
17 than four years.

18 (d) Persons appointed to the Commission shall have significant experience in the
19 defense of criminal or other cases subject to this Article or shall have demonstrated a
20 strong commitment to quality representation in indigent defense matters. No active
21 prosecutors or law enforcement officials, or active employees of such persons, may be
22 appointed to or serve on the Commission. No active judicial officials, or active
23 employees of such persons, may be appointed to or serve on the Commission, except as
24 provided in subsection (b) of this section. No active public defenders, active employees
25 of public defenders, or other active employees of the Office of Indigent Defense Services
26 may be appointed to or serve on the Commission, except that notwithstanding this
27 subsection, G.S. 14-234, or any other provision of law, Commission members may
28 include part-time public defenders employed by the Office of Indigent Defense Services
29 and may include persons, or employees of persons or organizations, who provide legal
30 services subject to this Article as contractors or appointed attorneys.

31 (e) All members of the Commission are entitled to vote on any matters coming
32 before the Commission unless otherwise provided by rules adopted by the Commission
33 concerning voting on matters in which a member has, or appears to have, a financial or
34 other personal interest.

35 (f) Each member of the Commission shall serve until a successor in office has
36 been appointed. Vacancies shall be filled by appointment by the appointing authority for
37 the unexpired term. Removal of Commission members shall be in accordance with
38 policies and procedures adopted by the Commission.

39 (g) A quorum for purposes of conducting Commission business shall be a majority
40 of the members of the Commission.

41 (h) The Commission shall elect a Commission chair from the members of the
42 Commission for a term of two years.

1 (i) The Director of Indigent Defense Services shall attend all Commission
2 meetings except those relating to removal or reappointment of the Director or allegations
3 of misconduct by the Director. The Director shall not vote on any matter decided by the
4 Commission.

5 (j) Commission members shall not receive compensation but are entitled to be
6 paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S.
7 138-6 as applicable.

8 (k) The Commission shall hold its first meeting no later than September 15, 2000.
9 All appointments to the Commission specified in subdivisions (1) through (10) of
10 subsection (b) of this section shall be made by the appointing authorities by September 1,
11 2000. The appointee of the Chief Justice shall convene the first meeting. No later than
12 30 days after its first meeting, the Commission shall make the appointments specified in
13 subdivision (11) of subsection (b) of this section and shall elect its chair.

14 **"§ 7A-498.5. Responsibilities of Commission.**

15 (a) The Commission shall have as its principal purpose the development and
16 improvement of programs by which the Office of Indigent Defense Services provides, or
17 develops standards and procedures for, legal representation to indigent persons.

18 (b) The Commission shall appoint the Director of the Office of Indigent Defense
19 Services, who shall be chosen on the basis of training, experience, and other
20 qualifications. The Commission shall consult with the Chief Justice and Director of the
21 Administrative Office of the Courts in selecting a Director, but shall have final authority
22 in making the appointment.

23 (c) The Commission shall develop standards regarding the provision of services to
24 indigent persons. The standards shall include:

- 25 (1) Standards for maintaining and operating regional and district public
26 defender offices and appellate defender offices, including requirements
27 regarding qualifications, training, and size of the legal and supporting
28 staff;
29 (2) Standards prescribing minimum experience, training, and other
30 qualifications for appointed counsel;
31 (3) Standards for public defender and appointed counsel caseloads;
32 (4) Standards for the performance of public defenders and appointed
33 counsel;
34 (5) Standards for the independent, competent, and efficient representation
35 of clients whose cases present conflicts of interest, in both the trial and
36 appellate courts;
37 (6) Standards for providing and compensating experts and others who
38 provide services related to legal representation;
39 (7) Standards for qualifications and performance in capital cases; and
40 (8) Standards for determining indigency and for assessing and collecting the
41 costs of legal representation and related services.

1 (d) The Commission shall determine the method for delivering the services of
2 appointed counsel and contract counsel to indigent persons and may establish in each
3 district or combination of districts a system for delivering those services.

4 (e) The Commission shall adopt procedures ensuring that affected local bars have
5 the opportunity to be significantly involved in determining the method for delivering
6 services in their districts. The Commission shall solicit written comments from the
7 affected local district bar and from the senior resident superior court judge and chief
8 district court judge. Those written comments, along with the recommendations of the
9 Commission, shall be forwarded to the members of the General Assembly who represent
10 the affected district and to other interested parties.

11 (f) The Commission shall establish policies and procedures with respect to the
12 distribution of funds appropriated under this Article, including rates of compensation for
13 appointed counsel, schedules of allowable expenses, appointment and compensation of
14 expert witnesses, and procedures for applying for and receiving compensation.

15 (g) The Commission shall approve and recommend to the General Assembly a
16 budget for the Office of Indigent Defense Services.

17 (h) The Commission shall adopt such other rules and procedures as it deems
18 necessary for the conduct of business by the Commission and the Office of Indigent
19 Defense Services.

20 **"§ 7A-498.6. Director of Indigent Defense Services.**

21 (a) The Director of Indigent Defense Services shall be appointed by the
22 Commission for a term of four years. The Director may be removed during this term in
23 the discretion of the Commission by a vote of two-thirds of all of the Commission
24 members. The Director shall be an attorney licensed and eligible to practice in the courts
25 of this State at the time of appointment and at all times during service as the Director.

26 (b) The Director shall:

27 (1) Prepare and submit to the Commission a proposed budget for the Office
28 of Indigent Defense Services, an annual report containing pertinent data
29 on the operations, costs, and needs of the Office, and such other
30 information as the Commission may require;

31 (2) Assist the Commission in developing rules and standards for the
32 delivery of services under this Article;

33 (3) Administer and coordinate the operations of the Office and supervise
34 compliance with standards adopted by the Commission;

35 (4) Subject to policies and procedures established by the Commission, hire
36 such professional, technical, and support personnel as deemed
37 reasonably necessary for the efficient operation of the Office of Indigent
38 Defense Services;

39 (5) Keep and maintain proper financial records for use in calculating the
40 costs of the operations of the Office of Indigent Defense Services;

41 (6) Apply for and accept on behalf of the Office of Indigent Defense
42 Services any funds that may become available from government grants,
43 private gifts, donations, or bequests from any source;

- 1 (7) Coordinate the services of the Office of Indigent Defense Services with
2 any federal, county, or private programs established to provide
3 assistance to indigent persons in cases subject to this Article and consult
4 with professional bodies concerning improving the administration of
5 indigent services;
6 (8) Conduct training programs for attorneys and others involved in the legal
7 representation of persons subject to this Article; and
8 (9) Perform other duties as the Commission may assign."
9

10 PART II. AMENDMENTS TO CHAPTER 7A OF THE GENERAL STATUTES

11
12 Section 2. G.S. 7A-304(a) reads as rewritten:

13 "(a) In every criminal case in the superior or district court, wherein the defendant is
14 convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed
15 against the prosecuting witness, the following costs shall be assessed and collected,
16 except that when the judgment imposes an active prison sentence, costs shall be assessed
17 and collected only when the judgment specifically so provides, and that no costs may be
18 assessed when a case is dismissed.

19 (1) For each arrest or personal service of criminal process, including
20 citations and subpoenas, the sum of five dollars (\$5.00), to be remitted
21 to the county wherein the arrest was made or process was served, except
22 that in those cases in which the arrest was made or process served by a
23 law-enforcement officer employed by a municipality, the fee shall be
24 paid to the municipality employing the officer.

25 (2) For the use of the courtroom and related judicial facilities, the sum of
26 twelve dollars (\$12.00) in the district court, including cases before a
27 magistrate, and the sum of thirty dollars (\$30.00) in superior court, to be
28 remitted to the county in which the judgment is rendered. In all cases
29 where the judgment is rendered in facilities provided by a municipality,
30 the facilities fee shall be paid to the municipality. Funds derived from
31 the facilities fees shall be used exclusively by the county or municipality
32 for providing, maintaining, and constructing adequate courtroom and
33 related judicial facilities, including: adequate space and furniture for
34 judges, district attorneys, public defenders, personnel of the Office of
35 Indigent Defense Services, magistrates, juries, and other court related
36 personnel; office space, furniture and vaults for the clerk; jail and
37 juvenile detention facilities; free parking for jurors; and a law library
38 (including books) if one has heretofore been established or if the
39 governing body hereafter decides to establish one. In the event the
40 funds derived from the facilities fees exceed what is needed for these
41 purposes, the county or municipality may, with the approval of the
42 Administrative Officer of the Courts as to the amount, use any or all of
43 the excess to retire outstanding indebtedness incurred in the construction

1 of the facilities, or to reimburse the county or municipality for funds
2 expended in constructing or renovating the facilities (without incurring
3 any indebtedness) within a period of two years before or after the date a
4 district court is established in such county, or to supplement the
5 operations of the General Court of Justice in the county.

6 (3) For the retirement and insurance benefits of both State and local
7 government law-enforcement officers, the sum of seven dollars and
8 twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty
9 cents (50¢) of this sum shall be administered as is provided in Article
10 12C of Chapter 143 of the General Statutes. Five dollars and seventy-
11 five cents (\$5.75) of this sum shall be administered as is provided in
12 Article 12E of Chapter 143 of the General Statutes, with one dollar and
13 twenty-five cents (\$1.25) being administered in accordance with the
14 provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall
15 be administered as is provided in Article 12F of Chapter 143 of the
16 General Statutes.

17 (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-
18 five cents (75¢) to be remitted to the Department of Justice and
19 administered under the provisions of Article 12G of Chapter 143 of the
20 General Statutes.

21 (4) For support of the General Court of Justice, the sum of sixty-one dollars
22 (\$61.00) in the district court, including cases before a magistrate, and
23 the sum of sixty-eight dollars (\$68.00) in the superior court, to be
24 remitted to the State Treasurer.

25 (5) For using pretrial release services, the district or superior court judge
26 shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be
27 remitted to the county providing the pretrial release services. This cost
28 shall be assessed and collected only if the defendant had been accepted
29 and released to the supervision of the agency providing the pretrial
30 release services.

31 (6) For support of the General Court of Justice, for the issuance by the clerk
32 of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2,
33 the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer.
34 Upon a showing to the court that the defendant failed to appear because
35 of an error or omission of a judicial official, a prosecutor, or a law-
36 enforcement officer, the court shall waive this fee."

37 Section 3. G.S. 7A-314(d) reads as rewritten:

38 "(d) An expert witness, other than a salaried State, county, or municipal law-
39 enforcement officer, shall receive such compensation and allowances as the court, or the
40 Judicial Standards Commission, in its discretion, may authorize. A law-enforcement
41 officer who appears as an expert witness shall receive reimbursement for travel expenses
42 only, as provided in subsection (b) of this section. Compensation of experts provided

1 under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent
2 Defense Services."

3 Section 4. G.S. 7A-344 is repealed.

4 Section 5. G.S. 7A-450(a) reads as rewritten:

5 "(a) An indigent person is a person who is financially unable to secure legal
6 representation and to provide all other necessary expenses of representation in an action
7 or proceeding enumerated in this Subchapter. An interpreter is a necessary expense as
8 defined in ~~Chapter 8A~~ Chapter 8B of the General Statutes for a deaf person who is entitled
9 to counsel under this subsection."

10 Section 6. G.S. 7A-451 reads as rewritten:

11 **"§ 7A-451. Scope of entitlement.**

12 (a) An indigent person is entitled to services of counsel in the following actions
13 and proceedings:

14 (1) Any case in which imprisonment, or a fine of five hundred dollars
15 (\$500.00), or more, is likely to be adjudged;

16 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of
17 the General Statutes;

18 (3) A motion for appropriate relief under Chapter 15A of the General
19 Statutes if the defendant has been convicted of a felony, has been fined
20 five hundred dollars (\$500.00) or more, or has been sentenced to a term
21 of imprisonment;

22 (4) A hearing for revocation of probation;

23 (5) A hearing in which extradition to another state is sought;

24 (6) A proceeding for an inpatient involuntary commitment to a facility
25 under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a
26 proceeding for commitment under Part 8 of Article 5 of Chapter 122C
27 of the General Statutes.

28 (7) In any case of execution against the person under Chapter 1, Article 28
29 of the General Statutes, and in any civil arrest and bail proceeding under
30 Chapter 1, Article 34, of the General Statutes;

31 (8) In the case of a juvenile, a hearing as a result of which commitment to
32 an institution or transfer to the superior court for trial on a felony charge
33 is possible;

34 (9) A hearing for revocation of parole at which the right to counsel is
35 provided in accordance with the provisions of Chapter 148, Article 4, of
36 the General Statutes;

37 (10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization
38 of Persons Mentally Ill and Mentally Retarded) of the General Statutes;
39 and

40 (11) A proceeding for the provision of protective services according to
41 ~~Chapter 108, Article 4~~, Chapter 108A, Article 6 of the General Statutes;

42 (12) In the case of a juvenile alleged to be neglected under Chapter 7A,
43 Article 23 of the General Statutes;

- 1 (13) A proceeding to find a person incompetent under Subchapter I of
2 Chapter 35A, of the General Statutes;
- 3 (14) A proceeding to terminate parental rights where a guardian ad litem is
4 appointed pursuant to G.S. 7B-1101;
- 5 (15) An action brought pursuant to Article 24B of Chapter 7A of the General
6 Statutes to terminate an indigent person's parental rights.
- 7 (16) A proceeding involving consent for an abortion on an unemancipated
8 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General
9 Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this
10 proceeding.

11 (b) In each of the actions and proceedings enumerated in subsection (a) of this
12 section, entitlement to the services of counsel begins as soon as feasible after the indigent
13 is taken into custody or service is made upon him of the charge, petition, notice or other
14 initiating process. Entitlement continues through any critical stage of the action or
15 proceeding, including, if applicable:

- 16 (1) An in-custody interrogation;
- 17 (2) A pretrial identification procedure which occurs after formal charges
18 have been preferred and at which the presence of the indigent is
19 required;
- 20 (3) A hearing for the reduction of bail, or to fix bail if bail has been earlier
21 denied;
- 22 (4) A probable cause hearing;
- 23 (5) Trial and sentencing; and
- 24 (6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1),
25 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

26 (c) In any capital case, an indigent defendant who is under a sentence of death
27 may apply to the superior court of the district where the defendant was indicted for the
28 appointment of counsel to represent the defendant in preparing, filing, and litigating a
29 motion for appropriate relief. The application for the appointment of such postconviction
30 counsel may be made prior to completion of review on direct appeal and shall be made no
31 later than 10 days from the latest of the following:

- 32 (1) The mandate has been issued by the Supreme Court of North Carolina
33 on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing
34 a petition for writ of certiorari to the United States Supreme Court has
35 expired without a petition being filed;
- 36 (2) The United States Supreme Court denied a timely petition for writ of
37 certiorari of the decision on direct appeal by the Supreme Court of
38 North Carolina; or
- 39 (3) The United States Supreme Court granted the defendant's or the State's
40 timely petition for writ of certiorari of the decision on direct appeal by
41 the Supreme Court of North Carolina, but subsequently left the
42 defendant's death sentence undisturbed.

1 If there is not a criminal or mixed session of superior court scheduled for that district,
2 the application must be made no later than 10 days from the beginning of the next
3 criminal or mixed session of superior court in the district. Upon application, supported by
4 the defendant's affidavit, the superior court shall enter an order appointing ~~two counsel~~ the
5 Office of Indigent Defense Services if the court finds that the defendant is indigent and
6 desires ~~counsel~~ counsel, and the Office of Indigent Defense Services shall appoint two
7 counsel to represent the defendant. The defendant does not have a right to be present at
8 the time of appointment of counsel, and the appointment need not be made in open court.
9 If the defendant was previously adjudicated an indigent for purposes of trial or direct
10 appeal, the defendant shall be presumed indigent for purposes of this subsection.

11 (d) The appointment of counsel as provided in subsection (c) of this section and
12 the procedure for compensation shall comply with ~~the Rules and Regulations Relating to the~~
13 ~~Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. The court may~~
14 ~~appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5). rules~~
15 adopted by the Office of Indigent Defense Services.

16 (e) No counsel appointed pursuant to subsection (c) of this section shall have
17 previously represented the defendant at trial or on direct appeal in the case for which the
18 appointment is made unless the defendant expressly requests continued representation
19 and understandingly waives future allegations of ineffective assistance of counsel."

20 Section 7. G.S. 7A-452 reads as rewritten:

21 **"§ 7A-452. Source of counsel; fees; appellate records.**

22 (a) ~~Counsel for an indigent person shall be assigned by the court. Upon the court's~~
23 determination that a person is indigent and entitled to counsel under this Article, counsel
24 shall be appointed in accordance with rules adopted by the Office of Indigent Defense
25 Services. In noncapital cases the court shall assign counsel pursuant to rules adopted by
26 the Office of Indigent Defense Services. In capital cases the Office of Indigent Defense
27 Services or designee of the Office of Indigent Defense Services shall assign counsel; at
28 least one member of each capital defense team, where practicable, shall be a member of
29 the bar in that division. In the courts of those counties which have a public defender,
30 however, the public defender may tentatively assign himself or an assistant public
31 defender to represent an indigent person, subject to subsequent ~~approval~~ determination of
32 entitlement to counsel by the ~~court~~ court and approval by the court in noncapital cases
33 and by the Office of Indigent Defense Services in capital cases.

34 (b) Fees of assigned counsel and salaries and other operating expenses of the
35 offices of the public defenders shall be borne by the State.

36 (c) (1) The clerk of superior court is authorized to make a
37 determination of indigency and ~~to appoint counsel, entitlement to~~
38 counsel, as authorized by this Article. The word "court," as it is used in
39 this Article and in any rules pursuant to this Article, includes the clerk
40 of superior court.

41 (2) A judge of superior or district court having authority to ~~appoint~~
42 determine entitlement to counsel in a particular case may give directions
43 to the clerk with regard to the ~~appointment of~~ determination of

1 entitlement to counsel in that case; may, if he finds it appropriate,
2 change or modify the ~~appointment of counsel when counsel has been~~
3 ~~appointed~~ determination made by the clerk; and may set aside a finding
4 of waiver of counsel made by the clerk.

5 (d) Unless a public defender or assistant public defender is appointed to serve, ~~the~~
6 ~~trial judge appointing~~ standby counsel appointed under G.S. 15A-1243 shall ~~award~~ receive
7 reasonable compensation to be paid by the State."

8 Section 8. G.S. 7A-453 reads as rewritten:

9 "**§ 7A-453. Duty of custodian of a possibly indigent person; determination of**
10 **indigency.**

11 (a) In counties ~~which have a public defender, designated by the Office of Indigent~~
12 Defense Services, the authority having custody of a person who is without counsel for
13 more than 48 hours after being taken into custody shall so inform the ~~public defender.~~
14 designee of the Office of Indigent Defense Services. ~~The public defender designee of the~~
15 Office of Indigent Defense Services shall make a preliminary determination as to the
16 person's entitlement to his services, and proceed accordingly. The court shall make the
17 final determination.

18 (b) In counties ~~which do not have a public defender, that have not been designated by~~
19 the Office of Indigent Defense Services, the authority having custody of a person who is
20 without counsel for more than 48 hours after being taken into custody shall so inform the
21 clerk of superior court.

22 (c) In any county, if a defendant, upon being taken into custody, states that he is
23 indigent and desires counsel, the authority having custody shall immediately inform the
24 ~~defender designee of the Office of Indigent Defense Services~~ or the clerk of superior
25 court, as the case may be, who shall take action as provided in this Article.

26 (d) The duties imposed by this section upon authorities having custody of persons
27 who may be indigent are in addition to the duties imposed upon arresting officers under
28 G.S. 15-47."

29 Section 9. G.S. 7A-454 reads as rewritten:

30 "**§ 7A-454. Supporting services.**

31 ~~The court, in its discretion, may approve a fee for the service of an expert witness who~~
32 ~~testifies for an indigent person, and shall approve reimbursement for the necessary~~
33 ~~expenses of counsel. Fees and expenses accrued under this section shall be paid by the~~
34 ~~State. Fees for the services of an expert witness for an indigent person and other~~
35 necessary expenses of counsel shall be paid by the State in accordance with rules adopted
36 by the Office of Indigent Defense Services."

37 Section 10. G.S. 7A-455 reads as rewritten:

38 "**§ 7A-455. Partial indigency; liens; acquittals.**

39 (a) If, in the opinion of the court, an indigent person is financially able to pay a
40 portion, but not all, of the value of the legal services rendered for him by assigned
41 counsel, the public defender, or the appellate defender, and other necessary expenses of
42 representation, he shall order the partially indigent person to pay such portion to the clerk
43 of superior court for transmission to the State treasury.

1 (b) In all cases the court shall ~~fix the money value of services rendered by assigned~~
2 ~~counsel, the public defender, or the appellate defender, and such sum plus any sums~~
3 ~~allowed by the court for other necessary expenses of representing the indigent person,~~
4 ~~including any fees and expenses that may have been allowed prior to final determination~~
5 ~~of the action to assigned counsel pursuant to G.S. 7A-458, shall be entered as direct that a~~
6 ~~judgment be entered in the office of the clerk of superior court, and court for the money~~
7 ~~value of services rendered by assigned counsel, the public defender, or the appellate~~
8 ~~defender, plus any sums allowed for other necessary expenses of representing the~~
9 ~~indigent person, including any fees and expenses that may have been allowed prior to~~
10 ~~final determination of the action to assigned counsel pursuant to G.S. 7A-458, which~~
11 shall constitute a lien as prescribed by the general law of the State applicable to
12 judgments. Any reimbursement to the State as provided in subsection (a) of this section
13 or any funds collected by reason of such judgment shall be deposited in the State treasury
14 and credited against the judgment; ~~provided, that counsel fees ordered paid to the clerk~~
15 ~~on behalf of the appointed counsel pursuant to G.S. 15A-1343(e) may be paid directly to~~
16 ~~the counsel.~~ judgment. The value of services shall be determined in accordance with
17 rules adopted by the Office of Indigent Defense Services. In fixing the ~~The money value~~
18 ~~of services rendered by the public defender and the appellate defender, the court shall~~
19 ~~consider~~ defender shall be based upon the factors normally involved in fixing the fees of
20 private attorneys, such as the nature of the case, the time, effort, and responsibility
21 involved, and the fee usually charged in similar cases. ~~The value of the services shall be~~
22 ~~fixed by a~~ A district court judge shall direct entry of judgment for actions or proceedings
23 finally determined in the district court and ~~by a superior court judge shall direct entry of~~
24 judgment for actions or proceedings originating in, heard on appeal in, or appealed from
25 the superior court. Even if the trial, appeal, hearing, or other proceeding is never held,
26 preparation therefor is nevertheless compensable.

27 (c) No order for partial payment under subsection (a) of this section and no
28 judgment under subsection (b) of this section shall be entered unless the indigent person
29 is convicted. If the indigent person is convicted, the order or judgment shall become
30 effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq.,
31 in the amount then owing, upon the later of (i) the date upon which the conviction
32 becomes final if the indigent person is not ordered, as a condition of probation, to pay the
33 State of North Carolina for the costs of his representation in the case or (ii) the date upon
34 which the indigent person's probation is terminated or revoked if the indigent person is so
35 ordered.

36 (d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1
37 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public
38 defender, or appellate defender who rendered the services or incurred the expenses for
39 which the judgment is to be entered shall obtain the social security number, if any, of
40 each person against whom judgment is to be entered. This number, or a certificate that
41 the person has no social security number, shall be included in each fee application
42 submitted by an assigned attorney, guardian ad litem, public defender, or appellate
43 defender, and no order for payment entered upon an application which does not include

1 the required social security number or certification shall be valid to authorize payment to
2 the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed
3 against any person under this section or under G.S. 7A-450.3 shall include the social
4 security number, if any, of the judgment debtor."

5 Section 11. G.S. 7A-457(a) reads as rewritten:

6 "(a) An indigent person who has been informed of his right to be represented by
7 counsel at any in-court proceeding, may, in writing, waive the right to in-court
8 representation by ~~counsel~~, counsel in accordance with rules adopted by the Office of
9 Indigent Defense Services. Any waiver of counsel shall be effective only if the court
10 finds of record that at the time of waiver the indigent person acted with full awareness of
11 his rights and of the consequences of the waiver. In making such a finding, the court shall
12 consider, among other things, such matters as the person's age, education, familiarity with
13 the English language, mental condition, and the complexity of the crime charged."

14 Section 12. G.S. 7A-458 reads as rewritten:

15 "**§ 7A-458. Counsel fees.**

16 ~~In districts which do not have a public defender, the court shall fix the~~ The fee to which an
17 attorney who represents an indigent person is entitled—entitled shall be fixed in
18 accordance with rules adopted by the Office of Indigent Defense Services. In doing so, the
19 ~~court shall allow a fee~~ Fees shall be based on the factors normally considered in fixing
20 attorneys' fees, such as the nature of the case, and the time, effort and responsibility
21 involved. ~~Fees shall be fixed by the district court judge who hears the case for actions or~~
22 ~~proceedings finally determined in the district court and by the superior court judge who hears the~~
23 ~~case for actions or proceedings originating in, heard on appeal in, or appealed from the superior~~
24 ~~court.—Even if the trial, appeal, hearing or other proceeding is never held, preparation~~
25 ~~therefor is nevertheless compensable and, in capital cases and other extraordinary cases~~
26 ~~pending in superior court, the presiding judge may allow a fee for services rendered and~~
27 ~~payment for expenses incurred~~ may be allowed pending final determination of the case."

28 Section 13. G.S. 7A-459, G.S. 7A-467(b), and G.S. 7A-467(c) are repealed.

29 Section 13A. G.S. 7A-465(b) reads as rewritten:

30 "(b) The public defender shall be an attorney licensed to practice law in North
31 Carolina, and shall devote his full time to the duties of his office.

32 In lieu of merit and other increment raises paid to regular State employees, a public
33 defender shall receive as longevity pay an amount equal to four and eight-tenths percent
34 (4.8%) of the annual salary set forth in the Current Operations Appropriations Act
35 payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10
36 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and
37 nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means
38 service as a public defender, appellate defender, assistant public defender, or appellate
39 defender, assistant district attorney, justice or judge of the General Court of Justice, or
40 clerk of superior court."

41 Section 13B. G.S. 7A-467(d) reads as rewritten:

42 "(d) In lieu of merit and other increment raises paid to regular State employees, an
43 assistant public defender shall receive as longevity pay an amount equal to four and

1 eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations
2 Appropriations Act payable monthly after five years of service, nine and six-tenths
3 percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15
4 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service.
5 "Service" means service as an assistant public ~~defender.~~ defender, appellate defender,
6 assistant public or appellate defender, assistant district attorney, justice or judge of the
7 General Court of Justice, or clerk of superior court."

8 Section 13C. G.S. 7A-467 is amended by adding a new section to read:

9 "(a1) If a conflict of interests prohibits the public defender from representing an
10 indigent person, or in unusual circumstances when, in the opinion of the court the proper
11 administration of justice requires it, the court may assign counsel pursuant to rules
12 adopted by the Office of Indigent Defense Services. The Office of Indigent Defense
13 Services may adopt rules authorizing the public defender to appoint private counsel. Any
14 attorney assigned under this subsection is entitled to the services of the public defender's
15 office."

17 PART III. AMENDMENTS TO MISCELLANEOUS OTHER STATUTES

18
19 Section 14. G.S. 1-311 reads as rewritten:

20 "§ 1-311. Against the person.

21 If the action is one in which the defendant might have been arrested, an execution
22 against the person of the judgment debtor may be issued to any county within the State,
23 after the return of an execution against his property wholly or partly unsatisfied. But no
24 execution shall issue against the person of a judgment debtor, unless an order of arrest
25 has been served, as provided in the Article Arrest and Bail, or unless the complaint
26 contains a statement of facts showing one or more of the causes of arrest required by law,
27 whether such statement of facts is necessary to the cause of action or not. Provided, that
28 where the facts are found by a jury, the verdict shall contain a finding of facts
29 establishing the right to execution against the person; and where jury trial is waived and
30 the court finds the facts, the court shall find facts establishing the right to execution
31 against the person. Such findings of fact shall include a finding that the defendant either

32 (i) is about to flee the jurisdiction to avoid paying his creditors, (ii) has concealed
33 or diverted assets in fraud of his creditors, or (iii) will do so unless immediately detained.

34 If defendant appears at the hearing on the debt and the judge has reason to believe that
35 the defendant is indigent, he shall inform the defendant that if he is an indigent person he
36 is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary
37 release on the basis of his indigency, that if he does so he will have an opportunity within
38 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and
39 provisional release, and that the judge will thereupon immediately appoint counsel for
40 him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing
41 on the debt and the judge provisionally concludes he is indigent, counsel should be
42 appointed ~~immediately.~~ immediately pursuant to rules adopted by the Office of Indigent
43 Defense Services."

1 Section 15. G.S. 1-413 reads as rewritten:

2 **"§ 1-413. Issuance and form of order.**

3 The order may be made to accompany the summons, or to issue at any time
4 afterwards, before judgment. It shall require the sheriff of the county where the defendant
5 may be found forthwith to arrest him and hold him to bail in a specified sum, and to
6 return the order at a place and time therein mentioned to the clerk of the court in which
7 the action is brought. Notice of the return must be served on the plaintiff or his attorney
8 as prescribed by law for the service of other notices. The order shall include a statement
9 that if the person arrested is an indigent person he is entitled to services of counsel under
10 G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency,
11 that if he does so he will have an opportunity within 72 hours to suggest to a judge his
12 indigency for purposes of appointment of counsel and preliminary release, and that the
13 judge will thereupon immediately appoint counsel for him if it is adjudged that he is
14 unable to pay a lawyer. Appointment of counsel shall be in accordance with rules
15 adopted by the Office of Indigent Defense Services."

16 Section 16. G.S. 7B-602 reads as rewritten:

17 **"§ 7B-602. Parent's right to counsel.**

18 In cases where the juvenile petition alleges that a juvenile is abused, neglected, or
19 dependent, the parent has the right to counsel and to appointed counsel in cases of
20 indigency unless that person waives the right. ~~In no case may the court appoint a county~~
21 ~~attorney, prosecutor, or public defender."~~

22 Section 17. G.S. 7B-603 reads as rewritten:

23 **"§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

24 (a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 ~~or G.S.~~
25 ~~7B-602 pursuant to any other provision of the Juvenile Code~~ shall be paid a reasonable
26 fee fixed by the court ~~in the same manner as fees for attorneys appointed in cases of~~
27 ~~indigency~~ or by direct engagement for specialized guardian ad litem services through the
28 Administrative Office of the Courts.

29 (b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other
30 provision of the Juvenile Code for which the Office of Indigent Defense Services is
31 responsible for providing counsel shall be paid a reasonable fee in accordance with rules
32 adopted by the Office of Indigent Defense Services.

33 (c) The court may require payment of the attorney or guardian ad litem fee from a
34 person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In
35 no event shall the parent or guardian be required to pay the fees for a court-appointed
36 attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the
37 juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding
38 to terminate parental rights, unless the parent's rights have been terminated. A person
39 who does not comply with the court's order of payment may be punished for contempt as
40 provided in G.S. 5A-21."

41 Section 18. G.S. 7B-1101 reads as rewritten:

42 **"§ 7B-1101. Jurisdiction.**

1 The court shall have exclusive original jurisdiction to hear and determine any petition
2 relating to termination of parental rights to any juvenile who resides in, is found in, or is
3 in the legal or actual custody of a county department of social services or licensed child-
4 placing agency in the district at the time of filing of the petition. The court shall have
5 jurisdiction to terminate the parental rights of any parent irrespective of the age of the
6 parent. The parent has the right to counsel and to appointed counsel in cases of indigency
7 unless the parent waives the right. The fees of appointed counsel shall be borne by the
8 ~~Administrative Office of the Courts.~~ Office of Indigent Defense Services. In addition to the
9 right to appointed counsel set forth above, a guardian ad litem shall be appointed in
10 accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the
11 following cases:

12 (1) Where it is alleged that a parent's rights should be terminated pursuant
13 to G.S. 7B-1111(6); or

14 (2) Where the parent is under the age of 18 years.

15 The fees of the guardian ad litem shall be borne by the ~~Administrative Office of the Courts~~
16 Office of Indigent Defense Services when the court finds that the respondent is indigent.
17 In other cases the fees of the court-appointed guardian ad litem shall be a proper charge
18 against the respondent if the respondent does not secure private legal counsel. Provided,
19 that before exercising jurisdiction under this Article, the court shall find that it would
20 have jurisdiction to make a child-custody determination under the provisions of G.S.
21 50A-201, 50A-203, or 50A-204. Provided, further, that the clerk of superior court shall
22 have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of
23 the General Statutes generally."

24 Section 19. G.S. 7B-1109(b) reads as rewritten:

25 "(b) The court shall inquire whether the juvenile's parents are present at the hearing
26 and, if so, whether they are represented by counsel. If the parents are not represented by
27 counsel, the court shall inquire whether the parents desire counsel but are indigent. In the
28 event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are
29 unable to obtain counsel to represent them, ~~the court shall appoint counsel~~ shall be
30 appointed to represent them. ~~them in accordance with rules adopted by the Office of~~
31 Indigent Defense Services. The court shall grant the parents such an extension of time as
32 is reasonable to permit their appointed counsel to prepare their defense to the termination
33 petition. In the event that the parents do not desire counsel and are present at the hearing,
34 the court shall examine each parent and make findings of fact sufficient to show that the
35 waivers were knowing and voluntary. This examination shall be reported as provided in
36 G.S. 7A-198."

37 Section 20. G.S. 7B-1808(b) reads as rewritten:

38 "(b) At the first appearance, the court shall:

39 (1) Inform the juvenile of the allegations set forth in the petition;

40 (2) Determine whether the juvenile has retained counsel or has been
41 assigned ~~counsel and, if the juvenile is not represented by counsel,~~
42 appoint counsel for the juvenile; counsel;

1 (3) If applicable, inform the juvenile of the date of the probable cause
2 hearing, which shall be within 15 days of the first appearance; and

3 (4) Inform the parent, guardian, or custodian that the parent, guardian, or
4 custodian is required to attend all hearings scheduled in the matter and
5 may be held in contempt of court for failure to attend any scheduled
6 hearing.

7 If the juvenile is not represented by counsel, counsel for the juvenile shall be
8 appointed in accordance with rules adopted by the Office of Indigent Defense Services."

9 Section 21. G.S. 7B-1906(c) reads as rewritten:

10 "(c) The court shall determine whether a juvenile who is alleged to be
11 delinquent has retained counsel or has been assigned counsel; ~~and, if the juvenile is not~~
12 ~~represented by counsel, appoint counsel for the juvenile.~~ juvenile shall be appointed in
13 accordance with rules adopted by the Office of Indigent Defense Services."

14 Section 22. G.S. 7B-2000(a) reads as rewritten:

15 "(a) A juvenile alleged to be within the jurisdiction of the court has the right to be
16 represented by counsel in all proceedings. ~~The court shall appoint counsel for the juvenile,~~
17 Counsel for the juvenile shall be appointed in accordance with rules adopted by the
18 Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any
19 proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court
20 when alleged or adjudicated to be undisciplined."

21 Section 23. G.S. 7B-2002 reads as rewritten:

22 "**§ 7B-2002. Payment of court-appointed attorney.**

23 An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other provision of
24 this Subchapter shall be paid a reasonable fee ~~fixed by the court in the same manner as fees~~
25 ~~for attorneys appointed in cases of indigency through the Administrative Office of the Courts.~~ in
26 accordance with rules adopted by the Office of Indigent Defense Services. The court
27 may require payment of the attorneys' fees from a person other than the juvenile as
28 provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply with
29 the court's order of payment may be found in civil contempt as provided in G.S. 5A-21."

30 Section 24. G.S. 7B-2704 reads as rewritten:

31 "**§ 7B-2704. Payment of support or other expenses; assignment of insurance**
32 **coverage.**

33 At the dispositional hearing or a subsequent hearing, if the court finds that the parent
34 is able to do so, the court may order the parent to:

35 (1) Pay a reasonable sum that will cover in whole or in part the support of
36 the juvenile. If the court requires the payment of child support, the
37 amount of the payments shall be determined as provided in G.S. 50-
38 13.4;

39 (2) Pay a fee for probation supervision or residential facility costs;

40 (3) Assign private insurance coverage to cover medical costs while the
41 juvenile is in secure detention, training school, or other out-of-home
42 placement; and

43 (4) Pay ~~court-appointed~~ court-appointed attorneys' fees.

1 All money paid by a parent pursuant to this section shall be paid into the office of the
2 clerk of superior court.

3 If the court places a juvenile in the custody of a county department of social services
4 and if the court finds that the parent is unable to pay the cost of the support required by
5 the juvenile, the cost shall be paid by the county department of social services in whose
6 custody the juvenile is placed, provided the juvenile is not receiving care in an institution
7 owned or operated by the State or federal government or any subdivision thereof."

8 Section 25. G.S. 7B-2804(a) reads as rewritten:

9 "(a) The parent, guardian, person, or agency entitled to legal custody of a juvenile
10 who has not been adjudged delinquent but who has run away without the consent of the
11 parent, guardian, person, or agency may petition the appropriate court in the demanding
12 state for the issuance of a requisition for the juvenile's return. The petition shall state the
13 name and age of the juvenile, the name of the petitioner, and the basis of entitlement to
14 the juvenile's custody, the circumstances of the running away, the juvenile's location if
15 known at the time application is made, and any other facts that may tend to show that the
16 juvenile who has run away is endangering the juvenile's own welfare or the welfare of
17 others and is not an emancipated minor. The petition shall be verified by affidavit, shall
18 be executed in duplicate, and shall be accompanied by two certified copies of the
19 document or documents on which the petitioner's entitlement to the juvenile's custody is
20 based, such as birth certificates, letters of guardianship, or custody decrees. Any further
21 affidavits and other documents as may be deemed proper may be submitted with the
22 petition. The judge of the court to which this application is made may hold a hearing
23 thereon to determine whether for the purposes of this Compact the petitioner is entitled to
24 the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run
25 away without consent, whether or not the juvenile is an emancipated minor, and whether
26 or not it is in the best interests of the juvenile to compel the juvenile's return to the state.
27 If the judge determines, either with or without a hearing, that the juvenile should be
28 returned, the judge shall present to the appropriate court or to the executive authority of
29 the state where the juvenile is alleged to be located a written requisition for the return of
30 the juvenile. The requisition shall set forth the name and age of the juvenile, the
31 determination of the court that the juvenile has run away without the consent of a parent,
32 guardian, person, or agency entitled to legal custody, and that it is in the best interests and
33 for the protection of the juvenile that the juvenile be returned. In the event that a
34 proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent
35 juvenile is pending in the court at the time when the juvenile runs away, the court may
36 issue a requisition for the return of the juvenile upon its own motion, regardless of the
37 consent of the parent, guardian, person, or agency entitled to legal custody, reciting
38 therein the nature and circumstances of the pending proceeding. The requisition shall in
39 every case be executed in duplicate and shall be signed by the judge. One copy of the
40 requisition shall be filed with the Compact Administrator of the demanding state, there to
41 remain on file subject to the provisions of law governing records of the court. Upon the
42 receipt of a requisition demanding the return of a juvenile who has run away, the court or
43 the executive authority to whom the requisition is addressed shall issue an order to any

1 peace officer or other appropriate person directing that person to take into custody and
2 detain the juvenile. The detention order must substantially recite the facts necessary to the
3 validity of its issuance hereunder. No juvenile detained upon the order shall be delivered
4 over to the officer whom the court has appointed to receive the juvenile unless the
5 juvenile first is taken before a judge of a court in the state, who shall inform the juvenile
6 of the demand made for the juvenile's return, and who may ~~appoint~~ determine that counsel
7 or guardian ad litem for the juvenile. ~~juvenile should be appointed.~~ If the court finds that
8 the requisition is in order, the court shall deliver the juvenile over to the officer appointed
9 to receive the juvenile by the court demanding the juvenile. The court, however, may fix
10 a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

11 Upon reasonable information that a person is a juvenile who has run away from
12 another state party to this Compact without the consent of a parent, guardian, person, or
13 agency entitled to legal custody, the juvenile may be taken into custody without a
14 requisition and brought before a judge of the appropriate court who may ~~appoint~~
15 determine that counsel or guardian ad litem for the juvenile should be appointed and who
16 shall determine after a hearing whether sufficient cause exists to hold the person, subject
17 to the order of the court, for the juvenile's own protection and welfare, for such a time not
18 exceeding 90 days as will enable the return of the juvenile to another state party to this
19 Compact pursuant to a requisition for return from a court of that state. In cases in which
20 the court determines that counsel or guardian ad litem should be provided for the
21 juvenile, appointment shall be in accordance with rules adopted by the Office of Indigent
22 Defense Services. If, at the time when a state seeks the return of a juvenile who has run
23 away, there is pending in the state wherein the juvenile is found, any criminal charge, or
24 any proceeding to have the juvenile adjudicated a delinquent juvenile for an act
25 committed in the state, or if the juvenile is suspected of having committed within the state
26 a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned
27 without the consent of the state until discharged from prosecution or other form of
28 proceeding, imprisonment, detention, or supervision for the offense or juvenile
29 delinquency. The duly accredited officers of any state party to this Compact, upon the
30 establishment of their authority and the identity of the juvenile being returned, shall be
31 permitted to transport the juvenile through any and all states party to this Compact,
32 without interference. Upon return of the juvenile to the state from which the juvenile ran
33 away, the juvenile shall be subject to such further proceedings as may be appropriate
34 under the laws of that state."

35 Section 26. G.S. 7B-2805 reads as rewritten:

36 "**§ 7B-2805. Return of escapees and absconders.**

37 (a) The appropriate person or authority from whose probation or parole
38 supervision a delinquent juvenile has absconded or from whose institutional custody a
39 delinquent juvenile has escaped shall present to the appropriate court or to the executive
40 authority of the state where the delinquent juvenile is alleged to be located a written
41 requisition for the return of the delinquent juvenile. The requisition shall state the name
42 and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a
43 delinquent juvenile, the circumstances of the breach of the terms of probation or parole or

1 of the juvenile's escape from an institution or agency vested with legal custody or
2 supervision, and the location of the delinquent juvenile, if known, at the time the
3 requisition is made. The requisition shall be verified by affidavit, shall be executed in
4 duplicate, and shall be accompanied by two certified copies of the judgment, formal
5 adjudication, or order of commitment which subjects the delinquent juvenile to probation
6 or parole or to the legal custody of the institution or agency concerned. Any further
7 affidavits and documents as may be deemed proper may be submitted with the
8 requisition. One copy of the requisition shall be filed with the Compact Administrator of
9 the demanding state, there to remain on file subject to the provisions of the law governing
10 records of the appropriate court. Upon the receipt of a requisition demanding the return of
11 a delinquent juvenile who has absconded or escaped, the court or the executive authority
12 to whom the requisition is addressed shall issue an order to any peace officer or other
13 appropriate person directing the person to take into custody and detain such delinquent
14 juvenile. The detention order must substantially recite the facts necessary to the validity
15 of its issuance hereunder. No delinquent juvenile detained upon the order shall be
16 delivered over to the officer whom the appropriate person or authority demanding the
17 juvenile has appointed to receive the juvenile, unless the juvenile is first taken forthwith
18 before a judge of an appropriate court in the state, who shall inform the juvenile of the
19 demand made for the return, and who may ~~appoint~~ determine that counsel or guardian ad
20 litem for the ~~juvenile~~ juvenile should be appointed. If the judge of the court finds that the
21 requisition is in order, the judge shall deliver the delinquent juvenile over to the officer
22 whom the appropriate person or authority demanding the juvenile appointed to receive
23 the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose
24 of testing the legality of the proceeding.

25 Upon reasonable information that a person is a delinquent juvenile who has
26 absconded while on probation or parole, or escaped from an institution or agency vested
27 with legal custody or supervision in any state party to this Compact, the person may be
28 taken into custody in any other state party to this Compact without a requisition. But in
29 that event, the juvenile shall be taken forthwith before a judge of the appropriate court,
30 who may ~~appoint~~ determine that counsel or guardian ad litem for the person should be
31 appointed and who shall determine after a hearing, whether sufficient cause exists to hold
32 the person subject to the order of the court for a length of time, not exceeding 90 days, as
33 will enable detention of the juvenile under a detention order issued on a requisition
34 pursuant to this Article. If, at the time when a state seeks the return of a delinquent who
35 has either absconded while on probation or parole or escaped from an institution or
36 agency vested with legal custody or supervision, there is pending in the state wherein the
37 juvenile is detained any criminal charge or any proceeding to have the juvenile
38 adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is
39 suspected of having committed a criminal offense or an act of juvenile delinquency
40 within the state, the juvenile shall not be returned without the consent of the state until
41 discharged from prosecution or other form of proceeding, imprisonment, detention, or
42 supervision for the offense or juvenile delinquency. The duly accredited officers of any
43 state party to this Compact, upon the establishment of their authority and the identity of

1 the delinquent juvenile being returned, shall be permitted to transport the delinquent
2 juvenile through any and all states party to this Compact, without interference. Upon
3 return to the state from which the juvenile escaped or absconded, the delinquent juvenile
4 shall be subject to any further proceedings appropriate under the laws of that state.

5 (b) The state to which a delinquent juvenile is returned under this Article shall be
6 responsible for the payment of transportation costs of the return.

7 (c) If the court determines that counsel or guardian ad litem should be provided
8 under this section, appointment shall be in accordance with rules adopted by the Office of
9 Indigent Defense Services."

10 Section 27. G.S. 15-11.1(b) reads as rewritten:

11 "(b) In the case of unknown or unapprehended defendants or of defendants willfully
12 absent from the jurisdiction, the court shall ~~have discretion to appoint a guardian ad litem,~~
13 ~~who shall be a licensed attorney, determine whether an attorney should be appointed as~~
14 guardian ad litem to represent and protect the interest of such unknown or absent
15 defendants. Appointment shall be in accordance with rules adopted by the Office of
16 Indigent Defense Services. The judicial findings concerning identification or value that
17 are made at such hearing whereby property is returned to the lawful owner or a person,
18 firm, or corporation entitled to possession, may be admissible into evidence at the trial.
19 After final judgment all property lawfully seized by or otherwise coming into the
20 possession of law-enforcement authorities shall be disposed of as the court or magistrate
21 in its discretion orders, and may be forfeited and either sold or destroyed in accordance
22 with due process of law."

23 Section 28. G.S. 15A-279(d) reads as rewritten:

24 "(d) Any such person is entitled to have counsel present and must be advised prior
25 to being subjected to any nontestimonial identification procedures of his right to have
26 counsel present during any nontestimonial identification procedure and to the
27 appointment of counsel if he cannot afford to retain counsel. Appointment of counsel
28 shall be in accordance with rules adopted by the Office of Indigent Defense Services. No
29 statement made during nontestimonial identification procedures by the subject of the
30 procedures shall be admissible in any criminal proceeding against him, unless his counsel
31 was present at the time the statement was made."

32 Section 29. G.S. 15A-803(d) reads as rewritten:

33 "(d) Procedure. – A material witness order may be obtained upon motion supported
34 by affidavit showing cause for its issuance. The witness must be given reasonable notice,
35 opportunity to be heard and present evidence, and the right of representation by counsel
36 at a hearing on the motion. Counsel for a material witness may be appointed and
37 compensated in the same manner as counsel for an indigent defendant. Appointment of
38 counsel shall be in accordance with rules adopted by the Office of Indigent Defense
39 Services. The order must be based on findings of fact supporting its issuance."

40 Section 30. G.S. 15A-1243 reads as rewritten:

41 "**§ 15A-1243. Standby counsel for defendant representing himself.**

42 When a defendant has elected to proceed without the assistance of counsel, the trial
43 judge in his discretion may ~~appoint~~ determine that standby counsel should be appointed to

1 assist the defendant when called upon and to bring to the judge's attention matters
2 favorable to the defendant upon which the judge should rule upon his own motion.
3 Appointment and compensation of standby counsel shall be in accordance with rules
4 adopted by the Office of Indigent Defense Services."

5 Section 31. G.S. 15A-1343(e) reads as rewritten:

6 "(e) Costs of Court and Appointed Counsel. – Unless the court finds there are
7 extenuating circumstances, any person placed upon supervised or unsupervised probation
8 under the terms set forth by the court shall, as a condition of probation, be required to pay
9 all court costs and costs for appointed counsel or public defender in the case in which he
10 was convicted. The cost of appointed counsel or public defender services shall be
11 determined in accordance with rules adopted by the Office of Indigent Defense Services.
12 The court shall determine the amount ~~due~~ of those costs to be repaid and the method of
13 payment."

14 Section 32. G.S. 23-30.1 reads as rewritten:

15 "**§ 23-30.1. Provisional release.**

16 Every person who has filed a petition under the provisions of G.S. 23-30 shall be
17 brought before a judge within 72 hours after filing the petition and shall be provisionally
18 released from imprisonment unless a hearing shall be held and the creditor shall establish
19 that the prisoner has fraudulently concealed assets. If, at the time he is brought before a
20 judge, the prisoner makes a showing of indigency, ~~the judge shall appoint counsel~~ shall be
21 appointed for him ~~the prisoner in accordance with rules adopted by the Office of Indigent~~
22 Defense Services. A provisional release under this section shall not constitute a
23 discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud
24 even if he has unsuccessfully attempted to oppose the provisional release on the basis of
25 fraudulent concealment. The debtor may be provisionally released even though actual
26 service upon the creditor has not been accomplished if 72 hours has passed since the
27 debtor delivered the notice to the sheriff for service upon the creditor."

28 Section 33. G.S. 35A-1107 reads as rewritten:

29 "**§ 35A-1107. Right to counsel or guardian ad litem.**

30 The respondent is entitled to be represented by counsel of his own choice or by ~~court-~~
31 ~~appointed an appointed~~ guardian ad litem. Upon filing of the ~~petition, the clerk shall appoint~~
32 ~~as guardian ad litem an attorney who shall petition,~~ an attorney shall be appointed as
33 guardian ad litem to represent the respondent unless the respondent retains his own
34 counsel, in which event the clerk may discharge the guardian ad litem. litem may be
35 discharged. Appointment and discharge of an appointed guardian ad litem shall be in
36 accordance with rules adopted by the Office of Indigent Defense Services."

37 Section 34. G.S. 35A-1130(c) reads as rewritten:

38 "(c) At the hearing on the motion, the ward shall be entitled to be represented by
39 counsel or guardian ad litem, and ~~the clerk shall appoint a guardian ad litem~~ shall be
40 appointed in accordance with rules adopted by the Office of Indigent Defense Services if
41 the ward is indigent and not represented by counsel. Upon motion of any party or the
42 clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a
43 right, upon request by him, his counsel, or his guardian ad litem to trial by jury. Failure

1 to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless
2 require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure,
3 by entering an order for trial by jury on his own motion. Provided, if there is a jury in a
4 proceeding for restoration to competency, it shall be a jury of six persons selected in
5 accordance with the provisions of Chapter 9 of the General Statutes."

6 Section 35. G.S. 90-21.8(c) reads as rewritten:

7 "(c) The minor may participate in proceedings in the court on her own behalf or
8 through a guardian ad litem. The court shall advise her that she has a right to ~~court~~
9 appointed ~~counsel~~ counsel, and ~~shall provide her with counsel~~ shall be provided upon her
10 request. ~~request in accordance with rules adopted by the Office of Indigent Defense~~
11 Services."

12 Section 36. G.S. 108A-105(b) reads as rewritten:

13 "(b) The court shall set the case for hearing within 14 days after the filing of the
14 petition. The disabled adult must receive at least five days' notice of the hearing. He has
15 the right to be present and represented by counsel at the hearing. If the person, in the
16 determination of the judge, lacks the capacity to waive the right to counsel, then ~~the court~~
17 shall appoint a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17- Rule
18 17, and rules adopted by the Office of Indigent Defense Services. If the person is
19 indigent, the cost of representation shall be borne by the State."

20 Section 36A. G.S. 122C-270 is amended by adding a new section to read:

21 "(e1) All appointments of counsel under this Chapter shall be in accordance with
22 rules adopted by the Office of Indigent Defense Services."

23 Section 37. G.S. 148-62.1 reads as rewritten:

24 **"§ 148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel,**
25 **in discretion of Post-Release Supervision and Parole Commission.**

26 Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-
27 450(a) may be determined entitled, in the discretion of the Post-Release Supervision
28 and Parole Commission, to the services of counsel at State expense at a parole revocation
29 hearing at which either:

- 30 (1) The parolee or post-release supervisee claims not to have committed the
31 alleged violation of the parole or post-release supervision conditions; or
- 32 (2) The parolee or post-release supervisee claims there are substantial
33 reasons which justified or mitigated the violation and make revocation
34 inappropriate, even if the violation is a matter of public record or is
35 uncontested, and that the reasons are complex or otherwise difficult to
36 develop or present; or
- 37 (3) The parolee or post-release supervisee is incapable of speaking
38 effectively for himself;

39 and where the Commission feels, on a case by case basis, that such appointment in
40 accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

41 If the parolee or post-release supervisee is determined to be indigent and entitled to
42 services of counsel, counsel shall be appointed in accordance with rules adopted by the
43 Office of Indigent Defense Services."

1
2 **PART IV. TRANSITION AND EFFECTIVE DATES**
3

4 Section 38. The Director of the Administrative Office of the Courts shall assist
5 the chair of the Commission on Indigent Defense Services in retaining the Commission's
6 initial Director of Indigent Defense Services. The Director of the Administrative Office
7 of the Courts shall recruit and interview prospective candidates and shall submit at least
8 three names to the full Commission for its consideration. The Commission may hire its
9 initial Director of Indigent Defense Services from that list or may request that the chair of
10 the Commission and Director of the Administrative Office of the Courts submit
11 additional names.

12 Section 39. The Commission on Indigent Defense Services shall report on or
13 before May 1, 2001, to the Chairs of the Senate and House Appropriations Committees
14 and the Chairs of the Senate and House Appropriations Subcommittees on Justice and
15 Public Safety regarding (i) a plan for the orderly transfer of budget and related authority
16 from the Administrative Office of the Courts to the Commission on Indigent Defense
17 Services, effective July 1, 2001; (ii) the rules, standards, and other regulations developed
18 by the Commission for the delivery of indigent defense services; and (iii) other matters
19 for implementation of the provisions of this act.

20 Section 40. Except as otherwise provided in this Part, this act becomes
21 effective July 1, 2001. G.S. 7A-498, 7A-498.1, 7A-498.2, 7A-498.4, 7A-498.5, and 7A-
22 498.6, as enacted in Section 1 of this act, are effective when they become law; however,
23 except as otherwise provided in this Part, no rules, standards, or other regulations issued
24 by the Commission on Indigent Defense Services, and no decisions regarding the actual
25 delivery of services shall take effect prior to July 1, 2001, and all authority over the
26 expenditure of funds shall remain with the Director of the Administrative Office of the
27 Courts prior to that date. The Commission shall be responsible for the expenditure of
28 funds for all cases pending on or after July 1, 2001.