

PUBLIC DEFENDER ACT

Act of Dec. 2, 1968, P.L. 1144, No. 358

Cl. 16

AN ACT

To provide for the office of public defender, authorizing assistants and other personnel, and to provide adequate representation for persons who have been charged with an indictable offense or with being a juvenile delinquent, who for lack of sufficient funds are unable to obtain legal counsel.

Compiler's Note: Act 358 was suspended by Pennsylvania Rule of Juvenile Court Procedure No.800(4), amended December 30, 2005, insofar as it is inconsistent with Rules 150 and 151 relating to attorneys--appearances and withdrawals and assignment of counsel.

Compiler's Note: Act 358 was suspended by Pennsylvania Rule of Criminal Procedure No.1101, adopted March 1, 2000, insofar as it is inconsistent with Rule 122 relating to execution of arrest warrant.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short Title.--This act shall be known and may be cited as the "Public Defender Act."

Section 2. Definitions.--As used in this act:

"Court" means the court of record which has obtained jurisdiction of a person charged with being a juvenile delinquent, or of a defendant charged with an indictable offense or will obtain jurisdiction of the defendant if he be held for the grand jury.

"County" means the county in which jurisdiction over the defendant lies or will lie.

Section 3. Public Defender; Establishment.--In each county except the County of Philadelphia, there shall be a public defender, appointed as herein provided. Two or more counties may cooperate in the appointment of a public defender, as provided in the intergovernmental cooperation provisions of the Constitution of Pennsylvania or as provided by law.

Section 4. Public Defender; Appointment.--The public defender shall be appointed by the Board of County Commissioners.

Section 5. Personnel of Office; Compensation; Qualification.--(a) The public defender, with the approval of the appointive body, may provide for as many full or part time assistant public defenders, clerks, investigators, stenographers and other employes as he may deem necessary to enable him to carry out the duties of his office. The salary board shall fix the salary of the public defender and of the personnel authorized by this section.

(b) In lieu of, or in addition to assistant public defenders, the public defender may arrange for and make use of the services of attorneys at law admitted to practice before the Supreme and Superior Courts of this Commonwealth and the court of common pleas of the county or counties in which they may serve, when such attorneys volunteer to act as assistants, without compensation, to enable him to carry out the duties of his office.

(c) The public defender and assistant public defenders, if any, shall be attorneys at law admitted to practice before the Supreme and Superior Courts of this Commonwealth. Residency within a judicial district shall not be a requirement for the appointment of a public defender.

Section 6. Duties.--(a) The public defender shall be responsible for furnishing legal counsel, in the following types of cases, to any person who, for lack of sufficient funds, is unable to obtain legal counsel:

- (1) Where a person is charged with juvenile delinquency;
- (2) Critical pretrial identification procedures;
- (3) Preliminary hearings;
- (4) State habeas corpus proceedings;
- (5) State trials, including pretrial and posttrial motions;
- (6) Superior Court appeals;
- (7) Pennsylvania Supreme Court appeals;
- (8) Postconviction hearings, including proceedings at the trial and appellate levels;
- (9) Criminal extradition proceedings;
- (10) Probation and parole proceedings and revocation thereof;
- (11) In any other situations where representation is constitutionally required.

(b) The public defender, after being satisfied of the person's inability to procure sufficient funds to obtain legal counsel to represent him, shall provide such counsel.

Every person who requests legal counsel shall sign an affidavit that he is unable to procure sufficient funds to obtain legal counsel to represent him and shall provide, under oath, such other information as may be required by the court, the public defender, or the Pennsylvania Rules of Criminal Procedure.

(c) The public defender, when appointed by the court, shall furnish legal counsel to persons who are or may be subject to commitment in a proceeding under the act of October 20, 1966 (3rd Sp. Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966."

(6 amended Dec. 10, 1974, P.L.830, No.277)

Section 7. Appointment of Other Attorneys by Court of Common Pleas.--For cause, the court of common pleas may, on its own motion or upon the application of the public defender, the defendant, or person charged with being a juvenile delinquent, appoint an attorney other than the public defender to represent the person charged at any stage of the proceedings. The attorney so appointed shall be awarded reasonable compensation, and reimbursement for expenses necessarily incurred, to be fixed

by the judge of the court of common pleas sitting at the trial or hearing of the case and paid by the county.

Section 8. Penalties; Restitution.--(a) False affidavits and false statements made by any person for the purpose of securing counsel or services under the provisions of this act shall subject the persons making such false affidavits or statements to the penalties prescribed by law for perjury.

(b) Any person who has been convicted of making a false affidavit or false statement for the purpose of securing counsel or services under this act shall make restitution as the court shall determine to the county and the Commonwealth of Pennsylvania of all moneys paid on the basis of the false affidavit or false statement.

Section 9. Facilities.--The board of commissioners shall provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of the business of that office.

Section 10. Incompatible Offices.--No public defender shall be eligible to a seat in the Legislature or to any other public elected office for which compensation is provided, under the laws and Constitution of the Commonwealth, excepting an office or commission in the militia of the Commonwealth during his continuance in office.

Section 10.1. Expenses for Parole Proceedings.--The county which imposed the sentence from which the defendant was paroled shall be responsible for reimbursing the public defender's office of any other county for reasonable expenses incurred for representing that defendant in a parole revocation proceeding and appeals therefrom.

(10.1 added Dec. 23, 1981, P.L.590, No.172)

Section 11. Specific Repeals.--The following acts and parts of acts and all amendments thereto are repealed to the extent specified:

(1) The act of March 22, 1907 (P.L.31), entitled "An act to provide for the assignment of counsel in murder cases, and for the allowance of expenses and compensation in such cases," absolutely as to all counties except the County of Philadelphia.

(2) Subdivision (p) of Article XXI, act of July 28, 1953 (P.L.723), known as the "Second Class County Code," absolutely.

(3) Subdivision (r) of Article XIX, act of August 9, 1955 (P.L.323), known as "The County Code," absolutely.

(4) The act of November 16, 1959 (P.L.1505), entitled "An act to provide for the assignment of counsel in criminal cases in certain counties and for the allowance of compensation in such cases," absolutely.

Section 12. Other Repeals.--All acts and parts of acts, local, general or special are hereby repealed in so far as they are inconsistent herewith.

Section 13. Effective Date.--This act shall take effect January 1, 1969.