

**LOCAL FINANCE NOTICE**CHRISTINE TODD WHITMAN  
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DIRECTOR**MUNICIPAL PUBLIC DEFENDERS LAW  
P.L. 1997, C. 256 (N.J.S.A. 2B:24-1 et seq.)**

On September 23, 1997, Governor Whitman approved P.L. 1997, Chapter 256. This law requires every municipality to appoint a "municipal public defender" (hereafter, defender or public defender), the cost of which may be offset by a public defender application fee charged to individuals who use the defender's services. This Local Finance Notice provides local officials with information necessary for the implementation of the law. This Notice has been prepared in consultation with the Attorney General's office and the Administrative Office of the Courts. A copy of the law is included with this Notice.

The main sections of the bill take effect on March 22, 1998. Sections 17 and 18 took effect on December 22, 1997. Section 17 pertains to the collection of application fees. Its provisions affect all municipal budgets during 1998, and may require amendments to SFY 1998 budgets already in effect. Section 18 pertains to the repeal of N.J.S.A. 2B:12-28. This information is important to elected officials, chief administrative officer, and the municipal attorney.

**Background**

The Federal and State Constitutions have long provided that all defendants charged with a criminal offense are entitled to the assistance of counsel. In New Jersey, this right has been extended to defendants in municipal courts who face a "consequence of magnitude" (see below). Specifically, counsel is appointed in those instances where an indigent defendant faces such a consequence. At the municipal court level, up until this time, N.J.S.A. 2B:12-28 (repealed by the new law) gave municipalities the option of hiring public defenders, and permitted the municipality to impose an application fee not to exceed \$50 to offset the costs of retaining a municipal public defender(s). The application fee was waivable by the judge in the event the person could not afford it. Many municipalities hired public defenders, while others relied on a system of individual attorneys being assigned by the office of the Assignment Judge, pursuant to the Supreme Court's ruling in Madden v. Delran, 126 N.J. 591 (1992), to represent indigents at no charge.

The law also includes a number of other provisions regarding the appointment, role, compensation and budgetary requirements concerning the public defender function. The Division of Local Government Services (Division) is granted specific oversight activities regarding various aspects of the law.

**Appointment of a Public Defender**

The law requires each municipal court in the State to have at least one public defender appointed by the governing body of the municipality. In the case of a joint municipal court, the public defender shall be appointed with the concurrence of the governing bodies of each participating municipality.

The public defender is required to represent any indigent defendant charged in municipal court, with a crime, as specified in N.J.S.A. 2B:12-18, or who, in the opinion of the court, is likely to be subject to imprisonment or other "consequence of magnitude" upon conviction of any other offense. A public defender is responsible for handling all phases of the defense, including, but not limited to discovery, pretrial, and post trial hearings (not including de novo Superior Court appeals), motions, removals to federal district court and other collateral functions reasonably related to the defense.

The municipality shall provide the defendant with all necessary services and facilities of representation, including both expert and lay investigation and testimony as well as other preparations in every case. Eligibility for services of the defender shall be determined by the municipal court on the basis of need of the defendants. The factors of need and real value to a defendant may be weighed against the financial constraints of the municipality in determining the necessary services and facilities of representation. The final determination as to necessity for services shall be made by the municipal court.

Other requirements pertaining to the appointment of the public defender include:

- A municipal public defender shall serve for a term of one year from the original date of appointment and may continue to serve pending reappointment or appointment of a successor.
- A municipal public defender may be appointed to that position in one or more municipal courts and need not reside in the appointing municipality.
- If a public defender is unavailable for any reason, the municipal court may appoint a qualified attorney to carry out the duties of the defender in a particular case, pursuant to a rate of compensation established by the municipality. If the municipality does not establish its own rate, then the rate schedule for conflict cases used by the Office of the State Public Defender for conflict cases is to be utilized.

### **Compensation for Services**

The municipality is responsible for payment for services of public defenders, except that until December 22, 1998, a municipality is not required to pay for expert and lay investigation or testimony. A municipal public defender shall receive compensation, either on an hourly, per diem, annual or other basis as may be provided by the municipality.

The governing body may require, by ordinance, that a person applying for representation by a municipal public defender must pay an application fee of not more than \$200, but only in an amount necessary to pay the costs of municipal public defender services. After the adoption of the requisite ordinance, these fees can be assessed immediately.

The municipal court may waive any application fee established by the governing body in whole or in part, if the judge determines that the application fee imposes an unreasonable hardship upon a particular defendant. The judge may also permit a person to pay the application fee over a specific period of time, not to exceed four (4) months. The law provides a method for defendants, who have the means, to reimburse the municipality for the costs of representation. It also grants a lien to the municipality on defendant's present or future property. It further authorizes the municipal attorney do all things necessary to obtain reimbursement for the municipality for public defender services.

## Accounting of Funds

The application fees collected by the municipality from defendants for the services of the public defender shall be deposited into a dedicated trust fund. These fees are to be used exclusively to meet costs incurred in providing the services of a public defender, in accordance with the statute. The fund must be approved by the Division as a budget rider and administered by the municipality's chief financial officer.

Beginning in 1999, the law requires the Division, as part of budget review, to determine if the amount of money in a dedicated trust fund exceeded, by 25 percent, the amount expended for providing public defender services during the preceding year. If it does, the excess amount shall be remitted by the municipality to the Criminal Disposition and Review Collection Fund administered by Victims of Crimes Compensation Board.

The Division is currently reviewing this requirement and, for 1999, may develop a revenue and expenditure form for the Municipal Public Defenders' Trust Fund, which will be part of the Annual Financial Statement.

## Budgetary Requirements

For those municipalities adopting an ordinance establishing the application fee for public defender services, the governing body should also adopt a resolution requesting use of a dedication by rider trust fund for the receipt and disbursement of moneys collected for such services. This may also include the costs of interlocutory appeals in the Superior Court. The resolution should be submitted to the Division for approval, along with a certified copy of the adopted fee ordinance.

If it adopts the dedication by rider provision in 1998, a municipality will not be required to provide a budget appropriation for a public defender. The municipality will, however, receive a CAP base adjustment for 1998 in the amount expended for public defender service in 1997. In determining to fund the program strictly through the trust fund, the municipality should carefully consider its experience to ensure that sufficient funds will be available to pay for these services.

Public defender appropriations will be placed outside the CAP in the "Operations - Other" section and a cap base adjustment will be taken for 1998 for the amount expended for defender purposes inside the cap in 1997, if a municipality: continues to fund a public defender position(s); or,

1. moves the 1997 appropriation to the trust fund, to offset any fees waived by the municipal court or incurred extraordinary expenses.

It should be noted that the salary and operating costs for the public defender should not be placed in the Municipal Court budget. Public defenders are not considered judiciary employees, and therefore are not subject the Code of Conduct for Judiciary Employees.

## Conclusion

This Notice has not addressed the other matters (i.e., determination of need, costs to be covered, use of liens, collection practices, settling claims, establishment of eligibility) involved in public defender managed cases, which are set forth in the law. The municipal attorney and other appropriate officials should review the law and assist in developing administrative procedures to be used in implementing the law.

Please remember that the responsibility for a municipality to appoint the public defender takes effect on March 22, 1998, while the application fees can be adopted immediately. The Division of Local Government Services will be working in cooperation with the Administrative Office of the Courts to ensure that all affected municipal officials receive any additional information about the law. If you have any questions, please contact the Bureau of Financial Regulation and Assistance at (609) 292-4806.

Chief Financial Officers are asked to share this Notice with elected officials and the chief administrative officer of the municipality.

Beth Gates

Beth Gates, Director  
Division of Local Government Services

Enclosure

Distribution: Chief Financial Officers to distribute to elected officials, municipal attorney, chief administrative officer, and municipal court.

## P.L. 1997, CHAPTER 256

AN ACT concerning the appointment and funding of municipal public defenders, supplementing Title 2B of the New Jersey Statutes and repealing N.J.S.2B:12-28.

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

### **C.2B:24-1 Findings, declarations relative to municipal public defenders.**

1. The Legislature finds and declares:
  - a. Municipal public defenders are a critical component of New Jersey's system for the administration of justice and the effective, fair and equal representation of the poor.
  - b. As the New Jersey Supreme Court stated in *Rodriguez v. Rosenblatt*, 58 N.J.281 (1971), "as a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequence of magnitude without first having had due and fair opportunity to have counsel assigned without cost."
  - c. The appointment of municipal public defenders increases the efficiency and effectiveness of the system and the professionalism of the municipal courts.
  - d. Not all municipalities employ municipal public defenders, and in order to ensure the uniform and proper administration of justice, it is essential to require the appointment of municipal public defenders by each municipal government in the State.

### **C.2B:24-2 Definitions relative to municipal public defenders.**

2. As used in this act:
  - "Indigent defendant" means a person who is entitled to be represented by a municipal public defender pursuant to this act, and does not have the present financial ability to secure competent legal representation, as determined by section 9 of this act.
  - "Municipal court" means a municipal, central or joint municipal court established pursuant to N.J.S.2B:12-1.
  - "Municipal public defender" means a person, as defined in section 4 of this act, appointed to represent indigent defendants in proceedings over which the municipal court has jurisdiction.

### **C.2B:24-3 Appointment of municipal public defenders, chief municipal public defender.**

3. Each municipal court in this State shall have at least one municipal public defender appointed by the governing body of the municipality in accordance with applicable laws, ordinances and resolutions. Any municipal court with two or more municipal public defenders shall have a "chief municipal public defender" who shall be appointed by the governing body of the municipality. The chief municipal public defender of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each municipality. The chief municipal public defender shall have authority over other municipal public defenders serving that court with respect to the performance of their duties.

### **C.2B:24-4 Requirements for municipal public defenders.**

4. a. A municipal public defender shall be an attorney-at-law of this State in good standing, and shall serve for a term of one year from the date of his appointment, and may continue to serve in office pending re-appointment or appointment of a successor. A municipal public defender may be appointed to that position in one or more municipal courts. The provisions of this act shall apply to each such position held. A municipal public defender need not reside in the municipality where he acts as a municipal public defender.

b. A municipal public defender of a joint municipal court shall be appointed upon the concurrence of the governing bodies of each of the municipalities in accordance with applicable laws, ordinances or resolutions.

c. In accordance with applicable laws, ordinances and resolutions, a municipality may appoint additional municipal public defenders as necessary to administer justice in a timely and effective manner in its municipal court. Additional appointments shall be subject to the provisions of this act, including appointments in a joint municipal court.

d. Appointments to fill vacancies in the position of municipal public defender shall be made in accordance with the provisions of this act as soon as practicable.

e. In addition to any other means provided by law for the removal from office of a public official, a municipal public defender may be removed by the governing body of a municipality for good cause shown and after a public hearing, and upon due notice and an opportunity to be heard. Failure to reappoint a municipal public defender for a second or subsequent term does not constitute a "removal from office" within the meaning of this subsection.

f. The municipal public defenders may represent private clients in any municipality, including the municipality where they act as a municipal public defender, subject to the Rules of Court Governing the Conduct of Lawyers, Judges and Court Personnel.

#### **C.2B:24-5 Compensation of municipal public defender.**

5. A municipal public defender shall receive compensation, either on an hourly, per diem, annual or other basis as the municipality may provide. In the case of a joint municipal court, participating municipalities, by similar ordinances, shall enter into an agreement fixing the compensation of the municipal public defender and providing for payment. The compensation of a municipal public defender for services rendered pursuant to the provisions of this act shall be in lieu of any and all other compensation by the municipality. The ordinance, resolution or agreement setting compensation shall set forth any additional compensation to be paid for interlocutory appeals in the Superior Court.

#### **C.2B:24-6 Duties of municipal public defender.**

6. a. It shall be the duty of the municipal public defender to represent, except in the case of temporary unavailability or conflict of interest, any defendant charged with an offense in municipal court who is an indigent municipal defendant entitled to representation pursuant to this act. All necessary services and facilities of representation, including both expert and lay investigation and testimony as well as other preparations, shall be provided in every case. The municipality shall be responsible for payment for services pursuant to this section. The factors of need and real value to a defendant may be weighed against the financial constraints of the municipality in determining the necessary services and facilities of representation. The final determination as to necessity for services required pursuant to this section shall be made by the court.

b. A municipal public defender shall be responsible for handling all phases of the defense, including but not limited to discovery, pretrial and post-trial hearings, motions, removals to federal district court and other collateral functions reasonably related to the defense. As used in this subsection, "post-trial hearing" shall not include de novo appeals in Superior Court.

c. Nothing in this section shall be deemed to require a municipality to pay for expert and lay investigation or testimony for a period of one year after the effective date of P.L.1997, c.256 (C.2B:24-1 et seq.).

#### **C.2B:24-7 Representation of indigent defendants.**

7. a. The municipal public defender shall represent an indigent defendant charged in municipal court with a crime as specified in N.J.S.2B:12-18 or, if in the opinion of the municipal court there is a likelihood

that the defendant, if convicted, of any other offense will be subject to imprisonment or other consequence of magnitude, the municipal public defender shall represent an indigent defendant.

b. If there is a vacancy in the office of municipal public defender, if the municipal public defender is temporarily unavailable or if a finding of conflict of interest precludes the municipal public defender from representing an indigent defendant, the municipal prosecutor may prosecute the offense if the municipal court appoints a qualified attorney to represent the indigent defendant. Unless rates are otherwise established by the municipality, the attorney shall be entitled to compensation at the same rate as attorneys hired by the Office of the Public Defender in conflict cases, with payment to be made within 30 days. Once appointed, the attorney shall carry out all duties of the municipal public defender in connection with the case that is the subject of the appointment.

**C.2B:24-8 Communications protected under attorney-client privilege.**

8. All communications between the indigent defendant and the municipal public defender or any other attorney appointed to act as a municipal public defender shall be fully protected by the attorney-client privilege to the same extent and degree as though counsel has been privately engaged. This shall not preclude the use by the municipal public defender of privileged material for the preparation and disclosure of statistical, case study and other sociological data, provided that in any such use there shall be no disclosure of the identity of or means for discovery of the identity of particular defendants.

**C.2B:24-9 Eligibility for services of municipal public defender.**

9. Eligibility for services of the municipal public defender shall be determined by the municipal court on the basis of the need of the defendant, except as provided in section 11 of this act. Need shall be measured according to section 14 of P.L.1967, c.43 (C.2A:158A-14) and guidelines promulgated by the New Jersey Supreme Court.

In the event that a determination of eligibility cannot be made before the time when the first services are to be rendered, or if an initial determination is found to be erroneous, the municipal court shall refer the defendant to the municipal public defender provisionally, and if subsequently it is determined that the defendant is ineligible the municipal court shall inform the defendant, and the defendant shall be obliged to engage his own counsel and to reimburse the municipality for the cost of the services rendered to that time.

**C.2B:24-10 Investigation of financial status of defendant.**

10. The municipal court shall make an investigation of the financial status of each defendant seeking representation pursuant to this act and shall have the authority to require a defendant to execute and deliver written requests or authorizations required under applicable law to provide the court with access to records of public or private sources, otherwise confidential, as may be of aid in evaluating eligibility. The court is authorized to obtain information from any public record office of the State or of any subdivision or agency thereof on request and without payment of the fees ordinarily required by law.

**C.2B:24-11 Eligibility of defendant under 18 years of age.**

11. Whenever a person entitled to representation by a municipal public defender pursuant to this act, is under the age of 18 years, the eligibility for services shall be determined on the basis of the financial circumstances of the individual and the financial circumstances of the individual's parents or legal guardians. The municipality shall be entitled to recover the cost of legal services from the parents or legal guardians as provided in section 16 of this act and the municipal court shall have authority to require parents or legal guardians to execute and deliver the written requests or authorization required under applicable law in order to provide the court with access to records of public or private sources, otherwise confidential, as may be of aid to it in evaluating eligibility.

**C.2B:24-12 Reimbursement to municipality.**

12. If the defendant has or reasonably expects to have means to meet some part, though not all, of the cost of the services rendered, the defendant shall be required to reimburse the municipality, either by a single payment or in installments in such amounts as he can reasonably be expected to pay; but no default or failure in making payment shall affect or reduce the rendering of services.

**C.2B:24-13 Lien on property of defendant.**

13. a. A municipality shall have a lien on any property to which the defendant shall have or acquire an interest for an amount equal to the reasonable value of the services rendered to a defendant pursuant to this act as calculated at the same rate as the Office of the Public Defender bills clients at that time.

b. To effectuate such a lien for the municipality, the municipal attorney shall file a notice setting forth services rendered to the defendant and the reasonable value thereof with the Clerk of the Superior Court. The filing of the notice with the Clerk of the Superior Court shall constitute a lien on property for a period of 10 years from the date of filing, unless discharged sooner, and, except for such time limitations, shall have the force and effect of a judgment. Within 10 days of the filing of the notice, the municipal attorney shall send by certified mail, or serve personally, a copy of the notice with a statement of the date of the filing to or upon the defendant at the defendant's last known address. If the municipal attorney shall fail to give notice, the lien is void.

**C.2B:24-14 Compromise, settlement of claims.**

14. The municipal attorney is authorized to compromise and settle any claim for services performed pursuant to this act whenever the financial circumstances of the person receiving the services are such that, in the judgment of the municipal attorney, the best interest of the State will be served by compromise and settlement.

**C.2B:24-15 Books for recording liens.**

15. The Clerk of the Superior Court shall provide separate books for the recording of liens established pursuant to section 13 of this act, which books shall be properly indexed in the name of the judgment debtor. The municipal attorney shall not be required to pay filing or recording fees.

**C.2B:24-16 Collection of money due municipality.**

16. The municipal attorney in the name of the municipality may do all things necessary to collect any money due to the municipality by way of reimbursement for services rendered by a municipal public defender pursuant to this act. The municipal attorney may enter into arrangements with any State or county agency to handle collections on a cost basis. The municipal attorney shall have all the remedies and proceedings available for collection which are available for or upon the recovery of a judgment in a civil action and shall also be permitted to collect counsel fees and costs from the defendant for such collection action so that the same are not borne by the municipality.

**C.2B:24-17 Application fee, waiver; deposit in dedicated fund.**

17. a. A municipality may require by ordinance a person applying for representation by a municipal public defender or court approved counsel to pay an application fee of not more than \$200.00, but only in an amount necessary to pay the costs of municipal public defender services. In accordance with guidelines promulgated by the Supreme Court, the municipal court may waive any required application fee, in whole or in part, only if the court determines, in its discretion, upon a clear and convincing showing by the applicant that the application fee represents an unreasonable burden on the person seeking representation. The



municipal court may permit a person to pay the application fee over a specific period of time not to exceed four months.

b. Funds collected pursuant to subsection a. of this section shall be deposited in a dedicated fund administered by the chief financial officer of the municipality or in the case of a joint municipal court in a manner agreed to by the constituent municipalities. Such funds shall be used exclusively to meet the costs incurred in providing the services of a municipal public defender including, when required, expert and lay investigation and testimony.

c. Beginning in 1999, if it is determined by the Division of Local Government Services during its annual review of a municipal budget that the amount of money in a dedicated fund established pursuant to this section exceeds by more than 25% the amount which the municipality expended during the prior year providing the services of a municipal public defender, the amount in excess of the amount expended shall be forwarded to the Criminal Disposition and Review Collection Fund administered by Victims of Crime Compensation Board.

**Repealer.**

18. N.J.S.2B:12-28 is repealed.

19. This act shall take effect on January 1, 1998 or on the 180th day after enactment, whichever is later except that sections 17 and 18 of this act shall take effect on the 90th day after enactment.

Approved September 23, 1997.