

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS75189-LL-138 (3/2)

Short Title: Appointment/Removal of Public Defenders. (Public)

Sponsors: Senator Rand.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE APPOINTMENT OF PUBLIC DEFENDERS BY
3 THE COMMISSION ON INDIGENT DEFENSE SERVICES AND TO PROVIDE
4 FOR SUSPENSION OR REMOVAL OF A PUBLIC DEFENDER BY A
5 TWO-THIRDS VOTE OF THE COMMISSION ON INDIGENT DEFENSE
6 SERVICES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 7A-498.7 reads as rewritten:

9 **"§ 7A-498.7. Public Defender Offices.**

10 (a) The following counties of the State are organized into the defender districts
11 listed below, and in each of those defender districts an office of public defender is
12 established:

<u>Defender District</u>	<u>Counties</u>
1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
3A	Pitt
3B	Carteret
10	Wake
12	Cumberland
14	Durham
15B	Orange, Chatham
16A	Scotland, Hoke
16B	Robeson
18	Guilford

1	21	Forsyth
2	26	Mecklenburg
3	27A	Gaston
4	28	Buncombe

5
6 After notice to, and consultation with, the affected district bar, senior resident
7 superior court judge, and chief district court judge, the Commission on Indigent Defense
8 Services may recommend to the General Assembly that a district or regional public
9 defender office be established. A legislative act is required in order to establish a new
10 office or to abolish an existing office.

11 (b) For each new term, and to fill any vacancy, public defenders shall be
12 appointed from a list of not less than two and not more than three names nominated by
13 written ballot of the attorneys resident in the defender district who are licensed to
14 practice law in North Carolina. The balloting shall be conducted pursuant to rules
15 adopted by the Commission on Indigent Defense Services. The appointment shall be
16 made by the ~~senior resident superior court judge of the superior court district or set of~~
17 ~~districts as defined in G.S. 7A 44.1 that includes the county or counties of the defender~~
18 ~~district for which the public defender is being appointed.~~ Commission on Indigent
19 Defense Services after consultation with the senior resident superior court judge and
20 chief district court judge. Public defenders shall be chosen by the Commission on the
21 basis of training, experience, and other qualifications.

22 (c) A public defender shall be an attorney licensed to practice law in North
23 Carolina and shall devote full time to the duties of the office. In lieu of merit and other
24 increment raises paid to regular State employees, a public defender shall receive as
25 longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual
26 salary set forth in the Current Operations Appropriations Act payable monthly after five
27 years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen
28 and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths
29 percent (19.2%) after 20 years of service. "Service" means service as a public defender,
30 appellate defender, assistant public or appellate defender, district attorney, assistant
31 district attorney, justice or judge of the General Court of Justice, or clerk of superior
32 court.

33 (d) Subject to standards adopted by the Commission, the day-to-day operation
34 and administration of public defender offices shall be the responsibility of the public
35 defender in charge of the office. The public defender shall keep appropriate records and
36 make periodic reports, as requested, to the Director of the Office of Indigent Defense
37 Services on matters related to the operation of the office.

38 (e) The Office of Indigent Defense Services shall procure office equipment and
39 supplies for the public defender, and provide secretarial and library support from State
40 funds appropriated to the public defender's office for this purpose.

41 (f) Each public defender is entitled to assistant public defenders, investigators,
42 and other staff, full-time or part-time, as may be authorized by the Commission.
43 Assistants, investigators, and other staff are appointed by the public defender and serve
44 at the pleasure of the public defender. Average and minimum compensation of

1 assistants shall be as provided in the biennial Current Operations Appropriations Act.
2 The actual salaries of assistants shall be set by the public defender in charge of the
3 office, subject to approval by the Commission. The Commission shall fix the
4 compensation of investigators. Assistants and investigators shall perform such duties as
5 may be assigned by the public defender.

6 (g) In lieu of merit and other increment raises paid to regular State employees, an
7 assistant public defender shall receive as longevity pay an amount equal to four and
8 eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations
9 Appropriations Act payable monthly after five years of service, nine and six-tenths
10 percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after
11 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of
12 service. "Service" means service as a public defender, appellate defender, assistant
13 public or appellate defender, district attorney, assistant district attorney, justice or judge
14 of the General Court of Justice, or clerk of superior court.

15 (h) The term of office of public defender appointed under this section is four
16 years. ~~A public defender or assistant public defender may be suspended or removed~~
17 ~~from office, and reinstated, for the same causes and under the same procedures as are~~
18 ~~applicable to removal of a district attorney.~~A public defender may be suspended or
19 removed from office for cause by a two-thirds vote of all of the members of the
20 Commission on Indigent Defense Services. The Commission shall provide the public
21 defender with timely written notice of the alleged causes and an opportunity for hearing
22 before the Commission prior to taking any final action to remove or suspend the public
23 defender, and the public defender shall be given written notice of the Commission's
24 decision. The public defender may obtain judicial review of a suspension or removal by
25 the Commission by filing a petition within 30 days of receiving notice of the decision
26 with the Superior Court of Wake County. Review of the Commission's decision shall be
27 heard on the record and not as a de novo review or trial de novo. The Commission shall
28 adopt rules implementing this subsection.

29 (i) A public defender may apply to the Director of the Office of Indigent
30 Defense Services to enter into contracts with local governments for the provision by the
31 State of services of temporary assistant public defenders pursuant to G.S. 153A-212.1 or
32 G.S. 160A-289.1.

33 (j) The Director of the Office of Indigent Defense Services may provide
34 assistance requested pursuant to subsection (i) of this section only upon a showing by
35 the requesting public defender, supported by facts, that the overwhelming public interest
36 warrants the use of additional resources for the speedy disposition of cases involving
37 drug offenses, domestic violence, or other offenses involving a threat to public safety.

38 (k) The terms of any contract entered into with local governments pursuant to
39 subsection (i) of this section shall be fixed by the Director of the Office of Indigent
40 Defense Services in each case. Nothing in this section shall be construed to obligate the
41 General Assembly to make any appropriation to implement the provisions of this
42 section or to obligate the Office of Indigent Defense Services to provide the
43 administrative costs of establishing or maintaining the positions or services provided for
44 under this section. Further, nothing in this section shall be construed to obligate the

1 Office of Indigent Defense Services to maintain positions or services initially provided
2 for under this section."

3 **SECTION 2.** This act becomes effective July 1, 2007.