



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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### **MEMORANDUM**

**DATE:** March 20, 2015

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Robert D. Overmiller, Chairperson  
GACEC

**RE:** Senate Bill No. 28 (Office of Defense Services)

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 28 which would streamline the operation of the system for providing counsel to indigent defendants in criminal proceedings. Currently, the Office of the Public Defender represents approximately 83% of indigent defendants. The remaining defendants are provided with a contract attorney through the Office of Conflict Counsel. This bill would consolidate the administrative functions of the Public Defender and Office of Conflict Counsel while still protecting clients from conflicts of interest.

The GACEC would like to share the following observations.

First, while the bill changes the "Office of the Public Defender" to "Office of Defense Services" (lines 3-5) and the chapter is designated the "Office of Defense Services Act" (line 82), the bill does not amend the title to Chapter 46 which will still read "Chapter 46. Public Defender". The sponsors may wish to add an amendment to change the chapter title.

Second, in line 8, the word "appointed" should be stricken. It is not part of the current statute.

Third, the legislation (lines 37-41) contains limits on salaried attorneys "engaging in the practice of law outside the duties of the Office of Defense Services." In the same section, the limitation is arguably narrower, i.e., barring "engaging in private law practice". The sponsors may wish to clarify the scope of the restriction. For example, could a salaried lawyer receive compensation for serving as a part-time adjunct Law School Professor, writing a legal treatise or article, teaching a seminar, serving as a legislative attorney in the House or Senate, serving as a mediator or arbitrator, or serving as a State administrative hearing officer? Even judges are allowed to teach, lecture, and write. Compare Delaware Judges' Code of Judicial Conduct, Canon 3.

Fourth, lines 49-51 would benefit from revision. Literally, the sentence reads that the court may

appoint an attorney other than a qualified counsel. This is illogical. It suggests that the court would appoint someone who is not with the Office of Conflicts Counsel and not a qualified counsel.

Fifth, there are many references to the Office of the Public Defender or Public Defender throughout the Code. See, e.g., Title 11 Del.C. §§8701(b)(6) and 9502; Title 13 Del.C. §2102; and Title 29 Del.C. §3303(a). Under the bill, there is no longer a “Public Defender”. There is a “Chief Defender” (line 7) and a “Public Defender’s Office” (line 5). Ideally, the other references throughout the Code should be amended to conform to the new language.

Sixth, existing law (lines 64-71) which is not amended by the bill requires defendants represented by Public Defender to pay a \$100 court fee or fine even if charges are nolle prossed or the defendant is found not guilty. Inability to pay the fee or fine results in the non-convicted defendant being referred to the Department of Correction for mandatory work. Council views this as unreasonable.

Thank you for your time and consideration of our observations and recommendations. Please feel free to contact me or Wendy Strauss should you have any questions.

CC: Brendan O'Neill, Public Defender