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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

APPROVED
SEP 3 - 1974

AUG 23 1974

*Posted
9/3
Jo Archivia
9/14*

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3703 - District of Columbia
Criminal Justice Code amendment
Sponsor - Sen. Eagleton (D) Missouri

Last Day for Action

Purpose

To provide for representation of indigent defendants in criminal cases in the District of Columbia.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia Government	Approval
Department of Justice	Approval
Administrative Office of the U.S. Courts	No objection

Discussion

The enrolled bill would amend the D.C. Criminal Code to provide for development and operation by the Joint Committee on Judicial Administration of a plan for furnishing representation for indigent defendants in D.C. courts. The bill would cover a defendant financially unable to obtain adequate legal representation who is charged with an offense for which the Constitution or D.C. law would require representation, who is under arrest when representation is required, who is charged with parole or probation violation, who is subject to proceedings relating to hospitalization of mentally ill, and who is a juvenile delinquent.



S. 3703 would further provide for provision of limited ancillary services such as investigative or expert services necessary to an adequate defense.

The enrolled bill would authorize appropriation of such sums as may be necessary during fiscal years 1975 and 1976. Further, the bill would provide for retroactivity to July 1, 1974.

In its report on S. 3703, the House Committee on the District of Columbia stated that in previous years defense for the indigent was provided under the Criminal Justice Act. However, the Court Reform and Criminal Procedure Act of 1970 transferred local criminal jurisdiction from Federal to D.C. courts and that:

"With the full implementation of the District of Columbia Court Reform and Criminal Procedure Act, the Administrative Office of the United States Courts, the United States Judicial Conference, and the Chief Justice of the United States have taken the position that the Superior Court of the District of Columbia and the District of Columbia Court of Appeals are not the rightful beneficiaries of the Criminal Justice Act...

"In March of this year funds were exhausted from which counsel for indigent defendants could be paid."

Since the Constitution requires legal representation in certain cases, the Committee stated:

"If counsel is not available, the court will ultimately have to discontinue the conduct of criminal and juvenile delinquent proceedings."

The Committee describes this legislation as obviating either confinement without trial or release pending trial.

The D.C. Government had requested legislation overhauling the entire indigent defendant representation system. The Committee agreed to S. 3703 "as a temporary measure to provide legislative authorization for the pending appropriation item in the D.C. budget providing funds urgently required to continue the counsel program."

The D.C. Government estimates the cost of the program at about \$2.3 million in fiscal year 1975. Such amount is included in the House passed D.C. appropriation bill.



Assistant Director for
Legislative Reference

Enclosures



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON
Mayor-Commissioner

August 21, 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Rommel:

This is in reference to a facsimile of an enrolled enactment of Congress entitled:

S. 3703 - To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes.

The enrolled bill, which may be cited as the "District of Columbia Criminal Justice Act", amends Title 11 of the District of Columbia Code by adding thereto a chapter 26 authorizing the Joint Committee on Judicial Administration to place in operation, within ninety days after the date of enactment of the bill, a plan to provide for the appointment of attorneys to furnish representation before the Superior Court of the District of Columbia and the District of Columbia Court of Appeals for persons who are financially unable to retain counsel in specified criminal cases and proceedings involving in general the potential loss of one's liberty. The plan would include counsel and investigative, expert, and other services, and would include also the use of private attorneys, attorneys furnished by the existing Public Defender Service, and attorneys and students participating in clinical programs. The plan to be established pursuant to the

authority of the enrolled bill would replace applicable provisions of the Criminal Justice Act of 1964 and interim appropriation measures under which private attorneys representing indigents before the local courts of the District of Columbia were compensated through June 30, 1974.

Under the new section 11-2602 of the D.C. Code, as added by S. 3703, the selection of attorneys to furnish representation would be made from panels of attorneys designated or approved by the local courts. The new section 11-2604 would provide compensation to attorneys appointed under the plan at a rate fixed by the Joint Committee on Judicial Administration. The hourly rate of compensation and the maximum amount of compensation to be paid an appointed attorney would be established at a rate and in amounts not in excess of those set forth in section 3006A(d) of title 18, United States Code (Criminal Justice Act) for corresponding kinds of cases or proceedings.

The new section 11-2607 would authorize the Joint Committee on Judicial Administration to annually prepare and submit to the Commissioner, in accordance with existing procedures, an estimate of the amount needed to compensate private attorneys for furnishing representation in matters to which they are appointed. The new section 11-2608 authorizes out of moneys credited to the District of Columbia appropriations to administer the Act for fiscal years 1975 and 1976. It is estimated that approval of S. 3703 will result in a cost to the District of approximately \$2.3 million in fiscal year 1975.

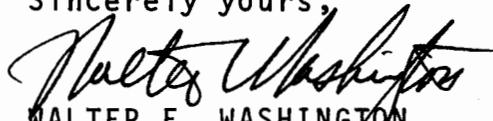
Section 3 of the enrolled bill makes inapplicable to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals the provisions of the Criminal Justice Act of 1964 which after the date of enactment will apply only to representation of defendants before the Federal courts of the District. Section 4 provides an effective date for the bill upon the date of enactment, but authorizes compensation for persons appointed to represent indigents on or after July 1, 1974 but prior to the commencing date of the plan in accordance with its provisions.

On April 23, 1974 the District Government submitted to the Congress a proposed "District of Columbia Defender Services Act", which was introduced in the House of Representatives as H.R. 14374. While H.R. 14374 and S. 3703 are similar in objective—to insure that defendants and respondents who are financially unable to obtain an adequate defense in criminal cases and proceedings before the courts of the District of Columbia are provided representation—they differ materially in the method of providing such representation. H.R. 14374 would, inter alia, have established a District of Columbia Defender Service to combine in a single agency, acting under an independent Board of Trustees, the existing private attorney and Public Defender Service programs; authorized representation of indigent defendants before the Federal courts of the District of Columbia on a reimbursable basis; and unified the functions of planning, selection of attorney panels, preparation of budgets, payment of compensation to private attorneys, and administration in an independent agency of the District Government.

Although we believe that H.R. 14374 would have offered the most beneficial and effective means of providing adequate legal representation for persons financially unable to retain counsel, we note that the new section 11-2609 of the D.C. Code will make inapplicable to chapter 26 the provisions of section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act which prohibit the Council of the District of Columbia from enacting any act or resolution relating to the organization or jurisdiction of the District of Columbia courts. Accordingly, after January 2, 1975, the Council of the District of Columbia will be able to inquire anew into the entire matter of representation of indigent defendants by private attorneys and public defenders and make such determinations as it deems appropriate.

The District Government recommends the approval of S. 3703.

Sincerely yours,


WALTER E. WASHINGTON
Mayor-Commissioner

Department of Justice
Washington, D. C. 20530

AUG 22 1974

Honorable Roy L. Ash
Director, Office of Management and
Budget
Washington, D. C. 20503

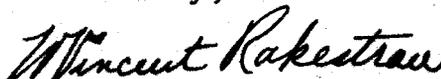
Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill (S. 3703), "District of Columbia Criminal Justice Act."

The bill would authorize the courts of the District of Columbia to establish a plan for the reimbursement of counsel for indigent defendants. At the present time the Criminal Justice Act (18 U.S.C. §3006A) authorizes the Judicial Council of the District of Columbia and the District of Columbia Court of Appeals to jointly approve such a plan for the District. S. 3703 would make the Criminal Justice Act inapplicable to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals. Instead those jurisdictions would come within the purview of a plan to be promulgated for the District of Columbia courts by the Joint Committee on Judicial Administration. The parameters of the plan, outlined in S. 3703, are similar to those found in the Criminal Justice Act. Thus except for transferring the authority for a plan for the D. C. courts from the Judicial Council and Court of Appeals to the Joint Committee, S. 3703 does not differ materially from the Criminal Justice Act.

In the past this Department has supported the utilization of public funds for the provision of legal services to indigent defendants. Accordingly, the Department of Justice recommends Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General
Office of Legislative Affairs

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

August 23, 1974

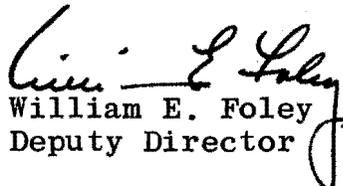
Mr. W. H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Rommel:

This will acknowledge receipt of your memorandum transmitting for our views and recommendations enrolled bill S. 3703, "To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes."

S. 3703 emanates from a proposal made to the Congress by the Judicial Conference of the United States. The bill as enacted differs, however, in one important and unfortunate aspect from the recommendation of the Judicial Conference. In amending the Criminal Justice Act of 1964 (18 U.S.C. 3006(A)) in subsection 11-2609 the Congress prevents the federal courts in the District of Columbia of availing themselves of the provisions of subsection (h) of section 1 of the Criminal Justice Act and thus precludes the establishment for the exclusive use of the federal courts of either a federal public defender agency or a community defender agency. Both the Judicial Conference and this office have expressed opposition to this restriction but inasmuch as the basic legislation achieves a purpose much desired by the Judicial Conference, no objection to Executive approval will be interposed.

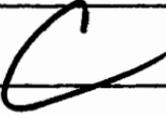
Sincerely,


William E. Foley
Deputy Director

THE WHITE HOUSE
WASHINGTON

ENROLLED BILL

SUBJECT: Enrolled Bill S. 3703 - District of
Columbia Criminal Justice Code amendment

<u>Name</u>	<u>Approval</u>	<u>Date</u>
<u>James Cavanaugh</u>	<u>Yes</u>	<u> </u>
<u>Andre Buckles</u>	<u>Yes</u>	<u> </u>
<u>Phil Buchen</u>	<u>Yes</u>	<u> </u>
<u>Bill Timmons</u>	<u>Yes</u>	<u> </u>
<u>Geoff Shepard</u>	<u>Yes</u>	<u> </u>
<u>Ken Cole</u>		<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

Comments:

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 533

Date: August 26, 1974

Time: 9:30 a. m.

FOR ACTION: James Cavanaugh
✓ Andre Buckles
✓ Phil Buchen
✓ Bill Timmons
✓ Geoff Shepard

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, August 27, 1974

Time: 2:00 p. m.

SUBJECT: Enrolled Bill S. 3703 - District of Columbia Criminal Justice Code amendment

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3703 - District of Columbia
Criminal Justice Code amendment
Sponsor - Sen. Eagleton (D) Missouri

Last Day for Action

Purpose

To provide for representation of indigent defendants in criminal cases in the District of Columbia.

Agency Recommendations

Office of Management and Budget	Approval
District of Columbia Government	Approval
Department of Justice	Approval
Administrative Office of the U.S. Courts	No objection

Discussion

The enrolled bill would amend the D.C. Criminal Code to provide for development and operation by the Joint Committee on Judicial Administration of a plan for furnishing representation for indigent defendants in D.C. courts. The bill would cover a defendant financially unable to obtain adequate legal representation who is charged with an offense for which the Constitution or D.C. law would require representation, who is under arrest when representation is required, who is charged with parole or probation violation, who is subject to proceedings relating to hospitalization of mentally ill, and who is a juvenile delinquent.



S. 3703 would further provide for provision of limited ancillary services such as investigative or expert services necessary to an adequate defense.

The enrolled bill would authorize appropriation of such sums as may be necessary during fiscal years 1975 and 1976. Further, the bill would provide for retroactivity to July 1, 1974.

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"With the full implementation of the District of Columbia Court Reform and Criminal Procedure Act, the Administrative Office of the United States Courts, the United States Judicial Conference, and the Chief Justice of the United States have taken the position that the Superior Court of the District of Columbia and the District of Columbia Court of Appeals are not the rightful beneficiaries of the Criminal Justice Act...

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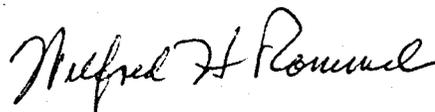
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The D.C. Government estimates the cost of the program at about \$2.3 million in fiscal year 1975. Such amount is included in the House passed D.C. appropriation bill.



Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

WASHINGTON

August 27, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS

FROM: WILLIAM E. TIMMONS

W. E. Timmons

SUBJECT:

Action Memorandum - Log No. 533
Enrolled Bill S. 3703 - District of Columbia
Criminal Justice Code Amendment

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 533

Date: August 26, 1974

Time:

9:30 a. m.

FOR ACTION: James Cavanaugh
 Andre Buckles
 Phil Buchen
 ✓ Bill Timmons

cc (for information): Warren K. Hendriks
 Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, August 27, 1974

Time: 2:00 p. m.

SUBJECT: Enrolled Bill S. 3703 - District of Columbia Criminal
 Justice Code amendment

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

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PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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Warren K. Hendriks
 For the President

EXECUTIVE OFFICE OF THE PRESIDENT:

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3703 - District of Columbia
Criminal Justice Code amendment
Sponsor - Sen. Eagleton (D) Missouri

Last Day for Action

Purpose

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Office of Management and Budget	Approval
District of Columbia Government	Approval
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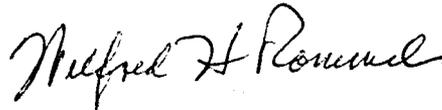
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Assistant Director for
Legislative Reference

Enclosures



THE DISTRICT OF COLUMBIA

WASHINGTON, D.C. 20004

WALTER E. WASHINGTON
Mayor-Commissioner

August 21, 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

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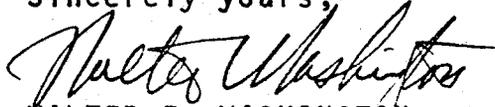
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On April 23, 1974 the District Government submitted to the Congress a proposed "District of Columbia Defender Services Act", which was introduced in the House of Representatives as H.R. 14374. While H.R. 14374 and S. 3703 are similar in objective—to insure that defendants and respondents who are financially unable to obtain an adequate defense in criminal cases and proceedings before the courts of the District of Columbia are provided representation—they differ materially in the method of providing such representation. H.R. 14374 would, inter alia, have established a District of Columbia Defender Service to combine in a single agency, acting under an independent Board of Trustees, the existing private attorney and Public Defender Service programs; authorized representation of indigent defendants before the Federal courts of the District of Columbia on a reimbursable basis; and unified the functions of planning, selection of attorney panels, preparation of budgets, payment of compensation to private attorneys, and administration in an independent agency of the District Government.

Although we believe that H.R. 14374 would have offered the most beneficial and effective means of providing adequate legal representation for persons financially unable to retain counsel, we note that the new section 11-2609 of the D.C. Code will make inapplicable to chapter 26 the provisions of section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act which prohibit the Council of the District of Columbia from enacting any act or resolution relating to the organization or jurisdiction of the District of Columbia courts. Accordingly, after January 2, 1975, the Council of the District of Columbia will be able to inquire anew into the entire matter of representation of indigent defendants by private attorneys and public defenders and make such determinations as it deems appropriate.

The District Government recommends the approval of S. 3703.

Sincerely yours,


WALTER E. WASHINGTON
Mayor-Commissioner

Department of Justice
Washington, D.C. 20530

AUG 22 1974

Honorable Roy L. Ash
Director, Office of Management and
Budget
Washington, D. C. 20503

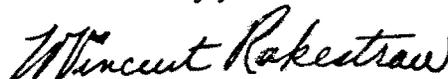
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In the past this Department has supported the utilization of public funds for the provision of legal services to indigent defendants. Accordingly, the Department of Justice recommends Executive approval of this bill.

Sincerely,



W. Vincent Rakestraw
Assistant Attorney General
Office of Legislative Affairs

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

August 23, 1974

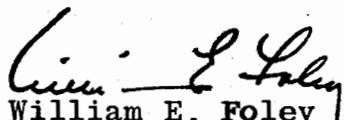
Mr. W. H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Rommel:

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S. 3703 emanates from a proposal made to the Congress by the Judicial Conference of the United States. The bill as enacted differs, however, in one important and unfortunate aspect from the recommendation of the Judicial Conference. In amending the Criminal Justice Act of 1964 (18 U.S.C. 3006(A)) in subsection 11-2609 the Congress prevents the federal courts in the District of Columbia of availing themselves of the provisions of subsection (h) of section 1 of the Criminal Justice Act and thus precludes the establishment for the exclusive use of the federal courts of either a federal public defender agency or a community defender agency. Both the Judicial Conference and this office have expressed opposition to this restriction but inasmuch as the basic legislation achieves a purpose much desired by the Judicial Conference, no objection to Executive approval will be interposed.

Sincerely,


William E. Foley
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 533

Date: August 26, 1974

Time: 9:30 a. m.

FOR ACTION: James Cavanaugh
Andre Buckles
✓ Phil Buchen
Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, August 27, 1974

Time: 2:00 p. m.

SUBJECT: Enrolled Bill S. 3703 - District of Columbia Criminal
Justice Code amendment

ACTION REQUESTED:

_____ For Necessary Action

XX For Your Recommendations

_____ Prepare Agenda and Brief

_____ Draft Reply

_____ For Your Comments

_____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*No objection
D.C.*

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President



Date: August 26, 1974

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REMARKS:

Please return to Kathy Tindle - West Wing

Approve
S.C.S.

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K. E. COLE, JR.
 For the President



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 533

Date: August 26, 1974

Time:

9:30 a. m.

FOR ACTION: James Cavanaugh

cc (for information): Warren K. Hendriks

✓ Andre Buckles

Jerry Jones

Phil Buchen

Bill Timmons

FROM THE STAFF SECRETARY

DUE: Date: Tuesday, August 27, 1974

Time:

2:00 p. m.

SUBJECT: Enrolled Bill S. 3703 - District of Columbia Criminal Justice Code amendment

ACTION REQUESTED:

___ For Necessary Action

XX For Your Recommendations

___ Prepare Agenda and Brief

___ Draft Reply

___ For Your Comments

___ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

No Objection *AKB*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

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Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

8/23/74
Approved

[Signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President



DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

JULY 2, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DIGGS, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany S. 3703]

The Committee on the District of Columbia, to whom was referred the bill (S. 3703) to authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause and inserts a substitute text which appears in italic type in the reported bill.

PURPOSE OF BILL

The purpose of the bill (S. 3703) is to provide a plan to insure that persons charged with crimes in the District of Columbia, who are financially unable to obtain an adequate defense in the courts of the District of Columbia are provided with legal representation. The bill establishes a plan for furnishing such representation and a mechanism for appointment and compensation of counsel.

BACKGROUND

In previous years payments for lawyers representing indigent defendants under a court appointment were reimbursed through the plan established by the Criminal Justice Act (18 U.S.C. 3006A). That Act was specifically applicable to the District of Columbia. Since the Court Reform and Criminal Procedure Act of 1970 (84 Stat. 473) with its transfer of local criminal jurisdiction from the United States District Court to the local District of Columbia Court system, it has been the position of the Administrative Office of the United States Courts and the Judicial Conference of the United States to transfer the responsi-

bility for the indigent defenders program to that local court system. The Administrative Office of the United States Courts took the position in Committee hearings held on the need for funds for the Criminal Justice Act, that it was willing to fund the program until the end of the 1974 fiscal year. At that point the program would have to be included in the District of Columbia budget for fiscal 1975. The District of Columbia Government agreed to this proposal. Accordingly, authorizing legislation (H.R. 14376 and S. 3703) was required to legitimate the transfer.

NEED FOR LEGISLATION

The United States Supreme Court in its 1972 decision, in the case of *Argersinger v. Hamlin* (407 U.S. 25), required that counsel be appointed in any case where there exists the possibility of the deprivation of liberty. With the full implementation of the District of Columbia Court Reform and Criminal Procedure Act however, the Administrative Office of the United States Courts, the United States Judicial Conference, and the Chief Justice of the United States have taken the position that the Superior Court of the District of Columbia and the District of Columbia Court of Appeals are not the rightful beneficiaries of the Criminal Justice Act of 1964 (18 U.S.C. 3006A), which has, up until now, been the source of funds for reimbursement of counsel appearing before the local D.C. courts.

In March of this year the available funds were exhausted from which counsel for indigent defendants could be paid. As a result, the D.C. Superior Court Trial Lawyers Association announced that they would be unable to accept appointments to defend an indigent unless there was some assurance of compensation. The D.C. courts, responding in the best way that they could, asked for volunteers, and decided that they would order the private bar to provide counsel for defense if volunteers were insufficient. Such a system, however, is an emergency system and cannot be expected to work or be relied upon in the long run. The reported legislation is intended to provide authorization for a viable, local, indigent-defender system in the District of Columbia.

The Constitution, as interpreted by the Supreme Court, requires that every defendant in a criminal or juvenile delinquent proceeding be represented by counsel. If counsel is not available, the court will ultimately have to discontinue the conduct of criminal and juvenile delinquent proceedings. Whether this action would mean that all individuals affected would be held in confinement until counsel were found or, as appears more likely, that they would be released pending solution of this problem—both alternatives are highly unpalatable. This legislation seeks to prevent the necessity of dealing with either of those possibilities.

SUMMARY OF MAJOR PROVISIONS OF THE BILL

The bill creates a new Chapter 26, Title II of the District of Columbia Code to provide for representation of indigents in criminal cases in the District of Columbia courts. It creates a plan for the furnishing of legal representation to indigents in cases where they are subject to the possibility of loss of liberty or where federal or local law requires

such representation. Counsel furnishing representation under the plan shall be selected from panels designated or approved by the courts. Counsel is to be provided for the duration of the complete judicial process with compensation to be fixed approximately parallel to that of the Federal Criminal Justice Act (18 U.S.C. 3006A). The bill also provides for compensation for ancillary services necessitated by the defense. The bill specifically provides for qualified law students to be included in its coverage in the light of Mr. Justice Powell's concurring opinion in the *Argersinger* case wherein he cited the availability of such student-in-court programs as being an excellent resource to tap.

The budget estimate for the program will be submitted by the Joint Committee on Judicial Administration.

The legislation repeals the applicability of the Federal Criminal Justice Act (18 U.S.C. 3006A) to the District of Columbia. The District of Columbia Council is given the authority to make modifications in only this chapter of Title II.

HISTORY

Hearings on the proposed legislation (H.R. 14374 and H.R. 14376) were held by the Subcommittee on the Judiciary on June 13, 1974. Testimony in support of the legislation was presented by representatives of the Administrative Office of the United States Courts, the Chief Judges of the District of Columbia Court of Appeals, and the District of Columbia Superior Court, the District of Columbia Corporation Council, the Director of the Public Defender Service, and by representatives of the District of Columbia Unified Bar, the District of Columbia Bar Association, and the Washington Bar Association. No testimony was given nor statements filed in opposition to the objective of providing counsel for indigent defendants.

The Subcommittee reported the bill, H.R. 14376, as amended, on June 24, 1974.

H.R. 14374 provides for a complete overhaul of the system by which indigent defendants are provided legal representation. On the other hand, the reported bill, S. 3703 (companion to H.R. 14376) merely provides the authorization for a continuation of the current system under the auspices of the Joint Committee on Judicial Administration. The Subcommittee agreed to S. 3703 as a temporary measure to provide legislative authorization for the pending appropriation item in the D.C. budget providing funds urgently required to continue the counsel program. The Full Committee concurred in this recommendation and ordered, reported S. 3703 in lieu of H.R. 14376.

VOTE

The bill, S. 3703, was ordered favorably reported to the House on July 1, 1974, by a voice vote, a quorum being present.

COST

The District of Columbia estimates the cost of this program for fiscal year 1975 will be \$2.3 million, and approximately such an amount is included in the D.C. appropriation bill which recently passed the

House. The Committee anticipates similar amounts for the ensuing fiscal years.

CONCLUSION

By this legislation, the Committee has endeavored to insure that indigent persons in the District of Columbia will receive adequate legal representation in the courts as is guaranteed by the Constitution.

It is important to note that the representation of indigents is a crucial part of the criminal justice system, and it is the view of this Committee that budgetary priorities should be effectively arranged to underscore the necessity for defender services to all indigents in the District and to insure that they are adequately funded. Failure to do so may well have a deleterious effect on the criminal justice system in the District of Columbia, to the detriment of the community as a whole.

JUDICIAL RECOMMENDATIONS ON THE LEGISLATION

The recommendations of the Joint Committee on Judicial Administration in the District of Columbia, as presented to the Committee by Judge Gerard D. Reilly, Chief Judge of the District of Columbia Court of Appeals, in transmitting the proposed legislation which became H.R. 14376, follows:

DISTRICT OF COLUMBIA COURT OF APPEALS,
Washington, D.C., April 19, 1974.

HON. CHARLES C. DIGGS, JR.,
Chairman, Committee on the District of Columbia, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am herewith transmitting for the consideration of the House Committee on the District of Columbia proposed legislation which would establish a plan for providing representation of defendants who are financially unable to retain defense counsel in criminal cases in the courts of the District. This draft bill has been prepared by the Joint Committee on Judicial Administration in the District of Columbia, established by D.C. Code 1973, § 11-1701. If enacted, it would repeal the provision in the Criminal Justice Act which makes that statute applicable to cases in the District of Columbia courts (*i.e.*, subsection (1) of 18 U.S.C. 3006A) and create in lieu thereof a similar act covering only the District of Columbia Court of Appeals and the Superior Court. Such legislation would provide statutory authorization for a requested appropriation of \$2,300,000, now pending before the House Appropriations Committee, as an item included in the Mayor-Commissioner's budget estimate for fiscal year 1975.

The need for this legislation is compelling for the whole system of criminal justice in this jurisdiction is threatened with breakdown as a result of the exhaustion of funds appropriated for the current fiscal year to pay counsel for representing indigent defendants in our courts. Since early March, Chief Judge Greene and I have had to resort to a makeshift plan for drafting lawyers. We are rapidly approaching a day when these efforts will be unavailing, as the staff of the Public Defender Service and experienced private trial counsel are already

burdened with an excessive number of assignments. In the meantime, the Federal Judicial Conference has remained adamant in its position against including in its budget estimate any proposal for supplemental appropriations to meet the obligations incurred by our courts for appointments of private counsel in the fiscal years 1973 and 1974.

Continuation of this situation into the next fiscal year would be intolerable. Consequently, in order to expedite passage of an authorization bill the enclosed draft proposes no change in the structure or operation of the Public Defender Service. In other words, the Joint Committee at the present time is making no recommendations for amendments to Chapter 22, Title 2, of the D.C. Code, as the pending D.C. budget estimate for the Service has already been formulated on the basis of this existing statutory framework.

Accordingly, the revised legislative proposal of the Joint Committee simply fills the gap created by the absence of any federal budget estimate for the payment of fees of private counsel, transcripts and other expenses. It follows the same scales of compensation prescribed by the Federal Criminal Justice Act, but by repealing the subsection of that statute making it applicable to the District of Columbia courts and authorizing direct appropriations for this purpose to the District government, it precludes the raising of possible points of order to the 1975 budget estimate.

We recognize, of course, that the proposed bill is something of a stopgap measure, for some revisions of the laws relating to the Public Defender Service should eventually be considered by Congress. At present, however, there are so many conflicting views as to what should be done in this respect, particularly as the Federal Judicial Conference for this circuit last month authorized appointment of a committee to study the matter, we believe that to include in the authorization bill controversial proposals on this subject might result in postponing until the next fiscal year passage of this much needed legislation.

My colleagues and I shall be available at any time should the Committee decide to set the matter down for hearing.

Faithfully yours,

GERARD D. REILLY,

*Chairman, Joint Committee on Judicial
Administration in the District of Columbia.*

SECTION-BY-SECTION ANALYSIS

Sec. 11-2601. Plan for Furnishing Representation of Indigents in Criminal Cases

This section provides a plan for furnishing representation to indigents in criminal cases. The Joint Committee on Judicial Administration of the local courts is required to place into operation in the District of Columbia a plan for furnishing representation to persons in the District of Columbia who are financially unable to obtain adequate representation when they are charged with crimes and for whom the Sixth Amendment of the Constitution requires the appointment of Counsel; or for whom, in a case in which he faces loss of liberty, the local law requires the appointment of counsel.

Representation must be provided to indigents in all felony or misdemeanor cases where the United States Attorney prosecutes or would prosecute were the defendant not a juvenile, and in all cases of indigent persons under arrest where representation is required by law. Representation must also be provided for persons charged with violation of parole or probation, or in custody as a material witness cases or seeking collateral relief. Those classes of collateral relief include remedies on a motion attacking sentence, extradition, habeas corpus and commitment of mentally ill persons while serving sentence. Case representation under the plan includes counsel, investigative, experts and other services, if necessary.

The plan is required to include a provision for private attorneys, attorneys provided by the Public Defender Service, and attorneys and qualified students who are participating in clinical programs.

Sec. 11-2602. Appointment of Counsel.

This section provides a plan for selecting counsel from panels of attorneys designated or approved by the courts. Every defendant in every criminal case must be advised that he is entitled to be represented by counsel, and counsel shall be appointed for him if he is financially unable to afford it. Such appointment may be made retroactive to include representation provided prior to appointment under the plan. Separate counsel may be appointed when appropriate. This is to ensure that when cases of co-defendants should be severed for reasons of law that there will be compensation available for separate counsel.

Sec. 11-2603. Duration and Substitution of Appointments.

This section provides that persons for whom counsel is appointed shall be represented at every stage of the proceedings from initial appearance before the court through appeals, including ancillary matters appropriate to the proceeding. It further provides that the court may terminate the appointment of counsel should the individual become financially able to provide it. The court is given the discretion in the interest of justice to substitute one appointed counsel for another at any point in the proceedings.

Sec. 11-2604. Payment for Representation.

This section provides for a payment schedule to be established by the Joint Committee on Judicial Administration, not to exceed the hourly scale established under the Federal Criminal Justice Act, Title 18 of the United States Code, Section 3006A(d). Attorneys shall be reimbursed for expenses reasonably incurred. This section further provides for maximum amounts to be paid to attorneys, not to exceed the maximum amounts established under the Federal Criminal Justice Act, Title 18 of the United States Code, Section 3006A(d)(2), unless special circumstances warrant a waiver of the limit. Currently, these maximum amounts are \$1,000 for a felony case and \$400 for misdemeanors. It also provides a procedure for filing claims for compensation and reimbursement by affidavit. New trials are deemed to be new cases for compensation purposes. Representation in the District of Columbia Court of Appeals will be provided without prepayment of fees and cost.

Sec. 11-2605. Services Other Than Counsel.

This section provides compensation for services other than legal counsel. Counsel for a person who is financially unable to obtain investigative, expert or other services necessary for adequate defense may request such services in an ex parte application. The court may then, if it finds such services to be necessary, authorize counsel to obtain such services. Counsel appointed under this section may obtain, subject to later review, investigative, expert or other services, excluding the preparation of reporter's transcript, without prior authorization, if necessary for adequate defense. There is a maximum amount schedule established with a waiver if necessary.

Sec. 11-2606. Receipt of Other Payments.

Whenever the courts find funds are available for payment for counsel services from a third party, it may direct that such funds be paid to the appointed attorney, or to any person or organization authorized to render investigative, expert or other services or deposited in the Treasury as reimbursement for the appropriation of such funds.

Sec. 11-2607. Preparation of Budget.

This section requires the Joint Committee on Judicial Administration to annually prepare and submit to the Commissioner of the District of Columbia its estimate of the amount needed for furnishing representation by private attorneys for persons entitled to representation under this act. The Joint Committee is required to establish definitional standards for indigency to qualify for the program and to take into account the number of indigent cases which can be handled by the Public Defender Service, private attorneys, and by law students, and to take into account the number of cases in the United States courts for which payment was made under the last appropriation for the administration of the Criminal Justice Act in those courts. The request shall not exceed the appropriation for the prosecution of those represented.

Sec. 11-2608

The District of Columbia Self-Government and Governmental Reorganization Act prohibits the D.C. Council from modifying any provisions of Title II of the D.C. Code. This section, as amended, would give the Council the authorization to change any part of chapter 26 of Title 11 relating to a plan providing for the representation of indigent defendants. It does not permit any other change to be made in any other section of the chapter or of Title 11.

Sec. 11-2609. Authorization of Appropriations.

The appropriation language authorizes funds to be appropriated out of any money in the Treasury to the credit of the District of Columbia in such sums as may be necessary for the administration of this plan. Such appropriations remain available until expended.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as re-

ported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

DISTRICT OF COLUMBIA CODE

* * * * *

TITLE 11.—ORGANIZATION AND JURISDICTION
OF THE COURTS

* * * * *

*Chapter 26.—REPRESENTATION OF INDIGENTS
IN CRIMINAL CASES*

Sec.

- 11-2601. *Plan for furnishing representation to indigents in criminal cases.*
 11-2602. *Appointment of counsel.*
 11-2603. *Duration and substitution of appointments.*
 11-2604. *Payment for representation.*
 11-2605. *Services other than counsel.*
 11-2606. *Receipt of other payments.*
 11-2607. *Preparation of budget.*
 11-2608. *Authorization of appropriations.*

§ 11-2601. *PLAN FOR FURNISHING REPRESENTATION OF INDIGENTS IN
CRIMINAL CASES*

The Joint Committee on Judicial Administration shall place in operation in the District of Columbia a plan for furnishing representation to a person in the District of Columbia who is financially unable to obtain adequate representation—

- (1) *who is charged with a felony or misdemeanor and the United States Attorney prosecutes, or with juvenile delinquency by the commission of an act which, if committed by an adult, would be prosecuted by the United States Attorney;*
 (2) *who is under arrest, when such representation is required by law;*
 (3) *who is charged with violating a condition of probation or parole, in custody as a material witness, or seeking collateral relief, as provided in—*
 (a) *section 110 of title 23 of the District of Columbia Code (remedies on motion attacking sentence),*
 (b) *chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),*
 (c) *chapter 19 of title 16 of the District of Columbia Code (habeas corpus),*
 (d) *section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence), or*
 (4) *for whom the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any local law requires the appointment of counsel. Representation under the plan shall include counsel and investigative,*

expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs.

§ 11-2602. APPOINTMENT OF COUNSEL

Counsel furnishing representation under the plan shall be selected from panels of attorneys designated or approved by the courts. In every criminal case in which a person may be appointed counsel under this chapter the court shall advise the defendant that he is entitled to be represented by counsel and that counsel will be appointed for him if he is financially unable to obtain counsel. Unless the defendant waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

§ 11-2603. DURATION AND SUBSTITUTION OF APPOINTMENTS

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

§ 11-2604. PAYMENT FOR REPRESENTATION

(1) *Hourly rate.*—Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of title 18 United States Code, section 3006A (d). Such attorney shall be reimbursed for expenses reasonably incurred.

(2) *Maximum amounts.*—For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by title 18, United States Code, section 3006A (d) (2) in the corresponding kind of case or proceeding.

(3) *Waiving maximum amounts.*—Payment in excess of any maximum amount provided in subsection (2) of this section may be made for extended or complex representation whenever the Superior Court

in which the representation was rendered, certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the chief judge of the District of Columbia Court of Appeals.

(4) *Filing claims.*—A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the D.C. Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(5) *New trials.*—For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(6) *Proceedings before Appellate Court.*—If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by 1915 (a) of title 28 of the United States Code.

§ 11-2605. SERVICES OTHER THAN COUNSEL

(1) *Upon request.*—Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an *ex parte* application. Upon finding, after appropriate inquiry in an *ex parte* proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(2) *Without prior request.*—Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by title 18, United States Code, section 3006A (e) (2) whichever is higher, and expenses reasonably incurred.

(3) *Maximum amounts.*—Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by title 18, United States Code, section 3006A (e) (3), whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the chief judge of the District of Columbia Court of Appeals.

§ 11-2606. RECEIPT OF OTHER PAYMENTS

Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized by section 2605 to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

§ 11-2607. PREPARATION OF BUDGET

(a) *The Joint Committee shall annually prepare and submit to the Commissioner of the District of Columbia, or to his successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, its estimate of the amount needed for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601(b) of this title.*

(b) *In making its computation of such estimate, the Joint Committee shall—*

(1) *issue and follow definitional standards with respect to financial inability to obtain adequate legal representation;*

(2) *estimate the respective percentage of indigent defendant cases which can be effectively handled by the Public Defender Service, private attorneys, and qualified law students participating in clinical programs under attorney supervision;*

(3) *take into account the number of cases in the United States courts for which payment was made under the last appropriation for the administration of the Criminal Justice Act in such courts and the proportion which such number bears to the estimated number of such cases in the District of Columbia courts for the particular fiscal year;*

(4) *shall not request an amount to be paid private attorneys for representation pursuant to section 2601 of this title in excess of the estimated appropriation for the prosecution of those persons thus represented.*

§ 11-2608. AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated for each fiscal year, out of any moneys in the Treasury credited to the District of Columbia, such sums as are necessary to carry out the purposes of this chapter. Unless otherwise specified in appropriations Acts, such appropriations shall remain available until expended. Disbursements from such appropriations to persons entitled to payments, pursuant to orders of the courts, under this Act, shall be made by the executive officer of said courts, subject to the supervision of the fiscal officer of the District of Columbia.

TITLE 18, UNITED STATES CODE

* * * * *

§ 3006A. ADEQUATE REPRESENTATION OF DEFENDANTS

(a) * * *

* * * * *

[(1) Applicability in the District of Columbia.—The provisions of this Act, other than subsection (h) of section 1, shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.]

* * * * *

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Calendar No. 934

93D CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 93-966

DISTRICT OF COLUMBIA CRIMINAL JUSTICE ACT

JUNE 26, 1974.—Ordered to be printed

Mr. EAGLETON, from the Committee on the District of Columbia, submitted the following

REPORT

[To accompany S. 3703]

The Committee on the District of Columbia, having had under consideration legislation to authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, reports an original bill and recommends that it do pass.

PURPOSE OF THE BILL

The purpose of S. 3703 is to authorize the District of Columbia court system to set up a plan to reimburse counsel for indigent defendants similar to the one previously authorized under the Criminal Justice Act (18 U.S.C. 3006A.).

NEED FOR THE LEGISLATION

In previous years payments to counsel acting on behalf of indigent defendants under court appointment were reimbursed under the Criminal Justice Act. However, since the transfer of local criminal jurisdiction to the District of Columbia court system, it has been the desire of the Administrative Office of the United States Courts to transfer responsibility for what has become a local court system to the local authorities. Accordingly, authorizing legislation is needed for appropriations to pay counsel. If this is not done, sufficient attorneys cannot be obtained to afford accused indigent persons the right to a speedy trial under the Constitution and many criminal cases which would otherwise be successfully prosecuted in the District of Columbia will be dismissed.

HISTORY

S. 3475 and S. 3478 were introduced in the Senate on May 9, 1974. Hearings were held on these two bills on June 5, 1974. Witnesses on these bills included Chief Judge Harold H. Greene of the D.C. Superior Court, Judge Frank Q. Nebeker of the D.C. Court of Appeals, D.C. Corporation Counsel C. Frank Murphy on behalf of the Mayor-Commissioner, Mr. Samuel Dash, Chairman of the Board of Trustees of the Public Defender Service, and Mr. David Austern on behalf of the D.C. Bar Association.

Witnesses at the hearings were split as to which of the two approaches contained in the two bills would be more desirable. S. 3478 approaches the problem by placing responsibility for the furnishing of counsel in an expanded Public Defender Service which would have responsibility for supervising appointed counsel in individual cases. This approach had the backing of the District Government and the Public Defender Service. S. 3475 represents a local Criminal Justice Act solution to the problem on a permanent basis. It was backed by the Joint Committee on Judicial Administration of the D.C. Courts. The unified Bar of the District of Columbia has appointed a special committee to look into the entire problem posed by the appointment of counsel for indigent defendants and indicated that it would prefer for legislation to be temporary and that Congress or the District of Columbia Council should have the benefit of their report prior to the enactment of permanent legislation.

The committee is convinced that a temporary extension of the present type of program is the most advisable course of action at this time. The arguments for and against the present system are in need of the careful analysis that is being undertaken by the Bar Association. However, in the interim there must be some program. The present program is operating relatively successfully and a two-year extension will not and should not, in the committee's view, prejudice the case for change that some wish to make.

Accordingly, the committee is reporting to the Senate an original bill, S. 3703 which creates for two years a program modeled after the federal Criminal Justice Act program. This legislation is applicable only to the local courts and is not intended to change the relationship of the Public Defender Service to the D.C. Courts. Nor does the reporting of S. 3703 indicate that the committee has decided at this time which of the two approaches contained in S. 3475 and S. 3478 is more desirable as a permanent solution for the District of Columbia.

COMMITTEE VOTE

The bill, S. 3703, was approved unanimously by the committee on June 26, 1974.

COST

The enactment of this legislation will involve an expected annual expenditure in each of the two fiscal years involved of \$2.3 million. Changes in the current fee schedule, changes in the mix between public defenders and private attorneys, or changes in judicial review of payments to private attorneys could alter this estimate.

CHANGES MADE IN EXISTING LAW BY THE BILL AS REPORTED

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

DISTRICT OF COLUMBIA CODE

TITLE II.—ORGANIZATION AND JURISDICTION OF THE COURTS

* * * * *

Chapter 26.—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

Sec.

*11-2601. Plan for furnishing representation of indigents in criminal cases.**11-2602. Appointment of counsel.**11-2603. Duration and substitution of appointments.**11-2604. Payment for representation.**11-2605. Services other than counsel.**11-2606. Receipt of other payments.**11-2607. Preparation of budget.**11-2608. Authorization of appropriations.***§ 11-2601. Plan for furnishing representation of indigents in criminal cases**

The Joint Committee on Judicial Administration shall place in operation in the District of Columbia a plan for furnishing representation to a person in the District of Columbia who is financially unable to obtain adequate representation—

(1) who is charged with a felony or misdemeanor, or other offence for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any law or the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole, in custody as a material witness, or seeking collateral relief, as provided in—

(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to chapter 5, title 21, of the District of Columbia Code (hospitalization of the mentally ill); or

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs.

§ 11-2602. Appointment of counsel

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent him if he is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which he may request the appointment of counsel.

§ 11-2603. Duration and substitution of appointments

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

§ 11-2604. Payment for representation

(1) **HOURLY RATE.**—*Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of section 3006A(d)(1) of title 18, United States Code. Such attorney shall be reimbursed for expenses reasonably incurred.*

(2) **MAXIMUM AMOUNTS.**—*For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by section 3006A(d)(2) of title 18, United States Code, in the corresponding kind of case or proceeding.*

(3) **WAIVING MAXIMUM AMOUNTS.**—*Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (2) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.*

(4) **FILING CLAIMS.**—*A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.*

(5) **NEW TRIALS.**—*For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.*

(6) **PROCEEDINGS BEFORE APPELLATE COURT.**—*If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28, United States Code.*

§ 11-2605. Services other than counsel

(1) **UPON REQUEST.**—*Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.*

(2) **WITHOUT PRIOR REQUEST.**—*Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.*

(3) **MAXIMUM AMOUNTS.**—*Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.*

§ 11-2606. Receipt of other payments

"(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, by the Service for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefore from or on behalf of a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 11-2607. Preparation of Budget

The joint committee shall prepare and annually submit to the Commissioner of the District of Columbia, in conformity with section 11-1743 of this title, or to his successor in accordance with section 445 of the District of Columbia Self Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title.

§ 11-2608. Authorization of appropriations

There are hereby authorized to be appropriated to the District of Columbia such funds as may be necessary for the administration of this chapter for fiscal years 1975 and 1976. When so specified in appropriation Acts, such appropriations shall remain available until expended.

UNITED STATES CODE

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

* * * * *

§ 3006A. () Applicability in the District of Columbia.—The provisions of this Act, other than subsection (b) of section 1, [shall be applicable in the District of Columbia. The plan of the District of Columbia shall be approved jointly by the Judicial Council of the District of Columbia Circuit and the District of Columbia Court of Appeals.] shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

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Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To authorize in the District of Columbia a plan providing for the representation of defendants who are financially unable to obtain an adequate defense in criminal cases in the courts of the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "District of Columbia Criminal Justice Act".

Sec. 2. Title 11 of the District of Columbia Code is amended by adding at the end thereof the following new chapter:

"Chapter 26.—REPRESENTATION OF INDIGENTS IN CRIMINAL CASES

"Sec.

- "11-2601. Plan for furnishing representation to indigents in criminal cases.
- "11-2602. Appointment of counsel.
- "11-2603. Duration and substitution of appointments.
- "11-2604. Payment for representation.
- "11-2605. Services other than counsel.
- "11-2606. Receipt of other payments.
- "11-2607. Preparation of budget.
- "11-2608. Authorization of appropriations.
- "11-2609. Authority of council.

"§ 11-2601. Plan for furnishing representation of indigents in criminal cases

"The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation—

"(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case which he faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

"(2) who is under arrest, when such representation is required by law;

"(3) who is charged with violating a condition of probation or parole in custody as a material witness, or seeking collateral relief, as provided in—

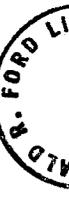
"(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

"(B) Chapter 7 of title 23 of the District of Columbia Code (extradition and fugitives from justice),

"(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

"(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

"(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the



Ninety-third Congress of the United States of America

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Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

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"11-2606. Receipt of other payments.

"11-2607. Preparation of budget.

"11-2608. Authorization of appropriations.

"11-2609. Authority of council.

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"The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation—

"(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case which he faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

"(2) who is under arrest, when such representation is required by law;

"(3) who is charged with violating a condition of probation or parole in custody as a material witness, or seeking collateral relief, as provided in—

"(A) Section 23-110 of the District of Columbia Code (remedies on motion attacking sentence),

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"(C) Chapter 19 of title 16 of the District of Columbia Code (habeas corpus),

"(D) Section 928 of the Act of March 8, 1901 (D.C. Code, sec. 24-302) (commitment of mentally ill person while serving sentence);

"(4) who is subject to proceedings pursuant to chapter 5 of title 21 of the District of Columbia Code (hospitalization of the mentally ill);

"(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include provision for private attorneys, attorneys fur-

nished by the Public Defender Service, and attorneys and qualified students participating in clinical programs.

“§ 11-2602. Appointment of counsel

“Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he has the right to be represented by counsel and that counsel will be appointed to represent him if he is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent him. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent him if he is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which he may request the appointment of counsel.

“§ 11-2603. Duration and substitution of appointments

“A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter, as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in section 2602, and authorize payment as provided in section 2604, as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

“§ 11-2604. Payment for representation

“(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the hourly scale established by the provisions of section 3006A(d)(1) of title 18, United States Code. Such attorney shall be reimbursed for expenses reasonably incurred.

“(b) For representation of a defendant before the Superior Court or before the District of Columbia Court of Appeals, as the case may be, the compensation to be paid to an attorney shall not exceed the maximum amounts established by section 3006A(d)(2) of title 18, United States Code, in the corresponding kind of case or proceeding.

“(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court

of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

“(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

“(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

“(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28, United States Code.

“§ 11-2605. Services other than counsel

“(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

“(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$150 or the rate provided by section 3006A(e)(2) of title 18, United States Code, whichever is higher, and expenses reasonably incurred.

“(c) Compensation to be paid to a person for services rendered by him to a person under this subsection shall not exceed \$300, or the rate provided by section 3006A(e)(3) of title 18, United States Code, whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.

“§ 11-2606. Receipt of other payments

“(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

“(b) Any person compensated, or entitled to be compensated, for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

“§ 11-2607. Preparation of Budget

“The joint committee shall prepare and annually submit to the Commissioner of the District of Columbia, in conformity with section 1743 of this title, or to his successor in accordance with section 445 of the District of Columbia Self-Government and Governmental Reorganization Act, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title.

“§ 11-2608. Authorization of appropriations

“There are hereby authorized to be appropriated, out of any moneys in the Treasury credited to the District of Columbia, such funds as may be necessary for the administration of this chapter for fiscal years 1975 and 1976. When so specified in appropriation Acts, such appropriations shall remain available until expended.

“§ 11-2609. Authority of Council

“Section 602(a)(4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter.”.

SEC. 3. (a) Paragraph (1) of section 3006A, title 18, United States Code, as amended, is amended to read:

“(1) APPLICABILITY IN THE DISTRICT OF COLUMBIA.—The provisions of this Act, other than subsection (h) of section 1, shall apply in the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. The provisions of this Act shall not apply to the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.”.

SEC. 4. This Act shall take effect upon the date of its enactment. Any person appointed on or after July 1, 1974, but prior to the commencing date of the plan referred to in section 11-2601 of the District of Columbia Code (as added by section 2 of this Act), by a judge of the Superior Court or the District of Columbia Court of Appeals to furnish to any person in the District of Columbia, who is financially unable to obtain adequate representation, that representation and those services referred to in such section 11-2601, may be compensated and reimbursed for such representation and services rendered, including expenses incurred therewith, upon filing a claim for payment. Payment shall not be allowed in excess of the amounts authorized in accordance with those sections added to the District of Columbia Code by such section 2.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

August 22, 1974

Dear Mr. Director:

The following bills were received at the White House on August 22nd:

S. 1871	H.R. 14402
S. 3703	H.R. 14920
H.R. 6485	H.R. 15205
H.R. 11864	H.R. 15842

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.