WEST VIRGINIA CODE: §29-21-6

§29-21-6. Powers, duties, and limitations.

(a) Consistent with the provisions of this article, the agency is authorized to make grants to and contracts with public defender corporations and with individuals, partnerships, firms, corporations, and nonprofit organizations for the purpose of providing legal representation under this article and may make any other grants and contracts that are necessary to carry out the purposes and provisions of this article.

(b) The agency is authorized to accept and employ or dispose of in furtherance of the purposes of this article any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise.

(c) The agency shall establish and the executive director or his or her designee shall operate a criminal law research center as provided in §29-21-7 of this code. This center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide training and technical assistance related to the delivery of legal representation; and to engage in research, except that broad general, legal, or policy research unrelated to direct representation of eligible clients may not be undertaken.

(d) The agency shall establish and the executive director or his or her designee shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency. The accounting and auditing division shall review all plans and proposals for grants and contracts and shall make a recommendation of approval or disapproval to the executive director. The accounting and auditing division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection, or monitoring of public defender corporations and other grantees, contractors, persons, or entities receiving financial assistance under this article and shall further carry out the agency's responsibilities for records and reports as set forth in §29-21-18 of this code. The accounting and auditing division shall require each public defender corporation to submit financial statements monthly and to report monthly on the billable and nonbillable time of its professional employees, including time used in administration of the respective offices, so as to compare the time to similar time expended in nonpublic law offices for similar activities. The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. This assistance shall include, but not be limited to, budget preparation and statistical analysis.

(e) The agency shall establish and the executive director or his or her designee shall operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of eligible clients in the Supreme Court of Appeals. The executive director or his or her designee shall be the director of the appellate advocacy division. The appellate advocacy division shall represent eligible clients upon appointment by the circuit courts or by the Supreme Court of

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Appeals. The division may, however, refuse the appointments due to a conflict of interest or if the executive director has determined the existing caseload cannot be increased without jeopardizing the appellate division's ability to provide effective representation. In order to effectively and efficiently use the resources of the appellate division, the executive director may restrict the provision of appellate representation to certain types of cases. The executive director may select and employ staff attorneys to perform the duties prescribed by this subsection. The appellate division shall maintain records of representation of eligible clients for record purposes only.

(f) The agency shall establish and the executive director or his or her designee shall operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals. The executive director or his or her designee shall be the director of the division. The division shall represent eligible clients upon appointment by a circuit court or the Supreme Court of Appeals. A court may appoint the division to represent an eligible person unless the appointment would create a conflict of interest or the executive director has notified the court in writing that the division's existing caseload cannot be increased for a specified period of time without jeopardizing its ability to provide effective representation. In appointing the division, a court should determine whether the appointment of the division is the most effective use of the office considering the grounds and legal issues raised by the petitioner. The executive director may select and employ staff attorneys, paraprofessionals, and investigators to perform the duties prescribed by this subsection. The division shall maintain records of representation of eligible clients for record-keeping purposes only.

(g) If the executive director, with the approval of the Indigent Defense Commission and the Secretary of Administration, determines that the purposes of this article can be furthered and costs reduced by the execution of a contract with a provider of legal services in specialized areas of the law, other than criminal defense or the representation of respondent parents in abuse and neglect proceedings, to provide legal representation to eligible clients, the execution of the contract is authorized and is exempt from the provisions of, and procedures adopted pursuant to, §5A-3-1 et seq. of this code. The payment of the contract amount is authorized from the funds appropriated for the payment of appointed counsel fees.

(h) The agency may reduce or reject vouchers or requests for payment submitted pursuant to §29-21-13a of this code found not to be in compliance with the provisions of this article, subject to the limitations set forth herein.

(i) The executive director may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the provisions of this article as amended during the 2019 regular session of the Legislature.

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