WEST VIRGINIA CODE CHAPTER 29 ARTICLE 21

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§29-21-1. Legislative findings; purpose.

The Legislature finds and declares that in certain proceedings the state is required to provide high quality legal assistance to indigent persons who would be otherwise unable to afford adequate legal counsel; that providing legal representation to those who face an economic barrier to adequate legal counsel will serve the ends of justice in accordance with rights and privileges guaranteed to all citizens by the Constitution of the United States of America and the Constitution of the State of West Virginia; that the availability of quality legal assistance reaffirms the faith of our citizens in our government of laws; that the present system which utilizes appointed counsel is not operating satisfactorily in some areas of this state and the Legislature is presently unable to determine what system or systems will provide the most efficient means for providing legal representation; that there is a need to explore alternative methods of delivering legal assistance, including the use of salaried public defenders complemented by private panel attorneys; that innovative programs and pilot projects as well as a continuation of the present appointed counsel system are necessary in separate areas of the state to provide information and experience upon which to base future legislative action.

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§29-21-2. Definitions.

As used in this article, the following words and phrases are hereby defined:

(1) "Eligible client": Any person who meets the requirements established by this article to receive publicly funded legal representation in an eligible proceeding as defined herein;

(2) "Eligible proceeding": Criminal charges which may result in incarceration; juvenile proceedings; proceedings to revoke parole or probation if the revocation may result in incarceration; contempt of court; child abuse and neglect proceedings which may result in a termination of parental rights; mental hygiene commitment proceedings; extradition proceedings; proceedings which are ancillary to an eligible proceeding, including, but not limited to, proceedings to enhance sentences brought pursuant to sections eighteen and nineteen, article eleven, chapter sixty-one of this code, forfeiture proceedings brought pursuant to article seven, chapter sixty-a of this code, and proceedings brought to obtain extraordinary remedies; and appeals from or post-conviction challenges to the final judgment in an eligible proceeding. Legal representation provided pursuant to the provisions of this article is limited to the court system of the State of West Virginia, but does not include representation in municipal courts unless the accused is at risk of incarceration;

(3) "Legal representation": The provision of any legal services or legal assistance as counsel or guardian ad litem consistent with the purposes and provisions of this article;

(4) "Private practice of law": The provision of legal representation by a public defender or assistant public defender to a client who is not entitled to receive legal representation under the provisions of this article, but does not include, among other activities, teaching;

(5) "Public defender": The staff attorney employed on a full-time basis by a public defender corporation who, in addition to providing direct representation to eligible clients, has administrative responsibility for the operation of the public defender corporation. The public defender may be a part-time employee if the board of directors of the public defender corporation finds efficient operation of the corporation does not require a full-time attorney and the executive director approves such part-time employment;

(6) "Assistant public defender": A staff attorney providing direct representation to eligible clients whose salary and status as a full-time or part-time employee are fixed by the board of directors of the public defender corporation;

(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients; and

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

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§29-21-3. Establishment of Public Defender Services.

There is hereby created an executive agency known as Public Defender Services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems and recommend improvements. The agency shall maintain its office at the state Capitol.

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§29-21-3a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§29-21-3b. Indigent Defense Commission.

(a) There is hereby established the Indigent Defense Commission to provide assistance to Public Defender Services with regard to the general policies and procedures of the agency, including, but not limited to, the opening, closing, or merging of public defender offices throughout the state and the establishment of performance measures for the qualitative review of indigent defense.

(b) In order to demonstrate a collaborative approach to solving criminal justice problems, the commission shall consist of the Executive Director of Public Defender Services, who shall serve as chair, and the following members appointed by the Governor:

(1) One former or retired circuit judge;

(2) Three lawyers, at least one of which is from each congressional district, who have significant experience in the defense of criminal cases or have demonstrated a strong commitment to quality representation of indigent defendants;

(3) One current chief public defender; and

(4) One nonlawyer with a demonstrated commitment to providing legal services to the indigent;

(5) One person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and

(6) One attorney with significant experience in the defense of juvenile delinquency and abuse and neglect cases.

(c) The commission shall meet at the times and places specified by the call of the chair: *Provided*, That the commission shall meet no less than four times each year. Members shall serve without compensation but may receive reimbursement of actual and necessary expenses for each day or portion thereof engaged in this discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section. Thereafter, terms of office shall be for four years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his or her appointment until the end of the term for which he or she was appointed or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation, or removal in the membership of this commission, it shall be filled by appointment within 30 days of the vacancy for the unexpired portion of the term in the same manner as original appointments. No member shall serve more than two

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consecutive full or partial terms and no person may be reappointed to the commission until at least two years have elapsed after the completion of a second successive term.

(e) The appointed members of the commission serve four year terms that shall coincide with the term of the Governor.

(f) The commission has the following powers and duties:

(1) To develop standards regarding the qualifications and training for public defenders, assistant public defenders, and staff;

(2) To explore opportunities related to the training of appointed panel attorneys;

(3) To evaluate, on an annual basis, the compensation and caseloads of public defenders and appointed panel attorneys;

(4) To develop standards for providing and compensating expert witnesses, investigators, and other persons who provide services related to legal representation under this article;

(5) To study, monitor, and evaluate existing standards for determining eligibility for legal representation under section sixteen of this article;

(6) To study the feasibility and need of creating additional public defender corporations, the activation of public defender corporations and the formation of multicircuit or regional public defender corporations in accordance with the provisions of section eight of this article;

(7) To study the potential for the dissolution of public defender corporations;

(8) To study, monitor, evaluate, and make recommendations regarding the training, experience, and background necessary for a public defender or panel attorney to competently represent indigent defendants in capital cases; and

(9) To monitor and make recommendations regarding the following activities of the board of directors of each public defender corporation receiving funding pursuant to this article:

(A) The appointment of the public defender and any assistant public defenders pursuant to subdivision (1), subsection (c), section fifteen of this article;

(B) The fixing of professional and clerical salaries pursuant to subdivision (2), subsection (c), section fifteen of this article; and

(C) The removal of any public defender, assistant public defender or other employee for misfeasance, malfeasance, or nonfeasance pursuant to subdivision (3), subsection (c), section fifteen of this article.

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§29-21-4. Purpose and duties of Public Defender Services.

The agency shall have as its principal purpose the development and improvement of programs by which the state provides legal representation to indigent persons.

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§29-21-5. Executive director.

(a) The Governor shall appoint, by and with the advice and consent of the Senate, the executive director of Public Defender Services, who shall serve at the will and pleasure of the Governor. The executive director shall be a qualified administrator as determined by the Governor, and shall be a member of the bar of the Supreme Court of Appeals. In addition to the executive director there shall be such other employees as the executive director determines to be necessary. The executive director shall have the authority to promulgate rules, and shall have such other authority and perform such duties as may be required or necessary to effectuate this article. The executive director shall provide supervision and direction to the other agency employees in the performance of their duties.

(b) The executive director's annual salary shall be as determined by the Legislature.

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§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 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

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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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§29-21-7. Criminal law research center established; functions.

(a) Within the agency, there shall be a division known as the criminal law research center which may:

(1) Undertake research, studies and analyses and act as a central repository, clearinghouse and disseminator of research materials;

(2) Prepare and distribute a criminal law manual and other materials and establish and implement standard and specialized training programs for attorneys practicing criminal law;

(3) Provide and coordinate continuing legal education programs and services for attorneys practicing criminal law; and

(4) Prepare, supplement and disseminate indices and digests of decisions of the West Virginia Supreme Court of Appeals and other courts, statutes and other legal authorities relating to criminal law.

(b) The services of the criminal law research center shall be offered at reasonable rates or by subscription to prosecuting attorneys and their professional staffs, panel attorneys, and private attorneys engaged in the practice of criminal law. The services may be provided to public defender corporations, public defenders and assistant public defenders at reduced rates.

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§29-21-8. Public defender corporations; establishment thereof.

(a) (1) In each judicial circuit of the state, there is hereby created a public defender corporation of the circuit: Provided, That the executive director, with the approval of the Indigent Defense Commission, may authorize the creation, merger or dissolution of a public defender corporation in a judicial circuit where the creation, merger or dissolution of such a public defender corporation would improve the quality of legal representation, assure the prudent and resourceful expenditure of state funds and further the purposes of this article: Provided, however, That prior to the creation, merger or dissolution of a public defender corporation in accordance with this subsection, the commission shall provide a report to the Legislature pursuant to subsection (g), section three-b of this article for approval of the creation, merger, or dissolution of any public defender corporation.

(2) The purpose of these public defender corporations is to provide legal representation in the respective circuits in accordance with the provisions of this article. A public defender corporation may employ full-time attorneys and employ part-time attorneys in whatever combination that the public defender corporation deems most cost effective.

(b) If the executive director, with the approval of the Indigent Defense Commission, determines there is a need to activate, merge or dissolve a corporation in a judicial circuit of the state, pursuant to subsection (a) of this section, the Indigent Defense Commission shall first consult with and give substantial consideration to the recommendation of the judge of a single-judge circuit or the chief judge of a multijudge circuit.

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§29-21-9. Panel attorneys.

(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who are available to serve as counsel for eligible clients. An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients by informing the court. An agreement to accept cases generally or certain types of cases particularly may not prevent a panel attorney from declining an appointment in a specific case.

(b) In all cases where an attorney-at-law is required to be appointed for an eligible client, the appointment shall be made by the circuit judge: Provided, That in family court contempt cases, the family court judge shall appoint an attorney-at-law when required, in the following order of preference:

(1) In circuits where a public defender office is in operation, the judge shall appoint the public defender office unless an appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors or the public defender, with the approval of the board, has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation;

(2) If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel;

(3) If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel;

(4) If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment;

(5) If the adjoining public defender office does not accept the appointment, the judge may appoint a panel attorney from an adjoining circuit; or

(6) If a panel attorney from an adjoining circuit is unavailable, the judge may appoint a panel attorney from any circuit.

(c) In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed: Provided, That any time a court, in appointing counsel pursuant to the provisions of this section, alters the order of appointment as set forth herein, the order of appointment shall contain the court's reasons for doing so.

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§29-21-10.

Repealed.

Acts, 2008 Reg. Sess., Ch. 117.

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§29-21-11.

Repealed.

Acts, 2008 Reg. Sess., Ch. 117.

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§29-21-12.

Repealed.

Acts, 2008 Reg. Sess., Ch. 117.

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§29-21-13. Approval of public defender corporation funding applications; funding; recordkeeping by public defender corporations.

(a) On or before May 1 of each year, each active public defender corporation shall submit to the executive director and the commission a funding application and a proposed budget for the ensuing fiscal year. The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and annual budget for each public defender corporation. The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the board of directors of each public defender corporation, prepare a plan for providing legal services, execute a funding contract for the fiscal year and commit funds for that purpose.

(b) Upon final approval of a funding application by the executive director, the approved budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the amount set forth in the approval notice and the agency shall not be obligated to reimburse the recipient for costs incurred in excess of the amount unless and until a program modification has been approved in accordance with the provisions of this article. At the discretion of the executive director, when caseloads increase or unusual expenses occur, funding contracts may be amended during a fiscal year if necessary to provide cost effective representation.

(c) Funding of public defender corporations or other programs or entities providing legal representation under the provisions of this article shall be by annual grants disbursed in such periodic allotments as the executive director shall deem appropriate.

(d) All recipients of funding under this article shall maintain such records as required by the executive director.

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§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and which records are to be maintained in a form that will enable the attorney to determine for any day the periods of time expended in tenths of an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to maintain or submit the actual start and finish times of work performed.

(b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to Public Defender Services a voucher for services. Public Defender Services shall electronically acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be submitted to Public Defender Services on forms approved by the executive director. The executive director shall establish guidelines for the submission of vouchers and claims for fees and expense reimbursements under this section. Claims submitted more than 90 business days after the last date of service shall be rejected unless, for good cause, the appointing court authorizes in writing an extension.

(c) Public Defender Services shall review the voucher to determine if the time and expense claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed and payment promptly directed within 45 business days of submission of the voucher.

(d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher shall be notified electronically of the rejection and provided detailed reasons for the rejection within 30 business days of submission of the voucher. The attorney may resubmit the voucher accompanied by copies of his or her records supporting the voucher and certification from the appointing court that the services or expenses were performed or incurred, and were reasonable and necessary, within 15 business days of receipt of notification. The executive director shall make a final agency decision regarding the rejection of the voucher within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority or require any panel attorney to submit privileged client information. (2) If the final agency decision is to reject the voucher, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment and to order all remedies available under the West Virginia Rules of Civil Procedure.

(e) If Public Defender Services reduces the amount of compensation claimed or reimbursement requested, the attorney submitting the voucher shall be notified electronically of the reduction and detailed reasons for the reduction within 30 business days of the submission of the voucher. The attorney may:

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(1) Agree with the reduction and certify his or her agreement electronically to Public Defender Services which shall then proceed to process payment; or

(2) Disagree with the reduction and request payment of the reduced amount while preserving the ability to contest the reduction;

(3) An attorney proceeding pursuant to this subsection shall inform Public Defender Services of his or her decision by electronic means within 15 business days of receipt of the notice of reduction. If there is no communication from the attorney within 15 business days of receipt of the notice of reduction, then the reduction is deemed to be accepted by the attorney;

(4) The attorney may submit records and certification from the appointing court that the services or expenses reflected in the amount reduced were performed or incurred and were reasonable and necessary. The executive director shall then make a final agency decision regarding the reduction within 15 business days of receipt of the submitted records and certification. Under no circumstances may the executive director have the authority to require any panel attorney to submit privileged client information;

(5) If the attorney disagrees with the final agency decision, and the attorney and the executive director cannot reach an agreement regarding the reduction within 15 business days of the receipt of the notice of the final agency decision, Public Defender Services shall request review of the final agency decision by motion to the appointing court filed within 15 business days of notice of the final agency decision. After a hearing providing the attorney and Public Defender Services an opportunity to be heard, the appointing court shall have final authority to resolve the issue of payment, and to order all remedies available under the West Virginia Rules of Civil Procedure;

(6) If there is no communication from Public Defender Services within 30 business days of the submission of the voucher, the voucher is deemed to have been approved for payment without reduction.

(f) Notwithstanding any provisions of this code to the contrary, the executive director may employ in-house counsel to represent Public Defender Services in hearings held pursuant to this article.

(g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code, the provisions of the amendments to this article enacted during the 2019 regular session of the Legislature shall be effective July 1, 2019.

(h) Notwithstanding any other provision of this section to the contrary, Public Defender Services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(i) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the

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completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by Public Defender Services during the case. The executive director, in his or her discretion, may authorize periodic payments where ongoing representation extends beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(j) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended for services performed and expenses incurred subsequent to the effective date of this article:

(1) For attorney's work performed out of court, compensation shall be at the rate of $60 per hour.

Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research;

(2) For attorney's work performed in court, compensation shall be at the rate of $80 per hour.

In-court work includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate, special master, or other judicial officer;

(3) Compensation for legal services performed for a panel attorney by a paralegal out-of-court is to be calculated using a rate of $20 per hour and no such compensation is to be paid for in-court services performed for a panel attorney by a paralegal absent prior approval of the circuit court before whom the panel attorney is appearing and subject to maximum reimbursement amounts set by agency rule;

(4) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, $4,500 unless the court, for good cause shown, approves payment of a larger sum.

(k) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a

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maximum of $2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

(l) Expense vouchers shall specifically set forth the nature, amount, and purpose of expenses incurred and shall provide receipts, invoices, or other documentation required by the executive director and the State Auditor as follows:

(1) Reimbursement of expenses for production of transcripts of proceedings reported by a court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of this code;

(2) There may be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8 of this code or court rule;

(3) Reimbursement of the expense of an appearance fee for a court reporter who reports a proceeding other than one described in subdivision (2) of this subsection is limited to $25. Where a transcript of a proceeding is produced, there may be no reimbursement for the expense of any appearance fee;

(4) Except for the appearance fees provided in this subsection, there may be no reimbursement for hourly court reporters' fees or fees for other time expended by the court reporter, either at the proceeding or traveling to or from the proceeding;

(5) Reimbursement of the cost of transcription of tapes electronically recorded during preliminary hearings or magistrate court trials is limited to $1 per page;

(6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to the rates for the reimbursement of travel expenses established by rules promulgated by the Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary of the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

(7) Reimbursement for investigative services is limited to a rate of $30 per hour for work performed by an investigator.

(m) For purposes of compensation under this section, an appeal from magistrate court to circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate case.

(n) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered, and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the

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eligible client for which services were rendered is one of several charges involving multiple warrants or indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to enable Public Defender Services to avoid a duplication of compensation for services rendered. The executive director shall refuse to requisition payment for any voucher which is not in conformity with the recordkeeping, compensation, or other provisions of this article or the voucher guidelines established issued pursuant to this article and in such circumstance shall return the voucher to the court or to the service provider for further review or correction.

(o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt. Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the calendar year in which payment is due.

(p) Vouchers submitted for fees and expenses involving child abuse and neglect cases shall be processed for payment before processing vouchers submitted for all other cases.

(q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the charge or charges for which the indigent defendant was afforded counsel qualify for an expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued representation upon the terms specified in this section. The Panel Attorney shall include the services performed by panel attorneys in regard to an expungement on the same voucher or a subsequent voucher submitted concerning the same case number as the one submitted to Public Defender Services for the underlying criminal charge or charges. The maximum amount of compensation for out-of-court and in-court work under this section shall be limited to $1,000 for expungement services in addition to the limits imposed on the underlying criminal charge or charges, unless the court, for good cause shown, approves payment of a larger sum. The actual and necessary expenses incurred in providing legal representation for expungement proceedings under this section shall be reimbursed to a maximum of $500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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§29-21-14. Limitation on use of funds; exceptions.

(a) Funds made available by the agency to public defender corporations or other entities under this article, either by loan, grant or contract, and funds used for payments to panel attorneys shall be used only to provide legal representation for eligible clients involved in proceedings defined by this article as eligible proceedings.

(b) Funds received from any source other than the agency shall not be used by a public defender corporation for purposes prohibited by this article.

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§29-21-14a.

Repealed.

Acts, 1989 Reg. Sess., Ch. 169.

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§29-21-14b.

Repealed.

Acts, 1989 Reg. Sess., Ch. 169.

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§29-21-15. Public defender corporations -- Board of directors.

(a) The governing body of each public defender corporation shall be a board of directors consisting of persons who are residents of the area to be served by the public defender corporation.

(1) In multicounty circuits, and in the case of multicircuit or regional corporations, the county commission of each county within the area served shall appoint a director, who shall not be an attorney-at-law. The president of each county bar association within the area served shall appoint a director, who shall be an attorney-at-law: Provided, That in a county where there is not an organized and active bar association, the circuit court shall convene a meeting of the members of the bar of the court resident within the county and such members of the bar shall elect one of their number as a director. The Governor shall appoint one director, who shall serve as chairman, who may be an attorney-at-law, unless such appointment would result in there being an even number of directors, in which event the Governor shall appoint two directors, one of whom may be an attorney-at-law. The Governor's appointees shall serve four-year terms which terms shall coincide with the term of the Governor. Appointments may be made for unexpired terms as may be necessary. Other board members' terms shall be as determined by the board.

(2) In single-county circuits, the manner of selecting directors shall be the same as that described in subdivision (1) of this subsection, except that the county commission shall appoint two directors rather than one, and the bar shall appoint two directors rather than one.

(b) The board of directors shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given pursuant to rules promulgated in accordance with the provisions of section three, article nine-a, chapter six of this code, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(c) The board of directors shall establish and enforce broad policies governing the operation of the public defender corporation but shall not interfere with any attorney's professional responsibilities to clients. The duties of the board of directors shall include, but not be limited to, the following:

(1) Appointment of the public defender and any assistant public defenders as may be necessary to enable the public defender corporation to provide legal representation to eligible clients; and

(2) Approval of the public defender corporation's budget and the fixing of professional and clerical salaries: Provided, That the compensation paid to any part-time public defender, part-time assistant public defender or other part-time employee shall not include benefits such as retirement, health insurance or paid leave time for illness or vacation unless Public Defender Services has certified in writing to the board of directors that there exists

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sufficient funding to provide such benefits and the board of directors authorizes such benefits to be included in the compensation; and

(3) Removal of any public defender, assistant public defender or other employee for misfeasance, malfeasance or nonfeasance.

(d) To the extent that the provisions of chapter thirty-one of this code regarding nonprofit corporations are not inconsistent with this article, the provisions of said chapter shall be applicable to the board of directors of the public defender corporation.

(e) While serving on the board of directors, no member may receive compensation from the public defender corporation, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership and may accept appointments to represent eligible clients so long as he or she does not discuss a particular case with any public defender, assistant public defender or other employee of the office governed by the board. Directors may not serve as cocounsel with the public defender or assistant public defender in any matter.

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§29-21-16. Determination of maximum income levels; eligibility guidelines; use of form affidavit; inquiry by court; denial of services; repayment; limitation on remedies against affiant.

(a) The agency shall establish and periodically review and update financial guidelines for determining eligibility for legal representation made available under the provisions of this article. The agency shall adopt a financial affidavit form for use by persons seeking legal representation made available under the provisions of this article.

(b) All persons seeking legal representation made available under the provisions of this article shall complete the agency's financial affidavit form, which shall be considered as an application for the provision of publicly funded legal representation.

(c) Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of §49-4-701 through §49-4-725 of this code. If the juvenile advises the court of his or her inability to pay for counsel, the court shall require the juvenile's parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the juvenile's parents, or, if applicable, the juvenile's custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the juvenile. If the financial affidavit demonstrates that either of the juvenile's parents, or, if applicable, the juvenile's custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the juvenile in the proceedings.

The court may disregard the assets of the juvenile's parents or custodian and appoint counsel for the juvenile, as provided in this section, if the court concludes, as a matter of law, that the juvenile and the parent or custodian have a conflict of interest that would adversely affect the juvenile's right to effective representation of counsel, or concludes, as a matter of law, that requiring the juvenile's parent or custodian to provide legal representation for the juvenile would otherwise jeopardize the best interests of the juvenile.

(d) In any circuit in which there exists a trial court administrator, the office of the administrator shall make determinations of indigency. In circuits in which a public defender office is in operation and a trial court administrator does not exist, all determinations of indigency shall be made by a public defender office employee designated by the executive director. In circuits in which no trial court administrator or public defender office is in operation, circuit judges shall make all determinations of eligibility. The determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (9), subsection (e) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make any inquiries necessary to determine whether the affiant has truthfully and completely

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disclosed the required financial information.

After reviewing all pertinent matters, the person determining eligibility may find the affiant eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or more of the nine factors set forth in subsection (e) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (e) of this section.

(e) The following factors shall be considered in determining eligibility for legal representation made available under the provisions of this article:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid assets, assets which may provide collateral to obtain funds to employ private counsel, and other assets which may be liquidated to provide funds to employ private counsel;

(3) Fixed debts and obligations, including federal, state, and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) Whether the person seeking publicly funded legal representation has made reasonable and diligent efforts to obtain private legal representation, and the results of those efforts;

(7) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(8) Whether the person seeking publicly funded legal representation has posted a cash bond for bail or has obtained release on bond for bail through the services of a professional bondsman for compensation and the amount and source of the money provided for the bond;

(9) The consequences for the individual if legal assistance is denied.

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(f) Legal representation requested by the affiant may not be denied, in whole or part, unless the affiant can obtain legal representation without undue financial hardship. A person determined to be ineligible by public defender personnel may have the initial determination reviewed by a local circuit judge who may amend, modify, or rewrite the initial determination. At any stage of the proceedings a circuit court may determine a prior finding of eligibility was incorrect or has become incorrect as the result of the affiant's changed financial circumstances, and may revoke any prior order providing legal representation. In that event, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to the appointment for services already rendered.

(g) In the circumstances and manner set forth below, circuit judges may order repayment to the state, through the office of the clerk of the circuit court having jurisdiction over the proceedings, of the costs of representation provided under this article:

(1) In every case in which services are provided to an indigent person and an adverse judgment has been rendered against such person, the court may require that person, and in juvenile cases, may require the juvenile's parents or custodian, to pay as costs the compensation of appointed counsel, the expenses of the defense, and any other fees and costs authorized by statute;

(2) The court shall not order a person to pay costs unless the person is able to pay without undue hardship. In determining the amount and method of repayment of costs, the court shall take account of the financial resources of the person, the person's ability to pay, and the nature of the burden that payment of costs will impose. The fact that the court initially determines, at the time of a case's conclusion, that it is not proper to order the repayment of costs does not preclude the court from subsequently ordering repayment if the person's financial circumstances change;

(3) When a person is ordered to repay costs, the court may order payment to be made immediately or within a specified period of time or in specified installments. If a person is sentenced to a term of imprisonment, an order for repayment of costs is not enforceable during the period of imprisonment unless the court expressly finds, at the time of sentencing, that the person has sufficient assets to pay the amounts ordered to be paid or finds there is a reasonable likelihood the person will acquire the necessary assets in the foreseeable future;

(4) A person who has been ordered to repay costs, and who is not in contumacious default in the payment thereof, may at any time petition the sentencing court for modification of the repayment order. If it appears to the satisfaction of the court that continued payment of the amount ordered will impose undue hardship on the person or the person's dependents, the court may modify the method or amount of payment;

(5) When a person ordered to pay costs is also placed on probation or imposition or execution of sentence is suspended, the court may make the repayment of costs a condition of probation or suspension of sentence.

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(h) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the State Auditor who shall deposit the funds in the General Revenue Fund of the state.

(i) The making of an affidavit subject to inquiry under this section does not in any event give rise to criminal remedies against the affiant nor occasion any civil action against the affiant except for the recovery of costs as in any other case where costs may be recovered and the recovery of the value of services, if any, provided pursuant to this article. A person who has made an affidavit knowing the contents of the affidavit to be false may be prosecuted for false swearing as provided by law.

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§29-21-17. Private practice of law by public defenders.

(a) No full-time public defender or full-time assistant public defender may engage in any private practice of law except as provided in this section.

(b) A board of directors may permit a newly employed full-time public defender or full-time assistant public defender to engage in the private practice of law for compensation for the sole purpose of expeditiously closing and withdrawing from existing private cases from a prior private practice. In no event shall any person employed for more than ninety days as a full-time public defender or full-time assistant public defender be engaged in any other private practice of law for compensation: Provided, That until January 1, 1993, the prohibition against the private practice of law does not apply to full-time public defenders employed in Class II, III or IV counties as defined by article seven, chapter seven of this code.

(c) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in private practice for compensation if the defender is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction and if the defender remits to the public defender corporation all compensation received.

(d) A board of directors may permit a full-time public defender or full-time assistant public defender to engage in uncompensated private practice of law if the public defender or assistant public defender is acting:

(1) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or

(2) On behalf of a close friend or family member; or

(3) On behalf of a religious, community or charitable group.

(e) Violation of the requirements of this section is sufficient grounds for immediate summary dismissal regardless of the conditions of employment established by a corporation's board of directors.

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§29-21-18. Records and reports.

(a) The agency is authorized to require such reports as it deems necessary from any public defender corporation or other entity or person receiving funding under this article regarding activities carried out pursuant to this article.

(b) The agency is authorized to prescribe the keeping of records with respect to the activities of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article and shall have access to such records at all reasonable times for the purpose of ensuring compliance with the terms and conditions upon which financial assistance was provided.

(c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any public defender corporation, other grantee, contractor, person or entity receiving financial assistance under this article shall be maintained by the agency for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the agency may establish.

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§29-21-19. Audits.

(a) The accounts of each public defender corporation shall be audited annually as soon as possible after the end of each state fiscal year. Such audits shall be conducted in accordance with generally accepted auditing standards by the State Tax Commissioner.

(b) The audits shall be conducted at the place or places where the accounts of the public defender corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the public defender corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

(c) The report of the annual audit shall be filed with the agency and shall be available for public inspection during business hours at the principal office of the public defender corporation. The report of each such audit shall be maintained for a period of at least five years at the office of the agency.

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§29-21-20. Appointed counsel immune from liability.

Any attorney who provides legal representation under the provisions of this article under appointment by a circuit court, family court or by the Supreme Court of Appeals, and whose only compensation therefor is paid under the provisions of this article, shall be immune from liability arising from that representation in the same manner and to the same extent that prosecuting attorneys are immune from liability.

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§29-21-21. Forgiveness of loans; reversion of public defender corporation assets.

All equipment, operational or supplemental loans heretofore made under the former provisions of article twenty-one are forgiven and declared null and void and shall not be an obligation of a public defender corporation formerly established under the previous provisions of article twenty-one, nor an obligation of any successor organization or of the members of any board of directors of any public defender corporation.

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§29-21-22.

Repealed.

Acts, 1989 Reg. Sess., Ch. 169.

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