WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 81
(By Mr. Jones, Mr. Maryland, et al.)

PASSED April 9, 1981
In Effect July 1, 1981
AN ACT to repeal article eleven, chapter fifty-one; to amend and reenact sections one-a and four, article five, chapter twenty-seven; to amend and reenact chapter twenty-nine by adding thereto a new article, designated article twenty-one; to amend and reenact section one, article five, chapter forty-nine; to amend and reenact section three, article four, chapter fifty; to amend and reenact section four, article four-a, chapter fifty-three; and to amend and reenact section one, article three and section twenty-two, article twelve of chapter sixty-two; all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to the establishment of a public defender system for the representation of indigent persons; amending certain code sections to reflect the repeal of article eleven, chapter fifty-one of the code and resultant code references; setting forth legislative findings and a declaration of purpose; definition establishing the West Virginia public legal services council; defining the membership of the council and providing for the method of appointment, terms of office, and the status of members of the council; providing for selection of a chairman of such council; defining a quorum; allowing for the removal and resignation of members of the council; requiring quarterly meetings; providing for compensation of members; prohibiting participation of members in certain instances; describing the purpose and duties of the council; describing the position of executive director; providing for the hiring of employees; compensation of executive director and employees; setting forth the powers,
duties, and limitations of the council; establishing a criminal law research center, an accounting and auditing division, and an appellate advocacy division; describing the functions of the criminal law research center; creating public defender corporations and providing for the activation of such corporations; establishing regional and local panels of attorneys and describing the method of appointment and order of appointing the public defender office, panel attorneys, and others; requiring notification of intent to apply for financial assistance in certain instances; providing for plans for legal representation and the form and content of such plans; requiring the review of plans by circuit judges; describing the responsibilities of the council upon receipt of applications; providing for approval of program and budget and funding by loans and grants; requiring records and submission of vouchers; describing the method of payment, rates of compensation and limits thereon; describing the contents of vouchers; limiting the use of funds; describing the board of directors of a public defender corporation and the appointment of members thereof; providing for the composition of the board and meetings and duties thereof; allowing expenses of members to be paid; establishing a method of determining maximum income levels and other eligibility guidelines; providing for the use of form affidavits; allowing inquiry by the court and denial of services in some instances; providing for repayment; limiting remedies against affiants; setting forth when public defenders and assistant public defenders are prohibited from outside practice of law; requiring certain records and reports; and providing for audits of public defender corporations.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter fifty-one be repealed; that sections one-a and four, article five, chapter twenty-seven be amended and reenacted; that chapter twenty-nine be amended by adding thereto a new article, designated article twenty-one; that section one, article five, chapter forty-nine be amended and reenacted; that section three, article four, chapter fifty be amended and reenacted; that section four, article four-a, chapter fifty-three be amended and reenacted; that section one, article three and section twenty-two, article twelve, chapter sixty-two be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:
CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

If, in any case, the prosecuting attorney and his assistants in a county in which there is a state mental health hospital are unable to act due to a burdensome number of cases brought under this article, the circuit court shall appoint some competent practicing attorney to act in that case. The court shall certify to the director of the administrative office of the supreme court of appeals the performance of that service when completed and may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code. Compensation shall be paid out the "mental hygiene fund" provided for in section four of this article.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) Involuntary commitment. Except as provided in section three of this article, no individual shall be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found, or if the individual is hospitalized in a mental health facility located in a county other than where he resides or was found, in the county of the mental health facility, and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility: Provided, That if said individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) How final commitment proceedings are commenced. Final commitment proceedings for an individual may be commenced by the filing of a written application under oath and the certificate or affidavit is hereinafter provided with the clerk of the circuit court or mental hygiene commissioner of the county of which the individual is a resident, or where he may be found, or the county of the mental health facility, if he is hospitalized in a mental health facility located in a county...
other than where he resides or may be found by an adult person having personal knowledge of the facts of the case.

(c) Oath; contents of application; who may inspect application; when application cannot be filed.

(1) The person making such application shall do so under oath.

(2) The application shall contain statements by the applicant that he believes because of symptoms of mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others and the grounds for such belief, stating in detail the recent overt acts upon which such belief is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation.

(3) The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents related thereto filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual shall not be open to inspection by any person other than the individual, except upon authorization of the individual or his legal representative or by order of the circuit court, and such records shall not be published except upon the authorization of the individual or his legal representative.

(4) Applications shall not be filed with regard to individuals who are merely epileptics, mentally deficient or senile.

(d) Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.

(1) The applicant shall file with his application the certificate of a physician or a psychologist stating that in his opinion the individual is mentally ill, mentally retarded or addicted and that because of his mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others if he is allowed to remain at liberty and therefore he should be hospitalized, stating in detail the recent overt acts upon which such conclusion is based: Provided, That no such statement of recent overt acts need be made when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation.
(2) A certificate is not necessary only when an affidavit is filed by the applicant showing facts that the individual has refused to submit to examination by a physician or a psychologist.

(e) Notice requirements; eight days' notice required. Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for and have the clerk of the circuit court give notice of the hearing (1) to the individual, (2) to the applicant or applicants, (3) to the individual's spouse, one of the parents or guardians, or if the individual does not have a spouse, parent or parent or guardian, to one of the individual's adult next of kin: Provided, That such person is not the applicant, (4) to the mental health authorities serving the area, (5) to the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of such individual's residence, and (6) to the prosecuting attorney of the county in which the hearing is to be held. Such notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing, and shall specify the nature of the charges against the individual; the facts underlying and supporting the application of his involuntary commitment; his rights to have counsel appointed for him; his right to consult with and be represented by counsel at every stage of the proceedings; and the time and place of the hearing. The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin, or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(f) Examination of individual by court-appointed physician or psychologist; custody for examination; dismissal of proceedings.

(1) Except as provided in subsection (3) of this section, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician or psychologist to examine the individual and report to the circuit court or mental hygiene commissioner his findings as
the mental condition of the individual and the likelihood of
his causing serious harm to himself or others.

(2) If the designated physician or psychologist reports to
the circuit court or mental hygiene commissioner that the
individual has refused to submit to an examination, the
circuit court or mental hygiene commissioner shall order him
to submit to such examination. The circuit court or mental
hygiene commissioner may direct that the individual be
detained or taken into custody for the purpose of an
immediate examination by the designated physician or
psychologist. All such orders shall be directed to the sheriff of
the county or other appropriate law-enforcement officer.
After such examination has been completed, the individual
shall be released from custody unless proceedings are
instituted pursuant to section three of this article.

(3) If the reports of the appointed physician or
psychologist do not confirm that the individual is mentally ill,
mentally retarded or addicted and might be harmful to
himself or others, then the proceedings for his involuntary
hospitalization shall be dismissed.

(g) Rights of the individual at the final commitment
hearing; seven days’ notice to counsel required.

(1) The individual shall be present at the final
commitment hearing and he, the applicant and all persons
entitled to notice of such hearing shall be afforded an
opportunity to testify and to present and cross-examine
witnesses.

(2) In the event that the individual has not retained
counsel, the court or mental hygiene commissioner at least
six days prior to hearing shall appoint a competent attorney,
and shall inform the individual of the name, address and
telephone number of his appointed counsel.

(3) The individual shall have the right to have an
examination by an independent expert of his choice and
testimony from such expert as a medical witness on his
behalf. The cost of such independent expert shall be borne by
the individual unless he is indigent.

(4) The individual shall not be compelled to be a witness
against himself.

(h) Duties of counsel representing individual; payment of
counsel representing indigent.

(1) The counsel representing an individual shall conduct a
timely interview, make investigation and secure appropriate
witnesses, and shall be present at the hearing and protect the interest of the individual.

(2) Any counsel representing an individual shall be entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code.

(i) **Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.**

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner shall be bound by the rules of evidence except that statements made to physicians or psychologists by the individual may be admitted into evidence by the physician's or psychologist's testimony notwithstanding failure to inform the individual that this statement may be used against him. Any psychologist or physician testifying shall bring all records pertaining to said individual to said hearing. Such medical evidence obtained pursuant to an examination under this section, or section two or section three of this article, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript shall be made available to the individual, his counsel or the prosecuting attorney within thirty days, if the same is requested for the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(j) **Requisite findings by the court.**

(1) Upon completion of the final commitment hearing, and the evidence presented therein, the circuit court or mental
hygiene commissioner shall make findings as to whether or not the individual is mentally ill, retarded or addicted and because of his illness, retardation or addiction is likely to cause serious harm to himself or to others if allowed to remain at liberty and is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in such county.

(2) The circuit court or mental hygiene commissioner shall also make a finding as to whether or not there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment shall be on the person or persons seeking the commitment of the individual.

(3) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent and convincing proof.

(k) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility for an indeterminate period or for a temporary observatory period not exceeding six months.

(2) The individual shall not be detained in a mental health facility for a period in excess of ten days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization, to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.

(4) An order for an indeterminate period shall expire of its own terms at the expiration of two years from the date of the
last order of commitment unless prior to the expiration, the
department of health, upon findings based on an examination
of the patient by a physician or a psychologist, extends the
order for indeterminate hospitalization: Provided, That if the
patient or his counsel requests a hearing, then a hearing shall
be held by the mental hygiene commissioner; or by the circuit
court of the county as provided in subsection (a) of this
section.

(l) Dismissal of proceedings. If the circuit court or mental
hygiene commissioner finds that the individual is not
mentally ill, mentally retarded or addicted, the proceedings
shall be dismissed. If the circuit court or mental hygiene
commissioner finds that the individual is mentally ill,
mentally retarded or addicted but is not because of such
illness, retardation or addiction likely to cause serious harm
to himself or others if allowed to remain at liberty, the
proceedings shall be dismissed.

(m) Immediate notification of order of hospitalization.
The clerk of the circuit court in which an order directing
hospitalization is entered, if not in the county of the
individual's residence, shall immediately upon entry thereof
forward a certified copy of same to the clerk of the circuit
court of the county of which the individual is a resident.

(n) Consideration of transcript by circuit court of county
of individual's residence; order of hospitalization; execution
of order.

(1) If the circuit court or mental hygiene commissioner is
satisfied that hospitalization should be ordered but finds that
the individual is not a resident of the county in which the
hearing is held, and the individual is not currently a resident
of a mental health facility, a transcript of the evidence
adduced at the final commitment hearing of such individual,
certified by the clerk of the circuit court, shall forthwith be
forwarded to the clerk of the circuit court of the county of
which such individual is a resident, who shall immediately
present such transcript to the circuit court or mental hygiene
commissioner of said county.

(2) If the circuit court or mental hygiene commissioner of
the county of the residence of the individual is satisfied from
the evidence contained in such transcript that such
individual should be hospitalized as determined by the
standard set forth above, the circuit court shall order the
appropriate hospitalization as though the individual has been
brought before the circuit court or its mental hygiene
commissioner in the first instance.

(3) This order shall be transmitted forthwith to the clerk of
the circuit court of the county in which the hearing was held
who shall execute said order promptly.

(o) Order of custody to responsible person. In lieu of
ordering the patient to a mental health facility, the circuit
court may order the individual delivered to some responsible
person who will agree to take care of the individual and the
circuit court may take from such responsible person a bond
in an amount to be determined by the circuit court with
condition to restrain and take proper care of such individual
until further order of the court.

(p) Individual not a resident of this state. If the individual
found to be mentally ill, mentally retarded or addicted by the
circuit court or mental hygiene commissioner is a resident of
another state, this information shall be forthwith given to the
director of health, who shall make appropriate arrangements
for his transfer to the state of his residence conditioned on the
agreement of the individual except as qualified by the
interstate compact on mental health.

(q) Report to the director of health.

(1) The chief medical officer of a mental health facility
admitting a patient pursuant to proceedings under this
section shall forthwith make a report of such admission to the
director of health.

(2) Whenever an individual is released from custody due
to the failure of an employee of a mental health facility to
comply with the time requirements of this article, the chief
medical officer of such mental health facility shall forthwith
after the release of the individual make a report of the director
of health of the failure to comply.

(r) Payment of some expenses by the state; mental hygiene
fund established; expenses paid by the county commission.

(1) The state shall pay the commissioner's fee and such
court reporter fees as are not paid and reimbursed under
article twenty-one, chapter twenty-nine of this code out of a
special fund to be established within the supreme court of
appeals of this state, to be known as the "mental hygiene
fund".

(2) The county commission shall pay out of the county
treasury all other expenses incurred in the hearings
conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and witness called by the indigent individual.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC LEGAL SERVICES.

§29-21-1. Statement of findings and declaration of purpose.
1 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.

1 As used in this article:
2 (1) "Council" or "legal services council" means the West Virginia public legal services council established under this article;
3 (2) "Eligible client" means any person who is accused of a serious crime, has been convicted of such crime, is a party in a juvenile court proceeding, or is the respondent in a commitment proceeding, and who is to be afforded legal representation under the provisions of this article;
4 (3) "Legal representation" or "legal assistance" means the
provision of any legal services consistent with the purposes
and provisions of this article;
(4) "Outside practice of law" means the provision of legal
assistance to a client who is not entitled to receive legal
assistance from the employer of the attorney rendering
assistance, but does not include, among other activities,
teaching, consulting, or performing evaluation;
(5) "Public defender" means the staff attorney employed
on a full-time basis by a public defender corporation who, in
addition to his direct representation of eligible clients, has
administrative responsibility for the operation of the public
defender corporation: Provided, That the public defender
may be a part-time employee if the board of directors of the
public defender corporation finds that there are
extraordinary circumstances wherein efficient operation
requires that no staff attorneys should be employed on a
full-time basis, and the council approves such part-time
employment;
(6) "Assistant public defender" means a staff attorney
hired by the public defender to provide direct representation
of eligible clients, and 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" or "public defender
office" means a corporation created under section nine of this
article for the sole purpose of providing legal representation
to eligible clients;
(8) "Serious crime" means:
(a) a felony;
(b) a misdemeanor or offense, the penalty for which
involves the possibility of confinement or a fine of more than
five hundred dollars, or any other offense of a criminal nature
which, in the opinion of the court, because of the complexity
of the matter, or the youth, inexperience, or mental capacity
of the accused, requires representation of the accused by an
attorney;
(c) an act which, except for the age of the person involved,
would otherwise be a serious crime; and
(d) any other charge, including revocation of probation or
parole, which involves the possibility of confinement in a
penal institution.
§29-21-3. Establishment of West Virginia public legal services council.
There is hereby created the West Virginia public legal services council, for the purpose of facilitating required legal representation of indigent persons. The council shall have primary responsibility to administer, coordinate and evaluate programs for the delivery of legal assistance to eligible clients, to monitor the progress of various delivery systems, and to recommend improvements. The council shall maintain its office at the state capital.

§29-21-4. Council; membership, term of office; status; chairman; quorum; removal; resignation; quarterly meetings; compensation and expenses; conflicts of interest.
(a) The council shall consist of sixteen members appointed by the governor, by and with the advice and consent of the Senate, one to be appointed from each state senatorial district, exclusive of the seventeenth senatorial district. At least six shall be members of the bar of the supreme court of appeals, at least six shall not be attorneys, and none shall be a full-time employee of the state. The membership of the council shall be appointed so as to be generally representative of the organized bar, panel attorneys, public defenders and assistant public defenders, and the general public. No more than nine members of the council shall be members of the same political party.
(b) The term of office of each member of the council shall be four years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term.
(c) The members of the council shall not, by reason of such membership, be deemed officers or employees of the state of West Virginia.
(d) The governor shall select from among the voting members of the council a chairman.
(e) Eight members shall constitute a quorum to conduct business.
(f) When a member shall fail to appear at three consecutive meetings of the council or at one half of the meetings held during a two-year period, the secretary shall notify the member and the governor of such fact. A member may not be removed unless notice of the basis of removal has been given
to such member at least thirty days before an action is taken concerning his removal and the member has been afforded the opportunity to contest his removal by making written submissions to the governor.

(g) A member may resign at any time by giving written notice of his resignation to the governor and to the executive director of the council.

(h) The council shall meet at least four times during each calendar year at the call of the chairman. The council shall also convene upon the call of a majority of the members.

(i) Each member shall receive a salary of fifty dollars per meeting day as compensation and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties under this article.

(j) No member of the council may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

§29-21-5. Purpose and duties of council.

(a) The council shall have as its principal purpose the development of concepts for improving programs within the state for the legal representation of eligible clients.

(b) The council shall:

(1) provide advice to the executive director of the public legal services council;

(2) review the administrative operations of the council;

(3) evaluate proposed plans of public defender corporations for the provision of legal representation and the implementation of such plans;

(4) provide advisory opinions to the executive director on potential conflicts of interest in the representation of indigent persons;

(5) recommend improvements in the various systems utilized to provide legal representation to eligible clients;

(6) review the operations of alternative systems and compare and evaluate the performance and cost of the various alternative systems.

§29-21-6. Executive director; duties; employees; compensation.

(a) The governor shall appoint the executive director of the council, 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 may be a member of the bar of the supreme court of appeals. In addition to the executive director there shall be such other employees hired by the executive director as the council determines to be necessary. The executive director shall have such 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 employees of the council in the performance of their duties.

(b) The executive director and employees of the council shall be compensated at rates determined by the council: Provided, That the annual salary of the executive director shall not be more than the annual salary of the attorney general.


(a) Consistent with the provisions of this article, the council is authorized to make loans and grants to and contracts with public defender corporations and with individuals, partnerships, firms, corporations, and non-profit organizations, for the purpose of providing legal representation to eligible clients under this article, and to make such other loans, grants and contracts as are necessary to carry out the purposes and provisions of this article.

(b) The council 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 council shall establish and the executive director or his designate shall operate a criminal law research center as provided for in section eight of this article, and through such center shall undertake directly, or by grant or contract, to serve as a clearinghouse for information, to provide training and technical assistance relating 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 by grant or contract.

(d) The council shall establish and the executive director or his designate shall operate an accounting and auditing division to require and monitor the compliance of public
defender corporations and their employees with the
provisions of this article. This division shall receive all plans
and proposals for loans, grants, and contracts, and all
requisitions for payment, and shall review the same. All such
plans and proposals shall be approved or disapproved by the
division on the basis of conformity to the provisions of this
article, and a recommendation shall then be made to the
executive director and the advisory board. After review by
the division, the executive director shall draw requisitions on
the state auditor for payment to public defender corporations
and others, upon proper application under the provisions of
this article. The division shall prepare, or cause to be
prepared, reports concerning the evaluation, inspection, or
monitoring of public defender corporations and other
grantees, contractors, or persons or entities receiving
financial assistance under this article, and shall further carry
out the council's responsibilities for records and reports as set
forth in section nineteen of this article.

(e) The council shall establish and the executive director
or his designate 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 a person designated by him shall be the director of
the appellate advocacy division and shall represent eligible
clients in only those instances where the trial attorney or
other local counsel is unwilling or unable to serve as appellate
counsel. The executive director is empowered to select and
employ staff attorneys to perform the duties prescribed by
this subsection, the number of such staff attorneys being
fixed by the board. The appellate division shall have its own
budget as determined appropriate by the council and shall
maintain vouchers and records for representation of eligible
clients, for record purposes only.

§29-21-8. Criminal law research center established; functions.

(a) Within the council, 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 educational
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, and such
service shall be provided to prosecuting attorneys and their
professional staffs, panel attorneys, and private attorneys
engaged in the practice of criminal law on the same basis as
such services are provided to public defender corporations,
public defenders and assistant public defenders.
§29-21-9. Public defender corporations created; method of
activation; activation in certain circuits by
operation of law; structure.
(a) In each judicial circuit of the state, there is hereby
created a public body corporate and politic to be known as
the "public defender corporation" of the circuit: Provided,
That there shall be but one such public defender corporation
designated for the twenty-third and thirty-first judicial
circuits, which shall serve both circuits. The purpose of such
public defender corporations is to provide legal
representation in the respective circuits in accordance with
the provisions of this article. Except as provided in
subsection (b) of this section, a public defender office created
by this subsection shall not be activated so as to transact any
business or exercise its powers under this article before the
first day of April, one thousand nine hundred eighty-two and
until or unless the judge of a single judge circuit or the chief
judge of a multi-judge circuit or a majority of the active
members of the bar in the circuit, shall determine at any time
hereafter that there is a need in the circuit to activate the
public defender corporation, shall certify such fact to the
council in writing, and shall have the activation of the office
recommended by the council and approved by the executive
director.
(b) The public defender corporations are hereby activated
in the first, second, third, seventh, eighth, ninth, eleventh,
thirteenth, fourteenth, fifteenth, twenty-third and thirty-first combined, twenty-fifth, twenty-eighth and thirtieth judicial circuits.

(c) Public defender offices activated prior to the first day of July, one thousand nine hundred eighty-two shall be structured so as to provide legal representation through salaried staff attorneys, complemented by panels of private attorneys-at-law. On and after the first day of July, one thousand nine hundred eighty-two, public defender offices activated pursuant to this section shall not be confined to a particular method of providing legal representation, but may submit for consideration and approval by the council, programs and plans which represent novel or innovative approaches for the provision of legal representation for eligible clients.

(d) On and after the first day of July, one thousand nine hundred eighty-two, public defender corporations may merge to form multi-circuit or regional public defender corporations. Applications for mergers shall be subject to the review procedures set forth in sections eleven and twelve of this article.


(a) In each circuit of the state, the circuit court shall establish and maintain regional and local panels of private attorneys-at-law who shall be available to serve as counsel for eligible clients. The court shall appoint one or more panel attorneys in accordance with the provisions of this article, to represent eligible clients in situations where the public defender corporation has not been activated or a public defender is not available to represent such eligible clients.

(b) An attorney-at-law may become a panel attorney and have his name placed on the regional or local panel, or both, to serve as counsel for eligible clients, by informing the court that he is willing to serve as such. A prospective panel attorney shall inform the court in writing, on forms provided by the executive director, whether or not he will accept appointments generally, and if not, which types of cases described in section fifteen of this article he will not accept appointment in. The attorney shall also indicate whether or not he will accept appointment in adjoining circuits and, if so, the circuits in which he will accept appointments. An agreement to accept cases generally or certain types of cases
particularly shall not prevent a panel attorney from declining an appointment in a specific case.

(c) 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. In circuits where the public defender corporation is in operation, the judge shall appoint the public defender office. If the appointment of the public defender or his assistant is not appropriate, the court shall appoint a panel attorney from the local panel. If there is no local panel attorney available, the judge shall appoint a panel attorney from the regional panel. If there is no regional panel attorney available, the judge may appoint a public defender from an adjoining circuit when such public defender agrees to the appointment. In circuits where the public defender corporation is not activated, the judge shall first refer to the local panel and then to the regional panel in making appointments, and if an appointment cannot be made from the panel attorneys, the judge may appoint the public defender of an adjoining circuit when such public defender agrees to the appointment. In any circuit, when there is no public defender or assistant public defender, local panel attorney, regional panel attorney, or public defender of an adjoining circuit available, the judge may appoint a qualified private attorney to provide representation, and such private attorney shall be treated as a panel attorney for that specific case. In any given case, the appointing judge may alter the order in which he considers attorneys available for appointment if, in his discretion, the case requires particular knowledge or experience on the part of the attorney to be appointed.

§29-21-11. Notification of intent to apply for financial assistance.

(a) Any public defender corporation activated after the first day of July, one thousand nine hundred eighty-two and undertaking to apply to the public legal services council for financial assistance for a novel or innovative program to provide legal representation and any public defender corporation proposing a major substantive modification to an existing program is required to notify the council and the circuit judges in the circuit in which the program will deliver legal representation of the intent to apply for such assistance or modification. Such notice shall be given at least fifteen
days prior to the filing of an application or a proposal for modification.

(b) Notifications shall include a summary description of the proposed program. The summary description shall contain the following information:

(1) the identity of the applicant;
(2) the geographical location of the proposed program;
(3) a brief description of the proposed program, general size or scale, estimated cost, or other characteristics which will enable the circuit court to determine how the system for representation of indigents within the circuit may be affected by the proposed program; and
(4) the estimated date the public defender corporation expects to formally file an application or modification proposal.

§29-12-12. Plans for legal representation; form and content of plan; review by circuit judges.

(a) Any public defender corporation wishing to take advantage of state financial assistance through the council must submit an application to the council in the form of a plan for providing legal representation to eligible clients.

(b) The plan, which is to be submitted in a form prescribed by the executive director, shall contain a specific description of the public defender corporation's program, the plans and policies to be followed in carrying out the program, and other information prescribed by the executive director. The plan shall include, but not be limited to, the following:

(1) information exhibiting compliance with the requirements of this article;
(2) a projection of the annual caseload to be handled by the public defender corporation, describing the methods to be used to meet objectives;
(3) a description of the staff required for adequate administration of the plan; and
(4) a description of the facilities and equipment required to provide adequate legal representation of eligible clients.

(c) All applications for state financial assistance through the council under the provisions of this article must be submitted to the circuit judges of the circuit for review prior to their submission to the council.

(d) Public defender corporations will include with the completed application as submitted to the agency:
(1) all comments and recommendations made by the circuit judges, along with a statement that such comments have been considered prior to submission of the application; or
(2) where no comments have been received from circuit judges, a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received.

(e) Applications for annual renewal or continuation grants are subject to review upon request of the circuit judges; and applications not submitted to or acted upon by the council within six months after completion of the circuit judges' review are subject to re-review upon request.

(f) Comments and recommendations made by a circuit judge with respect to any program are for the purpose of assuring maximum consistency of such programs with local needs for legal representation of indigents.

(g) If notification is required under section eleven of this article, a circuit judge will complete review of a program notification within fifteen days after receipt by the judge of the notification. Where the public defender corporation has not received a response to the notification from a circuit judge within the fifteen-day period, the public defender corporation may consider the judge to have waived his opportunity to review and comment on the proposed program or program modification. If a public defender corporation submits a completed application to a circuit judge during the fifteen-day notification review period, the judge will complete review within fifteen days plus the number of days remaining in the fifteen-day notification period. If a public defender corporation submits to a circuit judge a completed application without a prior notification, the judge will complete review of the application within thirty days.

(h) In cases where notification is not required, the public defender corporation may expect that a circuit judge will complete review of a completed application within fifteen days.

(i) If review of an application is not completed within the time periods prescribed in this section the public defender corporation may consider that the application has been favorably reviewed and may submit the application to the public legal services council for consideration.
§29-21-13. Responsibilities of public legal services council upon receipt of applications for funding.

(a) If the council receives an application that does not carry evidence that appropriate circuit judges have been given an opportunity to review the application, the council shall return the application to the public defender corporation with instructions to fulfill the requirements of sections eleven and twelve of this article.

(b) The council must notify the circuit judges within seven working days of any major action taken on any application that has been reviewed by such judges. Major actions will include program approvals, rejections, returns for amendment, deferrals, or withdrawals.

(c) Where a judge has recommended against approval, or has recommended approval only with specific and major substantive changes, and the council approves the application substantially as submitted, the council will provide the judge with, along with the approval notice, an explanation therefor.

§29-21-14. Approval of program application and budget; initial funding by loan; records to be kept and vouchers submitted by public defender corporations and panel attorneys; approval and payment; rate of compensation; maximum amount of compensation; contents of voucher.

(a) Upon approval of a program application by the executive director, the amounts of the approved budget and the loans and grants included therein shall be set forth in an approval notice. The total cost to the council will not exceed the amount set forth in the approval notice and the council shall not be obligated to reimburse the public defender corporation for costs incurred in excess of such amount unless and until a program modification has been approved in accordance with the provisions of this article, revising the total costs of the program.

(b) Initial funding of a public defender corporation’s program shall be in the form of interest-free loans made by the council to the public defender corporation:

(1) an equipment loan in a requested amount of up to five thousand dollars plus such additional amount above five thousand dollars as may be approved by the council; and
(2) an operational loan not to exceed the projected operational costs for the first six months of program operation: Provided, That upon subsequent application by the public defender corporation, the operational loan shall be increased to an amount not exceeding the projected operational costs for the full twelve-month period of program operation. Operational loan funds shall be forwarded to the public defender corporation in quarterly installments.

(c) All public defender corporations shall maintain detailed and accurate records of the time expended by public defenders and assistant public defenders and expenses incurred on behalf of eligible clients. Upon completion of each case, exclusive of appeal, the public defender corporation shall submit to the appointing court a voucher for services which meets the requirements of subsection (h) of this section. After approval by the court, the court shall forward such voucher to the council, with an order of the court approving payment of the amount of the voucher or of such lesser sum to which the court shall believe the public defender corporation to be entitled. Upon receipt of an approved voucher, the council shall credit fifty percent of the face amount of the voucher as a payment on outstanding loans of the public defender corporation: Provided, That upon request of the public defender corporation, a larger percentage may be credited against such loans, or, upon request of the public defender corporation and the approval of the executive director, a smaller percentage may be so credited. All amounts reflected by vouchers and not credited to loans shall be tabulated, and at the end of each month, the executive director shall forward to the public defender corporation a grant equal to such monthly total. The total amount of loan credits and monthly grants shall not exceed the total budget approved for the program.

(d) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of appeal, shall submit to the appointing court a voucher for services which meets the requirements of subsection (h) of this section. After approval by the court, the court shall forward such voucher to the council, with an order of the court approving payment of the amount of the voucher or of such lesser sum to which the court shall believe the
panel attorney to be entitled. The executive director shall make payment to the panel attorney.

(e) In each case in which a public defender corporation or a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, compensation for actual and necessary services rendered shall be at the following rates:

1. for work performed out of court, compensation shall be at the rate of twenty dollars per hour, itemized to the nearest quarter-hour. Out-of-court work shall include, but not be limited to, travel, interviews of clients or witnesses, preparation of pleadings, and pre-hearing or pre-trial research.

2. for work performed in court, compensation shall be at the rate of twenty-five dollars per hour, itemized to the nearest quarter-hour. In-court work shall include, but not be limited to, all time spent awaiting hearing or trial if the presence of the attorney is required at the time.

3. expenses incurred in providing legal representation, including, but not limited to, necessary expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses shall be reimbursed to a maximum of five hundred dollars unless the court, for good cause shown, shall have given advance approval to incur expenses for a larger sum.

(f) The maximum amount of compensation for out-of-court and in-court work under subsection (e) of this section shall be one thousand dollars: Provided, That if the eligible client is charged with a felony for which a penalty of life imprisonment may be imposed, upon being advised by counsel that the time expended has reached the one thousand dollar maximum, the court may approve additional compensation for further work at one half the rates provided in subsection (e).

(g) For purposes of compensation under this section, an appeal to the supreme court of appeals from a circuit court shall be considered a separate case.

(h) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, and the date and place the service was rendered. If the charge against the eligible client for which services were rendered is one of
several charges involving multiple warrants or indictments, 
the voucher shall indicate such fact and sufficiently identify 
the several charges so as to enable the court to avoid a 
duplication of compensation for services rendered. The 
voucher shall indicate whether the services were rendered by 
a public defender corporation, a local panel attorney, a 
regional panel attorney, or such other private attorney as may 
have been appointed. A voucher submitted to the council 
which is not in conformity with the record-keeping and 
compensation provisions of this article may be returned to 
the court for further review.

§29-21-15. Limitation on use of funds; exceptions.
1 (a) Funds made available by the council to public 
defender corporations under this article, either by loan, grant, 
or contract, shall be used to provide legal representation for 
persons accused or convicted of serious crimes, except that 
funds may be used for representation of indigent person in 
the following proceedings:
7 (1) juvenile proceedings, including child neglect and 
abuse proceedings;
9 (2) mental hygiene proceedings;
10 (3) habeas corpus actions brought for the purpose of 
challenging the validity of confinement arising out of 
proceedings involving serious crimes, juvenile proceedings, 
or mental hygiene proceedings;
14 (4) prohibition actions brought for the purpose of 
challenging the excessive exercise of authority in a criminal, 
juvenile, or commitment proceeding by a lower tribunal; and 
17 (5) mandamus actions brought for the purpose of 
commanding action applicable to criminal, juvenile, or 
commitment proceedings.
(b) Funds received from another source other than the 
council for the provision of legal representation shall not be 
used by a public defender corporation for purposes 
prohibited by this article.

§29-21-16. Board of directors of public defender corporation; 
appointment; composition; meetings; duties of 
board; expenses.
1 (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 multi-county circuits, 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, but need not 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.

(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, 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 determination of the number of 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 salaries; and

(3) renewal of the employment contract of the public defender on an annual basis except where such renewal is denied for cause: Provided, That the board of directors shall have the power at any time to remove the public defender 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 such chapter shall be applicable to the board of directors of the public defender corporation.

(e) While serving on the board of directors, no member shall 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.

§29-21-17. 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 council shall establish, in consultation with the commissioner of the department of finance and administration, with the chief justice of the supreme court of appeals, and with the judges of the several circuits, maximum annual income levels for individuals eligible for legal representation under this article. The council shall consider such factors as family size, urban and rural differences, substantial cost-of-living variation, and the cost of available private representation.

(b) In addition to the maximum annual income level for an area established under subsection (a) of this section, a court shall consider other relevant factors before determining whether a person is eligible to receive legal representation under the provisions of this article. A person whose income exceeds the maximum annual income level may have counsel appointed if the person's circumstances require that eligibility be allowed on the basis of one or more of the following factors:

1. Current income prospects, taking into account seasonal variations in income;
2. Liquid net assets and other assets which may reasonably be available for the employment of 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) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought; and

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

(c) The council shall adopt a simple form affidavit to be completed by persons seeking legal representation, for use by courts to determine eligibility. The information obtained shall be preserved by the court for audit by the council. If there is substantial reason to doubt the accuracy of information in the affidavit, the circuit court shall make appropriate inquiry upon the record to determine whether a person is an indigent person entitled to all or any of the legal assistance sought and may deny all or any part of such services to the affiant which the court finds to be within the financial resources of the affiant and may revoke any prior appointment of counsel which the court determines to have been improvidently made. No circuit court shall deny all or any part of the services requested by the affiant unless the court shall determine upon the record that such service or services, including counsel, are available to the person seeking them and are within the financial resources of such person. Upon the determination that appointment of counsel previously made should be revoked, or that further provision of any other service should be denied, any attorney previously appointed shall be entitled to compensation under the provisions of law applicable to such appointment for services already rendered and any other officer of the court having previously rendered such services shall likewise be entitled to such compensation, if any, for services already rendered as law may provide.

(d) Subject to such rules as the supreme court of appeals shall promulgate, the circuit court shall have plenary power in every case in which services are rendered to an indigent person, whether or not services are thereafter denied under this section, to make such order for the repayment of costs and compensation for services granted to such person, either as condition of probation or otherwise, as the court may determine to be reasonable given the financial circumstances of the affiant.

(e) The making of an affidavit subject to inquiry under this section shall 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: Provided, That a person who
has made an affidavit knowing the contents thereof to be false
may be prosecuted for false swearing as provided by law.

(a) No full-time public defender or full-time assistant
public defender shall engage in any outside practice of law
except as provided in this section.
(b) A board of directors may permit a full-time public
defender or full-time assistant public defender to engage in
the outside practice of law for compensation if:
(1) the public defender or assistant public defender is
newly employed and has a professional responsibility to close
cases from a previous law practice, and does so as
expeditiously as possible; or
(2) the public defender or assistant public defender is
acting pursuant to an appointment made under a court rule or
practice of equal applicability to all attorneys in the
jurisdiction, and remits to the public defender corporation all
compensation received.
(c) A board of directors may permit a public defender or
assistant public defender to engage in uncompensated
outside 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.

(a) The council is authorized to require such reports as it
deems necessary from any public defender corporation
receiving financial assistance under this article regarding
activities carried out pursuant to this article.
(b) The council is authorized to prescribe the keeping of
records with respect to funds provided by the council and
shall have access to such records at all reasonable times for
the purpose of insuring compliance with the terms and
conditions upon which financial assistance was provided.
(c) The council shall publish an annual report which shall be filed by the council with the governor and the Legislature on or before the thirty-first day of January of each year.

(d) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any public defender corporation receiving financial assistance under this article shall be submitted on a timely basis to such public defender corporation and shall be maintained by the council 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.


(a) The accounts of each public defender corporation shall be audited annually. 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 council 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 council.


Any attorney who shall provide legal representation under the provisions of this article following his appointment by a circuit court, and whose only compensation therefor is paid under the provisions of this article, shall be immune from liability arising from his services in the same manner and to the same extent that prosecuting attorneys are immune from liability.
ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of age; constitutional guarantees; right to counsel; hearings.

(a) The circuit court of the county shall have original jurisdiction in proceedings brought under this article.

If during a criminal proceeding against a person in any court, it shall be ascertained or shall appear that the person is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court, and the circuit court shall assume jurisdiction of the case in the same manner as cases originally instituted in the circuit court by petition: Provided, That for violation of a traffic law of West Virginia, magistrate courts shall have concurrent jurisdiction with the circuit court, and persons under the age of eighteen years shall be liable for punishment for violation of such traffic laws in the same manner as adults except that magistrate courts shall have no jurisdiction to impose a sentence of confinement for the violation of traffic laws.

As used in this section, "violation of a traffic law of West Virginia" means violation of any law contained in chapters seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code except sections one and two, article four (hit and run) and sections one (negligent homicide), two (driving under influence of alcohol, controlled substances or drugs) and four (reckless driving), article five, chapter seventeen-c of this code.

(b) Any child shall be entitled to be admitted to bail or recognizance in the same manner as a person over the age of eighteen years and shall have the protection guaranteed by article three of the constitution of West Virginia.

(c) The child shall have the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the child, parent or custodian executes an affidavit showing that he cannot pay for an attorney appointed by the court or referee, the court shall appoint counsel, to be paid as provided for in article twenty-one, chapter twenty-nine of this code.
(d) In all proceedings under this article, the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. In all such proceedings the general public shall be excluded except persons whose presence is requested by a child or respondent and other persons the court finds to have a legitimate interest.

Except as herein modified, at all adjudicatory hearings, the rules of evidence applicable in criminal cases shall apply, including the rule against written reports based upon hearsay. Unless otherwise specifically provided in this chapter, all procedural rights afforded adults in criminal proceedings shall be applicable. Extra-judicial statements other than res gestae statements by a child under sixteen years of age, made to law-enforcement officials or while the child is in custody and outside the presence of the child’s counsel shall not be admissible. A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings. At the conclusion of any hearing, the court shall make findings of fact and conclusions of law, and the same shall appear of record.

(e) The court reporter shall furnish a transcript of the relevant proceedings to any indigent child who seeks review of any proceeding under this article if an affidavit is filed stating that the child and his parent or custodian are unable to pay therefor.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-3. Appointment of counsel in criminal proceeding.
1 In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the magistrate shall forthwith advise a defendant of his right to counsel and his right to have counsel appointed if such defendant cannot afford to retain counsel. In the event a defendant requests that counsel be appointed and executes an affidavit that he is unable to afford counsel, the magistrate shall stay further proceedings and shall request the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, to appoint counsel. Such judge shall thereupon appoint counsel. If there is no judge sitting in the county at the time of the request then the clerk...
of the circuit court shall appoint counsel from a list of
attorneys in accordance with the rules established by such
judge of the circuit court. Counsel shall be paid for his
services and expenses in accordance with the provisions of
article twenty-one, chapter twenty-nine of this code.

CHAPTER 53. EXTRAORDINARY REMEDIES.

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-4. Inability to pay costs, etc.; appointment of counsel;
obtaining copies of record or records in criminal
proceedings or in a previous proceeding or
proceedings to secure relief; payment of all costs
and expenses; adjudging of costs.

(a) A petition filed under the provisions of this article may
allege facts to show that the petitioner is unable to pay the
costs of the proceeding or to employ counsel, may request
permission to proceed in forma pauperis and may request the
appointment of counsel. If the court to which the writ is
returnable (hereinafter for convenience of reference referred
to simply as “the court,” unless the context in which used
clearly indicates that some other court is intended) is satisfied
that the facts alleged in this regard are true, and that the
petition was filed in good faith, and has merit or is not
frivolous, the court shall order that the petitioner proceed in
forma pauperis, and the court shall appoint counsel for the
petitioner. If it shall appear to the court that the record in the
proceedings which resulted in the conviction and sentence,
including, but not limited to, a transcript of the testimony
therein, or the record or records in a proceeding or
proceedings on a prior petition or petitions filed under the
provisions of this article, or the record or records in any other
proceeding or proceedings instituted by the petitioner to
secure relief from his conviction or sentence, or all of such
records, or any part or parts thereof, are necessary for a
proper determination of the contention or contentions and
grounds (in fact or law) advanced in the petition, the court
shall, by order entered of record, direct the state to make
arrangements for copies of any such record or records, or all
of such records, or such part or parts thereof as may be
sufficient, to be obtained for examination and review by the
court, the state and the petitioner. The state may on its own
initiative obtain copies of any record or records, or all of the
records, or such part or parts thereof as may be sufficient, as
aforesaid, for its use and for examination and review by the
court and the petitioner. If, after judgment is entered under
the provisions of this article, an appeal or writ of error is
sought by the petitioner in accordance with the provisions of
section nine of this article, and the court which rendered the
judgment is of opinion that the review is being sought in good
faith and the grounds assigned therefor have merit or are not
frivolous, and such court finds that the petitioner is unable to
pay the costs incident thereto or to employ counsel, the court
shall, upon the petitioner's request, order that the petitioner
proceed in forma pauperis and shall appoint counsel for the
petitioner. If an appeal or writ of error is allowed, whether
upon application of the petitioner or the state, the reviewing
court shall, upon the requisite showing the request as
aforesaid, order that the petitioner proceed in forma pauperis
and shall appoint counsel for the petitioner. If it is
determined that the petitioner has the financial means with
which to pay the costs incident to any proceedings hereunder
and to employ counsel, or that the petition was filed in bad
faith or is without merit or is frivolous, or that review is being
sought or prosecuted in bad faith or the grounds assigned
therefor are without merit or are frivolous, the request to
proceed in forma pauperis and for the appointment of
counsel shall be denied and the court making such
determination shall enter an order setting forth the findings
pertaining thereto and such order shall be final.
(b) Whenever it is determined that a petitioner shall
proceed in forma pauperis, all necessary costs and expenses
incident to proceedings hereunder, originally, or on appeal
pursuant to section nine of this article, or both, including, but
not limited to, all court costs, and the cost of furnishing
transcripts, shall, upon certification by the court to the state
auditor, be paid out of the treasury of the state from the
appropriation for criminal charges. Any attorney appointed
in accordance with the provisions of this section shall be paid
for his services and expenses in accordance with the
provisions of article twenty-one, chapter twenty-nine of the
code. All costs and expenses incurred incident to obtaining
copies of any record or records, or all of the records, or such
part or parts thereof as may be sufficient, as aforesaid, for
examination and review by the court, the state and the
petitioner, shall, where the petitioner is proceeding in forma pauperis, and the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be paid out of the treasury of the state, upon certification by the court to the state auditor, from the appropriation for criminal charges. All such costs, expenses and fees shall be paid as provided in this subsection (b) notwithstanding the fact that all proceedings under the provisions of this article are civil and not criminal in character. In the event a petitioner who is proceeding in forma pauperis does not substantially prevail, all such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs.

(c) In the event a petitioner who is not proceeding in forma pauperis does not substantially prevail, all costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs. In any case where the petitioner does not proceed in forma pauperis, the court shall adjudge all costs and expenses to be paid as shall seem to the court to be right, consistent with the immediately preceding sentence of this subsection (c) and with the provisions of chapter fifty-nine of this code, as amended.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

When an indictment is found in any county, against a person for a felony or misdemeanor, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term. If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena
cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state, the reasonable expense whereof shall be paid out of the treasury of the state, upon certificate of the court wherein the case is pending. Every deposition so taken may, on the motion of the defendant, so far as the evidence therein contained is competent and proper, be read to the jury on the trial of the case as evidence therein. A court of record may appoint counsel to assist an accused in criminal cases at any time upon request. A copy of the indictment and of the list of the jurors selected or summoned for his trial, as provided in section three of this article, shall be furnished him, upon his request, at any time before the jury is impaneled. In every case where the court appoints counsel for the accused and the accused presents an affidavit showing that he cannot pay therefor, the attorney so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-22. Appointment of counsel for parole violators; authority to appoint; payment of counsel.

Any person accused of a violation of his parole, as set forth in this article, may be represented by counsel at any hearing held for the purpose of determining whether his parole should be revoked. In the event the person accused of a violation of his parole is unable to pay for counsel and desires to have counsel appointed for him, he shall present his
application for the appointment of counsel and an affidavit reflecting his inability to pay for such counsel to the circuit court in the county in which such person is confined or in the county in which the hearing is to be held for the purpose of determining whether his parole should be revoked, or to the judge thereof in vacation. If it appears to the satisfaction of the court or judge that such person is in fact unable to pay for counsel, such court or judge may appoint counsel to represent such person. Counsel so appointed shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty-nine of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayley
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1981.

Fred C. Wilks
Clerk of the Senate

L.B. Blankenship
Clerk of the House of Delegates

Robert P. Moore
President of the Senate

Speaker House of Delegates

The within is approved this the ___ day of May, 1981.

John R. Bryan
Governor