

APPROVED AND SIGNED BY THE GOVERNOR

Date 5-1-81

Time _____

No. 81

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED

SENATE BILL NO. 81

(By Mr. Jones & Mr. Morland, et al.)



PASSED April 9, 1981

In Effect July 1, 1981 ~~Passage~~



ENROLLED
Senate Bill No. 81

(By MR. JONES, MR. MORELAND, MR. GALPERIN and MR. HUFFMAN)

[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.**

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

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

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

14 (b) *How final commitment proceedings are commenced.*
15 Final commitment proceedings for an individual may be
16 commenced by the filing of a written application under oath
17 and the certificate or affidavit is hereinafter provided with the
18 clerk of the circuit court or mental hygiene commissioner of
19 the county of which the individual is a resident, or where he
20 may be found, or the county of the mental health facility, if he
21 is hospitalized in a mental health facility located in a county

22 other than where he resides or may be found by an adult
23 person having personal knowledge of the facts of the case.

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

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

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

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

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

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

53 (1) The applicant shall file with his application the
54 certificate of a physician or a psychologist stating that in his
55 opinion the individual is mentally ill, mentally retarded or
56 addicted and that because of his mental illness, mental
57 retardation or addiction, the individual is likely to cause
58 serious harm to himself or others if he is allowed to remain at
59 liberty and therefore he should be hospitalized, stating in
60 detail the recent overt acts upon which such conclusion is
61 based: *Provided*, That no such statement of recent overt acts
62 need be made when the applicant alleges the individual is
63 likely to cause serious harm as a result of having a complete
64 inability to care for himself by reason of mental retardation.

65 (2) A certificate is not necessary only when an affidavit is
66 filed by the applicant showing facts that the individual has
67 refused to submit to examination by a physician or a
68 psychologist.

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

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

101 (1) Except as provided in subsection (3) of this section,
102 within a reasonable time after notice of the commencement of
103 final commitment proceedings is given, the circuit court or
104 mental hygiene commissioner shall appoint a physician or
105 psychologist to examine the individual and report to the
106 circuit court or mental hygiene commissioner his findings as

107 the mental condition of the individual and the likelihood of
108 his causing serious harm to himself or others.

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

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

127 (g) *Rights of the individual at the final commitment*
128 *hearing; seven days' notice to counsel required.*

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

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

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

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

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

148 (1) The counsel representing an individual shall conduct a
149 timely interview, make investigation and secure appropriate

150 witnesses, and shall be present at the hearing and protect the
151 interest of the individual.

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

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

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

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

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

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

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

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

190 (1) Upon completion of the final commitment hearing, and
191 the evidence presented therein, the circuit court or mental

192 hygiene commissioner shall make findings as to whether or
193 not the individual is mentally ill, retarded or addicted and
194 because of his illness, retardation or addiction is likely to
195 cause serious harm to himself or to others if allowed to
196 remain at liberty and is a resident of the county in which the
197 hearing is held or currently is a patient at a mental health
198 facility in such county.

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

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

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

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

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

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

232 (4) An order for an indeterminate period shall expire of its
233 own terms at the expiration of two years from the date of the

234 last order of commitment unless prior to the expiration, the
235 department of health, upon findings based on an examination
236 of the patient by a physician or a psychologist, extends the
237 order for indeterminate hospitalization: *Provided*, That if the
238 patient or his counsel requests a hearing, then a hearing shall
239 be held by the mental hygiene commissioner; or by the circuit
240 court of the county as provided in subsection (a) of this
241 section.

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

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

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

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

271 (2) If the circuit court or mental hygiene commissioner of
272 the county of the residence of the individual is satisfied from
273 the evidence contained in such transcript that such
274 individual should be hospitalized as determined by the
275 standard set forth above, the circuit court shall order the

276 appropriate hospitalization as though the individual has been
277 brought before the circuit court or its mental hygiene
278 commissioner in the first instance.

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

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

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

298 (q) *Report to the director of health.*

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

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

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

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

317 (2) The county commission shall pay out of the county
318 treasury all other expenses incurred in the hearings

319 conducted under the provisions of this article whether or not
 320 hospitalization is ordered, including any fee allowed by the
 321 circuit court by order entered of record for any physician,
 322 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
 2 proceedings the state is required to provide high quality legal
 3 assistance to indigent persons who would be otherwise
 4 unable to afford adequate legal counsel; that providing legal
 5 representation to those who face an economic barrier to
 6 adequate legal counsel will serve the ends of justice in
 7 accordance with rights and privileges guaranteed to all
 8 citizens by the constitution of the United States of America
 9 and the constitution of the state of West Virginia; that the
 10 availability of quality legal assistance reaffirms the faith of
 11 our citizens in our government of laws; that the present
 12 system which utilizes appointed counsel is not operating
 13 satisfactorily in some areas of this state and the Legislature is
 14 presently unable to determine what system or systems will
 15 provide the most efficient means for providing legal
 16 representation; that there is a need to explore alternative
 17 methods of delivering legal assistance, including the use of
 18 salaried public defenders complemented by private panel
 19 attorneys; that innovative programs and pilot projects as well
 20 as a continuation of the present appointed counsel system are
 21 necessary in separate areas of the state to provide information
 22 and experience upon which to base future legislative action.

§29-21-2. Definitions.

- 1 As used in this article:
- 2 (1) "Council" or "legal services council" means the West
 3 Virginia public legal services council established under this
 4 article;
- 5 (2) "Eligible client" means any person who is accused of a
 6 serious crime, has been convicted of such crime, is a party in a
 7 juvenile court proceeding, or is the respondent in a
 8 commitment proceeding, and who is to be afforded legal
 9 representation under the provisions of this article;
- 10 (3) "Legal representation" or "legal assistance" means the

11 provision of any legal services consistent with the purposes
12 and provisions of this article;

13 (4) "Outside practice of law" means the provision of legal
14 assistance to a client who is not entitled to receive legal
15 assistance from the employer of the attorney rendering
16 assistance, but does not include, among other activities,
17 teaching, consulting, or performing evaluation;

18 (5) "Public defender" means the staff attorney employed
19 on a full-time basis by a public defender corporation who, in
20 addition to his direct representation of eligible clients, has
21 administrative responsibility for the operation of the public
22 defender corporation: *Provided*, That the public defender
23 may be a part-time employee if the board of directors of the
24 public defender corporation finds that there are
25 extraordinary circumstances wherein efficient operation
26 requires that no staff attorneys should be employed on a
27 full-time basis, and the council approves such part-time
28 employment;

29 (6) "Assistant public defender" means a staff attorney
30 hired by the public defender to provide direct representation
31 of eligible clients, and whose salary and status as a full-time
32 or part-time employee are fixed by the board of directors of
33 the public defender corporation;

34 (7) "Public defender corporation" or "public defender
35 office" means a corporation created under section nine of this
36 article for the sole purpose of providing legal representation
37 to eligible clients;

38 (8) "Serious crime" means:

39 (a) a felony;

40 (b) a misdemeanor or offense, the penalty for which
41 involves the possibility of confinement or a fine of more than
42 five hundred dollars, or any other offense of a criminal nature
43 which, in the opinion of the court, because of the complexity
44 of the matter, or the youth, inexperience, or mental capacity
45 of the accused, requires representation of the accused by an
46 attorney;

47 (c) an act which, except for the age of the person involved,
48 would otherwise be a serious crime; and

49 (d) any other charge, including revocation of probation or
50 parole, which involves the possibility of confinement in a
51 penal institution.

§29-21-3. Establishment of West Virginia public legal services council.

1 There is hereby created the West Virginia public legal
2 services council, for the purpose of facilitating required legal
3 representation of indigent persons. The council shall have
4 primary responsibility to administer, coordinate and evaluate
5 programs for the delivery of legal assistance to eligible
6 clients, to monitor the progress of various delivery systems,
7 and to recommend improvements. The council shall maintain
8 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.

1 (a) The council shall consist of sixteen members
2 appointed by the governor, by and with the advice and
3 consent of the Senate, one to be appointed from each state
4 senatorial district, exclusive of the seventeenth senatorial
5 district. At least six shall be members of the bar of the
6 supreme court of appeals, at least six shall not be attorneys,
7 and none shall be a full-time employee of the state. The
8 membership of the council shall be appointed so as to be
9 generally representative of the organized bar, panel attorneys,
10 public defenders and assistant public defenders, and the
11 general public. No more than nine members of the council
12 shall be members of the same political party.

13 (b) The term of office of each member of the council shall
14 be four years. Any member appointed to fill a vacancy
15 occurring prior to the expiration of the term for which such
16 member's predecessor was appointed shall be appointed for
17 the remainder of such term.

18 (c) The members of the council shall not, by reason of
19 such membership, be deemed officers or employees of the
20 state of West Virginia.

21 (d) The governor shall select from among the voting
22 members of the council a chairman.

23 (e) Eight members shall constitute a quorum to conduct
24 business.

25 (f) When a member shall fail to appear at three consecutive
26 meetings of the council or at one half of the meetings held
27 during a two-year period, the secretary shall notify the
28 member and the governor of such fact. A member may not be
29 removed unless notice of the basis of removal has been given

30 to such member at least thirty days before an action is taken
31 concerning his removal and the member has been afforded
32 the opportunity to contest his removal by making written
33 submissions to the governor.

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

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

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

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

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

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

4 (b) The council shall:

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

7 (2) review the administrative operations of the council;

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

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

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

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

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

1 (a) The governor shall appoint the executive director of
2 the council, who shall serve at the will and pleasure of the

3 governor. The executive director shall be a qualified
 4 administrator as determined by the governor, and may be a
 5 member of the bar of the supreme court of appeals. In
 6 addition to the executive director there shall be such other
 7 employees hired by the executive director as the council
 8 determines to be necessary. The executive director shall have
 9 such authority and perform such duties as may be required or
 10 necessary to effectuate this article. The executive director
 11 shall provide supervision and direction to the other
 12 employees of the council in the performance of their duties.

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

§29-21-7. Powers, duties, and limitations of public legal services council.

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

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

13 (c) The council shall establish and the executive director
 14 or his designate shall operate a criminal law research center
 15 as provided for in section eight of this article, and through
 16 such center shall undertake directly, or by grant or contract,
 17 to serve as a clearinghouse for information, to provide
 18 training and technical assistance relating to the delivery of
 19 legal representation, and to engage in research, except that
 20 broad general legal or policy research unrelated to direct
 21 representation of eligible clients may not be undertaken by
 22 grant or contract.

23 (d) The council shall establish and the executive director
 24 or his designate shall operate an accounting and auditing
 25 division to require and monitor the compliance of public

26 defender corporations and their employees with the
27 provisions of this article. This division shall receive all plans
28 and proposals for loans, grants, and contracts, and all
29 requisitions for payment, and shall review the same. All such
30 plans and proposals shall be approved or disapproved by the
31 division on the basis of conformity to the provisions of this
32 article, and a recommendation shall then be made to the
33 executive director and the advisory board. After review by
34 the division, the executive director shall draw requisitions on
35 the state auditor for payment to public defender corporations
36 and others, upon proper application under the provisions of
37 this article. The division shall prepare, or cause to be
38 prepared, reports concerning the evaluation, inspection, or
39 monitoring of public defender corporations and other
40 grantees, contractors, or persons or entities receiving
41 financial assistance under this article, and shall further carry
42 out the council's responsibilities for records and reports as set
43 forth in section nineteen of this article.

44 (e) The council shall establish and the executive director
45 or his designate shall operate an appellate advocacy division
46 for the purpose of prosecuting litigation on behalf of eligible
47 clients in the supreme court of appeals. The executive
48 director or a person designated by him shall be the director of
49 the appellate advocacy division and shall represent eligible
50 clients in only those instances where the trial attorney or
51 other local counsel is unwilling or unable to serve as appellate
52 counsel. The executive director is empowered to select and
53 employ staff attorneys to perform the duties prescribed by
54 this subsection, the number of such staff attorneys being
55 fixed by the board. The appellate division shall have its own
56 budget as determined appropriate by the council and shall
57 maintain vouchers and records for representation of eligible
58 clients, for record purposes only.

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

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

3 (1) undertake research, studies and analyses and act as a
4 central repository, clearinghouse and disseminator of
5 research materials;

6 (2) prepare and distribute a criminal law manual and other
7 materials and establish and implement standard and

8 specialized training programs for attorneys practicing
9 criminal law;

10 (3) provide and coordinate continuing legal educational
11 programs and services for attorneys practicing criminal law;
12 and

13 (4) prepare, supplement and disseminate indices and
14 digests of decisions of the West Virginia supreme court of
15 appeals and other courts, statutes and other legal authorities
16 relating to criminal law.

17 (b) The services of the criminal law research center shall
18 be offered at reasonable rates or by subscription, and such
19 service shall be provided to prosecuting attorneys and their
20 professional staffs, panel attorneys, and private attorneys
21 engaged in the practice of criminal law on the same basis as
22 such services are provided to public defender corporations,
23 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.**

1 (a) In each judicial circuit of the state, there is hereby
2 created a public body corporate and politic to be known as
3 the "public defender corporation" of the circuit: *Provided,*
4 That there shall be but one such public defender corporation
5 designated for the twenty-third and thirty-first judicial
6 circuits, which shall serve both circuits. The purpose of such
7 public defender corporations is to provide legal
8 representation in the respective circuits in accordance with
9 the provisions of this article. Except as provided in
10 subsection (b) of this section, a public defender office created
11 by this subsection shall not be activated so as to transact any
12 business or exercise its powers under this article before the
13 first day of April, one thousand nine hundred eighty-two and
14 until or unless the judge of a single judge circuit or the chief
15 judge of a multi-judge circuit or a majority of the active
16 members of the bar in the circuit, shall determine at any time
17 hereafter that there is a need in the circuit to activate the
18 public defender corporation, shall certify such fact to the
19 council in writing, and shall have the activation of the office
20 recommended by the council and approved by the executive
21 director.

22 (b) The public defender corporations are hereby activated
23 in the first, second, third, seventh, eighth, ninth, eleventh,

24 thirteenth, fourteenth, fifteenth, twenty-third and thirty-first
25 combined, twenty-fifth, twenty-eighth and thirtieth judicial
26 circuits.

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

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

§29-21-10. Panel attorneys; method of appointment.

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

9 (b) An attorney-at-law may become a panel attorney and
10 have his name placed on the regional or local panel, or both,
11 to serve as counsel for eligible clients, by informing the court
12 that he is willing to serve as such. A prospective panel
13 attorney shall inform the court in writing, on forms provided
14 by the executive director, whether or not he will accept
15 appointments generally, and if not, which types of cases
16 described in section fifteen of this article he will not accept
17 appointment in. The attorney shall also indicate whether or
18 not he will accept appointment in adjoining circuits and, if so,
19 the circuits in which he will accept appointments. An
20 agreement to accept cases generally or certain types of cases

21 particularly shall not prevent a panel attorney from declining
22 an appointment in a specific case.

23 (c) In all cases where an attorney-at-law is required to be
24 appointed for an eligible client, the appointment shall be
25 made by the circuit judge. In circuits where the public
26 defender corporation is in operation, the judge shall appoint
27 the public defender office. If the appointment of the public
28 defender or his assistant is not appropriate, the court shall
29 appoint a panel attorney from the local panel. If there is no
30 local panel attorney available, the judge shall appoint a panel
31 attorney from the regional panel. If there is no regional panel
32 attorney available, the judge may appoint a public defender
33 from an adjoining circuit when such public defender agrees
34 to the appointment. In circuits where the public defender
35 corporation is not activated, the judge shall first refer to the
36 local panel and then to the regional panel in making
37 appointments, and if an appointment cannot be made from
38 the panel attorneys, the judge may appoint the public
39 defender of an adjoining circuit when such public defender
40 agrees to the appointment. In any circuit, when there is no
41 public defender or assistant public defender, local panel
42 attorney, regional panel attorney, or public defender of an
43 adjoining circuit available, the judge may appoint a qualified
44 private attorney to provide representation, and such private
45 attorney shall be treated as a panel attorney for that specific
46 case. In any given case, the appointing judge may alter the
47 order in which he considers attorneys available for
48 appointment if, in his discretion, the case requires particular
49 knowledge or experience on the part of the attorney to be
50 appointed.

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

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

11 days prior to the filing of an application or a proposal for
12 modification.

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

16 (1) the identity of the applicant;

17 (2) the geographical location of the proposed program;

18 (3) a brief description of the proposed program, general
19 size or scale, estimated cost, or other characteristics which
20 will enable the circuit court to determine how the system for
21 representation of indigents within the circuit may be affected
22 by the proposed program; and

23 (4) the estimated date the public defender corporation
24 expects to formally file an application or modification
25 proposal.

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

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

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

11 (1) information exhibiting compliance with the
12 requirements of this article;

13 (2) a projection of the annual caseload to be handled by
14 the public defender corporation, describing the methods to
15 be used to meet objectives;

16 (3) a description of the staff required for adequate
17 administration of the plan; and

18 (4) a description of the facilities and equipment required
19 to provide adequate legal representation of eligible clients.

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

24 (d) Public defender corporations will include with the
25 completed application as submitted to the agency:

26 (1) all comments and recommendations made by the
27 circuit judges, along with a statement that such comments
28 have been considered prior to submission of the application;
29 or

30 (2) where no comments have been received from circuit
31 judges, a statement that the procedures outlined in this
32 section have been followed and that no comments or
33 recommendations have been received.

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

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

43 (g) If notification is required under section eleven of this
44 article, a circuit judge will complete review of a program
45 notification within fifteen days after receipt by the judge of
46 the notification. Where the public defender corporation has
47 not received a response to the notification from a circuit
48 judge within the fifteen-day period, the public defender
49 corporation may consider the judge to have waived his
50 opportunity to review and comment on the proposed
51 program or program modification. If a public defender
52 corporation submits a completed application to a circuit
53 judge during the fifteen-day notification review period, the
54 judge will complete review within fifteen days plus the
55 number of days remaining in the fifteen-day notification
56 period. If a public defender corporation submits to a circuit
57 judge a completed application without a prior notification,
58 the judge will complete review of the application within
59 thirty days.

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

64 (i) If review of an application is not completed within the
65 time periods prescribed in this section the public defender
66 corporation may consider that the application has been
67 favorably reviewed and may submit the application to the
68 public legal services council for consideration.

§29-21-13. Responsibilities of public legal services council upon receipt of applications for funding.

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

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

12 (c) Where a judge has recommended against approval, or
13 has recommended approval only with specific and major
14 substantive changes, and the council approves the
15 application substantially as submitted, the council will
16 provide the judge with, along with the approval notice, an
17 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.

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

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

14 (1) an equipment loan in a requested amount of up to five
15 thousand dollars plus such additional amount above five
16 thousand dollars as may be approved by the council; and

17 (2) an operational loan not to exceed the projected
18 operational costs for the first six months of program
19 operation: *Provided*, That upon subsequent application by
20 the public defender corporation, the operational loan shall be
21 increased to an amount not exceeding the projected
22 operational costs for the full twelve-month period of program
23 operation. Operational loan funds shall be forwarded to the
24 public defender corporation in quarterly installments.

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

50 (d) All panel attorneys shall maintain detailed and
51 accurate records of the time expended and expenses incurred
52 on behalf of eligible clients, and upon completion of each
53 case, exclusive of appeal, shall submit to the appointing court
54 a voucher for services which meets the requirements of
55 subsection (h) of this section. After approval by the court, the
56 court shall forward such voucher to the council, with an order
57 of the court approving payment of the amount of the voucher
58 or of such lesser sum to which the court shall believe the

59 panel attorney to be entitled. The executive director shall
60 make payment to the panel attorney.

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

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

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

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

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

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

96 (h) Vouchers submitted under this section shall
97 specifically set forth the nature of the service rendered, the
98 stage of proceeding or type of hearing involved, and the date
99 and place the service was rendered. If the charge against the
100 eligible client for which services were rendered is one of

101 several charges involving multiple warrants or indictments,
102 the voucher shall indicate such fact and sufficiently identify
103 the several charges so as to enable the court to avoid a
104 duplication of compensation for services rendered. The
105 voucher shall indicate whether the services were rendered by
106 a public defender corporation, a local panel attorney, a
107 regional panel attorney, or such other private attorney as may
108 have been appointed. A voucher submitted to the council
109 which is not in conformity with the record-keeping and
110 compensation provisions of this article may be returned to
111 the court for further review.

§29-21-15. Limitation on use of funds; exceptions.

1 (a) Funds made available by the council to public
2 defender corporations under this article, either by loan, grant,
3 or contract, shall be used to provide legal representation for
4 persons accused or convicted of serious crimes, except that
5 funds may be used for representation of indigent person in
6 the following proceedings:

7 (1) juvenile proceedings, including child neglect and
8 abuse proceedings;

9 (2) mental hygiene proceedings;

10 (3) habeas corpus actions brought for the purpose of
11 challenging the validity of confinement arising out of
12 proceedings involving serious crimes, juvenile proceedings,
13 or mental hygiene proceedings;

14 (4) prohibition actions brought for the purpose of
15 challenging the excessive exercise of authority in a criminal,
16 juvenile, or commitment proceeding by a lower tribunal; and

17 (5) mandamus actions brought for the purpose of
18 commanding action applicable to criminal, juvenile, or
19 commitment proceedings.

20 (b) Funds received from another source other than the
21 council for the provision of legal representation shall not be
22 used by a public defender corporation for purposes
23 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
2 corporation shall be a board of directors consisting of persons
3 who are residents of the area to be served by the public
4 defender corporation.

5 (1) In multi-county circuits, the county commission of
6 each county within the area served shall appoint a director,
7 who shall not be an attorney-at-law. The president of each
8 county bar association within the area served shall appoint a
9 director, who shall be an attorney-at-law: *Provided*, That in a
10 county where there is not an organized and active bar
11 association, the circuit court shall convene a meeting of the
12 members of the bar of the court resident within the county
13 and such members of the bar shall elect one of their number
14 as a director. The governor shall appoint one director, who
15 shall serve as chairman, who may, but need not be, an
16 attorney-at-law, unless such appointment would result in
17 there being an even number of directors, in which event the
18 governor shall appoint two directors, one of whom may be an
19 attorney-at-law.

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

25 (b) The board of directors shall have at least four meetings
26 a year. Timely and effective prior public notice of all meetings
27 shall be given, and all meetings shall be public except for
28 those concerned with matters properly discussed in
29 executive session.

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

36 (1) appointment of the public defender and determination
37 of the number of assistant public defenders as may be
38 necessary to enable the public defender corporation to
39 provide legal representation to eligible clients; and

40 (2) approval of the public defender corporation's budget
41 and the fixing of professional salaries; and

42 (3) renewal of the employment contract of the public
43 defender on an annual basis except where such renewal is
44 denied for cause: *Provided*, That the board of directors shall
45 have the power at any time to remove the public defender for
46 misfeasance, malfeasance or nonfeasance;

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

52 (e) While serving on the board of directors, no member
53 shall receive compensation from the public defender
54 corporation, but a member may receive payment for normal
55 travel and other out-of-pocket expenses required for
56 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.**

1 (a) The council shall establish, in consultation with the
2 commissioner of the department of finance and
3 administration, with the chief justice of the supreme court of
4 appeals, and with the judges of the several circuits, maximum
5 annual income levels for individuals eligible for legal
6 representation under this article. The council shall consider
7 such factors as family size, urban and rural differences,
8 substantial cost-of-living variation, and the cost of available
9 private representation.

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

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

21 (2) Liquid net assets and other assets which may
22 reasonably be available for the employment of private
23 counsel;

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

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

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

29 (6) The cost of obtaining private legal representation with
30 respect to the particular matter in which assistance is sought;
31 and

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

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

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

69 (e) The making of an affidavit subject to inquiry under this
70 section shall not in any event give rise to criminal remedies

71 against the affiant nor occasion any civil action against the
72 affiant except for the recovery of costs as in any other case
73 where costs may be recovered: *Provided*, That a person who
74 has made an affidavit knowing the contents thereof to be false
75 may be prosecuted for false swearing as provided by law.

§29-21-18. Outside practice of law by public defenders.

1 (a) No full-time public defender or full-time assistant
2 public defender shall engage in any outside practice of law
3 except as provided in this section.

4 (b) A board of directors may permit a full-time public
5 defender or full-time assistant public defender to engage in
6 the outside practice of law for compensation if:

7 (1) the public defender or assistant public defender is
8 newly employed and has a professional responsibility to close
9 cases from a previous law practice, and does so as
10 expeditiously as possible; or

11 (2) the public defender or assistant public defender is
12 acting pursuant to an appointment made under a court rule or
13 practice of equal applicability to all attorneys in the
14 jurisdiction, and remits to the public defender corporation all
15 compensation received.

16 (c) A board of directors may permit a public defender or
17 assistant public defender to engage in uncompensated
18 outside practice of law if the public defender or assistant
19 public defender is acting:

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

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

24 (3) on behalf of a religious, community, or charitable
25 group.

§29-21-19. Records and reports.

1 (a) The council is authorized to require such reports as it
2 deems necessary from any public defender corporation
3 receiving financial assistance under this article regarding
4 activities carried out pursuant to this article.

5 (b) The council is authorized to prescribe the keeping of
6 records with respect to funds provided by the council and
7 shall have access to such records at all reasonable times for
8 the purpose of insuring compliance with the terms and
9 conditions upon which financial assistance was provided.

10 (c) The council shall publish an annual report which shall
11 be filed by the council with the governor and the Legislature
12 on or before the thirty-first day of January of each year.

13 (d) Copies of all reports pertinent to the evaluation,
14 inspection, or monitoring of any public defender corporation
15 receiving financial assistance under this article shall be
16 submitted on a timely basis to such public defender
17 corporation and shall be maintained by the council for a
18 period of at least five years subsequent to such evaluation,
19 inspection, or monitoring. Such reports shall be available for
20 public inspection during regular business hours, and copies
21 shall be furnished, upon request, to interested parties upon
22 payment of such reasonable fees as the agency may establish.

§29-21-20. Audits.

1 (a) The accounts of each public defender corporation shall
2 be audited annually. Such audits shall be conducted in
3 accordance with generally accepted auditing standards by
4 the state tax commissioner.

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

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

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

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

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

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

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

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

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

30 (c) The child shall have the right to be effectively
31 represented by counsel at all stages of proceedings under the
32 provisions of this article. If the child, parent or custodian
33 executes an affidavit showing that he cannot pay for an
34 attorney appointed by the court or referee, the court shall
35 appoint counsel, to be paid as provided for in article
36 twenty-one, chapter twenty-nine of this code.

37 (d) In all proceedings under this article, the child shall be
38 afforded a meaningful opportunity to be heard, including the
39 opportunity to testify and to present and cross-examine
40 witnesses. In all such proceedings the general public shall be
41 excluded except persons whose presence is requested by a
42 child or respondent and other persons the court finds to have
43 a legitimate interest.

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

58 (e) The court reporter shall furnish a transcript of the
59 relevant proceedings to any indigent child who seeks review
60 of any proceeding under this article if an affidavit is filed
61 stating that the child and his parent or custodian are unable to
62 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
2 the applicable statutes authorize a sentence of confinement
3 the magistrate shall forthwith advise a defendant of his right
4 to counsel and his right to have counsel appointed if such
5 defendant cannot afford to retain counsel. In the event a
6 defendant requests that counsel be appointed and executes
7 an affidavit that he is unable to afford counsel, the magistrate
8 shall stay further proceedings and shall request the judge of
9 the circuit court, or the chief judge thereof if there is more
10 than one judge of the circuit court, to appoint counsel. Such
11 judge shall thereupon appoint counsel. If there is no judge
12 sitting in the county at the time of the request then the clerk

13 of the circuit court shall appoint counsel from a list of
14 attorneys in accordance with the rules established by such
15 judge of the circuit court. Counsel shall be paid for his
16 services and expenses in accordance with the provisions of
17 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.

1 (a) A petition filed under the provisions of this article may
2 allege facts to show that the petitioner is unable to pay the
3 costs of the proceeding or to employ counsel, may request
4 permission to proceed in forma pauperis and may request the
5 appointment of counsel. If the court to which the writ is
6 returnable (hereinafter for convenience of reference referred
7 to simply as "the court," unless the context in which used
8 clearly indicates that some other court is intended) is satisfied
9 that the facts alleged in this regard are true, and that the
10 petition was filed in good faith, and has merit or is not
11 frivolous, the court shall order that the petitioner proceed in
12 forma pauperis, and the court shall appoint counsel for the
13 petitioner. If it shall appear to the court that the record in the
14 proceedings which resulted in the conviction and sentence,
15 including, but not limited to, a transcript of the testimony
16 therein, or the record or records in a proceeding or
17 proceedings on a prior petition or petitions filed under the
18 provisions of this article, or the record or records in any other
19 proceeding or proceedings instituted by the petitioner to
20 secure relief from his conviction or sentence, or all of such
21 records, or any part or parts thereof, are necessary for a
22 proper determination of the contention or contentions and
23 grounds (in fact or law) advanced in the petition, the court
24 shall, by order entered of record, direct the state to make
25 arrangements for copies of any such record or records, or all
26 of such records, or such part or parts thereof as may be
27 sufficient, to be obtained for examination and review by the
28 court, the state and the petitioner. The state may on its own
29 initiative obtain copies of any record or records, or all of the

30 records, or such part or parts thereof as may be sufficient, as
31 aforesaid, for its use and for examination and review by the
32 court and the petitioner. If, after judgment is entered under
33 the provisions of this article, an appeal or writ of error is
34 sought by the petitioner in accordance with the provisions of
35 section nine of this article, and the court which rendered the
36 judgment is of opinion that the review is being sought in good
37 faith and the grounds assigned therefor have merit or are not
38 frivolous, and such court finds that the petitioner is unable to
39 pay the costs incident thereto or to employ counsel, the court
40 shall, upon the petitioner's request, order that the petitioner
41 proceed in forma pauperis and shall appoint counsel for the
42 petitioner. If an appeal or writ of error is allowed, whether
43 upon application of the petitioner or the state, the reviewing
44 court shall, upon the requisite showing the request as
45 aforesaid, order that the petitioner proceed in forma pauperis
46 and shall appoint counsel for the petitioner. If it is
47 determined that the petitioner has the financial means with
48 which to pay the costs incident to any proceedings hereunder
49 and to employ counsel, or that the petition was filed in bad
50 faith or is without merit or is frivolous, or that review is being
51 sought or prosecuted in bad faith or the grounds assigned
52 therefor are without merit or are frivolous, the request to
53 proceed in forma pauperis and for the appointment of
54 counsel shall be denied and the court making such
55 determination shall enter an order setting forth the findings
56 pertaining thereto and such order shall be final.

57 (b) Whenever it is determined that a petitioner shall
58 proceed in forma pauperis, all necessary costs and expenses
59 incident to proceedings hereunder, originally, or on appeal
60 pursuant to section nine of this article, or both, including, but
61 not limited to, all court costs, and the cost of furnishing
62 transcripts, shall, upon certification by the court to the state
63 auditor, be paid out of the treasury of the state from the
64 appropriation for criminal charges. Any attorney appointed
65 in accordance with the provisions of this section shall be paid
66 for his services and expenses in accordance with the
67 provisions of article twenty-one, chapter twenty-nine of the
68 code. All costs and expenses incurred incident to obtaining
69 copies of any record or records, or all of the records, or such
70 part or parts thereof as may be sufficient, as aforesaid, for
71 examination and review by the court, the state and the

72 petitioner, shall, where the petitioner is proceeding in forma
 73 pauperis, and the court orders the state to make
 74 arrangements for the obtaining of same or the state obtains
 75 the same on its own initiative, be paid out of the treasury of
 76 the state, upon certification by the court to the state auditor,
 77 from the appropriation for criminal charges. All such costs,
 78 expenses and fees shall be paid as provided in this subsection
 79 (b) notwithstanding the fact that all proceedings under the
 80 provisions of this article are civil and not criminal in
 81 character. In the event a petitioner who is proceeding in
 82 forma pauperis does not substantially prevail, all such costs,
 83 expenses and fees shall be and constitute a judgment of the
 84 court against the petitioner to be recovered as any other
 85 judgment for costs.

86 (c) In the event a petitioner who is not proceeding in
 87 forma pauperis does not substantially prevail, all costs and
 88 expenses incurred incident to obtaining copies of any record
 89 or records, or all of the records, or such part or parts thereof as
 90 may be sufficient, as aforesaid, for examination and review by
 91 the court, the state and the petitioner, shall, where the court
 92 orders the state to make arrangements for the obtaining of
 93 same or the state obtains the same on its own initiative, be
 94 and constitute a judgment of the court against the petitioner
 95 to be recovered as any other judgment for costs. In any case
 96 where the petitioner does not proceed in forma pauperis, the
 97 court shall adjudge all costs and expenses to be paid as shall
 98 seem to the court to be right, consistent with the immediately
 99 preceding sentence of this subsection (c) and with the
 100 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.

1 When an indictment is found in any county, against a
 2 person for a felony or misdemeanor, the accused, if in
 3 custody, or if he appear in discharge of his recognizance, or
 4 voluntarily, shall, unless good cause be shown for a
 5 continuance, be tried at the same term. If any witness for the
 6 accused be a nonresident of the state, or absent therefrom in
 7 any service or employment, so that service of a subpoena

8 cannot be had upon him in this state, or is aged or infirm so
9 that he cannot attend upon the court at the trial, the accused
10 may present to the court in which the case is pending, or to
11 the judge thereof in vacation, an affidavit showing such facts,
12 and stating therein what he expects to prove by any such
13 witness, his name, residence, or place of service or
14 employment; and if such court or judge be of the opinion that
15 the evidence of any such witness, as stated in such affidavit, is
16 necessary and material to the defense of the accused on his
17 trial, an order may be made by such court or judge for the
18 taking of the deposition of any such witness upon such notice
19 to the prosecuting attorney, of the time and place of taking
20 the same, as the court or judge may prescribe; and in such
21 order the court or judge may authorize the employment of
22 counsel, practicing at or near the place where the deposition
23 is to be taken, to cross-examine the witness on behalf of the
24 state, the reasonable expense whereof shall be paid out of the
25 treasury of the state, upon certificate of the court wherein the
26 case is pending. Every deposition so taken may, on the
27 motion of the defendant, so far as the evidence therein
28 contained is competent and proper, be read to the jury on the
29 trial of the case as evidence therein. A court of record may
30 appoint counsel to assist an accused in criminal cases at any
31 time upon request. A copy of the indictment and of the list of
32 the jurors selected or summoned for his trial, as provided in
33 section three of this article, shall be furnished him, upon his
34 request, at any time before the jury is impaneled. In every
35 case where the court appoints counsel for the accused and the
36 accused presents an affidavit showing that he cannot pay
37 therefor, the attorney so appointed shall be paid for his
38 services and expenses in accordance with the provisions of
39 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.**

1 Any person accused of a violation of his parole, as set forth
2 in this article, may be represented by counsel at any hearing
3 held for the purpose of determining whether his parole
4 should be revoked. In the event the person accused of a
5 violation of his parole is unable to pay for counsel and desires
6 to have counsel appointed for him, he shall present his

7 application for the appointment of counsel and an affidavit
8 reflecting his inability to pay for such counsel to the circuit
9 court in the county in which such person is confined or in the
10 county in which the hearing is to be held for the purpose of
11 determining whether his parole should be revoked, or to the
12 judge thereof in vacation. If it appears to the satisfaction of
13 the court or judge that such person is in fact unable to pay for
14 counsel, such court or judge may appoint counsel to
15 represent such person. Counsel so appointed shall be paid for
16 his services and expenses in accordance with the provisions
17 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. Bayler
Chairman Senate Committee

Tommy E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1981.

Judd C. Wilkins
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

Mark R. Parnell
President of the Senate

Hyler M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *1*

day of *May*, 1981.

John A. Rayner
Governor



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OFFICE OF THE GOVERNOR

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SECY. OF STATE