WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 231

(By Senator Tucker, Mr. President)

PASSED April 8, 1989
In Effect from Passage
AN ACT to amend and reenact article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a general revision of the law applicable to providing public legal services to indigents subjected to criminal or quasi-criminal proceedings.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-l. Legislative findings; 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.


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

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

(2) "Eligible proceeding": Criminal charges which may result in incarceration, juvenile proceedings, proceedings to revoke parole or probation if the revocation may result in incarceration, contempts of court, child abuse and neglect proceedings which may result in a termination of parental rights, mental hygiene commitment proceedings, paternity proceedings, extradition proceedings, proceedings brought in aid of an eligible proceeding, and appeals from or post conviction challenges to the final judgment in an eligible proceeding. Legal representation provided pursuant to the provisions of this article shall be limited to the court system of the state of West Virginia;
(3) "Legal representation": The provision of any legal services or legal assistance consistent with the purposes and provisions of this article;

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

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

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

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

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

§29-21-3. Establishment of public defender services.

There is hereby created an executive agency known as public defender services. The agency shall administer, coordinate and evaluate programs by which the state provides legal representation to indigent persons, monitor the progress of various delivery systems, and recommend improvements. The agency shall maintain its office at the state capitol.
§29-21-4. Purpose and duties of public defender services.

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

§29-21-5. Executive director.

1 (a) The governor shall appoint, by and with the advice and consent of the Senate, on or before the first day of July, one thousand nine hundred eighty-nine, the executive director of public defender services, who shall serve at the will and pleasure of the governor. The executive director shall be a qualified administrator as determined by the governor, and shall be a member of the bar of the supreme court of appeals. In addition to the executive director there shall be such other employees as the executive director determines to be necessary. The executive director shall have the authority to promulgate rules, and shall have such other authority and perform such duties as may be required or necessary to effectuate this article. The executive director shall provide supervision and direction to the other agency employees in the performance of their duties.

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


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

9 (b) The agency is authorized to accept, and employ or dispose of in furtherance of the purposes of this article, any money or property, real, personal or mixed, tangible or intangible, received by gift, devise, bequest or otherwise.
(c) The agency shall establish and the executive director or his designate shall operate a criminal law research center as provided for in section seven of this article. This 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.

(d) The agency shall establish and the executive director or his designate shall operate an accounting and auditing division to require and monitor the compliance with this article by public defender corporations and other persons or entities receiving funding or compensation from the agency. This division shall review all plans and proposals for loans, grants and contracts, and shall make a recommendation of approval or disapproval to the executive director. The division shall prepare, or cause to be prepared, reports concerning the evaluation, inspection, or monitoring of public defender corporations and other grantees, contractors, persons or entities receiving financial assistance under this article, and shall further carry out the agency's responsibilities for records and reports as set forth in section eighteen of this article.

Upon the request of the executive director, the accounting and auditing division shall require each public defender corporation to annually report on nonbillable time of its professional employees, including time utilized in administration of the respective offices, so as to compare such time to similar time expended in nonpublic law offices for like activities.

(e) The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. Such assistance shall include, but not be limited to, budget preparation and statistical analysis.

(f) The agency shall establish and the executive director or a person designated by the executive
director 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 the executive director shall be the director of the appellate advocacy division. The appellate advocacy division shall represent eligible clients upon appointment by the circuit courts, or by the supreme court of appeals. The division may, however, refuse such appointments due to a conflict of interest or if the executive director has determined the existing caseload cannot be increased without jeopardizing the appellate division's ability to provide effective representation. In order to effectively and efficiently utilize the resources of the appellate division the executive director may restrict the provision of appellate representation to certain types of cases.

The executive director is empowered to select and employ staff attorneys to perform the duties prescribed by this subsection. Within the appropriations to the agency, the appellate division shall have its own budget as determined to be appropriate by the executive director and shall maintain vouchers and records for representation of eligible clients, for record purposes only.

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

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

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

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

(3) Provide and coordinate continuing legal education programs and services for attorneys practicing
(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.


(a) In each judicial circuit of the state, there is
hereby created a “public defender corporation” of the
circuit: Provided, That one such public defender
corporation shall serve both the twenty-third and
thirty-first judicial circuits. The purpose of such public
defender corporations is to provide legal representa-
tion in the respective circuits in accordance with the
provisions of this article.

(b) The public defender corporations are hereby
activated in the first, second, third, seventh, eighth,
ninth, eleventh, twelfth, thirteenth, fourteenth, fif-
teenth, twenty-third and thirty-first combined,
twenty-fifth, twenty-eighth and thirtieth judicial
circuits. Public defender corporations in other circuits
may be activated by the executive director if the judge
of a single judge circuit, the chief judge of a multi-
judge circuit or a majority of the active members of
the bar in the circuit determine there is a need to
activate the corporation and certify that fact in writing
to the executive director.

(c) Public defender corporations may apply in
writing to the executive director for permission to
merge to form multi-circuit or regional public
defender corporations. Applications for mergers shall
be subject to the review procedures set forth in section
eleven 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.

(b) An attorney-at-law may become a panel attorney and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients, by informing the court. A prospective panel attorney shall inform the court in writing, on forms provided by the executive director, of a desire to accept appointments generally, or of the specific types of cases in which he or she will accept appointments. The attorney shall also indicate whether or not he or she will accept appointments in adjoining circuits and, if so, in which circuits. 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 a public defender office is in operation, the judge shall appoint the public defender office unless such appointment is not appropriate due to a conflict of interest or unless the public defender corporation board of directors has notified the court that the existing caseload cannot be increased without jeopardizing the ability of defenders to provide effective representation. If the public defender office is not available for appointment, the court shall appoint one or more panel attorneys from the local panel. If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel. If there is no regional panel attorney available, the judge may appoint a public defender office from an adjoining circuit if such public defender office agrees to the appointment. In circuits where no public defender office is in operation, 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 office of an adjoining
circuit if such public defender office agrees to the
appointment. In any circuit, when there is no public
defender, or assistant public defender, local panel
attorney or regional panel attorney available, the
judge may appoint one or more qualified private
attorneys to provide representation, and such private
attorney or attorneys shall be treated as panel attor-
neys for that specific case. In any given case, the
appointing judge may alter the order in which attor-
neys are appointed if the case requires particular
knowledge or experience on the part of the attorney to
be appointed.

§29-21-10. Public defender corporation — Intent to apply for
funding.

(a) Any public defender corporation established by
section eight of this article applying to public defender
services for financial assistance to establish a program
to provide legal representation consistent with this
article and any public defender corporation proposing
a major substantive modification to an existing pro-
gram shall notify the executive director and the circuit
judges in the area 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 thirty 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 area to be served by the
proposed program;

(3) A brief description of the proposed program,
general size or scale, estimated cost, or other charac-
teristics which will enable the circuit court to deter-
mine 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.

§29-21-11. Public defender corporations — Funding applications; legal representation plans; review.

(a) Any public defender corporation established by section eight of this article or any other entity wishing to take advantage of state financial assistance through the agency must submit a funding application to the executive director.

(b) The funding application, which is to be submitted in a form prescribed by the executive director, shall contain a general description of the plans and policies the applicant intends to utilize in providing legal representation, and such other information prescribed by the executive director.

(c) All applications for financial assistance from public defender services under the provisions of this article must be submitted to the circuit judges of the circuit for review prior to their submission to public defender services.

(d) Completed applications shall include:

(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) If 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) Reviews required under this section shall be completed by circuit judges within fifteen days after receipt. If the public defender corporation or other applicant has not received a response 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 and may submit the application to public defender services.
§29-21-12. Public defender corporation funding applications.

(a) If an application does not carry evidence that appropriate circuit judges have been given an opportunity to review the application, the application shall be returned with instructions to fulfill the requirements of section eleven of this article.

(b) The executive director shall within seven working days after taking any major action on an application notify the circuit judges who have reviewed the application of the action taken. Major actions will include program approvals, rejections, returns for amendment, deferrals or withdrawals.

(c) If a judge has recommended against approval, or has recommended approval only with specific and major substantive changes, and the executive director approves the application substantially as submitted, the executive director shall provide the judge with an explanation of the approval of the application.

§29-21-13. Approval of public defender corporation funding applications; funding; compensation of corporations and panel attorneys; record keeping by public defender corporations.

(a) The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and budget. The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the applicants, prepare a plan for providing legal services to the area which is the subject of the funding application.

(b) Upon final approval of a funding application by the executive director, the approved budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the amount set forth in the approval notice and the agency shall not be obligated to reimburse the recipient for costs incurred in excess of 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
(c) Funding of public defender corporations or other programs or entities providing legal representation under the provisions of this article shall be by annual grants disbursed in such periodic allotments as the executive director shall deem appropriate.

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

(e) 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. Claims for fees and expense reimbursements shall be submitted to the appointing court on forms approved by the executive director and shall meet the requirements of subsection (i) of this section. The appointing court shall review the voucher to determine if the time and expense claims are reasonable, necessary and valid and shall forward such voucher to the agency, with an order approving payment of the claimed amount or of such lesser sum the court considers appropriate: Provided, That notwithstanding any other provision of this section, public defender services may pay by direct bill, prior to the completion of the case, litigation expenses incurred by attorneys appointed under this article.

(f) In each case in which a panel attorney provides legal representation under this article, and in each appeal after conviction in circuit court, the panel attorney shall be compensated at the following rates for actual and necessary time expended:

(1) For work performed out of court, compensation shall be at the rate of twenty dollars per hour. Out-of-court work shall include, but not be limited to, travel, interviews of clients or witnesses, preparation of pleadings, and prehearing or pretrial research.

(2) For work performed in court, compensation shall
be at the rate of twenty-five dollars per 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) The maximum amount of compensation for out-of-court and in-court work under this subsection is one thousand dollars: Provided, That if the eligible client is charged with a felony for which a penalty of life imprisonment may be imposed, the court may approve additional compensation for further work at one half the rates provided in this subsection.

(g) Actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses shall be reimbursed to a maximum of five hundred dollars unless the court, for good cause shown, gives advance approval to incur expenses for a larger sum. Expense vouchers shall specifically set forth the nature, amount and purpose of expenses incurred and shall provide such receipts, invoices or other documentation required by the executive director.

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

(i) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the 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 local panel attorney,
a regional panel attorney, or such other private
attorney as may have been appointed. The executive
director shall refuse to requisition payment for any
voucher which is not in conformity with the record
keeping, compensation or other provisions of this
article and in such circumstance shall return the
voucher to the court for further review.

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

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

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


(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, and in the case of multi-
circuit or regional corporations the county commission
of each county within the area served shall appoint a
director, who shall not be an attorney-at-law. The
president of each county bar association within the
area served shall appoint a director, who shall be an
attorney-at-law: Provided, That in a county where
there is not an organized and active bar association,
the circuit court shall convene a meeting of the
members of the bar of the court resident within the
county and such members of the bar shall elect one of
their number as a director. The governor shall appoint
one director, who shall serve as chairman, who may,
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 any assistant public defenders as may be necessary to enable the public defender corporation to provide legal representation to eligible clients; and

(2) Approval of the public defender corporation's budget and the fixing of professional 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 may receive compensation from the public
defender corporation, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

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

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

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

Any juvenile shall have the right to be effectively represented by counsel at all stages of proceedings brought under the provisions of article five, chapter forty-nine of this code. If the child advises the court of his or her inability to pay for counsel, the court shall require the child’s parent or custodian to execute a financial affidavit. If the financial affidavit demonstrates that neither of the child’s parents, or, if applicable, the child’s custodian, has sufficient assets to pay for counsel, the court shall appoint counsel for the child. If the financial affidavit demonstrates that either of the child’s parents, or, if applicable, the child’s custodian, does have sufficient assets to pay for counsel, the court shall order the parent, or, if applicable, the custodian, to provide, by paying for, legal representation for the child in the proceedings: Provided, That the court may disregard the assets of the child’s parents or custodian and appoint counsel for the child, as provided above, if the court concludes, as a matter of law, that the child and the parent or
custodian have a conflict of interest that would adversely affect the child's right to effective representation of counsel, or concludes, as a matter of law, that requiring the child's parent or custodian to provide legal representation for the child would otherwise jeopardize the best interests of the child.

(c) In circuits in which no public defender office is in operation, circuit judges shall make all determinations of eligibility. In circuits in which a public defender office is in operation, all determinations of indigency shall be made by a public defender office employee designated by the executive director. Such determinations shall be made after a careful review of the financial affidavit submitted by the person seeking representation. The review of the affidavit shall be conducted in accord with the financial eligibility guidelines established by the agency pursuant to subsection (a) of this section. In addition to the financial eligibility guidelines, the person determining eligibility shall consider other relevant factors, including, but not limited to, those set forth in subdivisions (1) through (8) of subsection (d) of this section. If there is substantial reason to doubt the accuracy of information in the financial affidavit, the person determining eligibility may make such inquiries as are necessary to determine whether the affiant has truthfully and completely disclosed the required financial information. After reviewing all pertinent matters the person determining eligibility may find the affiant to be eligible to have the total cost of legal representation provided by the state, or may find that the total cost of providing representation shall be apportioned between the state and the eligible person. A person whose annual income exceeds the maximum annual income level allowed for eligibility may receive all or part of the necessary legal representation, or a person whose income falls below the maximum annual income level for eligibility may be denied all or part of the necessary legal representation if the person determining eligibility finds the person's particular circumstances require that eligibility be allowed or disallowed, as the case may be, on the basis of one or
more of the eight factors set forth in subsection (d) of this section. If legal representation is made available to a person whose income exceeds the maximum annual income level for eligibility, or if legal representation is denied to a person whose income falls below the maximum annual income level for eligibility, the person determining eligibility shall make a written statement of the reasons for the action and shall specifically relate those reasons to one or more of the factors set forth in subsection (d) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) Circuit clerks shall keep a record of repaid counsel fees and defense expenses collected pursuant to this section and shall, quarterly, pay the moneys to the state auditor who shall deposit the funds in the general revenue fund of the state.

(h) 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. A person who has made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing as provided by law.

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

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

(b) A board of directors may permit a newly
employed full-time public defender or full-time assistant public defender to engage in the private practice of law for compensation for the sole purpose of expeditiously closing and withdrawing from existing private cases from a prior private practice. In no event shall any person employed for more than ninety days as a full-time public defender or full-time assistant public defender be engaged in any other private practice of law for compensation.

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

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

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

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

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

(e) Violation of the requirements of this section is sufficient grounds for immediate summary dismissal.

§29-21-18. Records and reports.

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

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

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

§29-21-19. Audits.

(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 agency and shall be available for public inspection during business hours at the principal office of the public defender corporation. The report of each such audit shall be maintained for a period of at least five years at the office of the agency.
§29-21-20. Appointed counsel immune from liability.

1. Any attorney who provides legal representation
2. under the provisions of this article under appointment
3. by a circuit court or by the supreme court of appeals,
4. and whose only compensation therefor is paid under
5. the provisions of this article, shall be immune from
6. liability arising from that representation in the same
7. manner and to the same extent that prosecuting
8. attorneys are immune from liability.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick Shure
Chairman Senate Committee

J.L. Settle
Chairman House Committee

Originated in the Senate.

In effect from passage.

Bill and Seal
Clerk of the Senate

Donald T. Kopp
Clerk of the House of Delegates

Tony A. Trumbull
President of the Senate

Boyle
Speaker House of Delegates

The within is approved this the 27th day of April, 1989.

Martin Cooper
Governor