

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4254

(By ~~the~~ *Delegates Buchanan & Gallagher*)

— ● —

Passed *March 10,* 1990

In Effect *July 1, 1990* 

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4254
(By DELEGATES BUCHANAN AND GALLAGHER)

[Passed March 10, 1990; in effect July 1, 1990.]

AN ACT to amend and reenact sections two, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and nineteen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirteen-a and twenty-one, all relating to public defender services; definitions of eligible proceeding; executive director; powers and duties of agency; services of criminal law research center; activation and funding of public defender corporations; appointment of public defenders; applications for funding of public defender corporations; increasing compensation and expenses for panel attorneys; authority of board of directors for public defender corporations; eligibility guidelines and supporting affidavits; audits; private practice of law by public defenders; and forgiveness of public defender services loans.

Be it enacted by the Legislature of West Virginia:

That sections two, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, seventeen and nineteen, article twenty-one, chapter twenty-nine of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections thirteen-a and twenty-one, all to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-2. Definitions.

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

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

7 (2) "Eligible proceeding": Criminal charges which
8 may result in incarceration, juvenile proceedings,
9 proceedings to revoke parole or probation if the
10 revocation may result in incarceration, contempts of
11 court, child abuse and neglect proceedings which may
12 result in a termination of parental rights, mental
13 hygiene commitment proceedings, paternity proceed-
14 ings, extradition proceedings, proceedings brought in
15 aid of an eligible proceeding, and appeals from or post
16 conviction challenges to the final judgment in an eligible
17 proceeding. Legal representation provided pursuant to
18 the provisions of this article is limited to the court
19 system of the state of West Virginia, but does not
20 include representation in municipal courts unless the
21 accused is at risk of incarceration;

22 (3) "Legal representation": The provision of any legal
23 services or legal assistance consistent with the purposes
24 and provisions of this article;

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

30 (5) "Public defender": The staff attorney employed on
31 a full-time basis by a public defender corporation who,
32 in addition to providing direct representation to eligible

33 clients, has administrative responsibility for the opera-
 34 tion of the public defender corporation. The public
 35 defender may be a part-time employee if the board of
 36 directors of the public defender corporation finds
 37 efficient operation of the corporation does not require a
 38 full-time attorney and the executive director approves
 39 such part-time employment;

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

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

49 (8) "Public defender office": An office operated by a
 50 public defender corporation to provide legal represen-
 51 tation under the provisions of this article.

§29-21-5. Executive director.

1 (a) The governor shall appoint, by and with the advice
 2 and consent of the Senate, the executive director of
 3 public defender services, who shall serve at the will and
 4 pleasure of the governor. The executive director shall be
 5 a qualified administrator as determined by the gover-
 6 nor, and shall be a member of the bar of the supreme
 7 court of appeals. In addition to the executive director
 8 there shall be such other employees as the executive
 9 director determines to be necessary. The executive
 10 director shall have the authority to promulgate rules,
 11 and shall have such other authority and perform such
 12 duties as may be required or necessary to effectuate this
 13 article. The executive director shall provide supervision
 14 and direction to the other agency employees in the
 15 performance of their duties.

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

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

1 (a) Consistent with the provisions of this article, the
2 agency is authorized to make grants to and contracts
3 with public defender corporations and with individuals,
4 partnerships, firms, corporations and nonprofit organ-
5 izations, for the purpose of providing legal representa-
6 tion under this article, and may make such other grants
7 and contracts as are necessary to carry out the purposes
8 and provisions of this article.

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

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

24 (d) The agency shall establish and the executive
25 director or his designate shall operate an accounting and
26 auditing division to require and monitor the compliance
27 with this article by public defender corporations and
28 other persons or entities receiving funding or compen-
29 sation from the agency. This division shall review all
30 plans and proposals for grants and contracts, and shall
31 make a recommendation of approval or disapproval to
32 the executive director. The division shall prepare, or
33 cause to be prepared, reports concerning the evaluation,
34 inspection, or monitoring of public defender
35 corporations and other grantees, contractors, persons or
36 entities receiving financial assistance under this article,
37 and shall further carry out the agency's responsibilities
38 for records and reports as set forth in section eighteen
39 of this article.

40 The accounting and auditing division shall require

41 each public defender corporation to annually report on
 42 the billable and nonbillable time of its professional
 43 employees, including time utilized in administration of
 44 the respective offices, so as to compare such time to
 45 similar time expended in nonpublic law offices for like
 46 activities.

47 The accounting and auditing division shall provide to
 48 the executive director assistance in the fiscal adminis-
 49 tration of all of the agency's divisions. Such assistance
 50 shall include, but not be limited to, budget preparation
 51 and statistical analysis.

52 (e) The agency shall establish and the executive
 53 director or a person designated by the executive director
 54 shall operate an appellate advocacy division for the
 55 purpose of prosecuting litigation on behalf of eligible
 56 clients in the supreme court of appeals. The executive
 57 director or a person designated by the executive director
 58 shall be the director of the appellate advocacy division.
 59 The appellate advocacy division shall represent eligible
 60 clients upon appointment by the circuit courts, or by the
 61 supreme court of appeals. The division may, however,
 62 refuse such appointments due to a conflict of interest or
 63 if the executive director has determined the existing
 64 caseload cannot be increased without jeopardizing the
 65 appellate division's ability to provide effective represen-
 66 tation. In order to effectively and efficiently utilize the
 67 resources of the appellate division the executive director
 68 may restrict the provision of appellate representation to
 69 certain types of cases.

70 The executive director is empowered to select and
 71 employ staff attorneys to perform the duties prescribed
 72 by this subsection. The division shall maintain vouchers
 73 and records for representation of eligible clients, for
 74 record purposes only.

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

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

3 (1) Undertake research, studies and analyses and act

4 as a central repository, clearinghouse and disseminator
5 of research materials;

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

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

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

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

§29-21-8. Public defender corporations.

1 (a) In each judicial circuit of the state, there is hereby
2 created a "public defender corporation" of the circuit:
3 *Provided*, That one such public defender corporation
4 shall serve both the twenty-third and thirty-first judicial
5 circuits. The purpose of such public defender corpora-
6 tions is to provide legal representation in the respective
7 circuits in accordance with the provisions of this article.

8 (b) If the judge of a single judge circuit, the chief
9 judge of a multijudge circuit or a majority of the active
10 members of the bar in the circuit determine there is a
11 need to activate the corporation they shall certify that
12 fact in writing to the executive director. The executive
13 director shall allocate funds to those corporations so
14 certifying in the order in which he or she deems most
15 efficient and cost effective.

16 (c) Public defender corporations may apply in writing
17 to the executive director for permission to merge to form

18 multicircuit or regional public defender corporations.
19 Applications for mergers shall be subject to the review
20 procedures set forth in section eleven of this article.

§29-21-9. Panel attorneys.

1 (a) In each circuit of the state, the circuit court shall
2 establish and maintain regional and local panels of
3 private attorneys-at-law who shall be available to serve
4 as counsel for eligible clients.

5 (b) An attorney-at-law may become a panel attorney
6 and be enrolled on the regional or local panel, or both,
7 to serve as counsel for eligible clients, by informing the
8 court. A prospective panel attorney shall inform the
9 court in writing, on forms provided by the executive
10 director, of a desire to accept appointments generally,
11 or of the specific types of cases in which he or she will
12 accept appointments. The attorney shall also indicate
13 whether or not he or she will accept appointments in
14 adjoining circuits and, if so, in which circuits. An
15 agreement to accept cases generally or certain types of
16 cases particularly shall not prevent a panel attorney
17 from declining an appointment in a specific case.

18 (c) In all cases where an attorney-at-law is required
19 to be appointed for an eligible client, the appointment
20 shall be made by the circuit judge. In circuits where a
21 public defender office is in operation, the judge shall
22 appoint the public defender office unless such appoint-
23 ment is not appropriate due to a conflict of interest or
24 unless the public defender corporation board of direc-
25 tors or the public defender, with the approval of the
26 board, has notified the court that the existing caseload
27 cannot be increased without jeopardizing the ability of
28 defenders to provide effective representation.

29 If the public defender office is not available for
30 appointment, the court shall appoint one or more panel
31 attorneys from the local panel. If there is no local panel
32 attorney available, the judge shall appoint one or more
33 panel attorneys from the regional panel. If there is no
34 regional panel attorney available, the judge may appoint
35 a public defender office from an adjoining circuit if such
36 public defender office agrees to the appointment.

37 In circuits where no public defender office is in
38 operation, the judge shall first refer to the local panel
39 and then to the regional panel in making appointments,
40 and if an appointment cannot be made from the panel
41 attorneys, the judge may appoint the public defender
42 office of an adjoining circuit if the office agrees to the
43 appointment. In any circuit, when there is no public
44 defender, or assistant public defender, local panel
45 attorney or regional panel attorney available, the judge
46 may appoint one or more qualified private attorneys to
47 provide representation, and such private attorney or
48 attorneys shall be treated as panel attorneys for that
49 specific case. In any given case, the appointing judge
50 may alter the order in which attorneys are appointed if
51 the case requires particular knowledge or experience on
52 the part of the attorney to be appointed.

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

1 (a) Any public defender corporation applying to
2 public defender services for financial assistance to
3 establish a program to provide legal representation or
4 proposing a major substantive modification to an
5 existing program shall notify the executive director and
6 the circuit judges in the area in which the program will
7 deliver legal representation of the intent to apply for
8 such assistance or modification. Such notice shall be
9 given at least thirty days prior to the filing of an
10 application or a proposal for modification.

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

14 (1) The identity of the applicant;

15 (2) The geographical area to be served by the pro-
16 posed program;

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

22 and

23 (4) The estimated date the public defender corpora-
24 tion expects to formally file an application or modifica-
25 tion proposal.

**§29-21-11. Public defender corporations—Funding ap-
plications; legal representation plans; re-
view.**

1 (a) Any public defender corporation or any other
2 entity wishing to secure state financial assistance
3 through the agency shall submit a funding application
4 to the executive director.

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

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

16 Reviews shall be completed by circuit judges within
17 fifteen days after receipt. If the public defender
18 corporation or other applicant has not received a
19 response within the fifteen-day period, the public
20 defender corporation may consider the judge to have
21 waived his or her opportunity to review and comment
22 on the proposed program or program modification and
23 may submit the application to public defender services.

24 (d) Completed applications shall include:

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

29 (2) If no comments have been received from circuit
30 judges, a statement that the procedures outlined in this
31 section have been followed and that no comments or

32 recommendations have been received.

§29-21-12. Public defender corporation funding applications.

1 (a) If an application does not carry evidence that
2 appropriate circuit judges have been given an opportu-
3 nity to review the application, the application shall be
4 returned with instructions to fulfill the requirements of
5 section eleven of this article.

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

12 (c) If a judge has recommended against approval, or
13 has recommended approval only with specific and major
14 substantive changes, and the executive director ap-
15 proves the application substantially as submitted, the
16 executive director shall provide the judge with an
17 explanation of the approval of the application.

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

1 (a) The accounting and auditing division shall review
2 all funding applications and prepare recommendations
3 for an operating plan and budget. The executive
4 director shall review the funding applications and the
5 accounting and auditing recommendations and shall, in
6 consultation with the applicants, prepare a plan for
7 providing legal services.

8 (b) Upon final approval of a funding application by
9 the executive director, the approved budget shall be set
10 forth in an approval notice. The total cost to the agency
11 shall not exceed the amount set forth in the approval
12 notice and the agency shall not be obligated to reim-
13 burse the recipient for costs incurred in excess of the
14 amount unless and until a program modification has
15 been approved in accordance with the provisions of this
16 article.

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

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

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

1 (a) All panel attorneys shall maintain detailed and
 2 accurate records of the time expended and expenses
 3 incurred on behalf of eligible clients, and upon comple-
 4 tion of each case, exclusive of appeal, shall submit to the
 5 appointing court a voucher for services. Claims for fees
 6 and expense reimbursements shall be submitted to the
 7 appointing court on forms approved by the executive
 8 director. The appointing court shall review the voucher
 9 to determine if the time and expense claims are
 10 reasonable, necessary and valid and shall forward the
 11 voucher to the agency with an order approving payment
 12 of the claimed amount or of such lesser sum the court
 13 considers appropriate. Notwithstanding any other
 14 provision of this section, public defender services may
 15 pay by direct bill, prior to the completion of the case,
 16 litigation expenses incurred by attorneys appointed
 17 under this article: *Provided*, That a panel attorney may
 18 be compensated for services rendered and reimbursed
 19 for expenses incurred prior to the completion of the case
 20 where (1) more than six months have expired since the
 21 commencement of the panel attorney's representation in
 22 the case; and (2) no prior payment of attorney fees has
 23 been made to the panel attorney by public defender
 24 services during the case: *Provided, however*, That the
 25 amounts of any fees or expenses paid to the panel
 26 attorney on such an interim basis, when combined with
 27 any such amounts paid to the panel attorney at the
 28 conclusion of the case, shall not exceed the limitations
 29 on fees and expenses imposed by this section.

30 (b) In each case in which a panel attorney provides

31 legal representation under this article, and in each
32 appeal after conviction in circuit court, the panel
33 attorney shall be compensated at the following rates for
34 actual and necessary time expended for services
35 performed and expenses incurred subsequent to the
36 effective date of this article:

37 (1) For work performed out of court, compensation
38 shall be at the rate of forty-five dollars per hour. Out-
39 of-court work includes, but is not limited to, travel,
40 interviews of clients or witnesses, preparation of
41 pleadings, and prehearing or pretrial research.

42 (2) For work performed in court, compensation shall
43 be at the rate of sixty-five dollars per hour. In-court
44 work includes, but is not limited to, all time spent
45 awaiting hearing or trial if the presence of the attorney
46 is required at the time.

47 (3) The maximum amount of compensation for out-of-
48 court and in-court work under this subsection is as
49 follows: For proceedings of any kind involving felonies
50 for which a penalty of life imprisonment may be
51 imposed, such amount as the court may approve; for all
52 other eligible proceedings, three thousand dollars.

53 (c) Actual and necessary expenses incurred in provid-
54 ing legal representation, including, but not limited to,
55 expenses for travel, transcripts, salaried or contracted
56 investigative services, and expert witnesses shall be
57 reimbursed to a maximum of fifteen hundred dollars
58 unless the court, for good cause shown, gives advance
59 approval to incur expenses for a larger sum: *Provided,*
60 That when an attorney is appointed to a case outside of
61 the circuit where his or her principal office is located,
62 travel expenses incurred for travel as the result of
63 providing legal representation in the case shall be
64 reimbursed notwithstanding the fifteen hundred dollar
65 limit provided by this subsection: *Provided, however,*
66 That notwithstanding any other provision of this article,
67 these travel expenses incurred by an attorney appointed
68 to a case outside of his or her circuit as aforesaid shall
69 be reimbursed by public defender services prior to the
70 completion of the case upon the request of the panel

71 attorney on such forms approved by the executive
72 director.

73 Expense vouchers shall specifically set forth the
74 nature, amount and purpose of expenses incurred and
75 shall provide such receipts, invoices or other documen-
76 tation required by the executive director.

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

81 (e) Vouchers submitted under this section shall
82 specifically set forth the nature of the service rendered,
83 the stage of proceeding or type of hearing involved, the
84 date and place the service was rendered and the amount
85 of time expended in each instance. All time claimed on
86 the vouchers shall be itemized to the nearest tenth of an
87 hour. If the charge against the eligible client for which
88 services were rendered is one of several charges
89 involving multiple warrants or indictments, the voucher
90 shall indicate such fact and sufficiently identify the
91 several charges so as to enable the court to avoid a
92 duplication of compensation for services rendered. The
93 voucher shall indicate whether the services were
94 rendered by a local panel attorney, a regional panel
95 attorney, or such other private attorney as may have
96 been appointed. The executive director shall refuse to
97 requisition payment for any voucher which is not in
98 conformity with the record keeping, compensation or
99 other provisions of this article and in such circumstance
100 shall return the voucher to the court for further review.

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

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

5 (1) In multi-county circuits, and in the case of multi-
6 circuit or regional corporations, the county commission
7 of each county within the area served shall appoint a

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

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

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

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

38 (1) Appointment of the public defender and any
39 assistant public defenders as may be necessary to enable
40 the public defender corporation to provide legal repres-
41 entation to eligible clients; and

42 (2) Approval of the public defender corporation's
43 budget and the fixing of professional and clerical
44 salaries; and

45 (3) Renewal of the employment contract of the public
46 defender on an annual basis except where such renewal

47 is denied for cause: *Provided*, That the board of directors
48 shall have the power at any time to remove the public
49 defender for misfeasance, malfeasance or nonfeasance.

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

55 (e) While serving on the board of directors, no
56 member may receive compensation from the public
57 defender corporation, but a member may receive
58 payment for normal travel and other out-of-pocket
59 expenses required for fulfillment of the obligations of
60 membership.

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

1 (a) The agency shall establish, and periodically review
2 and update financial guidelines for determining eligibil-
3 ity for legal representation made available under the
4 provisions of this article. The agency shall adopt a
5 financial affidavit form for use by persons seeking legal
6 representation made available under the provisions of
7 this article.

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

13 (c) Any juvenile shall have the right to be effectively
14 represented by counsel at all stages of proceedings
15 brought under the provisions of article five, chapter
16 forty-nine of this code. If the child advises the court of
17 his or her inability to pay for counsel, the court shall
18 require the child's parent or custodian to execute a
19 financial affidavit. If the financial affidavit demon-
20 strates that neither of the child's parents, or, if

21 applicable, the child's custodian, has sufficient assets to
22 pay for counsel, the court shall appoint counsel for the
23 child. If the financial affidavit demonstrates that either
24 of the child's parents, or, if applicable, the child's
25 custodian, does have sufficient assets to pay for counsel,
26 the court shall order the parent, or, if applicable, the
27 custodian, to provide, by paying for, legal representation
28 for the child in the proceedings.

29 The court may disregard the assets of the child's
30 parents or custodian and appoint counsel for the child,
31 as provided above, if the court concludes, as a matter
32 of law, that the child and the parent or custodian have
33 a conflict of interest that would adversely affect the
34 child's right to effective representation of counsel, or
35 concludes, as a matter of law, that requiring the child's
36 parent or custodian to provide legal representation for
37 the child would otherwise jeopardize the best interests
38 of the child.

39 (d) In circuits in which no public defender office is in
40 operation, circuit judges shall make all determinations
41 of eligibility. In circuits in which a public defender
42 office is in operation, all determinations of indigency
43 shall be made by a public defender office employee
44 designated by the executive director. Such determina-
45 tions shall be made after a careful review of the
46 financial affidavit submitted by the person seeking
47 representation. The review of the affidavit shall be
48 conducted in accord with the financial eligibility
49 guidelines established by the agency pursuant to
50 subsection (a) of this section. In addition to the financial
51 eligibility guidelines, the person determining eligibility
52 shall consider other relevant factors, including, but not
53 limited to, those set forth in subdivisions (1) through (8)
54 of subsection (e) of this section. If there is substantial
55 reason to doubt the accuracy of information in the
56 financial affidavit, the person determining eligibility
57 may make such inquiries as are necessary to determine
58 whether the affiant has truthfully and completely
59 disclosed the required financial information.

60 After reviewing all pertinent matters the person
61 determining eligibility may find the affiant to be

62 eligible to have the total cost of legal representation
63 provided by the state, or may find that the total cost of
64 providing representation shall be apportioned between
65 the state and the eligible person. A person whose annual
66 income exceeds the maximum annual income level
67 allowed for eligibility may receive all or part of the
68 necessary legal representation, or a person whose
69 income falls below the maximum annual income level
70 for eligibility may be denied all or part of the necessary
71 legal representation if the person determining eligibility
72 finds the person's particular circumstances require that
73 eligibility be allowed or disallowed, as the case may be,
74 on the basis of one or more of the eight factors set forth
75 in subsection (e) of this section. If legal representation
76 is made available to a person whose income exceeds the
77 maximum annual income level for eligibility, or if legal
78 representation is denied to a person whose income falls
79 below the maximum annual income level for eligibility,
80 the person determining eligibility shall make a written
81 statement of the reasons for the action and shall
82 specifically relate those reasons to one or more of the
83 factors set forth in subsection (e) of this section.

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

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

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

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

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

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

99 (6) Whether the person seeking publicly funded legal
100 representation has made reasonable and diligent efforts

101 to obtain private legal representation, and the results of
102 those efforts;

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

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

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

113 (f) Legal representation requested by the affiant may
114 not be denied in whole or part unless the affiant can
115 obtain legal representation without undue financial
116 hardship. Persons determined to be ineligible by public
117 defender personnel may have the initial determination
118 reviewed by a local circuit judge who may amend,
119 modify or rewrite the initial determination. At any stage
120 of the proceedings a circuit court may determine a prior
121 finding of eligibility was incorrect or has become
122 incorrect as the result of the affiant's changed financial
123 circumstances, and may revoke any prior order provid-
124 ing legal representation. In such event any attorney
125 previously appointed shall be entitled to compensation
126 under the provisions of law applicable to such appoint-
127 ment for services already rendered.

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

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

140 statute.

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

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

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

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

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

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

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

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

4 (b) A board of directors may permit a newly em-
5 ployed full-time public defender or full-time assistant
6 public defender to engage in the private practice of law
7 for compensation for the sole purpose of expeditiously
8 closing and withdrawing from existing private cases
9 from a prior private practice. In no event shall any
10 person employed for more than ninety days as a full-
11 time public defender or full-time assistant public
12 defender be engaged in any other private practice of law
13 for compensation: *Provided*, That the prohibition against
14 the private practice of law does not apply to full-time
15 public defenders employed in class III or class IV
16 counties as defined by article seven, chapter seven of
17 this code.

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

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

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

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

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

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

§29-21-19. Audits.

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

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


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

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

1 All equipment, operational or supplemental loans
2 heretofore made under the former provisions of article
3 twenty-one are forgiven and declared null and void and
4 shall not be an obligation of a public defender corpora-
5 tion formerly established under the previous provisions

6 of article twenty-one, nor an obligation of any successor
7 organization or of the members of any board of directors
8 of any public defender corporation.

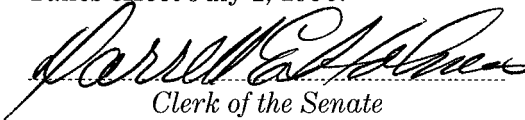
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

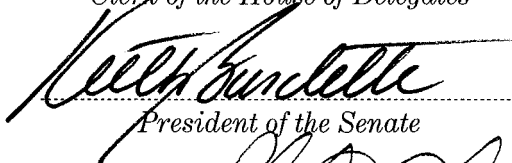

Chairman House Committee

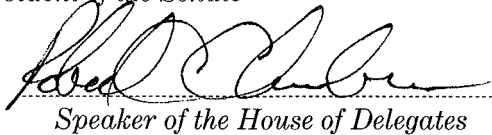
Originating in the House.

Takes effect July 1, 1990.

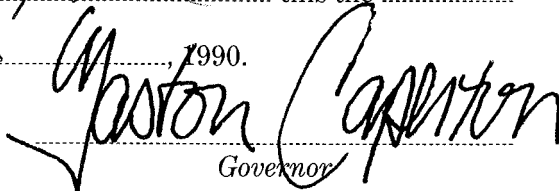

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 28th
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/90

Time 4:40 pm

RECEIVED

1900 MAR 28 10 41

GREEN MOUNTAIN
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