

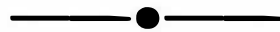
HB 4022
OH

FILED

2008 MAR 31 PM 12: 26

CE. JEWES. BINA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4022**

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead
[By Request of the Executive])



Passed March 8, 2008

In Effect July 1, 2008

E N R O L L E D

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2008 MAR 31 PM 12:26

COMMITTEE SUBSTITUTE

WEST VIRGINIA
LEGISLATURE
OFFICE OF CLERK

FOR

H. B. 4022

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 8, 2008; in effect July 1, 2008.]

AN ACT to repeal §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §29-21-3b; and to amend and reenact §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code, all relating to Public Defender Services generally; creating the Indigent Defense Commission; specifying members and their terms; specifying certain powers and duties of the Indigent Defense Commission; requiring submission of report to Legislature; requiring public defender corporations to submit monthly financial statements and reports; providing requirements for the creation, activation, merger or dissolution of public defender corporations; authorizing employment of certain attorneys; requiring consultation with judge; providing for the order of appointment of panel attorneys; establishing requirements for funding

applications; requiring corporations to submit proposed budgets; authorizing amended funding contracts; authorizing executive director to establish guidelines for submission of claims and vouchers; establishing certain deadlines for submitting claims; providing for periodic payment of fees to panel attorneys; clarifying in-court work and meaning of separate cases; establishing limitations on reimbursement of certain expenses; requiring vouchers be reimbursed within a certain period; providing for interest accruing on late reimbursements; and giving preference to processing vouchers involving child abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

That §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §29-21-3b; and that §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code be amended and reenacted, all to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

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

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

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

13 (1) One former or retired circuit judge;

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

18 (3) One current chief public defender; and

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

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

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

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

34 (d) Of the initial appointments made to the Commission,
35 two shall be for a term ending one year after the effective
36 date of this section, two for a term ending two years after the
37 effective date of this section, two for a term ending three
38 years after the effective date of this section. Thereafter,
39 terms of office shall be for four years, each term ending on
40 the same day of the same month of the year as did the term
41 which it succeeds. Each member shall hold office from the

42 date of his or her appointment until the end of the term for
43 which he or she was appointed or until his or her successor
44 qualifies for office. When a vacancy occurs as a result of
45 death, resignation or removal in the membership of this
46 Commission, it shall be filled by appointment within thirty
47 days of the vacancy for the unexpired portion of the term in
48 the same manner as original appointments. No member shall
49 serve more than two consecutive full or partial terms and no
50 person may be reappointed to the Commission until at least
51 two years have elapsed after the completion of a second
52 successive term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96 (g) On or before the fifteenth day of January, two
97 thousand nine the commission shall report to the Legislature
98 its findings and recommendations on the feasibility and need

99 for the creation of additional public defender corporations;
100 the activation of public defender corporations; the formation
101 of multi-circuit or regional public defender corporations; or
102 the dissolution of public defender corporations in accordance
103 with the provisions of section eight of this article.

§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 with
3 public defender corporations and with individuals,
4 partnerships, firms, corporations and nonprofit organizations
5 for the purpose of providing legal representation under this
6 article and may make any other grants and contracts that are
7 necessary to carry out the purposes and provisions of this
8 article.

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

22 (d) The agency shall establish and the executive director
23 or his or her designee shall operate an accounting and
24 auditing division to require and monitor the compliance with
25 this article by public defender corporations and other persons

26 or entities receiving funding or compensation from the
27 agency. The accounting and auditing division shall review
28 all plans and proposals for grants and contracts and shall
29 make a recommendation of approval or disapproval to the
30 executive director. The accounting and auditing division
31 shall prepare, or cause to be prepared, reports concerning the
32 evaluation, inspection or monitoring of public defender
33 corporations and other grantees, contractors, persons or
34 entities receiving financial assistance under this article and
35 shall further carry out the agency's responsibilities for
36 records and reports as set forth in section eighteen of this
37 article. The accounting and auditing division shall require
38 each public defender corporation to submit financial
39 statements monthly and to report monthly on the billable and
40 nonbillable time of its professional employees, including
41 time used in administration of the respective offices, so as to
42 compare the time to similar time expended in nonpublic law
43 offices for similar activities. The accounting and auditing
44 division shall provide to the executive director assistance in
45 the fiscal administration of all of the agency's divisions.
46 This assistance shall include, but not be limited to, budget
47 preparation and statistical analysis.

48 (e) The agency shall establish and the executive director
49 or his or her designee shall operate an appellate advocacy
50 division for the purpose of prosecuting litigation on behalf
51 of eligible clients in the Supreme Court of Appeals. The
52 executive director or his or her designee shall be the director
53 of the appellate advocacy division. The appellate advocacy
54 division shall represent eligible clients upon appointment by
55 the circuit courts or by the Supreme Court of Appeals. The
56 division may, however, refuse the appointments due to a
57 conflict of interest or if the executive director has determined
58 the existing caseload cannot be increased without
59 jeopardizing the appellate division's ability to provide
60 effective representation. In order to effectively and

61 efficiently use the resources of the appellate division, the
62 executive director may restrict the provision of appellate
63 representation to certain types of cases. The executive
64 director may select and employ staff attorneys to perform the
65 duties prescribed by this subsection. The appellate division
66 shall maintain records of representation of eligible clients for
67 record purposes only.

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

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

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

23 (b) If the executive director, with the approval of the
24 Indigent Defense Commission, determines there is a need to

25 activate, merge or dissolve a corporation in a judicial circuit
26 of the state, pursuant to subsection (a) of this section, the
27 Indigent Defense Commission shall first consult with and
28 give substantial consideration to the recommendation of the
29 judge of a single-judge circuit or the chief judge of a multi-
30 judge circuit.

§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 private
3 attorneys-at-law who are available to serve as counsel for
4 eligible clients. An attorney-at-law may become a panel
5 attorney and be enrolled on the regional or local panel, or
6 both, to serve as counsel for eligible clients by informing the
7 court. An agreement to accept cases generally or certain
8 types of cases particularly may not prevent a panel attorney
9 from declining an appointment in a specific case.

10 (b) In all cases where an attorney-at-law is required to be
11 appointed for an eligible client, the appointment shall be
12 made by the circuit judge in the following order of
13 preference:

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

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

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

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

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

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

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

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

1 (a) On or before the first day of May of each year, each
2 active public defender corporation shall submit to the
3 executive director and the commission a funding application
4 and a proposed budget for the ensuing fiscal year. The
5 accounting and auditing division shall review all funding
6 applications and prepare recommendations for an operating
7 plan and annual budget for each public defender corporation.

8 The executive director shall review the funding applications
9 and the accounting and auditing recommendations and shall,
10 in consultation with the board of directors of each public
11 defender corporation, prepare a plan for providing legal
12 services, execute a funding contract for the fiscal year and
13 commit funds for that purpose.

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

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

31 (d) All recipients of funding under this article shall
32 maintain such records as required by the executive 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 incurred
3 on behalf of eligible clients, and upon completion of each
4 case, exclusive of appeal, shall submit to the appointing court
5 a voucher for services. Claims for fees and expense

6 reimbursements shall be submitted to the appointing court on
7 forms approved by the executive director. The executive
8 director shall establish guidelines for the submission of
9 vouchers and claims for fees and expense reimbursements
10 under this section. Claims submitted more than ninety
11 calendar days after the last date of service shall be rejected,
12 unless for good cause, the appointing court authorizes in
13 writing an extension: *Provided*, That claims where the last
14 date of service occurred prior to the first day of July, two
15 thousand eight, shall be rejected unless submitted prior to the
16 first day of January, two thousand nine.

17 The appointing court shall review the voucher to
18 determine if the time and expense claims are reasonable,
19 necessary and valid, and shall forward the voucher to the
20 agency with an order approving payment of the claimed
21 amount or of a lesser sum the court considers appropriate.

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

26 (c) Notwithstanding any other provision of this section to
27 the contrary, a panel attorney may be compensated for
28 services rendered and reimbursed for expenses incurred prior
29 to the completion of the case where: (1) More than six
30 months have expired since the commencement of the panel
31 attorney's representation in the case; and (2) no prior payment
32 of attorney fees has been made to the panel attorney by
33 Public Defender Services during the case. The executive
34 director, in his or her discretion, may authorize periodic
35 payments where ongoing representation extends beyond six
36 months in duration. The amounts of any fees or expenses
37 paid to the panel attorney on an interim basis, when
38 combined with any amounts paid to the panel attorney at the

39 conclusion of the case, shall not exceed the limitations on
40 fees and expenses imposed by this section.

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

47 (1) For attorney's work performed out of court,
48 compensation shall be at the rate of forty-five dollars per
49 hour. For paralegal's work performed out of court for the
50 attorney, compensation shall be at the rate of the paralegal's
51 regular compensation on an hourly basis or, if salaried, at the
52 hourly rate of compensation which would produce the
53 paralegal's current salary, but in no event shall the
54 compensation exceed twenty dollars per hour. Out-of-court
55 work includes, but is not limited to, travel, interviews of
56 clients or witnesses, preparation of pleadings and prehearing
57 or pretrial research.

58 (2) For attorney's work performed in court, compensation
59 shall be at the rate of sixty-five dollars per hour. No
60 compensation for paralegal's work performed in court shall
61 be allowed. In-court work includes, but is not limited to, all
62 time spent awaiting hearing or trial before a judge,
63 magistrate, special master or other judicial officer.

64 (3) The maximum amount of compensation for out-of-
65 court and in-court work under this subsection is as follows:
66 For proceedings of any kind involving felonies for which a
67 penalty of life imprisonment may be imposed, the amount as
68 the court may approve; for all other eligible proceedings,
69 three thousand dollars unless the court, for good cause
70 shown, approves payment of a larger sum.

71 (e) Actual and necessary expenses incurred in providing
72 legal representation for proceedings of any kind involving
73 felonies for which a penalty of life imprisonment may be
74 imposed, including, but not limited to, expenses for travel,
75 transcripts, salaried or contracted investigative services and
76 expert witnesses, shall be reimbursed in an amount as the
77 court may approve. For all other eligible proceedings, actual
78 and necessary expenses incurred in providing legal
79 representation, including, but not limited to, expenses for
80 travel, transcripts, salaried or contracted investigative
81 services and expert witnesses, shall be reimbursed to a
82 maximum of one thousand five hundred dollars unless the
83 court, for good cause shown, approves reimbursement of a
84 larger sum.

85 Expense vouchers shall specifically set forth the nature,
86 amount and purpose of expenses incurred and shall provide
87 receipts, invoices or other documentation required by the
88 executive director and the State Auditor:

89 (1) (A) Reimbursement of expenses for production of
90 transcripts of proceedings reported by a court reporter is
91 limited to the cost per original page and per copy page as set
92 forth in section four, article seven, chapter fifty-one of this
93 code.

94 (B) (i) There shall be no reimbursement of expenses for
95 or production of a transcript of a preliminary hearing before
96 a magistrate or juvenile referee, or of a magistrate court trial,
97 where such hearing or trial has also been recorded
98 electronically in accordance with the provisions of section
99 eight, article five, chapter fifty of this code or court rule.

100 (ii) Reimbursement of the expense of an appearance fee
101 for a court reporter who reports a proceeding other than one
102 described in subparagraph (i) of this paragraph is limited to

103 twenty-five dollars. Where a transcript of a proceeding is
104 produced, there shall be no reimbursement for the expense of
105 any appearance fee.

106 (iii) Except for the appearance fees provided in this
107 paragraph, there shall be no reimbursement for hourly court
108 reporters' fees or fees for other time expended by the court
109 reporter, either at the proceeding or traveling to or from the
110 proceeding.

111 (C) Reimbursement of the cost of transcription of tapes
112 electronically recorded during preliminary hearings or
113 magistrate court trials is limited to one dollar per page.

114 (2) Reimbursement for any travel expense incurred in an
115 eligible proceeding is limited to the rates for the
116 reimbursement of travel expenses established by rules
117 promulgated by the Governor pursuant to the provisions of
118 section eleven, article eight, chapter twelve of this code and
119 administered by the Secretary of the Department of
120 Administration pursuant to the provisions of section forty-
121 eight, article three, chapter five-a of this code.

122 (3) Reimbursement for investigative services is limited to
123 a rate of thirty dollars per hour for work performed by an
124 investigator.

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

130 (g) Vouchers submitted under this section shall
131 specifically set forth the nature of the service rendered, the
132 stage of proceeding or type of hearing involved, the date and

133 place the service was rendered and the amount of time
134 expended in each instance. All time claimed on the vouchers
135 shall be itemized to the nearest tenth of an hour. If the charge
136 against the eligible client for which services were rendered is
137 one of several charges involving multiple warrants or
138 indictments, the voucher shall indicate the fact and
139 sufficiently identify the several charges so as to enable the
140 court to avoid a duplication of compensation for services
141 rendered. The executive director shall refuse to requisition
142 payment for any voucher which is not in conformity with the
143 recordkeeping, compensation or other provisions of this
144 article or the voucher guidelines established issued pursuant
145 to subsection (a) of this section and in such circumstance
146 shall return the voucher to the court or to the service provider
147 for further review or correction.

148 (h) Vouchers submitted under this section after the first
149 day of July, two thousand eight, shall be reimbursed within
150 ninety days of receipt. Reimbursements after ninety days
151 shall bear interest from the ninety-first day at the legal rate in
152 effect for the calendar year in which payment is due.

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

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




Chairman Senate Committee



Chairman House Committee

Originating in the House.

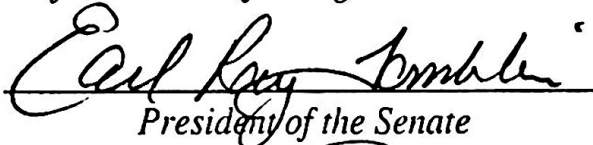
In effect July 1, 2008.



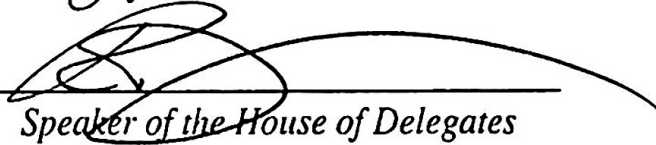
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 3/5
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2008

Time 2:10 pm