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That §29-21-10, §29-21-11 and §29-21-12 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §29-21-3b; and that §29-21-6, §29-21-8, §29-21-9, §29-21-13 and §29-21-13a of said code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


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

(b) In order to demonstrate a collaborative approach to solving criminal justice problems, the commission shall consist of the Executive Director of Public Defender Services, who shall serve as chair, and the following members appointed by the Governor:
(1) One former or retired circuit judge;

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

(3) One current chief public defender; and

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

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

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

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

(d) Of the initial appointments made to the Commission, two shall be for a term ending one year after the effective date of this section, two for a term ending two years after the effective date of this section, two for a term ending three years after the effective date of this section. Thereafter, terms of office shall be for four years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the
date of his or her appointment until the end of the term for
which he or she was appointed or until his or her successor
qualifies for office. When a vacancy occurs as a result of
death, resignation or removal in the membership of this
Commission, it shall be filled by appointment within thirty
days of the vacancy for the unexpired portion of the term in
the same manner as original appointments. No member shall
serve more than two consecutive full or partial terms and no
person may be reappointed to the Commission until at least
two years have elapsed after the completion of a second
successive term.

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

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

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

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

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

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

(5) To study, monitor and evaluate existing standards for
determining eligibility for legal representation under section
sixteen of this article;
(6) To study the feasibility and need of creating additional public defender corporations, the activation of public defender corporations and the formation of multicircuit or regional public defender corporations in accordance with the provisions of section eight of this article;

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

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

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

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

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

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

(g) On or before the fifteenth day of January, two thousand nine the commission shall report to the Legislature its findings and recommendations on the feasibility and need
for the creation of additional public defender corporations; the activation of public defender corporations; the formation of multi-circuit or regional public defender corporations; or the dissolution of public defender corporations in accordance with the provisions of section eight of this article.


(a) Consistent with the provisions of this article, the agency is authorized to make 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 any other grants and contracts that are necessary to carry out the purposes and provisions of this article.

(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 or her designee shall operate a criminal law research center as provided 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 related 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 or her designee 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. The accounting and auditing division shall review all plans and proposals for grants and contracts and shall make a recommendation of approval or disapproval to the executive director. The accounting and auditing 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. The accounting and auditing division shall require each public defender corporation to submit financial statements monthly and to report monthly on the billable and nonbillable time of its professional employees, including time used in administration of the respective offices, so as to compare the time to similar time expended in nonpublic law offices for similar activities. The accounting and auditing division shall provide to the executive director assistance in the fiscal administration of all of the agency's divisions. This assistance shall include, but not be limited to, budget preparation and statistical analysis.

(e) The agency shall establish and the executive director or his or her designee 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 his or her designee 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 the 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 use the resources of the appellate division, the executive director may restrict the provision of appellate representation to certain types of cases. The executive director may select and employ staff attorneys to perform the duties prescribed by this subsection. The appellate division shall maintain records of representation of eligible clients for record purposes only.

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

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

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

(b) If the executive director, with the approval of the Indigent Defense Commission, determines there is a need to
activate, merge or dissolve a corporation in a judicial circuit
of the state, pursuant to subsection (a) of this section, the
Indigent Defense Commission shall first consult with and
give substantial consideration to the recommendation of the
judge of a single-judge circuit or the chief judge of a multi-
judge circuit.


(a) In each circuit of the state, the circuit court shall
establish and maintain regional and local panels of private
attorneys-at-law who are available to serve as counsel for
eligible clients. 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. An agreement to accept cases generally or certain
types of cases particularly may not prevent a panel attorney
from declining an appointment in a specific case.

(b) 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 the following order of
preference:

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

(2) If the public defender office is not available for
appointment, the court shall appoint one or more panel
attorneys from the local panel;
(3) If there is no local panel attorney available, the judge shall appoint one or more panel attorneys from the regional panel;

(4) 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;

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

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

(c) In any given case, the appointing judge may alter the order in which attorneys are appointed if the case requires particular knowledge or experience on the part of the attorney to be appointed: Provided, That any time a court, in appointing counsel pursuant to the provisions of this section, alters the order of appointment as set forth herein, the order 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.

(a) On or before the first day of May of each year, each active public defender corporation shall submit to the executive director and the commission a funding application and a proposed budget for the ensuing fiscal year. The accounting and auditing division shall review all funding applications and prepare recommendations for an operating plan and annual budget for each public defender corporation.
The executive director shall review the funding applications and the accounting and auditing recommendations and shall, in consultation with the board of directors of each public defender corporation, prepare a plan for providing legal services, execute a funding contract for the fiscal year and commit funds for that purpose.

(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 the amount unless and until a program modification has been approved in accordance with the provisions of this article. At the discretion of the executive director, when caseloads increase or unusual expenses occur, funding contracts may be amended during a fiscal year if necessary to provide cost effective representation.

(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.

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

(a) 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. The executive director shall establish guidelines for the submission of vouchers and claims for fees and expense reimbursements under this section. Claims submitted more than ninety calendar days after the last date of service shall be rejected, unless for good cause, the appointing court authorizes in writing an extension: Provided, That claims where the last date of service occurred prior to the first day of July, two thousand eight, shall be rejected unless submitted prior to the first day of January, two thousand nine.

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

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

(c) Notwithstanding any other provision of this section to the contrary, a panel attorney may be compensated for services rendered and reimbursed for expenses incurred prior to the completion of the case where: (1) More than six months have expired since the commencement of the panel attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the panel attorney by Public Defender Services during the case. The executive director, in his or her discretion, may authorize periodic payments where ongoing representation extends beyond six months in duration. The amounts of any fees or expenses paid to the panel attorney on an interim basis, when combined with any amounts paid to the panel attorney at the
conclusion of the case, shall not exceed the limitations on fees and expenses imposed by this section.

(d) 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 for services performed and expenses incurred subsequent to the effective date of this article:

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

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

(3) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, three thousand dollars unless the court, for good cause shown, approves payment of a larger sum.
(e) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, 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 one thousand five hundred dollars unless the court, for good cause shown, approves reimbursement of a larger sum.

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

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

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

(ii) Reimbursement of the expense of an appearance fee for a court reporter who reports a proceeding other than one described in subparagraph (i) of this paragraph is limited to
twenty-five dollars. Where a transcript of a proceeding is produced, there shall be no reimbursement for the expense of any appearance fee.

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

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

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

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

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

(g) 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 the fact and
sufficiently identify the several charges so as to enable the
court to avoid a duplication of compensation for services
rendered. The executive director shall refuse to requisition
payment for any voucher which is not in conformity with the
recordkeeping, compensation or other provisions of this
article or the voucher guidelines established issued pursuant
to subsection (a) of this section and in such circumstance
shall return the voucher to the court or to the service provider
for further review or correction.

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

(i) Vouchers submitted for fees and expenses involving
child abuse and neglect cases shall be processed for payment
before processing vouchers submitted for all other cases.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White  
Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect July 1, 2008.

Darrell E. Miller  
Clerk of the Senate

Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Speaker of the House of Delegates

The within is approved this the 31st day of May, 2008.

Robert E. Bentley  
Governor