

**Senate Bill No. 482**

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(By Senators Tucker, Wills, Stollings, Plymale, Minard, Yost and  
Sypolt)

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[Introduced February 10, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §29-21-6 of the Code of West Virginia,  
1931, as amended, relating to requiring public defender  
corporations of all the judicial circuits to be centralized  
under the Executive Director of Public Defender Services; and  
granting rule-making authority.

*Be it enacted by the Legislature of West Virginia:*

That §29-21-6 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

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

(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.

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

5 (c) The agency shall establish and the executive director or  
6 his or her designee shall operate a criminal law research center as  
7 provided in section seven of this article. This center shall  
8 undertake directly, or by grant or contract, to serve as a  
9 clearinghouse for information; to provide training and technical  
10 assistance related to the delivery of legal representation; and to  
11 engage in research, except that broad general, legal or policy  
12 research unrelated to direct representation of eligible clients may  
13 not be undertaken.

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

1 auditing division shall require each public defender corporation to  
2 submit financial statements monthly and to report monthly on the  
3 billable and nonbillable time of its professional employees,  
4 including time used in administration of the respective offices, so  
5 as to compare the time to similar time expended in nonpublic law  
6 offices for similar activities. The accounting and auditing  
7 division shall provide to the executive director assistance in the  
8 fiscal administration of all of the agency's divisions. This  
9 assistance shall include, but not be limited to, budget preparation  
10 and statistical analysis.

11 (e) The agency shall establish and the executive director or  
12 his or her designee shall operate an appellate advocacy division  
13 for the purpose of prosecuting litigation on behalf of eligible  
14 clients in the Supreme Court of Appeals. The executive director or  
15 his or her designee shall be the director of the appellate advocacy  
16 division. The appellate advocacy division shall represent eligible  
17 clients upon appointment by the circuit courts or by the Supreme  
18 Court of Appeals. The division may, however, refuse the  
19 appointments due to a conflict of interest or if the executive  
20 director has determined the existing caseload cannot be increased  
21 without jeopardizing the appellate division's ability to provide  
22 effective representation. In order to effectively and efficiently  
23 use the resources of the appellate division, the executive director  
24 may restrict the provision of appellate representation to certain  
25 types of cases. The executive director may select and employ staff  
26 attorneys to perform the duties prescribed by this subsection. The  
27 appellate division shall maintain records of representation of

1 eligible clients for record purposes only.

2       (f) In order to improve the quality of legal representation,  
3 assure the prudent and resourceful expenditure of state funds the  
4 agency shall establish a program for the executive director to  
5 manage and otherwise have central authority and control over the  
6 public defender corporations created in accordance with section  
7 eight of this chapter. The executive director has the authority to  
8 promulgate rules, and has such other authority and perform such  
9 duties, as may be required or necessary to effectuate this  
10 subsection.

NOTE: The purpose of this bill is to require public defender corporations of all the judicial circuits to be centralized under the Executive Director of Public Defender Services. The bill also grants rulemaking authority.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.