

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 361

BY SENATOR TRUMP

[Introduced January 21, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §29-21-6 of the Code of West Virginia, 1931, as amended, relating
2 to Public Defender Services; authorizing the executive director to establish and operate a
3 habeas division; providing that the executive director shall be the director of the habeas
4 division; providing for the representation of eligible clients upon appointment by the circuit
5 courts or the Supreme Court of Appeals; providing for limitations on appointments for
6 conflicts of interest or extreme caseloads; and authorizing the executive director to employ
7 attorneys and support staff to perform the duties of the habeas division.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

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

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

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

9 (c) The agency shall establish and the executive director or his or her designee shall
10 operate a criminal law research center as provided in §29-21-7 of this code. This center shall
11 undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide
12 training and technical assistance related to the delivery of legal representation; and to engage in
13 research, except that broad general, legal or policy research unrelated to direct representation of
14 eligible clients may not be undertaken.

15 (d) The agency shall establish and the executive director or his or her designee shall
16 operate an accounting and auditing division to require and monitor the compliance with this article

17 by public defender corporations and other persons or entities receiving funding or compensation
18 from the agency. The accounting and auditing division shall review all plans and proposals for
19 grants and contracts and shall make a recommendation of approval or disapproval to the
20 executive director. The accounting and auditing division shall prepare, or cause to be prepared,
21 reports concerning the evaluation, inspection or monitoring of public defender corporations and
22 other grantees, contractors, persons or entities receiving financial assistance under this article
23 and shall further carry out the agency's responsibilities for records and reports as set forth in §29-
24 21-18 of this code. The accounting and auditing division shall require each public defender
25 corporation to submit financial statements monthly and to report monthly on the billable and
26 nonbillable time of its professional employees, including time used in administration of the
27 respective offices, so as to compare the time to similar time expended in nonpublic law offices for
28 similar activities. The accounting and auditing division shall provide to the executive director
29 assistance in the fiscal administration of all of the agency's divisions. This assistance shall include,
30 but not be limited to, budget preparation and statistical analysis.

31 (e) The agency shall establish and the executive director or his or her designee shall
32 operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of
33 eligible clients in the Supreme Court of Appeals. The executive director or his or her designee
34 shall be the director of the appellate advocacy division. The appellate advocacy division shall
35 represent eligible clients upon appointment by the circuit courts or by the Supreme Court of
36 Appeals. The division may, however, refuse the appointments due to a conflict of interest or if the
37 executive director has determined the existing caseload cannot be increased without jeopardizing
38 the appellate division's ability to provide effective representation. In order to effectively and
39 efficiently use the resources of the appellate division, the executive director may restrict the
40 provision of appellate representation to certain types of cases. The executive director may select
41 and employ staff attorneys to perform the duties prescribed by this subsection. The appellate
42 division shall maintain records of representation of eligible clients for record purposes only.

43 (f) The agency shall establish and the executive director or his or her designee shall
44 operate a habeas division for the purpose of prosecuting writs of habeas corpus on behalf of
45 eligible clients in the circuit courts statewide and in the Supreme Court of Appeals. The executive
46 director or his or her designee shall be the director of the habeas division. The habeas division
47 shall represent eligible clients upon appointment by the circuit courts or the Supreme Court of
48 Appeals. A court may appoint the habeas division unless the appointment would create a conflict
49 of interest or the executive director has notified the court in writing that the habeas division's
50 existing caseload cannot be increased for a specified period of time without jeopardizing its ability
51 to provide effective representation. In appointing the habeas division, the court should determine
52 whether the appointment of the habeas division is the most effective use of the habeas division
53 considering the grounds and legal issues raised by the petitioner. The executive director may
54 select and employ staff attorneys, paraprofessionals, and investigators to perform the duties
55 prescribed by this subsection. The habeas division shall maintain records of representation of
56 eligible clients for record purposes only.

NOTE: The purpose of this bill is to authorize Public Defender Services to establish and operate a habeas division.

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