

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 361

SENATOR TRUMP, *original sponsor*

[Originating in the Committee on the Judiciary;

Reported on January 30, 2019]

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 agency’s executive director to establish and
3 operate a habeas division; providing that the executive director or his or her designee shall
4 be the director of the division to represent qualified persons in habeas corpus matters;
5 providing for the representation of eligible clients upon appointment by the circuit courts
6 or the Supreme Court of Appeals; providing for limitations on appointments for conflicts of
7 interest or an excessive caseload; authorizing the executive director to employ attorneys
8 and support staff to perform the duties of the division; and requiring maintenance of client
9 records for record-keeping purposes only.

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