

Senate Bill No. 568

(By Senators Tucker and Plymale)

[Introduced February 21, 2011; referred to
the Committee on the Judiciary.]

A BILL to amend and reenact §29-21-9 of the Code of West Virginia, 1931, as amended, relating to panel attorneys; and providing that an attorney from the public defender office shall be appointed by a judge in certain cases.

Be it enacted by the Legislature of West Virginia:

That §29-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§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 prefer-
13 ence:

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

22 (2) If the public defender office is not available for ap-
23 pointment, the court shall appoint one or more panel attor-
24 neys 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 appoint-
31 ment;

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

35 (6) If a panel attorney from an adjoining circuit is unavail-
36 able, 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.

(NOTE: The purpose of this bill is to clarify that an attorney from the public defender office shall be appointed by a judge in all cases where an attorney-at-law is required to be appointed for an eligible client.

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