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Senate Bill No. 447

(By Senators Tucker, Klempa and Barnes)

[Introduced January 30, 2012; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §29-21-9 of the Code of West Virginia,
11 1931, as amended, relating to panel attorneys; and providing
12 that an attorney from the public defender office shall be
13 appointed by a judge in certain cases.

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

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

17 **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

18 **§29-21-9. Panel attorneys.**

19 (a) In each circuit of the state, the circuit court shall
20 establish and maintain regional and local panels of private
21 attorneys-at-law who are available to serve as counsel for eligible
22 clients. An attorney-at-law may become a panel attorney and be
23 enrolled on the regional or local panel, or both, to serve as

1 counsel for eligible clients by informing the court. An agreement
2 to accept cases generally or certain types of cases particularly
3 may not prevent a panel attorney from declining an appointment in
4 a specific case.

5 (b) In all cases where an attorney-at-law is required to be
6 appointed for an eligible client, the appointment shall be made by
7 the circuit judge in the following order of preference:

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

16 (2) If the public defender office is not available for
17 appointment, the court shall appoint one or more panel attorneys
18 from the local panel;

19 (3) If there is no local panel attorney available, the judge
20 shall appoint one or more panel attorneys from the regional panel;

21 (4) If there is no regional panel attorney available, the
22 judge may appoint a public defender office from an adjoining
23 circuit if such public defender office agrees to the appointment;

24 (5) If the adjoining public defender office does not accept

1 the appointment, the judge may appoint a panel attorney from an
2 adjoining circuit; or

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

6 (c) In any given case, the appointing judge may alter the
7 order in which attorneys are appointed if the case requires
8 particular knowledge or experience on the part of the attorney to
9 be appointed: *Provided*, That any time a court, in appointing
10 counsel pursuant to the provisions of this section, alters the
11 order of appointment as set forth herein, the order of appointment
12 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.