

1 **ENROLLED**

2 **Senate Bill No. 383**

3 (BY SENATORS COOKMAN, STOLLINGS, PLYMALE AND PALUMBO)

4 _____
5 [Passed April 8, 2013; in effect ninety days from passage.]
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10 AN ACT to amend and reenact §29-21-9 and §29-21-20 of the Code of
11 West Virginia, 1931, as amended, all relating to Public
12 Defender Services; authorizing family court judges to appoint
13 counsel in contempt cases when jail commitment is possible;
14 and providing immunity to attorney appointed by family court
15 judges.

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

17 That §29-21-9 and §29-21-20 of the Code of West Virginia,
18 1931, as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

20 **§29-21-9. Panel attorneys.**

21 (a) In each circuit of the state, the circuit court shall
22 establish and maintain regional and local panels of private
23 attorneys-at-law who are available to serve as counsel for eligible

1 clients. An attorney-at-law may become a panel attorney and be
2 enrolled on the regional or local panel, or both, to serve as
3 counsel for eligible clients by informing the court. An agreement
4 to accept cases generally or certain types of cases particularly
5 may not prevent a panel attorney from declining an appointment in
6 a specific case.

7 (b) In all cases where an attorney-at-law is required to be
8 appointed for an eligible client, the appointment shall be made by
9 the circuit judge: *Provided*, That in family court contempt cases,
10 the family court judge shall appoint an attorney-at-law when
11 required, in the following order of preference:

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

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

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

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

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

7 (6) If a panel attorney from an adjoining circuit is
8 unavailable, the judge may appoint a panel attorney from any
9 circuit.

10 (c) In any given case, the appointing judge may alter the
11 order in which attorneys are appointed if the case requires
12 particular knowledge or experience on the part of the attorney to
13 be appointed: *Provided*, That any time a court, in appointing
14 counsel pursuant to the provisions of this section, alters the
15 order of appointment as set forth herein, the order of appointment
16 shall contain the court's reasons for doing so.

17 **§29-21-20. Appointed counsel immune from liability.**

18 Any attorney who provides legal representation under the
19 provisions of this article under appointment by a circuit court,
20 family court or by the Supreme Court of Appeals, and whose only
21 compensation therefor is paid under the provisions of this article,
22 shall be immune from liability arising from that representation in
23 the same manner and to the same extent that prosecuting attorneys
24 are immune from liability.

