

1 **Senate Bill No. 383**

2 (By Senators Cookman, Stollings, Plymale and Palumbo)

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4 [Introduced February 27, 2013; referred to the Committee on the  
5 Judiciary.]  
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10 A BILL 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.

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(NOTE: The purpose of this bill is to allow family court judges to appoint counsel for indigent litigants where contempt proceedings could result in jail commitment. This will bring West Virginia in compliance with a United Supreme Court decision.

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

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THE JUDICIARY COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill No. 383**--A Bill to amend and reenact §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, all relating to authorizing family court judges to appoint counsel in contempt cases when jail commitment is possible; and providing immunity to an attorney appointed by family court judges.