

Senate Bill No. 383

(By Senators Cookman, Stollings, Plymale and Palumbo)

[Introduced February 27, 2013;
referred to the Committee on the Judiciary.]

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 Public Defender Services; authorizing family court judges to appoint counsel in contempt cases when jail commitment is possible; and providing immunity to attorney appointed by family court judges.

Be it enacted by the Legislature of West Virginia:

That §29-21-9 and §29-21-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all 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: Provided, That in family court
13 contempt cases, the family court judge shall appoint an
14 attorney-at-law when required, in the following order of
15 preference:

16 (1) In circuits where a public defender office is in
17 operation, the judge shall appoint the public defender office
18 unless an appointment is not appropriate due to a conflict of

19 interest or unless the public defender corporation board of
20 directors or the public defender, with the approval of the
21 board, has notified the court that the existing caseload cannot
22 be increased without jeopardizing the ability of defenders to
23 provide effective representation;

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

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

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

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

37 (6) If a panel attorney from an adjoining circuit is
38 unavailable, the judge may appoint a panel attorney from any
39 circuit.

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

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

1 Any attorney who provides legal representation under the
2 provisions of this article under appointment by a circuit court,
3 family court or by the Supreme Court of Appeals, and whose
4 only compensation therefor is paid under the provisions of this
5 article, shall be immune from liability arising from that
6 representation in the same manner and to the same extent that
7 prosecuting attorneys are immune from liability.

(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.)

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.