

H. B. 4247

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(By Delegates Frazier, Barill, Miley, T. Campbell
and Hunt)

[Introduced January 20, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §29-21-13a of the Code of West
Virginia, 1931, as amended, relating to increasing the
compensation of attorneys who are appointed to represent
criminal defendants.

Be it enacted by the Legislature of West Virginia:

That §29-21-13a of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-13a. Compensation and expenses for panel attorneys.

(a) All panel attorneys shall maintain detailed and accurate
records of the time expended and expenses incurred on behalf of
eligible clients and upon completion of each case, exclusive of
appeal, shall submit to the appointing court a voucher for
services. Claims for fees and expense reimbursements shall be
submitted to the appointing court on forms approved by the
executive director. The executive director shall establish
guidelines for the submission of vouchers and claims for fees and
expense reimbursements under this section. Claims submitted more
than ninety calendar days after the last date of service shall be

1 rejected, unless for good cause, the appointing court authorizes in
2 writing an extension: *Provided*, That claims where the last date of
3 service occurred prior to July 1, 2008, shall be rejected unless
4 submitted prior to January 1, 2009.

5 The appointing court shall review the voucher to determine if
6 the time and expense claims are reasonable, necessary and valid and
7 shall forward the voucher to the agency with an order approving
8 payment of the claimed amount or of a lesser sum the court
9 considers appropriate.

10 (b) Notwithstanding any other provision of this section to the
11 contrary, Public Defender Services may pay by direct bill, prior to
12 the completion of the case, litigation expenses incurred by
13 attorneys appointed under this article.

14 (c) Notwithstanding any other provision of this section to the
15 contrary, a panel attorney may be compensated for services rendered
16 and reimbursed for expenses incurred prior to the completion of the
17 case where:

18 (1) More than six months have expired since the commencement
19 of the panel attorney's representation in the case; and

20 (2) No prior payment of attorney fees has been made to the
21 panel attorney by Public Defender Services during the case.

22 The executive director, in his or her discretion, may
23 authorize periodic payments where ongoing representation extends
24 beyond six months in duration. The amounts of any fees or expenses
25 paid to the panel attorney on an interim basis, when combined with
26 any amounts paid to the panel attorney at the conclusion of the

1 case, ~~shall~~ may not exceed the limitations on fees and expenses
2 imposed by this section.

3 (d) In each case in which a panel attorney provides legal
4 representation under this article, and in each appeal after
5 conviction in circuit court, the panel attorney shall be
6 compensated at the following rates for actual and necessary time
7 expended for services performed and expenses incurred subsequent to
8 the effective date of this article:

9 (1) For attorney's work performed out of court, compensation
10 ~~shall be at the rate of~~ is \$45 per hour. Beginning July 1, 2012,
11 compensation is \$55 per hour. Beginning July 1, 2013, compensation
12 is \$65 per hour and, beginning July 1, 2014, \$75 per hour. For
13 paralegal's work performed out of court for the attorney,
14 compensation shall be at the rate of the paralegal's regular
15 compensation on an hourly basis or, if salaried, at the hourly rate
16 of compensation which would produce the paralegal's current salary
17 but in no event ~~shall the compensation exceed~~ greater than \$20 per
18 hour. Out-of-court work includes, but is not limited to, travel,
19 interviews of clients or witnesses, preparation of pleadings and
20 prehearing or pretrial research.

21 (2) For attorney's work performed in court, compensation ~~shall~~
22 ~~be at the rate of~~ is \$65 per hour. Beginning July 1, 2012,
23 compensation is \$75 per hour. Beginning July 1, 2013, compensation
24 is \$85 per hour and, beginning July 1, 2014, \$95 per hour. No
25 compensation for paralegal's work performed in court ~~shall be~~ is
26 allowed. In-court work includes, but is not limited to, all time

1 spent ~~awaiting~~ waiting for hearing or trial before a judge,
2 magistrate, special master or other judicial officer.

3 (3) The maximum amount of compensation for out-of-court and
4 in-court work under this subsection ~~is as follows:~~ for proceedings
5 of any kind involving felonies for which a penalty of life
6 imprisonment may be imposed ~~the~~ is an amount as the court may
7 approve. For all other eligible proceedings, the maximum is \$3,000
8 unless the court, for good cause shown, approves payment of a
9 larger sum.

10 (e) Actual and necessary expenses incurred in providing legal
11 representation for proceedings of any kind involving felonies for
12 which a penalty of life imprisonment may be imposed, including, but
13 not limited to, expenses for travel, transcripts, salaried or
14 contracted investigative services and expert witnesses, shall be
15 reimbursed in an amount as the court may approve. For all other
16 eligible proceedings, actual and necessary expenses incurred in
17 providing legal representation, including, but not limited to,
18 expenses for travel, transcripts, salaried or contracted
19 investigative services and expert witnesses, ~~shall be~~ is reimbursed
20 to a maximum of \$1,500 unless the court, for good cause shown,
21 approves reimbursement of a larger sum.

22 Expense vouchers shall specifically set forth the nature,
23 amount and purpose of expenses incurred and shall provide receipts,
24 invoices or other documentation required by the executive director
25 and the State Auditor:

26 (1) (A) Reimbursement of expenses for production of transcripts

1 of proceedings reported by a court reporter is limited to the cost
2 per original page and per copy page as set forth in section four,
3 article seven, chapter fifty-one of this code.

4 (B)(i) There shall be no reimbursement of expenses for or
5 production of a transcript of a preliminary hearing before a
6 magistrate or juvenile referee or of a magistrate court trial where
7 such hearing or trial has ~~also~~ been recorded electronically in
8 accordance with the provisions of section eight, article five,
9 chapter fifty of this code or court rule.

10 (ii) Reimbursement of the expense of an appearance fee for a
11 court reporter who reports a proceeding other than one described in
12 subparagraph (i) of this paragraph is limited to \$25. Where a
13 transcript of a proceeding is produced, there ~~shall be~~ is no
14 reimbursement for the expense of any appearance fee.

15 (iii) Except for the appearance fees provided in this
16 paragraph, there ~~shall be~~ is no reimbursement for hourly court
17 reporters' fees or fees for other time expended by the court
18 reporter either at the proceeding or traveling to or from the
19 proceeding.

20 (C) Reimbursement of the cost of transcription of tapes
21 electronically recorded during preliminary hearings or magistrate
22 court trials is limited to \$1 per page.

23 (2) Reimbursement for any travel expense incurred in an
24 eligible proceeding is limited to the rates for the reimbursement
25 of travel expenses established by rules promulgated by the Governor
26 pursuant to the provisions of section eleven, article eight,

1 chapter twelve of this code and administered by the Secretary of
2 the Department of Administration pursuant to the provisions of
3 section forty-eight, article three, chapter five-a of this code.

4 (3) Reimbursement for investigative services is limited to a
5 rate of \$30 per hour for work performed by an investigator.

6 (f) For purposes of compensation under this section, an appeal
7 from magistrate court to circuit court, an appeal from a final
8 order of the circuit court or a proceeding seeking an extraordinary
9 remedy made to the Supreme Court of Appeals shall be considered a
10 separate case.

11 (g) Vouchers submitted under this section shall specifically
12 set forth the nature of the service rendered, the stage of
13 proceeding or type of hearing involved, the date and place the
14 service was rendered and the amount of time expended in each
15 instance. All time claimed on the vouchers shall be itemized to
16 the nearest tenth of an hour. If the charge against the eligible
17 client for which services were rendered is one of several charges
18 involving multiple warrants or indictments, the voucher shall
19 indicate the fact and sufficiently identify the several charges so
20 as to enable the court to avoid a duplication of compensation for
21 services rendered. The executive director shall refuse to
22 requisition payment for any voucher which is not in conformity with
23 the record keeping, compensation or other provisions of this
24 article or the voucher guidelines established ~~issued~~ pursuant to
25 subsection (a) of this section. ~~and~~ In such circumstance, he or she
26 shall return the voucher to the court or to the service provider

1 for further review or correction.

2 (h) Vouchers submitted under this section after July 1, 2008,
3 shall be reimbursed within ninety days of receipt. Reimbursements
4 after ninety days shall bear interest from the ninety-first day at
5 the legal rate in effect for the calendar year in which payment is
6 due.

7 (i) Vouchers submitted for fees and expenses involving child
8 abuse and neglect cases shall be processed for payment before
9 processing vouchers submitted for all other cases.

NOTE: The purpose of this bill is to increase the compensation paid to lawyers appointed to represent criminal defendants.

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