

Senate Bill No. 481

(By Senators Wills, Edgell, Tucker, Kirkendoll, Unger, Yost,
Klempa, Kessler (Mr. President) and Plymale)

[Introduced February 1, 2012; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §29-21-13a of the Code of West
Virginia, 1931, as amended, relating to the compensation and
expenses for attorneys appointed by circuit courts in child
abuse and neglect proceedings.

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

1 services. Claims for fees and expense reimbursements shall be
2 submitted to the appointing court on forms approved by the
3 executive director. The executive director shall establish
4 guidelines for the submission of vouchers and claims for fees and
5 expense reimbursements under this section. Claims submitted more
6 than ninety calendar days after the last date of service shall be
7 rejected unless, for good cause, the appointing court authorizes in
8 writing an extension. ~~Provided, That~~ Claims where the last date of
9 service occurred prior to July 1, 2008, shall be rejected unless
10 submitted prior to January 2, 2009.

11 The appointing court shall review the voucher to determine if
12 the time and expense claims are reasonable, necessary and valid,
13 and ~~shall~~ forward the voucher to the agency with an order approving
14 payment of the claimed amount or of a lesser sum the court
15 considers appropriate.

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

20 (c) Notwithstanding any other provision of this section to the
21 contrary, a panel attorney may be compensated for services rendered
22 and reimbursed for expenses incurred prior to the completion of the
23 case where: (1) More than six months have expired since the

1 commencement of the panel attorney's representation in the case;
2 and (2) no prior payment of attorney fees has been made to the
3 panel attorney by Public Defender Services during the case. The
4 executive director ~~in his or her discretion,~~ may authorize periodic
5 payments where ongoing representation extends beyond six months in
6 duration. The amounts of any fees or expenses paid to the panel
7 attorney on an interim basis, when combined with any amounts paid
8 to the panel attorney at the conclusion of the case, shall not
9 exceed the limitations on fees and expenses imposed by this
10 section.

11 (d) In each case in which a panel attorney provides legal
12 representation under this article, and in each appeal after
13 conviction in circuit court, the panel attorney shall be
14 compensated at the following rates for actual and necessary time
15 expended for services performed and expenses incurred subsequent to
16 the effective date of this article:

17 (1) For attorney's work performed out of court, compensation
18 shall be at the rate of \$45 per hour. For paralegal's work
19 performed out of court for the attorney, compensation shall be at
20 the rate of the paralegal's regular compensation on an hourly basis
21 or, if salaried, at the hourly rate of compensation which would
22 produce the paralegal's current salary, but in no event shall the
23 compensation exceed \$20 per hour. Out-of-court work includes, but

1 is not limited to, travel, interviews of clients or witnesses,
2 preparation of pleadings and prehearing or pretrial research.

3 (2) For attorney's work performed in court, compensation shall
4 be at the rate of \$65 per hour. No compensation for paralegal's
5 work performed in court shall be allowed. In-court work includes,
6 but is not limited to, all time spent awaiting hearing or trial
7 before a judge, magistrate, special master or other judicial
8 officer. Attorneys who are appointed to represent parties in child
9 abuse and neglect proceedings under article six, chapter forty-nine
10 of this code shall be compensated at the rate of \$95 per hour for
11 work performed in court, upon certification of training required
12 under section two, article six, chapter forty-nine of this code.

13 (3) The maximum amount of compensation for out-of-court and
14 in-court work under this subsection is, ~~as follows:~~ for proceedings
15 of any kind involving felonies for which a penalty of life
16 imprisonment may be imposed, the amount as the court may approve.
17 For all other ~~eligible proceedings, three thousand dollars~~
18 proceedings, the maximum amount is \$3,000 unless the court, for
19 good cause shown, approves payment of a larger sum. Attorneys who
20 are appointed to represent parties in child abuse and neglect
21 proceedings under article six, chapter forty-nine of this code,
22 shall be compensated at the rate of \$95 per hour upon certification
23 of specialized training required under section two, article six,

1 chapter forty-nine of this code.

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

14 Expense vouchers shall specifically set forth the nature,
15 amount and purpose of expenses incurred and ~~shall~~ provide receipts,
16 invoices or other documentation required by the executive director
17 and the State Auditor:

18 (1) (A) Reimbursement of expenses for production of
19 transcripts of proceedings reported by a court reporter is limited
20 to the cost per original page and per copy page as set forth in
21 section four, article seven, chapter fifty-one of this code.

22 (B) (i) There ~~shall be~~ is no reimbursement of expenses for or
23 production of a transcript of a preliminary hearing before a

1 magistrate or juvenile referee or of a magistrate court trial where
2 ~~such~~ the hearing or trial has also been recorded electronically in
3 accordance with the provisions of section eight, article five,
4 chapter fifty of this code or court rule.

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

10 (iii) Except for the appearance fees provided in this
11 paragraph, there ~~shall be~~ is no reimbursement for hourly court
12 reporters' fees or fees for other time expended by the court
13 reporter, either at the proceeding or traveling to or from the
14 proceeding.

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

18 (2) Reimbursement for ~~any~~ travel expense incurred in ~~an~~
19 ~~eligible~~ a proceeding is limited to the rates for the reimbursement
20 of travel expenses established by rules promulgated by the Governor
21 pursuant to the provisions of section eleven, article eight,
22 chapter twelve of this code and administered by the Secretary of
23 the Department of Administration pursuant to the provisions of

1 section forty-eight, article three, chapter five-a of this code.

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

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

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

1 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 hourly rate for attorneys who are appointed in child abuse and neglect matters.

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