

**Senate Bill No. 131**

(By Senators Miller, Snyder, Romano and Facemire)

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[Introduced January 14, 2015; referred to the Committee on the Judiciary; and then to the  
Committee on Finance.]

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**FISCAL  
NOTE**

A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended; and to  
amend and reenact §49-6-2 of said code, all relating to 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; and that §49-6-2 of said code be amended and reenacted, all to read as follows:

**Chapter 29. MISCELLANEOUS BOARDS AND OFFICERS.**

**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

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

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

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

13         (c) Notwithstanding any other provision of this section to the contrary, a panel attorney may  
14 be compensated for services rendered and reimbursed for expenses incurred prior to the completion  
15 of the case where: (1) More than six months have expired since the commencement of the panel  
16 attorney's representation in the case; and (2) no prior payment of attorney fees has been made to the  
17 panel attorney by Public Defender Services during the case. The executive director ~~in his or her~~  
18 ~~discretion~~, may authorize periodic payments where ongoing representation extends beyond six  
19 months in duration. The amounts of ~~any~~ fees or expenses paid to the panel attorney on an interim  
20 basis, when combined with any amounts paid to the panel attorney at the conclusion of the case, ~~shall~~  
21 may not exceed the limitations on fees and expenses imposed by this section.

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

5 (1) For attorney's work performed out of court, compensation ~~shall be at the rate of \$45 per~~  
6 hour is \$45 per hour except that those attorneys who are appointed to represent parties in child abuse  
7 and neglect proceedings under article six, chapter forty-nine of this code are compensated at the rate  
8 of \$75 per hour for work performed out of court or not attending multidisciplinary training, upon  
9 certification of training required under section two, article six, chapter forty-nine of this code. For  
10 paralegal's work performed out of court for the attorney, compensation shall be at the rate of the  
11 paralegal's regular compensation on an hourly basis or, if salaried, at the hourly rate of compensation  
12 which would produce the paralegal's current salary but in no event shall the compensation exceed  
13 \$20 per hour. Out-of-court work includes, but is not limited to, travel, interviews of clients or  
14 witnesses, preparation of pleadings and prehearing or pretrial research.

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

1 (3) The maximum amount of compensation for out-of-court and in-court work under this  
2 subsection is, as follows:

3 (A) For proceedings of any kind involving felonies for which a penalty of life imprisonment  
4 may be imposed, the amount as the court may approve;

5 (B) For child abuse and neglect proceedings the maximum amount is \$5,000 unless the court,  
6 for good cause shown, approves payment of a larger sum;

7 (C) For all other eligible proceedings, three thousand dollars proceedings, the maximum  
8 amount is \$3,000 unless the court, for good cause shown, approves payment of a larger sum.

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

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

20 (1) (A) Reimbursement of expenses for production of transcripts of proceedings reported by  
21 a court reporter is limited to the cost per original page and per copy page as set forth in section four,

1 article seven, chapter fifty-one of this code.

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

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

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

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

15 (2) Reimbursement for ~~any~~ travel expense incurred in ~~an eligible~~ a proceeding is limited to  
16 the rates for the reimbursement of travel expenses established by rules promulgated by the Governor  
17 pursuant to the provisions of section eleven, article eight, chapter twelve of this code and  
18 administered by the Secretary of the Department of Administration pursuant to the provisions of  
19 section forty-eight, article three, chapter five-a of this code.

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

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

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

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

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

20 **CHAPTER 49. CHILD WELFARE**

21 **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

1 **§49-6-2. Petition to court when child believed neglected or abused -- Right to counsel;**  
2 **improvement period; hearing; priority of proceeding; transcript.**

3 (a) In any proceeding under the provisions of this article, the child, his or her or parents and  
4 his or her legally established custodian or other persons standing in loco parentis to him or her ~~shall~~  
5 ~~have~~ has the right to be represented by counsel at every stage of the proceedings and shall be  
6 informed by the court of their right to be ~~so~~ represented and that if they cannot pay for the services  
7 of counsel, ~~that~~ counsel will be appointed. Counsel of the child shall be appointed in the initial  
8 order. If the order gives physical custody of the child to the state, the initial order shall appoint  
9 counsel for the parents or, if the parents are separated or divorced, the parents or parent or other  
10 person or persons standing in loco parentis who had physical custody of the child for the majority  
11 of the time in the period immediately preceding the petition. ~~Provided, That such representation shall~~  
12 ~~only continue~~ This representation continues after the first appearance if the parent or other persons  
13 standing in loco parentis cannot pay for the services of counsel. Counsel for other parties shall only  
14 ~~be appointed upon request for appointment of counsel.~~ be appointed upon request. If the requesting  
15 parties have not retained counsel and cannot pay for the services of counsel, the court shall, by order  
16 entered of record, appoint an attorney or attorneys to represent the other party or parties and so  
17 inform the parties. Under no circumstances may the same attorney represent both the child and the  
18 other party or parties nor shall the same attorney represent both parents or custodians. ~~However,~~ One  
19 attorney may represent both parents or custodians where both parents or guardians consent to this  
20 representation after the attorney fully discloses to the client the possible conflict and ~~where~~ the  
21 attorney assures the court that she or he is able to represent each client without impairing her or his

1 professional judgment. ~~however,~~ If more than one child from a family is involved in the proceeding,  
2 one attorney may represent all the children. A parent who has been judicially determined to be  
3 battered ~~shall be~~ is entitled to his or her own attorney. ~~The court may allow to each attorney so~~  
4 ~~appointed a fee in the same amount which appointed counsel can receive in felony cases.~~ Effective  
5 July 1, 2012, ~~any~~ an attorney appointed pursuant to this section shall receive a minimum of eight  
6 hours of continuing legal education training per reporting period on child abuse and neglect  
7 procedure and practice. In addition to this requirement, after July 1, 2013, ~~any~~ an attorney appointed  
8 to represent a child must first complete training on representation of children that is approved by the  
9 administrative office of the Supreme Court of Appeals. The Supreme Court of Appeals shall  
10 develop procedures for approval and certification of training required under this section by July 1,  
11 2012. ~~Provided, however, That~~ Where no attorney who has completed this training is available for  
12 ~~such~~ appointment, the court shall appoint a competent attorney with demonstrated knowledge of  
13 child welfare law to represent the parent or child. ~~Any~~ An attorney appointed pursuant to this section  
14 shall perform all duties required as an attorney licensed to practice law in the State of West Virginia.

15 (b) In any proceeding brought pursuant to the provisions of this article, the court may grant  
16 ~~any~~ a respondent an improvement period in accord with the provisions of this article. During ~~such~~  
17 the improvement period, the court may require temporary custody with a responsible person ~~which~~  
18 who has been found to be a fit and proper person for the temporary custody of the child or children  
19 or the state department or other agency during the improvement period. An order granting ~~such~~ an  
20 improvement period ~~shall require~~ requires the department to prepare and submit to the court a family  
21 case plan in accordance with the provisions of section three, article six-d of this chapter.



1 (c) In any proceeding pursuant to the provisions of this article, the party or parties having  
2 custodial or other parental rights or responsibilities to the child shall be afforded a meaningful  
3 opportunity to be heard including the opportunity to testify and to present and cross-examine  
4 witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of  
5 all proceedings unless waived by all parties to the proceeding. The rules of evidence ~~shall~~ apply.  
6 Where relevant, the court shall consider the efforts of the state department to remedy the alleged  
7 circumstances. At the conclusion of the hearing, the court shall make a determination based upon  
8 the evidence and shall make findings of fact and conclusions of law as to whether such child is  
9 abused or neglected and, if applicable, whether the parent, guardian, or custodian is a battered parent,  
10 all of which shall be incorporated into the order of the court. The findings must be based upon  
11 conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

12 (d) ~~Any~~ A petition filed and ~~any~~ a proceeding held under the provisions of this article shall,  
13 to the extent practicable, be given priority over any other civil action before the court, except  
14 proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in  
15 progress. ~~Any~~ A petition filed under the provisions of this article shall be docketed immediately  
16 upon filing. ~~Any~~ A hearing to be held at the end of an improvement period and any other hearing  
17 to be held during any proceedings under the provisions of this article, shall be held as nearly as  
18 practicable on successive days and, with respect to ~~said~~ the hearing ~~to be~~ held at the end of an  
19 improvement period, shall be held as close in time as possible after the end of ~~said~~ the improvement  
20 period and shall be held within sixty days of the termination of ~~such~~ the improvement period.

21 (e) Following the court's determination, it shall be inquired of the parents or custodians

1 whether ~~or not~~ an appeal is desired and the response transcribed. A negative response ~~shall not be~~  
2 ~~construed as~~ is not a waiver. The evidence shall be transcribed and made available to the parties or  
3 their counsel as soon as practicable if ~~the same~~ is required for purposes of further proceedings. If  
4 an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript  
5 of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot  
6 pay therefor.

NOTE: The purpose of this bill is to increase the hourly rate for attorneys who are appointed in child abuse and neglect matters from \$45.00 to \$75.00 an hour out of court and from \$65.00 to \$95.00 an hour in court.

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