

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5515

FISCAL
NOTE

By Delegates Burkhammer, Steele, and Pinson

[Introduced February 07, 2024; Referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 193, as amended by adding thereto a new article,
2 designated §29-21A-101, §29-21A-102, §29-21A-103, §29-21A-104, §29-21A-105, §29-
3 21A-106, §29-21A-107, §29-21A-108, §29-21A-109, §29-21A-110, §29-21A-111, §29-
4 21A-112, §29-21A-113, §29-21A-114, §29-21A-115, §29-21A-116, §29-21A-117, all
5 related to establishing the West Virginia Public Guardian ad Litem Services and
6 authorizing a three year pilot program relating to the West Virginia Public Guardian ad
7 Litem Services; providing legislative findings; defining terms; establishing the West
8 Virginia Public Guardian ad Litem Services; relating to establishing three year pilot
9 program; relating to a sunset date for pilot program; relating to the creation of the Guardian
10 ad Litem Commission; relating to the purpose and duties of the West Virginia Public
11 Guardian ad Litem Services; relating to the executive director of the West Virginia Public
12 Guardian ad Litem Services; relating to the powers, duties, and limitations of the West
13 Virginia Public Guardian ad Litem Services; relating to the creation of West Virginia Public
14 Guardian ad Litem Corporations, establishment thereof, and requesting the West Virginia
15 Supreme Court of Appeals to select three circuits for pilot program; relating to qualified
16 panel attorneys serving as guardian ad litem; relating to approval of guardian ad litem
17 corporation applications, funding, recordkeeping by guardian ad litem corporations,
18 relating to compensation and expenses of qualified panel attorneys; relating to voucher
19 submission by a qualified panel guardian ad litem for payment purposes; relating to
20 limitation on use of funds and exceptions; relating to and establishing the Board of
21 Directors for a West Virginia Public Guardian ad Litem Corporation; relating to the private
22 practice of law by a public guardian ad litem; relating to the duties of record creation, record
23 making, and record keeping of the West Virginia Public Guardian ad Litem Services and a
24 West Virginia Public Guardian ad Litem Corporation; relating to the duties of creating,
25 maintaining, and availability of required reports of the West Virginia Public Guardian ad
26 Litem Services and a West Virginia Public Guardian ad Litem Corporation;

1 relating to audits of the accounts of any West Virginia Public Guardian ad Litem Corporation;
 2 relating to the creation of an annual audit report of West Virginia Public Guardian ad Litem
 3 Corporations; relating to public inspection of annual audit of a West Virginia Public
 4 Guardian ad Litem Corporation; relating to civil immunity for an appointed qualified
 5 guardian ad litem.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21A. WEST VIRGINIA PUBLIC GUARDIAN AD LITEM SERVICES.

§29-21A-101. Legislative findings; purpose.

1 The purpose of this article is to establish a pilot program in no more than three locations in
 2 this state establishing a West Virginia Public Guardian ad Litem Services to provide legal services
 3 for children in juvenile abuse and neglect proceedings; The Legislature finds and declares that in
 4 juvenile abuse and neglect proceedings the state is required to provide high quality legal
 5 assistance to children, who constitute a vulnerable population, and are unable to afford adequate
 6 legal counsel; that providing legal representation to this vulnerable population that face an
 7 economic barrier to adequate legal counsel will serve the ends of justice in accordance with rights
 8 and privileges guaranteed to all citizens by the Constitution of the United States of America and
 9 the Constitution of the State of West Virginia; that the availability of quality legal assistance
 10 reaffirms the faith of our citizens in our government of laws; that there is a need to explore
 11 alternative methods of delivering legal assistance to children that are the subject of a juvenile
 12 abuse and neglect proceeding, including the use of salaried public guardians ad litem
 13 complemented by qualified private panel attorneys; that innovative programs and pilot projects
 14 such as this as well as the use of qualified appointed counsel are necessary in separate areas of
 15 the state to provide information and experience upon which to base future legislative action.

§29-21A-102. Definitions.

1 As used in this article, the following words and phrases are hereby defined:

2 (1) "Eligible client": Any minor child who meets the requirements established by this article
3 to receive the publicly funded legal representation of a guardian ad litem in an eligible proceeding
4 as defined herein;

5 (2) "Eligible proceeding": Court actions filed pursuant to §49-4-101 et seq. of this code;
6 Legal representation by a guardian ad litem provided pursuant to the provisions of this article is
7 limited to the court system of the state of West Virginia, but does not include representation in
8 family court cases where the services of a guardian ad litem for a minor child are deemed
9 necessary or in criminal cases where the services of a guardian ad litem are deemed necessary;

10 (3) "Legal representation": The provision of any legal services or legal assistance as
11 guardian ad litem consistent with the purposes and provisions of this article;

12 (4) "Private practice of law": The provision of legal representation by a public guardian ad
13 litem or assistant public guardian ad litem to a client who is not entitled to receive legal
14 representation under the provisions of this article, but does not include, among other activities,
15 teaching;

16 (5) "Public guardian ad litem" or "Chief public guardian ad litem": The staff attorney
17 employed on a full-time basis by a public guardian ad litem corporation who, in addition to
18 providing direct representation to eligible clients, has administrative responsibility for the operation
19 of the public guardian ad litem corporation. The public guardian ad litem may be a part-time
20 employee if the board of directors of the public guardian ad litem corporation finds efficient
21 operation of the corporation does not require a full-time attorney and the executive director
22 approves such part-time employment.

23 (6) "Assistant public guardian ad litem": A staff attorney providing direct representation to
24 eligible clients whose salary and status as a full-time or part-time employee are fixed by the board
25 of directors of the public guardian ad litem corporation;

26 (7) "Public guardian ad litem corporation": A corporation created under §29-21A-108 of this
27 code for the sole purpose of providing guardian ad litem legal representation and other required
28 services to eligible clients; and

29 (8) "Public guardian ad litem office": An office operated by a public guardian ad litem
30 corporation to provide guardian ad litem legal representation and other required services under
31 the provisions of this article.

32 (9) "Rural county": is a county, based upon the 2020 United States Census, that has a
33 population of less than 50,000 residents and does not have a city located within its boundaries with
34 a population greater than 25,000 residents.

35 (10) "Special needs county": is any county that has an exceptional need for guardian ad
36 litem services due to a backlog of child abuse and neglect cases, a backlog of child abuse or
37 neglect referrals, a deficiency in the number of practicing guardian ad litem attorneys, a deficiency
38 in the amount of child protective services case workers, or is otherwise socioeconomically
39 depressed.

40 (11) "Urban county": is a county that has a population greater than 50,000 or has a city
41 located within its boundaries with a population greater than 25,000.

§29-21A-103. Establishment of the West Virginia Public Guardian ad Litem Services;
authorization for three-year pilot program; sunset date of the pilot program.

1 (a) There is hereby created an executive agency known as the West Virginia Public
2 Guardian ad Litem Services. The agency shall administer, coordinate, and evaluate programs by
3 which the state provides legal guardian ad litem representation to eligible clients, monitor the
4 progress of various delivery systems, recommend improvements, and provide annual reports
5 throughout the existence of the pilot program to the Legislature. The agency shall maintain its
6 office at the State Capitol. The pilot program shall be for a term of three years after operation of the
7 program of providing guardian ad litem legal services commences. Implementation of the
8 provisions and requirements of this article relating to this pilot program shall commence on July 1,

9 2024. This pilot program shall commence providing guardian ad litem legal representation in
10 eligible proceedings, as contemplated in this article, on October 1, 2024.

11 (b) The provisions of this article expire and shall have no force and effect after June 30,
12 2027, or until such later date the Legislature terminates the pilot program.

§29-21A-104. Guardian ad Litem Commission.

13 (a) There is hereby established the Guardian ad Litem Commission to provide assistance
14 to Public Guardian ad Litem Services with regard to the general policies and procedures of the
15 agency, including, but not limited to, the opening, closing, or merging of public guardian ad litem
16 offices throughout the state and the establishment of performance measures for the qualitative
17 review of the services provided by guardians ad litem.

18 (b) In order to demonstrate a collaborative approach to solving issues relating to the legal
19 representation of children in juvenile child abuse and neglect proceedings, the commission shall
20 consist of the Executive Director of Public Guardian ad Litem Services, who shall serve as chair,
21 and the following members appointed by the Governor:

22 (1) One former or retired circuit judge;

23 (2) Four lawyers who have significant experience in providing guardian ad litem services,
24 have been trained and certified as guardian ad litem by a training program authorized and
25 approved by the West Virginia Supreme Court of Appeals, and have demonstrated a strong
26 commitment to quality representation of minors in child abuse and neglect proceedings;

27 (3) One current chief public guardian ad litem; and

28 (4) One nonlawyer with a demonstrated commitment to providing guardian ad litem legal
29 services to minors in abuse and neglect proceedings;

30 (5) One person who is a member of an organization that advocates on behalf of minors
31 who have been a party to a child abuse and neglect proceeding; and

32 (c) The commission shall meet at the times and places specified by the call of the chair:

33 Provided, That the commission shall meet no less than four times each year. Members shall serve
34 without compensation but may receive reimbursement of actual and necessary expenses for each
35 day or portion thereof engaged in this discharge of official duties in a manner consistent with the
36 guidelines of the Travel Management Office of the Department of Administration.

37 (d) The initial appointments made to the commission shall be for the duration of the pilot
38 program. Thereafter, terms of office shall be for four years, each term ending on the same day of
39 the same month of the year as did the term which it succeeds. Each member shall hold office from
40 the date of his or her appointment until the end of the term for which he or she was appointed or
41 until his or her successor qualifies for office. When a vacancy occurs as a result of death,
42 resignation, or removal in the membership of this commission, it shall be filled by appointment
43 within 30 days of the vacancy for the unexpired portion of the term in the same manner as original
44 appointments. No member shall serve more than two consecutive full or partial terms and no
45 person may be reappointed to the commission until at least two years have elapsed after the
46 completion of a second successive term.

47 (e) The appointed members of the commission serve four-year terms that shall coincide
48 with the term of the Governor.

49 (f) The commission has the following powers and duties:

50 (1) To assist in developing standards regarding the qualifications and training for public
51 guardians ad litem, assistant public guardians ad litem, and staff;

52 (2) To explore opportunities related to the training of appointed panel guardians ad litem;

53 (3) To evaluate, on an annual basis, the compensation and caseloads of public guardians
54 ad litem and appointed panel guardians ad litem;

55 (4) To develop standards for providing and compensating expert witnesses, investigators,
56 social workers, and other persons who provide services related to guardian ad litem legal
57 representation under this article;

58 (5) To study the feasibility and need of creating additional public guardian ad litem

59 corporations, the activation of public guardian ad litem corporations and the formation of multi-
60 circuit or regional public guardian ad litem corporations in accordance with the provisions of §29-
61 21A-108;

62 (7) To study the potential for the dissolution of public guardian ad litem corporations;

63 (8) To monitor and make recommendations regarding the following activities of the board of
64 directors of each public guardian ad litem corporation receiving funding pursuant to this article:

65 (A) The appointment of the public guardian ad litem and any assistant public guardian ad
66 litem pursuant to §29-21A-113 of this code;

67 (B) The fixing of professional and clerical salaries pursuant to §29-21A-113 of this code;

68 and

69 (C) The removal of any public guardian ad litem, assistant public guardian ad litem or other
70 employee for misfeasance, malfeasance, or nonfeasance pursuant to §29-21A-113 of this code.

71 (9) To approve any contracts with a qualified provider of guardian ad litem services in
72 accordance with the provisions of §29-21A-107 of this code.

§29-21A-105. Purpose and duties of the West Virginia Public Guardian ad Litem Services.

1 The agency shall have as its principal purpose the development and improvement of
2 programs by which the state provides guardian ad litem legal representation to eligible clients.

§29-21A-106. Executive director.

1 (a) The Governor shall appoint, by and with the advice and consent of the Senate, the
2 Executive Director of the West Virginia Public Guardian ad Litem Services, who shall serve at the
3 will and pleasure of the Governor throughout this pilot program. The executive director shall be a
4 qualified administrator as determined by the Governor and shall be a member of the bar of the
5 Supreme Court of Appeals. In addition to the executive director there shall be such other
6 employees as the executive director determines to be necessary. The executive director shall
7 have the authority to promulgate rules and shall have such other authority and perform such duties
8 as may be required or necessary to effectuate this article. The executive director shall provide

9 supervision and direction to the other agency employees in the performance of their duties.

10 (b) The executive director's annual salary shall be equivalent to the salary provided to the
11 Executive Director of the West Virginia Public Defender Services, as outlined in §29-21-5 of this
12 code.

§29-21A-107. Powers, duties, and limitations of the West Virginia Public Guardian ad Litem Services.

1 (a) Consistent with the provisions of this article, the agency is authorized to make grants to,
2 and contracts with, public guardian ad litem corporations and with individuals, partnerships, firms,
3 corporations, and nonprofit organizations for the purpose of providing legal representation under
4 this article and may make any other grants and contracts that are necessary to carry out the
5 purposes and provisions of this article.

6 (b) The agency is authorized to accept and employ or dispose of in furtherance of the
7 purposes of this article any money or property, real, personal, or mixed, tangible or intangible,
8 received by gift, devise, bequest, or otherwise.

9 (c) The agency shall establish and the executive director or his or her designee shall
10 operate an accounting and auditing division to require and monitor the compliance with this article
11 by public guardian ad litem corporations and other persons or entities receiving funding or
12 compensation from the agency. The accounting and auditing division shall review all plans and
13 proposals for grants and contracts and shall make a recommendation of approval or disapproval to
14 the executive director. The accounting and auditing division shall prepare, or cause to be
15 prepared, reports concerning the evaluation, inspection, or monitoring of public guardian ad litem
16 corporations and other grantees, contractors, persons, or entities receiving financial assistance
17 under this article and shall further carry out the agency's responsibilities for records and reports as
18 set forth in §29-21A-115 of this code. The accounting and auditing division shall require each
19 public guardian ad litem corporation to submit financial statements monthly and to report monthly
20 on the billable and nonbillable time of its professional employees, including time used in

21 administration of the respective offices, so as to compare the time to similar time expended in
22 nonpublic law offices for similar activities. The accounting and auditing division shall provide to the
23 executive director assistance in the fiscal administration of all of the agency's divisions. This
24 assistance shall include, but not be limited to, budget preparation and statistical analysis.

25 (d) If the executive director, with the approval of the Guardian ad Litem Commission and
26 the Secretary of Administration, determines that the purposes of this article can be furthered and
27 costs reduced by the execution of a contract with a qualified provider of guardian ad litem legal
28 services, to provide legal representation to eligible clients, and to provide other necessary social,
29 paralegal, investigative, and clerical services relevant to providing guardian ad litem legal
30 representation, the execution of the contract is authorized and is exempt from the provisions of,
31 and procedures adopted pursuant to, §5A-3-1 et seq. of this code. The payment of the contract
32 amount is authorized from the funds appropriated for the payment of appointed guardian ad litem
33 counsel fees.

34 (e) The agency may reduce or reject vouchers or requests for payment submitted pursuant
35 to §29-21A-111 of this code found not to be in compliance with the provisions of this article, subject
36 to the limitations set forth herein.

**§29-21A-108. Public Guardian ad Litem corporations; establishment thereof; requesting
the Supreme Court to select the three circuits for pilot program.**

1 (a) (1) In the following judicial circuits of the state, there is hereby created a public guardian
2 ad litem corporation of the circuit for the duration of the pilot program herein established. The
3 Legislature requests that the Supreme Court of Appeals decide three circuits where this pilot
4 program shall be initially located and implemented. The Legislature requests that the Supreme
5 Court of Appeals select one rural county as defined in this article, one urban county as defined in
6 this article, and one special needs county as defined in this article by June 1, 2024.

7 (2) Throughout the pilot project, the executive director, with the approval of the Guardian
8 ad Litem Commission, may make recommendations to the Legislature regarding the creation,

9 merger or dissolution of a public guardian ad litem corporation in a judicial circuit where the
10 creation, merger or dissolution of such a public guardian ad litem corporation would improve the
11 quality of guardian ad litem legal representation, assure the prudent and resourceful expenditure
12 of state funds and further the purposes of this article.

13 (3) The purpose of these public guardian ad litem corporations is to provide legal
14 representation in the respective circuits in accordance with the provisions of this article. A public
15 guardian ad litem corporation may employ full-time attorneys and employ part-time attorneys in
16 whatever combination that the public guardian ad litem corporation deems most cost effective.

17 (b) If the executive director, with the approval of the Guardian ad Litem Commission
18 determines there is a need to make a recommendation to the Legislature to activate, merge or
19 dissolve a corporation in a judicial circuit of the state, pursuant to subsection (a) of this section, the
20 Guardian ad Litem Commission shall first consult with and give substantial consideration to the
21 recommendation of the judge of the chief judge of a circuit.

§29-21A-109. Qualified panel attorneys serving as guardian ad litem.

1 (a) In each circuit of the state, the circuit court shall establish and maintain regional and
2 local panels of private attorneys-at-law who are available to serve as guardian ad litem for eligible
3 clients. An attorney-at-law may become a qualified panel attorney serving as a guardian ad litem
4 and be enrolled on the regional or local panel, or both, to serve as counsel for eligible clients by
5 informing the court: *Provided*, That any panel attorney seeking appointment as a qualified
6 guardian ad litem shall be required to have completed all training that has been approved by the
7 West Virginia Supreme Court of Appeals, to be qualified as a guardian ad litem in this state prior to
8 receiving any appointment to serve as a guardian ad litem.

9 (b) In all cases where an attorney-at-law is required to be appointed as guardian ad litem
10 for an eligible client, the appointment shall be made by the circuit judge in the following order of
11 preference:

12 (1) In circuits where a public guardian ad litem office is in operation, the judge shall appoint

13 the public guardian ad litem office unless an appointment is not appropriate due to a conflict of
14 interest or unless the public guardian ad litem corporation board of directors or the public guardian
15 ad litem, with the approval of the board, has notified the court that the existing caseload cannot be
16 increased without jeopardizing the ability of guardians ad litem to provide effective representation;

17 (2) If the public guardian ad litem office is not available for appointment, the court shall
18 appoint one or more qualified panel attorneys to serve as guardian ad litem from the local panel;

19 (3) If there is no qualified local panel attorney available to serve as guardian ad litem, the
20 judge shall appoint one or more qualified panel attorneys to serve as guardian ad litem from the
21 regional panel;

22 (4) If there is no qualified regional panel attorney available, the judge may appoint a public
23 guardian ad litem office from an adjoining circuit if such public guardian ad litem office agrees to
24 the appointment;

25 (5) If the adjoining public guardian ad litem office does not accept the appointment, the
26 judge may appoint a qualified panel attorney from an adjoining circuit; or

27 (6) If a qualified panel attorney from an adjoining circuit is unavailable, the judge may
28 appoint a qualified panel attorney from any circuit.

29 (c) In any given case, the appointing judge may alter the order in which guardians ad litem
30 are appointed if the case requires particular knowledge or experience on the part of the guardian
31 ad litem to be appointed: *Provided*, That any time a court, in appointing counsel to serve as a
32 guardian ad litem pursuant to the provisions of this section, alters the order of appointment as set
33 forth herein, the order of appointment shall contain the court's reasons for doing so.

§29-21A-110. Approval of public guardian ad litem corporation funding applications;
funding; recordkeeping by public guardian ad litem corporations.

1 (a) On or before May 1 of each year, each active public guardian ad litem corporation shall
2 submit to the executive director and the Guardian ad Litem Commission a funding application and
3 a proposed budget for the ensuing fiscal year. The accounting and auditing division shall review all

4 funding applications and prepare recommendations for an operating plan and annual budget for
5 each public guardian ad litem corporation throughout the pendency of the pilot program herein
6 established. The executive director shall review the funding applications and the accounting and
7 auditing recommendations and shall, in consultation with the board of directors of each public
8 guardian ad litem corporation, prepare a plan for providing legal guardian ad litem services,
9 execute a funding contract for the fiscal year and commit funds for that purpose throughout the
10 pendency of the pilot program herein established.

11 (b) Upon final approval of a funding application by the executive director, the approved
12 budget shall be set forth in an approval notice. The total cost to the agency shall not exceed the
13 amount set forth in the approval notice and the agency shall not be obligated to reimburse the
14 recipient for costs incurred in excess of the amount unless and until a program modification has
15 been approved in accordance with the provisions of this article. At the discretion of the executive
16 director, when caseloads increase or unusual expenses occur, funding contracts may be amended
17 during a fiscal year if necessary to provide cost effective representation.

18 (c) Funding of public guardian ad litem corporations or other programs or entities providing
19 legal representation under the provisions of this article shall be by annual grants disbursed in such
20 periodic allotments as the executive director shall deem appropriate.

21 (d) All recipients of funding under this article shall maintain such records as required by the
22 executive director.

§29-21A-111. Compensation and expenses for qualified panel attorneys.

1 (a) All qualified panel attorneys serving as a guardian ad litem shall maintain detailed and
2 accurate records of the time expended and expenses incurred on behalf of eligible clients, and
3 which records are to be maintained in an electronic and paper form that will enable the attorney to
4 determine for any day the periods of time expended in tenths of an hour on behalf of any eligible
5 client and the total time expended in tenths of an hour on that day on behalf of all eligible clients:
6 Provided, That in no event may qualified panel attorneys be required to maintain or submit the

7 actual start and finish times of work performed.

8 (b) Upon completion of each case, exclusive of appeal, qualified panel attorneys shall
9 submit to Public Guardian ad Litem Services a voucher for services. Public Guardian ad Litem
10 Services shall electronically acknowledge the submission of a voucher. Claims for fees and
11 expense reimbursements shall be submitted to Public Guardian ad Litem Services on forms
12 approved by the executive director. The executive director shall establish guidelines for the
13 submission of vouchers and claims for fees and expense reimbursements under this section.
14 Claims submitted more than 90 business days after the last date of service shall be rejected
15 unless, for good cause, the appointing court authorizes in writing an extension.

16 (c) Public Guardian ad Litem Services shall review the voucher to determine if the time and
17 expense claims are reasonable, necessary, and valid. A voucher found to be correct shall be
18 processed and payment promptly directed within 45 business days of submission of the voucher.

19 (d)(1) If Public Guardian ad Litem Services rejects a voucher, the attorney submitting the
20 voucher shall be notified electronically of the rejection and provided detailed reasons for the
21 rejection within 30 business days of submission of the voucher. The attorney may resubmit the
22 voucher accompanied by copies of his or her records supporting the voucher and certification from
23 the appointing court that the services or expenses were performed or incurred, and were
24 reasonable and necessary, within 15 business days of receipt of notification. The executive
25 director shall make a final agency decision regarding the rejection of the voucher within 15
26 business days of receipt of the submitted records and certification. Under no circumstances may
27 the executive director have the authority or require any panel attorney to submit privileged client
28 information.

29 (2) If the final agency decision is to reject the voucher, Public Guardian ad Litem Services

30 shall request review of the final agency decision by motion to the appointing court filed within 15
31 business days of notice of the final agency decision. After a hearing providing the attorney and
32 Public Guardian ad Litem Services an opportunity to be heard, the appointing court shall have final
33 authority to resolve the issue of payment and to order all remedies available under the West
34 Virginia Rules of Civil Procedure.

35 (e) If Public Guardian ad Litem Services reduces the amount of compensation claimed or
36 reimbursement requested, the attorney submitting the voucher shall be notified electronically of
37 the reduction and detailed reasons for the reduction within 30 business days of the submission of
38 the voucher. The attorney may:

39 (1) Agree with the reduction and certify his or her agreement electronically to Public
40 Guardian ad Litem Services which shall then proceed to process payment; or

41 (2) Disagree with the reduction and request payment of the reduced amount while
42 preserving the ability to contest the reduction;

43 (3) An attorney proceeding pursuant to this subsection shall inform Public Guardian ad
44 Litem Services of his or her decision by electronic means within 15 business days of receipt of the
45 notice of reduction. If there is no communication from the attorney within 15 business days of
46 receipt of the notice of reduction, then the reduction is deemed to be accepted by the attorney;

47 (4) The attorney may submit records and certification from the appointing court that the
48 services or expenses reflected in the amount reduced were performed or incurred and were
49 reasonable and necessary. The executive director shall then make a final agency decision
50 regarding the reduction within 15 business days of receipt of the submitted records and
51 certification. Under no circumstances may the executive director have the authority to require any
52 panel attorney to submit privileged client information;

53 (5) If the attorney disagrees with the final agency decision, and the attorney and the
54 executive director cannot reach an agreement regarding the reduction within 15 business days of
55 the receipt of the notice of the final agency decision, Public Guardian ad Litem Services shall

56 request review of the final agency decision by motion to the appointing court filed within 15
57 business days of notice of the final agency decision. After a hearing providing the attorney and
58 Public Guardian ad Litem Services an opportunity to be heard, the appointing court shall have final
59 authority to resolve the issue of payment, and to order all remedies available under the West
60 Virginia Rules of Civil Procedure;

61 (6) If there is no communication from Public Guardian ad Litem Services within 30
62 business days of the submission of the voucher, the voucher is deemed to have been approved for
63 payment without reduction.

64 (f) Notwithstanding any provisions of this code to the contrary, the executive director may
65 employ in-house counsel to represent Public Guardian ad Litem Services in hearings held
66 pursuant to this article.

67 (g) Notwithstanding any other provision of this section to the contrary, Public Guardian ad
68 Litem Services may pay by direct bill, prior to the completion of the case, litigation expenses
69 incurred by attorneys appointed under this article.

70 (h) Notwithstanding any other provision of this section to the contrary, a qualified panel
71 attorney may be compensated for services rendered and reimbursed for expenses incurred prior
72 to the completion of the case after the completion of any substantive or review hearing conducted
73 in the underlying legal proceeding. The amounts of any fees or expenses paid to the panel
74 attorney on an interim basis, when combined with any amounts paid to the qualified panel attorney
75 at the conclusion of the case, shall not exceed the limitations on fees and expenses imposed by
76 this section.

77 (i) In each case in which a qualified panel attorney provides legal representation under this
78 article, and in each appeal after disposition in circuit court, the qualified panel attorney shall be
79 compensated at the following rates for actual and necessary time expended for services
80 performed and expenses incurred subsequent to the effective date of this article:

81 (1) For a qualified panel attorney's work performed out of court, compensation shall be at

82 the rate of \$80 per hour.

83 Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses,
84 preparation of pleadings, and prehearing or pretrial research;

85 (2) For a qualified panel attorney's work performed in court, compensation shall be at the
86 rate of \$100 per hour.

87 In-court work includes, but is not limited to, all time spent awaiting hearing before a judge
88 or other judicial officer, and participation in court-mandated multidisciplinary team meetings;

89 (3) Compensation for legal services performed for a qualified panel attorney by a paralegal
90 out-of-court is to be calculated using a rate of \$20 per hour;

91 (4) The maximum amount of compensation for out-of-work and in-court work under this
92 subsection shall be \$10,000 unless the court, for good cause shown, approves payment of a larger
93 sum.

94 (j) Actual and necessary expenses incurred in providing guardian ad litem legal
95 representation for proceedings of any kind, including but not limited to, expenses for travel,
96 transcripts, salaried or contracted investigative services, and expert witnesses, shall be
97 reimbursed in an amount as the court may approve.

98 (k) Expense vouchers shall specifically set forth the nature, amount, and purpose of
99 expenses incurred and shall provide receipts, invoices, or other documentation required by the
100 executive director and the State Auditor as follows:

101 (1) Reimbursement of expenses for production of transcripts of proceedings reported by a
102 court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4 of
103 this code;

104 (2) Reimbursement of the expense of an appearance fee for a court reporter who reports a
105 proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where a
106 transcript of a proceeding is produced, there may be no reimbursement for the expense of any
107 appearance fee;

108 (3) Except for the appearance fees provided in this subsection, there may be no
109 reimbursement for hourly court reporters' fees or fees for other time expended by the court
110 reporter, either at the proceeding or traveling to or from the proceeding;

111 (4) Reimbursement for any travel expense incurred in an eligible proceeding is limited to
112 the rates for the reimbursement of travel expenses established by rules promulgated by the
113 Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary of
114 the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

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

117 (l) For purposes of compensation under this section an appeal from a final order of the
118 circuit court, or a proceeding seeking an extraordinary remedy made to the Supreme Court of
119 Appeals shall be considered a separate case.

120 (m) Vouchers submitted under this section shall specifically set forth the nature of the
121 service rendered, the stage of proceeding or type of hearing involved, the date and place the
122 service was rendered, and the amount of time expended in each instance. All time claimed on the
123 vouchers shall be itemized to the nearest tenth of an hour. The executive director shall refuse to
124 requisition payment for any voucher which is not in conformity with the recordkeeping,
125 compensation, or other provisions of this article or the voucher guidelines established issued
126 pursuant to this article and in such circumstance shall return the voucher to the court or to the
127 service provider for further review or correction.

128 (n) Vouchers submitted under this section shall be reimbursed within 90 days of receipt.
129 Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for the
130 calendar year in which payment is due.

131 (o) In any legal proceeding where a qualified panel attorney is appointed as both an
132 attorney and guardian ad litem for any minor child, the appointment shall be treated as an
133 appointment for a guardian ad litem and any and all attorney's fees, expenses, investigative

134 services, and paralegal services shall be invoiced to the West Virginia Guardian ad Litem
135 Corporation for voucher processing.

§29-21A-112. Limitation on use of funds; exceptions.

1 (a) Funds made available by the agency to public guardian ad litem corporations or other
2 entities under this article, either by loan, grant or contract, and funds used for payments to
3 qualified panel attorneys shall be used only to provide guardian ad litem legal representation for
4 eligible clients involved in proceedings defined by this article as eligible proceedings.

5 (b) Funds received from any source other than the agency shall not be used by a public
6 guardian ad litem corporation for purposes prohibited by this article.

§29-21A-113. Public Guardian ad Litem corporations — Board of directors.

1 (a) The governing body of each public guardian ad litem corporation shall be a board of
2 directors consisting of persons who are residents of the area to be served by the public guardian
3 ad litem corporation.

4 (1) In multicounty circuits, and in the case of multi-circuit or regional corporations, the
5 county commission of each county within the area served shall appoint a director, who shall not be
6 an attorney-at-law. The president of each county bar association within the area served shall
7 appoint a director, who shall be an attorney-at-law that has satisfied all of the requisite training
8 relating to the duties of a guardian ad litem as approved by the West Virginia Supreme Court of
9 Appeals: *Provided*, That in a county where there is not an organized and active bar association,
10 the circuit court shall convene a meeting of the members of the bar of the court resident within the
11 county and such members of the bar shall elect one of their number as a director. The Governor
12 shall appoint one director, who shall serve as chairman, who may be an attorney-at-law, unless
13 such appointment would result in there being an even number of directors, in which event the
14 Governor shall appoint two directors, one of whom may be an attorney-at-law. The Governor's
15 appointees shall serve throughout the pendency of this pilot program. Appointments may be made
16 for unexpired terms as may be necessary. Other board members' terms shall be as determined by

17 the board.

18 (2) In single-county circuits, the manner of selecting directors shall be the same as that
19 described in subdivision (1) of this subsection, except that the county commission shall appoint
20 two directors rather than one, and the bar shall appoint two directors rather than one.

21 (b) The board of directors shall have at least four meetings a year. Timely and effective
22 prior public notice of all meetings shall be given pursuant to rules promulgated in accordance with
23 the provisions of section three, article nine-a, chapter six of this code, and all meetings shall be
24 public except for those concerned with matters properly discussed in executive session.

25 (c) The board of directors shall establish and enforce broad policies governing the
26 operation of the public guardian ad litem corporation but shall not interfere with any attorney's
27 professional responsibilities to clients. The duties of the board of directors shall include, but not be
28 limited to, the following:

29 (1) Appointment of the public guardian ad litem and any assistant public guardian ad litem
30 as may be necessary to enable the public guardian ad litem corporation to provide legal
31 representation to eligible clients; and

32 (2) Approval of the public guardian ad litem corporation's budget and the fixing of
33 professional and clerical salaries: *Provided*, That the compensation paid to any part-time public
34 guardian ad litem, part-time assistant public guardian ad litem, or other part-time employee shall
35 not include benefits such as retirement, health insurance or paid leave time for illness or vacation
36 unless Public Guardian ad Litem Services has certified in writing to the board of directors that
37 there exists sufficient funding to provide such benefits and the board of directors authorizes such
38 benefits to be included in the compensation; and

39 (3) Removal of any public guardian ad litem, assistant public guardian ad litem or other
40 employee for misfeasance, malfeasance, or nonfeasance.

41 (d) To the extent that the provisions of chapter thirty-one of this code regarding nonprofit
42 corporations are not inconsistent with this article, the provisions of said chapter shall be applicable

43 to the board of directors of the public guardian ad litem corporation.

44 (e) While serving on the board of directors, no member may receive compensation from
45 the public guardian ad litem corporation, but a member may receive payment for normal travel and
46 other out-of-pocket expenses required for fulfillment of the obligations of membership and may
47 accept appointments to represent eligible clients so long as he or she does not discuss a particular
48 case with any public guardian ad litem, assistant public guardian ad litem or other employee of the
49 office governed by the board. Directors may not serve as co-counsel with the public guardian ad
50 litem or assistant public guardian ad litem in any matter.

§29-21A-114. Private practice of law by a public guardian ad litem.

1 (a) No full-time public guardian ad litem or full-time assistant public guardian ad litem may
2 engage in any private practice of law except as provided in this section.

3 (b) A board of directors may permit a newly employed full-time public guardian ad litem or
4 full-time assistant public guardian ad litem to engage in the private practice of law for
5 compensation for the sole purpose of expeditiously closing and withdrawing from existing private
6 cases from a prior private practice. In no event shall any person employed for more than 90 days
7 as a full-time public guardian ad litem or full-time assistant public guardian ad litem be engaged in
8 any other private practice of law for compensation.

9 (c) A board of directors may permit a full-time public guardian ad litem or full-time assistant
10 public guardian ad litem to engage in private practice for compensation if the guardian ad litem is
11 acting pursuant to an appointment made under a court rule or practice of equal applicability to all
12 attorneys in the jurisdiction and if the guardian ad litem remits to the public guardian ad litem
13 corporation all compensation received.

14 (d) A board of directors may permit a full-time public guardian ad litem or full-time assistant
15 public guardian ad litem to engage in uncompensated private practice of law if the public guardian
16 ad litem or assistant public guardian ad litem is acting:

17 (1) Pursuant to an appointment made under a court rule or practice of equal applicability

18 to all attorneys in the jurisdiction; or

19 (2) On behalf of a close friend or family member; or

20 (3) On behalf of a religious, community, or charitable group.

21 (e) Violation of the requirements of this section is sufficient grounds for immediate
22 summary dismissal regardless of the conditions of employment established by a corporation's
23 board of directors.

§29-21A-115. Records and reports.

1 (a) At all times during this pilot program, the agency is authorized to require such reports as
2 it deems necessary from any public guardian ad litem corporation or other entity or person
3 receiving funding under this article regarding activities carried out pursuant to this article.

4 (b) The agency is authorized to prescribe the keeping of records with respect to the
5 activities of public guardian ad litem corporations and other grantees, contractors, persons, or
6 entities receiving financial assistance under this article and shall have access to such records at all
7 reasonable times for the purpose of ensuring compliance with the terms and conditions upon
8 which financial assistance was provided.

9 (c) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any public
10 guardian ad litem corporation, other grantee, contractor, person, or entity receiving financial
11 assistance under this article shall be maintained by the agency for a period of at least five years
12 subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public
13 inspection during regular business hours, and copies shall be furnished, upon request, to
14 interested parties upon payment of such reasonable fees as the agency may establish.

§29-21A-116. Audits.

1 (a) At all times during this pilot program, accounts of each public guardian ad litem
2 corporation shall be audited annually as soon as possible after the end of each state fiscal year.
3 Such audits shall be conducted in accordance with generally accepted auditing standards by the
4 State Tax Commissioner.

5 (b) The audits shall be conducted at the place or places where the accounts of the public
6 guardian ad litem corporation are normally kept. All books, accounts, financial records, reports,
7 files, and other papers or property belonging to or in use by the public guardian ad litem
8 corporation and necessary to facilitate the audits shall be made available to the person or persons
9 conducting the audits; and full facilities for verifying transactions with the balances and securities
10 held by depositories, fiscal agents, and custodians shall be afforded to any such person.

11 (c) The report of the annual audit shall be filed with the agency and shall be available for
12 public inspection during business hours at the principal office of the public guardian ad litem
13 corporation. The report of each such audit shall be maintained for a period of at least five years at
14 the office of the agency or during the time of this pilot program, whichever timeframe is longer.

§29-21A-117. Appointed qualified guardian ad litem counsel immune from liability.

1 Any qualified attorney who provides guardian ad litem legal representation under the
2 provisions of this article under appointment by any court, and whose only compensation therefor is
3 paid under the provisions of this article, shall be immune from liability arising from that
4 representation in the same manner and to the same extent that prosecuting attorneys are immune
5 from liability.

NOTE: The purpose of this bill is to create a three-year pilot program relating to West Virginia Public Guardian ad Litem Services, established initially in three circuits, and providing services initially in three circuits. Circuit based West Virginia Public Guardian ad Litem Corporations will be set up and a qualified guardian ad litem will be appointed as legal counsel when there is a conflict that exists within the local guardian ad litem office. This bill sets up the framework of the West Virginia Public Guardian ad Litem Services and establishes oversight over this pilot program.

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