

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4247**

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

6
7 (Originating in the Committee on Finance)

8 [February 23, 2012]

9
10 A BILL to amend and reenact §29-21-13a of the Code of West
11 Virginia, 1931, as amended, relating to increasing the
12 compensation of court appointed panel attorneys who represent
13 individuals in abuse and neglect, juvenile, criminal and other
14 proceedings.

15 *Be it enacted by the Legislature of West Virginia:*

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

18 **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

19 **§29-21-13a. Compensation and expenses for panel attorneys.**

20 (a) All panel attorneys shall maintain detailed and accurate
21 records of the time expended and expenses incurred on behalf of
22 eligible clients and upon completion of each case, exclusive of
23 appeal, shall submit to the appointing court a voucher for
24 services. Claims for fees and expense reimbursements shall be
25 submitted to the appointing court on forms approved by the
26 executive director. The executive director shall establish

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

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

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

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

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

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

25 The executive director, in his or her discretion, may
26 authorize periodic payments where ongoing representation extends

1 beyond six months in duration. The amounts of any fees or expenses
2 paid to the panel attorney on an interim basis, when combined with
3 any amounts paid to the panel attorney at the conclusion of the
4 case, ~~shall~~ may not exceed the limitations on fees and expenses
5 imposed by this section.

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

12 (1) For attorney's work performed out of court, compensation
13 shall be at the rate of \$45 per hour. Beginning July 1, 2012,
14 compensation shall be at the rate of \$50 per hour. For paralegal's
15 work performed out of court for the attorney, compensation shall be
16 at the rate of the paralegal's regular compensation on an hourly
17 basis or, if salaried, at the hourly rate of compensation which
18 would produce the paralegal's current salary but in no event shall
19 the compensation exceed \$20 per hour. Out-of-court work includes,
20 but is not limited to, travel, interviews of clients or witnesses,
21 preparation of pleadings and prehearing or pretrial research.

22 (2) For attorney's work performed in court, compensation shall
23 be at the rate of \$65 per hour. Beginning July 1, 2012,
24 compensation shall be at the rate of \$70 per hour. No compensation
25 for paralegal's work performed in court shall be allowed. In-court
26 work includes, but is not limited to, all time spent awaiting

1 hearing or trial before a judge, magistrate, special master or
2 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 amount as the court may approve.
7 For all other eligible proceedings, \$3,000 unless the court, for
8 good cause shown, approves payment of a larger sum.

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

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

25 (1) (A) Reimbursement of expenses for production of transcripts
26 of proceedings reported by a court reporter is limited to the cost

1 per original page and per copy page as set forth in section four,
2 article seven, chapter fifty-one of this code.

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

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

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

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

22 (2) Reimbursement for any travel expense incurred in an
23 eligible proceeding is limited to the rates for the reimbursement
24 of travel expenses established by rules promulgated by the Governor
25 pursuant to the provisions of section eleven, article ~~eight~~ three,
26 chapter twelve of this code and administered by the Secretary of

1 the Department of Administration pursuant to the provisions of
2 section forty-eight, article three, chapter five-a of this code.

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

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

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

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

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