

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3156**

By Delegates Steele, Nestor, Fast, Kirby, Riley, C.

Pritt, Hanna, Holstein, Dean, Shamblin, and

Householder

[Introduced January 30, 2023; Referred to the

Committee on the Judiciary then Finance]



1 A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended, by  
2 raising the compensation rates of panel attorneys; raise the compensation rates for  
3 investigators; and for dismissed or not guilty charge expungement only, providing the panel  
4 attorney to continue providing representation after the dismissal to achieve the  
5 expungement.

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

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

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

1 (a) All panel attorneys shall maintain detailed and accurate records of the time expended  
2 and expenses incurred on behalf of eligible clients, and which records are to be maintained in a  
3 form that will enable the attorney to determine for any day the periods of time expended in tenths of  
4 an hour on behalf of any eligible client and the total time expended in tenths of an hour on that day  
5 on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to  
6 maintain or submit the actual start and finish times of work performed.

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

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

18 (d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher  
19 shall be notified electronically of the rejection and provided detailed reasons for the rejection within  
20 30 business days of submission of the voucher. The attorney may resubmit the voucher  
21 accompanied by copies of his or her records supporting the voucher and certification from the  
22 appointing court that the services or expenses were performed or incurred, and were reasonable  
23 and necessary, within 15 business days of receipt of notification. The executive director shall make  
24 a final agency decision regarding the rejection of the voucher within 15 business days of receipt of  
25 the submitted records and certification. Under no circumstances may the executive director have  
26 the authority or require any panel attorney to submit privileged client information. (2) If the final  
27 agency decision is to reject the voucher, Public Defender Services shall request review of the final  
28 agency decision by motion to the appointing court filed within 15 business days of notice of the  
29 final agency decision. After a hearing providing the attorney and Public Defender Services an  
30 opportunity to be heard, the appointing court shall have final authority to resolve the issue of  
31 payment and to order all remedies available under the West Virginia Rules of Civil Procedure.

32 (e) If Public Defender Services reduces the amount of compensation claimed or  
33 reimbursement requested, the attorney submitting the voucher shall be notified electronically of  
34 the reduction and detailed reasons for the reduction within 30 business days of the submission of  
35 the voucher. The attorney may:

36 (1) Agree with the reduction and certify his or her agreement electronically to Public  
37 Defender Services which shall then proceed to process payment; or

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

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

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

50 (5) If the attorney disagrees with the final agency decision, and the attorney and the  
51 executive director cannot reach an agreement regarding the reduction within 15 business days of  
52 the receipt of the notice of the final agency decision, Public Defender Services shall request review  
53 of the final agency decision by motion to the appointing court filed within 15 business days of  
54 notice of the final agency decision. After a hearing providing the attorney and Public Defender  
55 Services an opportunity to be heard, the appointing court shall have final authority to resolve the  
56 issue of payment, and to order all remedies available under the West Virginia Rules of Civil  
57 Procedure;

58 (6) If there is no communication from Public Defender Services within 30 business days of  
59 the submission of the voucher, the voucher is deemed to have been approved for payment without  
60 reduction.

61 (f) Notwithstanding any provisions of this code to the contrary, the executive director may  
62 employ in-house counsel to represent Public Defender Services in hearings held pursuant to this  
63 article.

64 (g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code,  
65 the provisions of the amendments to this article enacted during the 2019 regular session of the  
66 Legislature shall be effective July 1, 2019.

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

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

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

83 (1) For attorney's work performed out of court, compensation shall be at the rate of \$60 per  
84 hour.

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

87 (2) For attorney's work performed in court, compensation shall be at the rate of \$80 per  
88 hour.

89 In-court work includes, but is not limited to, all time spent awaiting hearing or trial before a  
90 judge, magistrate, special master, or other judicial officer;

91 (3) Compensation for legal services performed for a panel attorney by a paralegal out-of-  
92 court is to be calculated using a rate of \$20 per hour and no such compensation is to be paid for in-  
93 court services performed for a panel attorney by a paralegal absent prior approval of the circuit  
94 court before whom the panel attorney is appearing and subject to maximum reimbursement  
95 amounts set by agency rule;

96           (4) The maximum amount of compensation for out-of-court and in-court work under this  
97 subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life  
98 imprisonment may be imposed, the amount as the court may approve; for all other eligible  
99 proceedings, ~~\$3,000~~ \$4,500 unless the court, for good cause shown, approves payment of a larger  
100 sum.

101           (k) Actual and necessary expenses incurred in providing legal representation for  
102 proceedings of any kind involving felonies for which a penalty of life imprisonment may be  
103 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted  
104 investigative services, and expert witnesses, shall be reimbursed in an amount as the court may  
105 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing  
106 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or  
107 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of  
108 ~~\$1,500~~ \$2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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

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

115           (2) There may be no reimbursement of expenses for or production of a transcript of a  
116 preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where the  
117 hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8  
118 of this code or court rule;

119           (3) Reimbursement of the expense of an appearance fee for a court reporter who reports a  
120 proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where a

121 transcript of a proceeding is produced, there may be no reimbursement for the expense of any  
122 appearance fee;

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

126 (5) Reimbursement of the cost of transcription of tapes electronically recorded during  
127 preliminary hearings or magistrate court trials is limited to \$1 per page;

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

132 (7) Reimbursement for investigative services is limited to a rate of ~~\$30~~ \$40 per hour for  
133 work performed by an investigator.

134 (m) For purposes of compensation under this section, an appeal from magistrate court to  
135 circuit court, an appeal from a final order of the circuit court, or a proceeding seeking an  
136 extraordinary remedy made to the Supreme Court of Appeals shall be considered a separate  
137 case.

138 (n) Vouchers submitted under this section shall specifically set forth the nature of the  
139 service rendered, the stage of proceeding or type of hearing involved, the date and place the  
140 service was rendered, and the amount of time expended in each instance. All time claimed on the  
141 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client  
142 for which services were rendered is one of several charges involving multiple warrants or  
143 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as to  
144 enable Public Defender Services to avoid a duplication of compensation for services rendered.  
145 The executive director shall refuse to requisition payment for any voucher which is not in  
146 conformity with the recordkeeping, compensation, or other provisions of this article or the voucher



147 guidelines established issued pursuant to this article and in such circumstance shall return the  
148 voucher to the court or to the service provider for further review or correction.

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

152 (p) Vouchers submitted for fees and expenses involving child abuse and neglect cases  
153 shall be processed for payment before processing vouchers submitted for all other cases.

154 (q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the  
155 charge or charges for which the indigent defendant was afforded counsel qualify for an  
156 expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued  
157 representation upon the terms specified in this section. The Panel Attorney shall include the  
158 services performed by panel attorneys in regard to an expungement on the same voucher or a  
159 subsequent voucher submitted concerning the same case number as the one submitted to Public  
160 Defender Services for the underlying criminal charge or charges. The maximum amount of  
161 compensation for out-of-court and in-court work under this section shall be limited to \$1,000 for  
162 expungement services in addition to the limits imposed on the underlying criminal charge or  
163 charges, unless the court, for good cause shown, approves payment of a larger sum. The actual  
164 and necessary expenses incurred in providing legal representation for expungement proceedings  
165 under this section shall be reimbursed to a maximum of \$500 unless the court, for good cause  
166 shown, approves reimbursement of a larger sum.

NOTE: The purpose of this bill is to increase compensation rates for panel attorneys and investigators, and to provide indigent defendants with an opportunity to obtain expungements.

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