

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4272

BY DELEGATES FAST, SHAFFER, HANSHAW, KURCABA,

MCCUSKEY, MANCHIN AND SKINNER

[Introduced January 26, 2016; 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,
2 relating to Public Defender Services; increasing the hourly rate for attorneys for in court
3 and out of court work including investigative services; permitting attorneys who spend at
4 least sixty percent of their practice in appointed cases to enroll in the Public Employees
5 Insurance Agency plans; and requiring the executive director to propose rules, for
6 legislative approval, that relate to requirements for such attorneys to enroll in such plans.

Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

30 (1) For attorney's work performed out of court, compensation shall be at the rate of ~~\$45~~
31 \$75 per hour. For paralegal's work performed out of court for the attorney, compensation shall be
32 at the rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the hourly
33 rate of compensation which would produce the paralegal's current salary, but in no event shall
34 the compensation exceed \$20 per hour. Out-of-court work includes, but is not limited to, travel,
35 interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial research.

36 (2) For attorney's work performed in court, compensation shall be at the rate of ~~\$65~~ \$95
37 per hour. No compensation for paralegal's work performed in court shall be allowed. In-court work
38 includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate,
39 special master or other judicial officer.

40 (3) The maximum amount of compensation for out-of-court and in-court work under this
41 subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life
42 imprisonment may be imposed, the amount as the court may approve; for all other eligible
43 proceedings, ~~\$3,000~~ \$6,000 unless the court, for good cause shown, approves payment of a
44 larger sum.

45 (e) Actual and necessary expenses incurred in providing legal representation for
46 proceedings of any kind involving felonies for which a penalty of life imprisonment may be
47 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted
48 investigative services and expert witnesses, shall be reimbursed in an amount as the court may
49 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing
50 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or
51 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of
52 \$1,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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

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

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

63 (ii) Reimbursement of the expense of an appearance fee for a court reporter who reports

64 a proceeding other than one described in subparagraph (i) of this paragraph is limited to \$25.
65 Where a transcript of a proceeding is produced, there shall be no reimbursement for the expense
66 of any appearance fee.

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

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

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

77 (3) Reimbursement for investigative services is limited to a rate of ~~\$30~~ \$60 per hour for
78 work performed by an investigator.

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

83 (g) Vouchers submitted under this section shall specifically set forth the nature of the
84 service rendered, the stage of proceeding or type of hearing involved, the date and place the
85 service was rendered and the amount of time expended in each instance. All time claimed on the
86 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client
87 for which services were rendered is one of several charges involving multiple warrants or

88 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as
89 to enable the court to avoid a duplication of compensation for services rendered. The executive
90 director shall refuse to requisition payment for any voucher which is not in conformity with the
91 recordkeeping, compensation or other provisions of this article or the voucher guidelines
92 established issued pursuant to subsection (a) of this section and in such circumstance shall return
93 the voucher to the court or to the service provider for further review or correction.

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

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

1 (j) Attorneys who spend at least 1200 hours per year on court appointed cases may be
2 considered employees of the state for purposes of eligibility to enroll for insurance coverage under
3 the Public Employees Insurance Act in article sixteen, chapter five of this code. The executive
4 director shall propose rules for legislative approval in accordance with article three, chapter
5 twenty-nine-a of this code in order to determine the requirements for court appointed attorneys to
6 enroll in the Public Employees Insurance Agency plans.

NOTE: The purpose of this bill is to increase the hourly rate for attorneys providing Public Defender Services for in court and out of court work. The bill permits attorneys who spend at least sixty percent of their practice in appointed cases to enroll in the Public Employees Insurance Agency plans and requires the Executive Director of the Public Defender Services to propose rules, for legislative approval, that relate to requirements to enroll in the public employees insurance act.

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