

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 481**

4 (By Senators Wills, Edgell, Tucker, Kirkendoll, Unger, Yost,
5 Klempa, Kessler (Mr. President) and Plymale)

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7 [Originating in the Committee on The Judiciary;
8 reported February 16, 2012.]
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13 A BILL to amend and reenact §29-21-13a of the Code of West
14 Virginia, 1931, as amended; and to amend and reenact §49-6-2
15 of said code, all relating to the compensation and expenses
16 for attorneys appointed by circuit courts in child abuse and
17 neglect proceedings.

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

19 That §29-21-13a of the Code of West Virginia, 1931, as
20 amended, be amended and reenacted; and that §49-6-2 of said code be
21 amended and reenacted, all to read as follows:

22 **ARTICLE 21. PUBLIC DEFENDER SERVICES.**

23 **§29-21-13a. Compensation and expenses for panel attorneys.**

24 (a) All panel attorneys shall maintain detailed and accurate

1 records of the time expended and expenses incurred on behalf of
2 eligible clients and upon completion of each case, exclusive of
3 appeal, ~~shall~~ submit to the appointing court a voucher for
4 services. Claims for fees and expense reimbursements shall be
5 submitted to the appointing court on forms approved by the
6 executive director. The executive director shall establish
7 guidelines for the submission of vouchers and claims for fees and
8 expense reimbursements under this section. Claims submitted more
9 than ninety calendar days after the last date of service shall be
10 rejected unless, for good cause, the appointing court authorizes in
11 writing an extension. ~~Provided, That~~ Claims where the last date of
12 service occurred prior to July 1, 2008, shall be rejected unless
13 submitted prior to January 2, 2009.

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

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

23 (c) Notwithstanding any other provision of this section to the
24 contrary, a panel attorney may be compensated for services rendered

1 and reimbursed for expenses incurred prior to the completion of the
2 case where: (1) More than six months have expired since the
3 commencement of the panel attorney's representation in the case;
4 and (2) no prior payment of attorney fees has been made to the
5 panel attorney by Public Defender Services during the case. The
6 executive director ~~in his or her discretion,~~ may authorize periodic
7 payments where ongoing representation extends beyond six months in
8 duration. The amounts of any fees or expenses paid to the panel
9 attorney on an interim basis, when combined with any amounts paid
10 to the panel attorney at the conclusion of the case, shall not
11 exceed the limitations on fees and expenses imposed by this
12 section.

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

19 (1) For attorney's work performed out of court, compensation
20 shall be at the rate of \$45 per hour. Provided, That attorneys who
21 are appointed to represent parties in child abuse and neglect
22 proceedings under article six, chapter forty-nine of this code
23 shall be compensated at the rate of \$75 per hour for work performed
24 out of court or not attending multi disciplinary training, upon

1 certification of training required under section two, article six,
2 chapter forty-nine of this code. For paralegal's work performed
3 out of court for the attorney, compensation shall be at the rate of
4 the paralegal's regular compensation on an hourly basis or, if
5 salaried, at the hourly rate of compensation which would produce
6 the paralegal's current salary, but in no event shall the
7 compensation exceed \$20 per hour. Out-of-court work includes, but
8 is not limited to, travel, interviews of clients or witnesses,
9 preparation of pleadings and prehearing or pretrial research.

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

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

23 (1) ~~f~~For proceedings of any kind involving felonies for which
24 a penalty of life imprisonment may be imposed, the amount as the

1 court may approve.;

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

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

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

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

24 (1) (A) Reimbursement of expenses for production of

1 transcripts of proceedings reported by a court reporter is limited
2 to the cost per original page and per copy page as set forth in
3 section four, article seven, chapter fifty-one of this code.

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

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

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

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

23 (2) Reimbursement for ~~any~~ travel expense incurred in ~~an~~
24 ~~eligible~~ a proceeding is limited to the rates for the reimbursement

1 of travel expenses established by rules promulgated by the Governor
2 pursuant to the provisions of section eleven, article eight,
3 chapter twelve of this code and administered by the Secretary of
4 the Department of Administration pursuant to the provisions of
5 section forty-eight, article three, chapter five-a of this code.

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

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

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

1 article or the voucher guidelines established issued pursuant to
2 subsection (a) of this section and in such circumstance shall
3 return the voucher to the court or to the service provider for
4 further review or correction.

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

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

13 **§49-6-2. Petition to court when child believed neglected or**
14 **abused--Right to counsel; improvement period; hearing;**
15 **priority of proceeding; transcript.**

16 (a) In any proceeding under the provisions of this article,
17 the child, his or her or parents and his or her legally established
18 custodian or other persons standing in loco parentis to him or her
19 shall have the right to be represented by counsel at every stage of
20 the proceedings and shall be informed by the court of their right
21 to be so represented and that if they cannot pay for the services
22 of counsel, that counsel will be appointed. Counsel of the child
23 shall be appointed in the initial order. If the order gives
24 physical custody of the child to the state, the initial order shall
25 appoint counsel for the parents or, if the parents are separated or

1 divorced, the parents or parent or other person or persons standing
2 in loco parentis who had physical custody of the child for the
3 majority of the time in the period immediately preceding the
4 petition: *Provided*, That such representation shall only continue
5 after the first appearance if the parent or other persons standing
6 in loco parentis cannot pay for the services of counsel. Counsel
7 for other parties shall only be appointed upon request for
8 appointment of counsel. If the requesting parties have not
9 retained counsel and cannot pay for the services of counsel, the
10 court shall, by order entered of record, appoint an attorney or
11 attorneys to represent the other party or parties and so inform the
12 parties. Under no circumstances may the same attorney represent
13 both the child and the other party or parties, nor shall the same
14 attorney represent both parents or custodians. However, one
15 attorney may represent both parents or custodians where both
16 parents or guardians consent to this representation after the
17 attorney fully discloses to the client the possible conflict and
18 where the attorney assures the court that she or he or she is able
19 to represent each client without impairing her or his or her
20 professional judgment; however, if more than one child from a
21 family is involved in the proceeding, one attorney may represent
22 all the children. A parent who has been judicially determined to
23 be battered shall be entitled to his or her own attorney. ~~The~~
24 ~~court may allow to each attorney so appointed a fee in the same~~
25 ~~amount which appointed counsel can receive in felony cases.~~ Any

1 attorney appointed pursuant to this section shall by July 1, 1993,
2 and three hours per year each year thereafter, receive a minimum of
3 three hours of continuing legal education training on
4 representation of children, child abuse and neglect: *Provided,*
5 *however,* That where no attorney who has completed this training is
6 available for such appointment, the court shall appoint a competent
7 attorney with demonstrated knowledge of child welfare law to
8 represent the child. Any attorney appointed pursuant to this
9 section shall perform all duties required as an attorney licensed
10 to practice law in the State of West Virginia.

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

21 (c) In any proceeding pursuant to the provisions of this
22 article, the party or parties having custodial or other parental
23 rights or responsibilities to the child shall be afforded a
24 meaningful opportunity to be heard, including the opportunity to
25 testify and to present and cross-examine witnesses. The petition

1 shall not be taken as confessed. A transcript or recording shall
2 be made of all proceedings unless waived by all parties to the
3 proceeding. The rules of evidence shall apply. Where relevant,
4 the court shall consider the efforts of the state department to
5 remedy the alleged circumstances. At the conclusion of the
6 hearing, the court shall make a determination based upon the
7 evidence and shall make findings of fact and conclusions of law as
8 to whether such child is abused or neglected and, if applicable,
9 whether the parent, guardian, or custodian is a battered parent,
10 all of which shall be incorporated into the order of the court.
11 The findings must be based upon conditions existing at the time of
12 the filing of the petition and proven by clear and convincing
13 proof.

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

1 shall be held within sixty days of the termination of such
2 improvement period.

3 (e) Following the court's determination, it shall be inquired
4 of the parents or custodians whether or not appeal is desired and
5 the response transcribed. A negative response shall not be
6 construed as a waiver. The evidence shall be transcribed and made
7 available to the parties or their counsel as soon as practicable,
8 if the same is required for purposes of further proceedings. If an
9 indigent person intends to pursue further proceedings, the court
10 reporter shall furnish a transcript of the hearing without cost to
11 the indigent person if an affidavit is filed stating that he or she
12 cannot pay therefor.

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NOTE: The purpose of this bill is to increase the hourly rate
for attorneys who are appointed in child abuse and neglect matters.

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