

**Senate Bill No. 99**

(By Senators Miller, Cookman and Fitzsimmons)

[Introduced January 8, 2014; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §29-21-13a of the Code of West  
Virginia, 1931, as amended; and to amend and reenact §49-6-2  
of said code, all relating to the compensation and expenses  
for attorneys appointed by circuit courts in child abuse and  
neglect proceedings.

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

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

**Chapter 29.**

**MISCELLANEOUS BOARDS AND OFFICERS.**

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

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

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

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

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

1 attorneys appointed under this article.

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

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

22       (1) For attorney's work performed out of court, compensation

1 ~~shall be at the rate of \$45 per hour~~ is \$45 per hour except that  
2 those attorneys who are appointed to represent parties in child  
3 abuse and neglect proceedings under article six, chapter forty-nine  
4 of this code are compensated at the rate of \$75 per hour for work  
5 performed out of court or not attending multidisciplinary training,  
6 upon certification of training required under section two, article  
7 six, chapter forty-nine of this code. For paralegal's work  
8 performed out of court for the attorney, compensation shall be at  
9 the rate of the paralegal's regular compensation on an hourly basis  
10 or, if salaried, at the hourly rate of compensation which would  
11 produce the paralegal's current salary but in no event shall the  
12 compensation exceed \$20 per hour. Out-of-court work includes, but  
13 is not limited to, travel, interviews of clients or witnesses,  
14 preparation of pleadings and prehearing or pretrial research.

15 (2) For attorney's work performed in court, compensation ~~shall~~  
16 ~~be at the rate of~~ is \$65 per hour. No compensation for paralegal's  
17 work performed in court shall be allowed. In-court work includes,  
18 but is not limited to, all time spent awaiting hearing or trial  
19 before a judge, magistrate, special master or other judicial  
20 officer. Attorneys who are appointed to represent parties in child  
21 abuse and neglect proceedings under article six, chapter forty-nine  
22 of this code are compensated at the rate of \$95 per hour for work

1 performed in court or attending multidisciplinary training, upon  
2 certification of training required under section two, article six,  
3 chapter forty-nine of this code.

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

6 (A) For proceedings of any kind involving felonies for which  
7 a penalty of life imprisonment may be imposed, the amount as the  
8 court may approve;

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

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

15 (e) Actual and necessary expenses incurred in providing legal  
16 representation for proceedings of any kind involving felonies for  
17 which a penalty of life imprisonment may be imposed including, but  
18 not limited to, expenses for travel, transcripts, salaried or  
19 contracted investigative services and expert witnesses, ~~shall be~~  
20 are reimbursed in an amount as the court may approve. For all other  
21 ~~eligible~~ proceedings, actual and necessary expenses incurred in  
22 providing legal representation including, but not limited to,

1 expenses for travel, transcripts, salaried or contracted  
2 investigative services and expert witnesses, ~~shall be~~ are  
3 reimbursed to a maximum of \$1,500 unless the court, for good cause  
4 shown, approves reimbursement of a larger sum.

5 Expense vouchers shall specifically set forth the nature,  
6 amount and purpose of expenses incurred and ~~shall~~ provide receipts,  
7 invoices or other documentation required by the executive director  
8 and the State Auditor:

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

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

19 (ii) Reimbursement of the expense of an appearance fee for a  
20 court reporter who reports a proceeding other than one described in  
21 subparagraph (i) of this paragraph, is limited to \$25. Where a  
22 transcript of a proceeding is produced, there ~~shall be~~ is no

1 reimbursement for the expense of any appearance fee.

2 (iii) Except for the appearance fees provided in this  
3 paragraph, there ~~shall be~~ is no reimbursement for hourly court  
4 reporters' fees or fees for other time expended by the court  
5 reporter, either at the proceeding or traveling to or from the  
6 proceeding.

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

10 (2) Reimbursement for ~~any~~ travel expense incurred in ~~an~~  
11 ~~eligible~~ a proceeding is limited to the rates for the reimbursement  
12 of travel expenses established by rules promulgated by the Governor  
13 pursuant to the provisions of section eleven, article eight,  
14 chapter twelve of this code and administered by the Secretary of  
15 the Department of Administration pursuant to the provisions of  
16 section forty-eight, article three, chapter five-a of this code.

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

19 (f) For purposes of compensation under this section, an appeal  
20 from magistrate court to circuit court, an appeal from a final  
21 order of the circuit court or a proceeding seeking an extraordinary  
22 remedy made to the Supreme Court of Appeals ~~shall be~~ is considered

1 a separate case.

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

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



1 due.

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

5 **CHAPTER 49.**

6 **CHILD WELFARE**

7 **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

8 **§49-6-2. Petition to court when child believed neglected or abused**

9 **-- Right to counsel; improvement period; hearing;**  
10 **priority of proceeding; transcript.**

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

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

1 ~~each attorney so appointed a fee in the same amount which appointed~~  
2 ~~counsel can receive in felony cases.~~ Effective July 1, 2012, ~~any~~  
3 an attorney appointed pursuant to this section shall receive a  
4 minimum of eight hours of continuing legal education training per  
5 reporting period on child abuse and neglect procedure and practice.  
6 In addition to this requirement, after July 1, 2013, ~~any~~ an  
7 attorney appointed to represent a child must first complete  
8 training on representation of children that is approved by the  
9 administrative office of the Supreme Court of Appeals. The Supreme  
10 Court of Appeals shall develop procedures for approval and  
11 certification of training required under this section by July 1,  
12 2012. ~~Provided, however, That~~ Where no attorney who has completed  
13 this training is available for ~~such~~ appointment, the court shall  
14 appoint a competent attorney with demonstrated knowledge of child  
15 welfare law to represent the parent or child. ~~Any~~ An attorney  
16 appointed pursuant to this section shall perform all duties  
17 required as an attorney licensed to practice law in the State of  
18 West Virginia.

19 (b) In any proceeding brought pursuant to the provisions of  
20 this article, the court may grant ~~any~~ a respondent an improvement  
21 period in accord with the provisions of this article. During ~~such~~  
22 the improvement period, the court may require temporary custody

1 with a responsible person ~~which~~ who has been found to be a fit and  
2 proper person for the temporary custody of the child or children or  
3 the state department or other agency during the improvement period.  
4 An order granting ~~such an~~ an improvement period ~~shall require~~ requires  
5 the department to prepare and submit to the court a family case  
6 plan in accordance with the provisions of section three, article  
7 six-d of this chapter.

8 (c) In any proceeding pursuant to the provisions of this  
9 article, the party or parties having custodial or other parental  
10 rights or responsibilities to the child shall be afforded a  
11 meaningful opportunity to be heard including the opportunity to  
12 testify and to present and cross-examine witnesses. The petition  
13 shall not be taken as confessed. A transcript or recording shall  
14 be made of all proceedings unless waived by all parties to the  
15 proceeding. The rules of evidence ~~shall~~ apply. Where relevant,  
16 the court shall consider the efforts of the state department to  
17 remedy the alleged circumstances. At the conclusion of the  
18 hearing, the court shall make a determination based upon the  
19 evidence and shall make findings of fact and conclusions of law as  
20 to whether such child is abused or neglected and, if applicable,  
21 whether the parent, guardian, or custodian is a battered parent,  
22 all of which shall be incorporated into the order of the court.

1 The findings must be based upon conditions existing at the time of  
2 the filing of the petition and proven by clear and convincing  
3 proof.

4 (d) ~~Any~~ A petition filed and ~~any~~ a proceeding held under the  
5 provisions of this article shall, to the extent practicable, be  
6 given priority over any other civil action before the court, except  
7 proceedings under article two-a, chapter forty-eight of this code  
8 and actions in which trial is in progress. ~~Any~~ A petition filed  
9 under the provisions of this article shall be docketed immediately  
10 upon filing. ~~Any~~ A hearing to be held at the end of an improvement  
11 period and any other hearing to be held during any proceedings  
12 under the provisions of this article, shall be held as nearly as  
13 practicable on successive days and, with respect to ~~said~~ the  
14 hearing ~~to be~~ held at the end of an improvement period, shall be  
15 held as close in time as possible after the end of ~~said~~ the  
16 improvement period and shall be held within sixty days of the  
17 termination of ~~such~~ the improvement period.

18 (e) Following the court's determination, it shall be inquired  
19 of the parents or custodians whether ~~or not~~ an appeal is desired  
20 and the response transcribed. A negative response ~~shall not be~~  
21 ~~construed as~~ is not a waiver. The evidence shall be transcribed  
22 and made available to the parties or their counsel as soon as

1 practicable if ~~the same is~~ required for purposes of further  
2 proceedings. If an indigent person intends to pursue further  
3 proceedings, the court reporter shall furnish a transcript of the  
4 hearing without cost to the indigent person if an affidavit is  
5 filed stating that he or she cannot pay therefor.

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.