

**H. B. 2955**

(By Delegates Fast and Kurcaba)

[Introduced February 24, 2015; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended, relating to Public Defender Services; increasing the hourly rate for attorneys for in court and out of court work; permitting attorneys who spend at least sixty percent of their practice in appointed case to enroll in the Public Employees Insurance Act; and requiring the executive director to propose rules, for legislative approval, that relate to requirement to enroll in the Public Employees Insurance Act.

*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 to read as follows:

**ARTICLE 21. PUBLIC DEFENDER SERVICES.**

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

(a) All panel attorneys shall maintain detailed and accurate records of the time expended and expenses incurred on behalf of eligible clients, and upon completion of each case, exclusive of

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

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

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

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

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

5 (1) For attorney's work performed out of court, compensation shall be at the rate of ~~\$45~~ \$145  
6 per hour. For paralegal's work performed out of court for the attorney, compensation shall be at the  
7 rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the hourly rate of  
8 compensation which would produce the paralegal's current salary, but in no event shall the  
9 compensation exceed \$20 per hour. Out-of-court work includes, but is not limited to, travel,  
10 interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial research.

11 (2) For attorney's work performed in court, compensation shall be at the rate of ~~\$65~~ \$195 per  
12 hour. No compensation for paralegal's work performed in court shall be allowed. In-court work  
13 includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate,  
14 special master or other judicial officer.

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

20 (e) Actual and necessary expenses incurred in providing legal representation for proceedings  
21 of any kind involving felonies for which a penalty of life imprisonment may be imposed, including,  
22 but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and

1 expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible  
2 proceedings, actual and necessary expenses incurred in providing legal representation, including, but  
3 not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert  
4 witnesses, shall be reimbursed to a maximum of \$1,500 unless the court, for good cause shown,  
5 approves reimbursement of a larger sum.

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

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

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

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

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

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

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

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

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

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

1 for further review or correction.

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

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

7 (j) Attorneys who spend at least sixty percent of their time with court appointed cases may  
8 be considered employees of the state for purposes of eligibility to enroll for insurance coverage under  
9 the Public Employees Insurance Act in article sixteen, chapter five of this code. The executive  
10 director shall propose rules for legislative approval in accordance with article three, chapter twenty-  
11 nine-a of this code in order to determine the requirements for court appointed attorneys to enroll in  
12 the Public Employees Insurance Act.

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 Act and requires the Executive Director of the Public Defender Services to propose rules, for legislative approval, that relate to requirement 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.