

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 99

**FISCAL
NOTE**

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BEACH, SNYDER AND LAIRD

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary; and then

to the Committee on Finance.]

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

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; 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 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~~ are rejected unless, for good cause,
8 the appointing court authorizes, in writing, an extension. ~~Provided, That~~ Claims where the last
9 date of service occurred prior to July 1, 2008, ~~shall be~~ are rejected unless submitted prior to
10 January 2, 2009.

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

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

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

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

31 (1) For attorney's work performed out of court, compensation ~~shall be at the rate of \$45~~
32 per hour is \$45 per hour except that those attorneys who are appointed to represent parties in
33 child abuse and neglect proceedings under article six, chapter forty-nine of this code are
34 compensated at the rate of \$75 per hour for work performed out of court or not attending
35 multidisciplinary training, upon certification of training required under section two, article six,
36 chapter forty-nine of this code. For paralegal's work performed out of court for the attorney,
37 compensation shall be at the rate of the paralegal's regular compensation on an hourly basis or,
38 if salaried, at the hourly rate of compensation which would produce the paralegal's current salary
39 but in no event shall the compensation exceed \$20 per hour. Out-of-court work includes, but is
40 not limited to, travel, interviews of clients or witnesses, preparation of pleadings and prehearing

41 or pretrial research.

42 (2) For attorney's work performed in court, compensation ~~shall be at the rate of~~ is \$65 per
43 hour. No compensation for paralegal's work performed in court shall be allowed. In-court work
44 includes, but is not limited to, all time spent awaiting hearing or trial before a judge, magistrate,
45 special master or other judicial officer. Attorneys who are appointed to represent parties in child
46 abuse and neglect proceedings under article six, chapter forty-nine of this code are compensated
47 at the rate of \$95 per hour for work performed in court or attending multidisciplinary training, upon
48 certification of training required under section two, article six, chapter forty-nine of this code.

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

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

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

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

57 (e) Actual and necessary expenses incurred in providing legal representation for
58 proceedings of any kind involving felonies for which a penalty of life imprisonment may be
59 imposed including, but not limited to, expenses for travel, transcripts, salaried or contracted
60 investigative services and expert witnesses, ~~shall be~~ are reimbursed in an amount as the court
61 may approve. For all other ~~eligible~~ proceedings, actual and necessary expenses incurred in
62 providing legal representation including, but not limited to, expenses for travel, transcripts,
63 salaried or contracted investigative services and expert witnesses, ~~shall be~~ are reimbursed to a
64 maximum of \$1,500 unless the court, for good cause shown, approves reimbursement of a larger

65 sum.

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

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

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

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

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

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

85 (2) Reimbursement for ~~any~~ travel expense incurred in an ~~eligible~~ a proceeding is limited
86 to the rates for the reimbursement of travel expenses established by rules promulgated by the
87 Governor pursuant to the provisions of section eleven, article eight, chapter twelve of this code
88 and administered by the Secretary of the Department of Administration pursuant to the provisions

89 of section forty-eight, article three, chapter five-a of this code.

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

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

96 (g) Vouchers submitted under this section shall specifically set forth the nature of the
97 service rendered, the stage of proceeding or type of hearing involved, the date and place the
98 service was rendered and the amount of time expended in each instance. All time claimed on the
99 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client
100 for which services were rendered is one of several charges involving multiple warrants or
101 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as
102 to enable the court to avoid a duplication of compensation for services rendered. The executive
103 director shall refuse to requisition payment for any voucher which is not in conformity with the
104 record keeping, compensation or other provisions of this article or the voucher guidelines
105 established issued pursuant to subsection (a) of this section and in such circumstance shall return
106 the voucher to the court or to the service provider for further review or correction.

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

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

CHAPTER 49. CHILD WELFARE

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**§49-6-2. Petition to court when child believed neglected or abused -- Right to counsel; improvement period; hearing; priority of proceeding; transcript.**

1 (a) In any proceeding under the provisions of this article, the child, his or her or parents
2 and his or her legally established custodian or other persons standing in loco parentis to him or
3 her ~~shall have~~ has the right to be represented by counsel at every stage of the proceedings and
4 shall be informed by the court of their right to be ~~se~~ represented and that if they cannot pay for
5 the services of counsel, ~~that~~ counsel will be appointed. Counsel of the child shall be appointed
6 in the initial order. If the order gives physical custody of the child to the state, the initial order shall
7 appoint counsel for the parents or, if the parents are separated or divorced, the parents or parent
8 or other person or persons standing in loco parentis who had physical custody of the child for the
9 majority of the time in the period immediately preceding the petition. ~~Provided, That such~~
10 ~~representation shall only continue~~ This representation continues after the first appearance if the
11 parent or other persons standing in loco parentis cannot pay for the services of counsel. Counsel
12 for other parties shall only ~~be appointed upon request for appointment of counsel~~ be appointed
13 upon request. If the requesting parties have not retained counsel and cannot pay for the services
14 of counsel, the court shall, by order entered of record, appoint an attorney or attorneys to
15 represent the other party or parties and so inform the parties. Under no circumstances may the
16 same attorney represent both the child and the other party or parties nor shall the same attorney
17 represent both parents or custodians. ~~However,~~ One attorney may represent both parents or
18 custodians where both parents or guardians consent to this representation after the attorney fully
19 discloses to the client the possible conflict and ~~where~~ the attorney assures the court that she or
20 he is able to represent each client without impairing her or his professional judgment. ~~however~~ If
21 more than one child from a family is involved in the proceeding, one attorney may represent all

22 the children. A parent who has been judicially determined to be battered ~~shall be~~ is entitled to his
23 or her own attorney. ~~The court may allow to each attorney so appointed a fee in the same amount~~
24 ~~which appointed counsel can receive in felony cases.~~ Effective July 1, 2012, any an attorney
25 appointed pursuant to this section shall receive a minimum of eight hours of continuing legal
26 education training per reporting period on child abuse and neglect procedure and practice. In
27 addition to this requirement, after July 1, 2013, any an attorney appointed to represent a child
28 must first complete training on representation of children that is approved by the administrative
29 office of the Supreme Court of Appeals. The Supreme Court of Appeals shall develop procedures
30 for approval and certification of training required under this section by July 1, 2012. *Provided,*
31 ~~however, That~~ Where no attorney who has completed this training is available for ~~such~~
32 appointment, the court shall appoint a competent attorney with demonstrated knowledge of child
33 welfare law to represent the parent or child. ~~Any~~ An attorney appointed pursuant to this section
34 shall perform all duties required as an attorney licensed to practice law in the State of West
35 Virginia.

36 (b) In any proceeding brought pursuant to the provisions of this article, the court may grant
37 ~~any a~~ respondent an improvement period in accord with the provisions of this article. During ~~such~~
38 the improvement period, the court may require temporary custody with a responsible person
39 ~~which~~ who has been found to be a fit and proper person for the temporary custody of the child or
40 children or the state department or other agency during the improvement period. An order
41 granting ~~such an~~ improvement period ~~shall require~~ requires the department to prepare and submit
42 to the court a family case plan in accordance with the provisions of section three, article six-d of
43 this chapter.

44 (c) In any proceeding pursuant to the provisions of this article, the party or parties having
45 custodial or other parental rights or responsibilities to the child shall be afforded a meaningful

46 opportunity to be heard including the opportunity to testify and to present and cross-examine
47 witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made
48 of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall
49 apply. Where relevant, the court shall consider the efforts of the state department to remedy the
50 alleged circumstances. At the conclusion of the hearing, the court shall make a determination
51 based upon the evidence and shall make findings of fact and conclusions of law as to whether
52 such child is abused or neglected and, if applicable, whether the parent, guardian, or custodian
53 is a battered parent, all of which shall be incorporated into the order of the court. The findings
54 must be based upon conditions existing at the time of the filing of the petition and proven by clear
55 and convincing proof.

56 (d) ~~Any~~ A petition filed and ~~any~~ a proceeding held under the provisions of this article shall,
57 to the extent practicable, be given priority over any other civil action before the court, except
58 proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in
59 progress. ~~Any~~ A petition filed under the provisions of this article shall be docketed immediately
60 upon filing. ~~Any~~ A hearing to be held at the end of an improvement period and any other hearing
61 to be held during any proceedings under the provisions of this article, shall be held as nearly as
62 practicable on successive days and, with respect to ~~said~~ the hearing ~~to be~~ held at the end of an
63 improvement period, shall be held as close in time as possible after the end of ~~said~~ the
64 improvement period and shall be held within sixty days of the termination of ~~such~~ the improvement
65 period.

66 (e) Following the court's determination, it shall be inquired of the parents or custodians
67 whether ~~or not~~ an appeal is desired and the response transcribed. A negative response ~~shall not~~
68 ~~be construed as~~ is not a waiver. The evidence shall be transcribed and made available to the
69 parties or their counsel as soon as practicable if ~~the same is~~ required for purposes of further

70 proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall
71 furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating
72 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 from \$45.00 to \$75.00 an hour out of court and from \$65.00 to \$95.00 an hour in court.

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