

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2955

FISCAL  
NOTE

**2015 Carryover**

(BY DELEGATES FAST AND KURCABA)

[Introduced January 13, 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; permitting attorneys who spend at least sixty percent of their practice  
 4 in appointed case to enroll in the Public Employees Insurance Act; and requiring the  
 5 executive director to propose rules, for legislative approval, that relate to requirement to  
 6 enroll in the Public Employees Insurance Act.

*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  
 4 expense reimbursements shall be submitted to the appointing court on forms approved by the  
 5 executive director. The executive director shall establish guidelines for the submission of  
 6 vouchers and claims for fees and expense reimbursements under this section. Claims submitted  
 7 more than ninety calendar days after the last date of service shall be rejected, unless for good  
 8 cause, the appointing court authorizes in writing an extension: *Provided*, That claims where the  
 9 last date of service occurred prior to July 1, 2008, shall be rejected unless submitted prior to  
 10 January 1, 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 not exceed the limitations on fees and expenses imposed by this  
26 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 \$145 per hour. For paralegal's work performed out of court for the attorney, compensation shall  
33 be at the rate of the paralegal's regular compensation on an hourly basis or, if salaried, at the  
34 hourly rate of compensation which would produce the paralegal's current salary, but in no event  
35 shall the compensation exceed \$20 per hour. Out-of-court work includes, but is not limited to,  
36 travel, interviews of clients or witnesses, preparation of pleadings and prehearing or pretrial  
37 research.

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

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

47           (e) Actual and necessary expenses incurred in providing legal representation for  
48 proceedings of any kind involving felonies for which a penalty of life imprisonment may be  
49 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted  
50 investigative services and expert witnesses, shall be reimbursed in an amount as the court may  
51 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing  
52 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or  
53 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of  
54 \$1,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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

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

61           (B) (i) There shall be no reimbursement of expenses for or production of a transcript of a

62 preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where  
63 such hearing or trial has also been recorded electronically in accordance with the provisions of  
64 section eight, article five, chapter fifty of this code or court rule.

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

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

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

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

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

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

85 (g) Vouchers submitted under this section shall specifically set forth the nature of the

86 service rendered, the stage of proceeding or type of hearing involved, the date and place the  
87 service was rendered and the amount of time expended in each instance. All time claimed on  
88 the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible  
89 client for which services were rendered is one of several charges involving multiple warrants or  
90 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as  
91 to enable the court to avoid a duplication of compensation for services rendered. The executive  
92 director shall refuse to requisition payment for any voucher which is not in conformity with the  
93 recordkeeping, compensation or other provisions of this article or the voucher guidelines  
94 established issued pursuant to subsection (a) of this section and in such circumstance shall return  
95 the voucher to the court or to the service provider for further review or correction.

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

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

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