

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 103

SENATOR TRUMP, *original sponsor*

[Passed March 9, 2019; to take effect July 1, 2019]

1 AN ACT to amend and reenact §29-21-6 and §29-21-13a of the Code of West Virginia, 1931, as
2 amended, all relating generally to Public Defender Services; requiring Public Defender
3 Services to establish and operate a division within the agency for the purpose of
4 prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the
5 state and before the Supreme Court of Appeals upon appointment by a court; transferring
6 initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit
7 courts to Public Defender Services; providing for resubmission or reconsideration of
8 vouchers previously modified or refused; establishing procedures for handling of modified
9 or refused vouchers; maintaining final authority over payment of vouchers with circuit
10 courts; authorizing the Executive Director of Public Defender Services, with approval of
11 the Indigent Defense Commission, to contract for noncriminal legal services; providing for
12 payment of contracts; authorizing agency to reduce or reject vouchers or requests for
13 payment; requiring panel attorneys to maintain time-keeping records to enable the
14 attorney to determine time expended on a daily basis; setting record-keeping standards;
15 requiring prompt processing and payment of vouchers; increasing the rates of
16 compensation for panel attorneys; authorizing payment for in-court paralegal services with
17 prior approval of the circuit court and subject to agency rule regarding maximum
18 reimbursement; authorizing the executive director to promulgate emergency rules; and
19 setting an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-6. Powers, duties, and limitations.

1 (a) Consistent with the provisions of this article, the agency is authorized to make grants
2 to and contracts with public defender corporations and with individuals, partnerships, firms,
3 corporations, and nonprofit organizations for the purpose of providing legal representation under

4 this article and may make any other grants and contracts that are necessary to carry out the
5 purposes and provisions of this article.

6 (b) The agency is authorized to accept and employ or dispose of in furtherance of the
7 purposes of this article any money or property, real, personal, or mixed, tangible or intangible,
8 received by gift, devise, bequest, or otherwise.

9 (c) The agency shall establish and the executive director or his or her designee shall
10 operate a criminal law research center as provided in §29-21-7 of this code. This center shall
11 undertake directly, or by grant or contract, to serve as a clearinghouse for information; to provide
12 training and technical assistance related to the delivery of legal representation; and to engage in
13 research, except that broad general, legal, or policy research unrelated to direct representation
14 of eligible clients may not be undertaken.

15 (d) The agency shall establish and the executive director or his or her designee shall
16 operate an accounting and auditing division to require and monitor the compliance with this article
17 by public defender corporations and other persons or entities receiving funding or compensation
18 from the agency. The accounting and auditing division shall review all plans and proposals for
19 grants and contracts and shall make a recommendation of approval or disapproval to the
20 executive director. The accounting and auditing division shall prepare, or cause to be prepared,
21 reports concerning the evaluation, inspection, or monitoring of public defender corporations and
22 other grantees, contractors, persons, or entities receiving financial assistance under this article
23 and shall further carry out the agency's responsibilities for records and reports as set forth in §29-
24 21-18 of this code. The accounting and auditing division shall require each public defender
25 corporation to submit financial statements monthly and to report monthly on the billable and
26 nonbillable time of its professional employees, including time used in administration of the
27 respective offices, so as to compare the time to similar time expended in nonpublic law offices for
28 similar activities. The accounting and auditing division shall provide to the executive director

29 assistance in the fiscal administration of all of the agency's divisions. This assistance shall
30 include, but not be limited to, budget preparation and statistical analysis.

31 (e) The agency shall establish and the executive director or his or her designee shall
32 operate an appellate advocacy division for the purpose of prosecuting litigation on behalf of
33 eligible clients in the Supreme Court of Appeals. The executive director or his or her designee
34 shall be the director of the appellate advocacy division. The appellate advocacy division shall
35 represent eligible clients upon appointment by the circuit courts or by the Supreme Court of
36 Appeals. The division may, however, refuse the appointments due to a conflict of interest or if the
37 executive director has determined the existing caseload cannot be increased without jeopardizing
38 the appellate division's ability to provide effective representation. In order to effectively and
39 efficiently use the resources of the appellate division, the executive director may restrict the
40 provision of appellate representation to certain types of cases. The executive director may select
41 and employ staff attorneys to perform the duties prescribed by this subsection. The appellate
42 division shall maintain records of representation of eligible clients for record purposes only.

43 (f) The agency shall establish and the executive director or his or her designee shall
44 operate a division within the agency for the purpose of prosecuting writs of habeas corpus on
45 behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals.
46 The executive director or his or her designee shall be the director of the division. The division
47 shall represent eligible clients upon appointment by a circuit court or the Supreme Court of
48 Appeals. A court may appoint the division to represent an eligible person unless the appointment
49 would create a conflict of interest or the executive director has notified the court in writing that the
50 division's existing caseload cannot be increased for a specified period of time without jeopardizing
51 its ability to provide effective representation. In appointing the division, a court should determine
52 whether the appointment of the division is the most effective use of the office considering the
53 grounds and legal issues raised by the petitioner. The executive director may select and employ
54 staff attorneys, paraprofessionals, and investigators to perform the duties prescribed by this

55 subsection. The division shall maintain records of representation of eligible clients for record-
56 keeping purposes only.

57 (g) If the executive director, with the approval of the Indigent Defense Commission and
58 the Secretary of Administration, determines that the purposes of this article can be furthered and
59 costs reduced by the execution of a contract with a provider of legal services in specialized areas
60 of the law, other than criminal defense or the representation of respondent parents in abuse and
61 neglect proceedings, to provide legal representation to eligible clients, the execution of the
62 contract is authorized and is exempt from the provisions of, and procedures adopted pursuant to,
63 §5A-3-1 *et seq.* of this code. The payment of the contract amount is authorized from the funds
64 appropriated for the payment of appointed counsel fees.

65 (h) The agency may reduce or reject vouchers or requests for payment submitted pursuant
66 to §29-21-13a of this code found not to be in compliance with the provisions of this article, subject
67 to the limitations set forth herein.

68 (i) The executive director may promulgate emergency rules pursuant to §29A-3-15 of this
69 code to effectuate the provisions of this article as amended during the 2019 regular session of
70 the Legislature.

§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 which records are to be maintained in a
3 form that will enable the attorney to determine for any day the periods of time expended in tenths
4 of an hour on behalf of any eligible client and the total time expended in tenths of an hour on that
5 day on behalf of all eligible clients: *Provided*, That in no event may panel attorneys be required to
6 maintain or submit the actual start and finish times of work performed.

7 (b) Upon completion of each case, exclusive of appeal, panel attorneys shall submit to
8 Public Defender Services a voucher for services. Public Defender Services shall electronically
9 acknowledge the submission of a voucher. Claims for fees and expense reimbursements shall be

10 submitted to Public Defender Services on forms approved by the executive director. The
11 executive director shall establish guidelines for the submission of vouchers and claims for fees
12 and expense reimbursements under this section. Claims submitted more than 90 business days
13 after the last date of service shall be rejected unless, for good cause, the appointing court
14 authorizes in writing an extension.

15 (c) Public Defender Services shall review the voucher to determine if the time and expense
16 claims are reasonable, necessary, and valid. A voucher found to be correct shall be processed
17 and payment promptly directed within 45 business days of submission of the voucher.

18 (d)(1) If Public Defender Services rejects a voucher, the attorney submitting the voucher
19 shall be notified electronically of the rejection and provided detailed reasons for the rejection
20 within 30 business days of submission of the voucher. The attorney may resubmit the voucher
21 accompanied by copies of his or her records supporting the voucher and certification from the
22 appointing court that the services or expenses were performed or incurred, and were reasonable
23 and necessary, within 15 business days of receipt of notification. The executive director shall
24 make a final agency decision regarding the rejection of the voucher within 15 business days of
25 receipt of the submitted records and certification. Under no circumstances may the executive
26 director have the authority or require any panel attorney to submit privileged client information.

27 (2) If the final agency decision is to reject the voucher, Public Defender Services shall
28 request review of the final agency decision by motion to the appointing court filed within 15
29 business days of notice of the final agency decision. After a hearing providing the attorney and
30 Public Defender Services an opportunity to be heard, the appointing court shall have final
31 authority to resolve the issue of payment and to order all remedies available under the West
32 Virginia Rules of Civil Procedure.

33 (e) If Public Defender Services reduces the amount of compensation claimed or
34 reimbursement requested, the attorney submitting the voucher shall be notified electronically of

35 the reduction and detailed reasons for the reduction within 30 business days of the submission of
36 the voucher. The attorney may:

37 (1) Agree with the reduction and certify his or her agreement electronically to Public
38 Defender Services which shall then proceed to process payment; or

39 (2) Disagree with the reduction and request payment of the reduced amount while
40 preserving the ability to contest the reduction;

41 (3) An attorney proceeding pursuant to this subsection shall inform Public Defender
42 Services of his or her decision by electronic means within 15 business days of receipt of the notice
43 of reduction. If there is no communication from the attorney within 15 business days of receipt of
44 the notice of reduction, then the reduction is deemed to be accepted by the attorney;

45 (4) The attorney may submit records and certification from the appointing court that the
46 services or expenses reflected in the amount reduced were performed or incurred and were
47 reasonable and necessary. The executive director shall then make a final agency decision
48 regarding the reduction within 15 business days of receipt of the submitted records and
49 certification. Under no circumstances may the executive director have the authority to require any
50 panel attorney to submit privileged client information;

51 (5) If the attorney disagrees with the final agency decision, and the attorney and the
52 executive director cannot reach an agreement regarding the reduction within 15 business days of
53 the receipt of the notice of the final agency decision, Public Defender Services shall request
54 review of the final agency decision by motion to the appointing court filed within 15 business days
55 of notice of the final agency decision. After a hearing providing the attorney and Public Defender
56 Services an opportunity to be heard, the appointing court shall have final authority to resolve the
57 issue of payment, and to order all remedies available under the West Virginia Rules of Civil
58 Procedure;

59 (6) If there is no communication from Public Defender Services within 30 business days
60 of the submission of the voucher, the voucher is deemed to have been approved for payment
61 without reduction.

62 (f) Notwithstanding any provisions of this code to the contrary, the executive director may
63 employ in-house counsel to represent Public Defender Services in hearings held pursuant to this
64 article.

65 (g) Except for the emergency rule-making provision set forth in §29-21-6(h) of this code,
66 the provisions of the amendments to this article enacted during the 2019 regular session of the
67 Legislature shall be effective July 1, 2019.

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

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

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

85 (1) For attorney's work performed out of court, compensation shall be at the rate of \$60
86 per hour.

87 Out-of-court work includes, but is not limited to, travel, interviews of clients or witnesses,
88 preparation of pleadings, and prehearing or pretrial research;

89 (2) For attorney's work performed in court, compensation shall be at the rate of \$80 per
90 hour.

91 In-court work includes, but is not limited to, all time spent awaiting hearing or trial before
92 a judge, magistrate, special master, or other judicial officer;

93 (3) Compensation for legal services performed for a panel attorney by a paralegal out-of-
94 court is to be calculated using a rate of \$20 per hour and no such compensation is to be paid for
95 in-court services performed for a panel attorney by a paralegal absent prior approval of the circuit
96 court before whom the panel attorney is appearing and subject to maximum reimbursement
97 amounts set by agency rule;

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

102 (k) Actual and necessary expenses incurred in providing legal representation for
103 proceedings of any kind involving felonies for which a penalty of life imprisonment may be
104 imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted
105 investigative services, and expert witnesses, shall be reimbursed in an amount as the court may
106 approve. For all other eligible proceedings, actual and necessary expenses incurred in providing
107 legal representation, including, but not limited to, expenses for travel, transcripts, salaried or
108 contracted investigative services and expert witnesses, shall be reimbursed to a maximum of
109 \$1,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

110 (l) Expense vouchers shall specifically set forth the nature, amount, and purpose of
111 expenses incurred and shall provide receipts, invoices, or other documentation required by the
112 executive director and the State Auditor as follows:

113 (1) Reimbursement of expenses for production of transcripts of proceedings reported by
114 a court reporter is limited to the cost per original page and per copy page as set forth in §51-7-4
115 of this code;

116 (2) There may be no reimbursement of expenses for or production of a transcript of a
117 preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where
118 the hearing or trial has also been recorded electronically in accordance with the provisions of §50-
119 5-8 of this code or court rule;

120 (3) Reimbursement of the expense of an appearance fee for a court reporter who reports
121 a proceeding other than one described in subdivision (2) of this subsection is limited to \$25. Where
122 a transcript of a proceeding is produced, there may be no reimbursement for the expense of any
123 appearance fee;

124 (4) Except for the appearance fees provided in this subsection, there may be no
125 reimbursement for hourly court reporters' fees or fees for other time expended by the court
126 reporter, either at the proceeding or traveling to or from the proceeding;

127 (5) Reimbursement of the cost of transcription of tapes electronically recorded during
128 preliminary hearings or magistrate court trials is limited to \$1 per page;

129 (6) Reimbursement for any travel expense incurred in an eligible proceeding is limited to
130 the rates for the reimbursement of travel expenses established by rules promulgated by the
131 Governor pursuant to the provisions of §12-8-11 of this code and administered by the Secretary
132 of the Department of Administration pursuant to the provisions of §5A-3-48 of this code;

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

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

139 (n) Vouchers submitted under this section shall specifically set forth the nature of the
140 service rendered, the stage of proceeding or type of hearing involved, the date and place the
141 service was rendered, and the amount of time expended in each instance. All time claimed on the
142 vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client
143 for which services were rendered is one of several charges involving multiple warrants or
144 indictments, the voucher shall indicate the fact and sufficiently identify the several charges so as
145 to enable Public Defender Services to avoid a duplication of compensation for services rendered.
146 The executive director shall refuse to requisition payment for any voucher which is not in
147 conformity with the recordkeeping, compensation, or other provisions of this article or the voucher
148 guidelines established issued pursuant to this article and in such circumstance shall return the
149 voucher to the court or to the service provider for further review or correction.

150 (o) Vouchers submitted under this section shall be reimbursed within 90 days of receipt.
151 Reimbursements after 90 days shall bear interest from the 91st day at the legal rate in effect for
152 the calendar year in which payment is due.

153 (p) Vouchers submitted for fees and expenses involving child abuse and neglect cases
154 shall be processed for payment before processing vouchers submitted for all other cases.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

To take effect July 1, 2019.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2019.

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Governor