

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 3155

FISCAL  
NOTE

BY DELEGATES FAST, HOUSEHOLDER, CRISS,

MAZZOCCHI, LOVEJOY, NESTOR AND BRUCE

[Introduced March 15, 2021; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §29-21-13a of the Code of West Virginia, 1931, as amended,  
2 relating to increasing the hourly rate of investigators working for Public Defender Services  
3 from \$30 to \$65.

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

## **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 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~~ \$65 per hour for  
134 work 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.

NOTE: The purpose of this bill is to increase the hourly rate for private investigators working for Public Defender Services from \$30 to \$65.

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