

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2351

BY DELEGATES BURKHAMMER AND HECKERT

[Passed April 12, 2025; in effect July 1, 2025]

FILED

2025 APR 30 P 11:13

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

HB 2351 veto

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1 AN ACT to amend and reenact §29-21-13a of the Code of 3 West Virginia, 1931, as amended,
2 relating to attorneys appointed to represent indigent persons 4 in criminal, juvenile, and
3 abuse and neglect cases, and attorneys appointed to serve as guardians 5 ad litem in the
4 state courts; increasing compensation paid by Public Defender Services; and 6 requiring
5 Public Defender Services to annually provide report summarizing certain legal services 7
6 provided by guardians ad litem.

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.

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

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

(e) If Public Defender Services reduces the amount of compensation claimed or reimbursement requested, the attorney submitting the voucher shall be notified electronically of the reduction and detailed reasons for the reduction within 30 business days of the submission of the voucher. The attorney may:

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

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

(3) An attorney proceeding pursuant to this subsection shall inform Public Defender 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(i) 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.

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

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

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

(1) For attorney's work performed out of court, compensation shall be at the rate of \$70 per hour.

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

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

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

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

(4) The maximum amount of compensation for out-of-court and in-court work under this subsection is as follows: For proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, the amount as the court may approve; for all other eligible proceedings, \$4,500 unless the court, for good cause shown, approves payment of a larger sum.

(k) Actual and necessary expenses incurred in providing legal representation for proceedings of any kind involving felonies for which a penalty of life imprisonment may be imposed, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services, and expert witnesses, shall be reimbursed in an amount as the court may approve. For all other eligible proceedings, actual and necessary expenses incurred in providing legal representation, including, but not limited to, expenses for travel, transcripts, salaried or contracted investigative services and expert witnesses, shall be reimbursed to a maximum of \$2,500 unless the court, for good cause shown, approves reimbursement of a larger sum.

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

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

(2) There may be no reimbursement of expenses for or production of a transcript of a preliminary hearing before a magistrate or juvenile referee, or of a magistrate court trial, where

the hearing or trial has also been recorded electronically in accordance with the provisions of §50-5-8 of this code or court rule;

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

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

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

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

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

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

(n) Vouchers submitted under this section shall specifically set forth the nature of the service rendered, the stage of proceeding or type of hearing involved, the date and place the service was rendered, and the amount of time expended in each instance. All time claimed on the vouchers shall be itemized to the nearest tenth of an hour. If the charge against the eligible client 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.

155 (q) Upon a dismissal of or a finding of not guilty concerning a criminal charge, should the
156 charge or charges for which the indigent defendant was afforded counsel qualify for an
157 expungement of charges under §61-11-25 of this code, the defendant shall be afforded continued
158 representation upon the terms specified in this section. The Panel Attorney shall include the
159 services performed by panel attorneys in regard to an expungement on the same voucher or a
160 subsequent voucher submitted concerning the same case number as the one submitted to Public
161 Defender Services for the underlying criminal charge or charges. The maximum amount of
162 compensation for out-of-court and in-court work under this section shall be limited to \$1,000 for
163 expungement services in addition to the limits imposed on the underlying criminal charge or
164 charges, unless the court, for good cause shown, approves payment of a larger sum. The actual
165 and necessary expenses incurred in providing legal representation for expungement proceedings
166 under this section shall be reimbursed to a maximum of \$500 unless the court, for good cause
167 shown, approves reimbursement of a larger sum.

168 (r) Beginning on December 1, 2025, Public Defender Services shall annually provide to
169 the Legislative Oversight Commission on Health and Human Resources, the Foster Care

Ombudsman, and the West Virginia Supreme Court of Appeals a report summarizing legal services that are being provided by the submission of a voucher by panel attorneys serving as guardians ad litem in the courts the state. Each agency report shall contain a summary of the following legal services being provided by panel attorneys serving as guardians ad litem:

(1) The average per case number of multidisciplinary team meetings attended by appointed guardians ad litem from the initial appointment date until permanency for the child has been achieved as reflected by court order;

(2) The average amount of cases an appointed panel attorney served as a guardian ad litem;

(3) The average length of time that a child abuse or neglect proceeding lasts from the date of the initial appointment of a panel guardian ad litem until an order is entered that finds that permanency for the child has been achieved;

(4) The average number of in-person visits or conferences that appointed guardians ad litem have with their clients, or when appropriate the client's parents or caretaker, including the aggregate number of cases that appointed guardians ad litem have an in-person visit, or conference, with their client, or when appropriate a client's parents or caretaker, and the aggregate number of cases that guardians ad litem did not have an in-person visit or conference with their client, or client's parents or caretaker: *Provided*, That nothing in this subsection will require the disclosure by any guardian ad litem of any information protected by attorney client privilege.

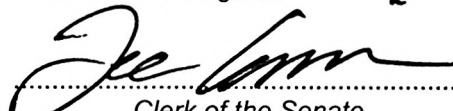
(5) The average number of out-of-court hours itemized and billed in each case by an appointed panel attorney serving as guardian ad litem from the initial appointment date until permanency for the child has been achieved as reflected by court order;

(6) The average number of in-court hours itemized and billed in each case by an appointed panel attorney serving as guardian ad litem from the initial appointment date until permanency for the child has been achieved as reflected by court order;

196 (7) The average number of hours itemized and billed in each case as travel time by an
197 appointed panel attorney serving as guardian ad litem from the initial appointment date until
198 permanency for the child has been achieved as reflected by court order.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

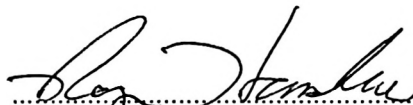

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Clerk of the House of Delegates

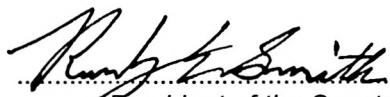

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Clerk of the Senate

Originated in the House of Delegates.

In effect July 1, 2025.

FILED
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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE


.....
Speaker of the House of Delegates


.....
President of the Senate

The within is disapproved this the 30th
Day of April, 2025.


.....
Governor

PRESENTED TO THE GOVERNOR

APR 22 2025

Time 12:00 pm