

COMMITTEE SUBSTITUTE

FOR

## **Senate Bill No. 471**

(By Senators Palumbo, Laird, Tucker, Edgell,  
Wills, Unger, Yost, Klempa and Kessler (Mr. President))

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[Originating in the Committee on the Judiciary;  
reported February 9, 2012.]

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A Bill to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the West Virginia Supreme Court of Appeals to establish a reasonable rate of compensation for mental hygiene services; and establishing a payment procedure for the compensation.

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

That §27-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1. Appointment of Mental Hygiene Commissioner; duties of Mental Hygiene Commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.**

1       (a) *Appointment of Mental Hygiene Commissioners.* —  
2 The chief judge in each judicial circuit of this state shall  
3 appoint a competent attorney and may, if necessary, appoint  
4 additional attorneys to serve as Mental Hygiene Commis-  
5 sioners to preside over involuntary hospitalization hearings.  
6 Mental Hygiene Commissioners shall be persons of good  
7 moral character and of standing in their profession and they  
8 shall, before assuming the duties of such commissioner, take  
9 the oath required of other special commissioners as provided  
10 in article one, chapter six of this code.

11       All persons newly appointed to serve as Mental Hygiene  
12 Commissioners shall attend and complete an orientation  
13 course, within one year of their appointment, consisting of at  
14 least three days of training provided annually by the Su-  
15 preme Court of Appeals. In addition, existing Mental  
16 Hygiene Commissioners and any magistrates designated by  
17 the chief judge of a judicial circuit to hold probable cause

18 and emergency detention hearings involving involuntary  
19 hospitalization shall attend and complete a course provided  
20 by the Supreme Court of Appeals, which course shall  
21 include, but not be limited to, instruction on the manifesta-  
22 tions of mental illness and addiction. Persons attending such  
23 courses outside the county of their residence shall be reim-  
24 bursed out of the budget of the Supreme Court — General  
25 Judicial for reasonable expenses incurred. The Supreme  
26 Court shall establish rules for such courses, including rules  
27 providing for the reimbursement of reasonable expenses as  
28 authorized herein.

29 (b) *Duties of Mental Hygiene Commissioners.* —

30 (1) Mental Hygiene Commissioners may sign and issue  
31 summonses for the attendance, at any hearing held pursuant  
32 to section four, article five of this chapter, of the individual  
33 sought to be committed; may sign and issue subpoenas for  
34 witnesses, including subpoenas duces tecum; may place any  
35 witness under oath; may elicit testimony from applicants,  
36 respondents and witnesses regarding factual issues raised in  
37 the petition; and may make findings of fact on evidence and  
38 may make conclusions of law, but such findings and conclu-  
39 sions shall not be binding on the circuit court. ~~The circuit~~

40 ~~court, by order entered of record, shall allow the commis-~~  
41 ~~sioner a reasonable fee for services rendered in connection~~  
42 ~~with each case. All Mental Hygiene Commissioners shall be~~  
43 ~~reasonably compensated at a uniform rate determined by the~~  
44 ~~Supreme Court of Appeals. Mental Hygiene Commissioners~~  
45 ~~shall submit all requests for compensation to the administra-~~  
46 ~~tive director of the courts for payment.~~ Mental Hygiene  
47 Commissioners shall discharge their duties and hold their  
48 offices at the pleasure of the chief judge of the judicial  
49 circuit in which he or she is appointed and may be removed  
50 at any time by such chief judge. It shall be the duty of a  
51 Mental Hygiene Commissioner to conduct orderly inquiries  
52 into the mental health of the individual sought to be commit-  
53 ted concerning the advisability of committing the individual  
54 to a mental health facility. The Mental Hygiene Commis-  
55 sioner shall safeguard, at all times, the rights and interests of  
56 the individual as well as the interests of the state. The  
57 Mental Hygiene Commissioner shall make a written report  
58 of his or her findings to the circuit court. In any proceedings  
59 before any court of record as set forth in this article, the  
60 court of record shall appoint an interpreter for any individ-  
61 ual who is deaf or cannot speak or who speaks a foreign

62 language and who may be subject to involuntary commit-  
63 ment to a mental health facility.

64 (2) A Mental Hygiene Commissioner appointed by the  
65 circuit court of one county or multiple county circuit may  
66 serve in such capacity in a jurisdiction other than that of his  
67 or her original appointment if such be agreed upon by the  
68 terms of a cooperative agreement between the circuit courts  
69 and county commissions of two or more counties entered into  
70 to provide prompt resolution of mental hygiene matters  
71 during noncourt hours or on nonjudicial days.

72 (c) *Duties of prosecuting attorney.* — It shall be the duty  
73 of the prosecuting attorney or one of his or her assistants to  
74 represent the applicants in all final commitment proceedings  
75 filed pursuant to the provisions of this article. The prosecut-  
76 ing attorney may appear in any proceeding held pursuant to  
77 the provisions of this article if he or she deems it to be in the  
78 public interest.

79 (d) *Duties of sheriff.* — Upon written order of the circuit  
80 court, Mental Hygiene Commissioner or magistrate in the  
81 county where the individual formally accused of being  
82 mentally ill or addicted is a resident or is found, the sheriff  
83 of that county shall take said individual into custody and

84 transport him or her to and from the place of hearing and the  
85 mental health facility. The sheriff shall also maintain  
86 custody and control of the accused individual during the  
87 period of time in which the individual is waiting for the  
88 involuntary commitment hearing to be convened and while  
89 such hearing is being conducted: *Provided*, That an individ-  
90 ual who is a resident of a state other than West Virginia  
91 shall, upon a finding of probable cause, be transferred to his  
92 or her state of residence for treatment pursuant to ~~the~~  
93 ~~provisions of~~ subsection (p), section four of this article:  
94 *Provided, however*, That where an individual is a resident of  
95 West Virginia but not a resident of the county in which he or  
96 she is found and there is a finding of probable cause, the  
97 county in which the hearing is held may seek reimbursement  
98 from the county of residence for reasonable costs incurred by  
99 the county attendant to the mental hygiene proceeding.  
100 Notwithstanding any provision of this code to the contrary,  
101 sheriffs may enter into cooperative agreements with sheriffs  
102 of one or more other counties, with the concurrence of their  
103 respective circuit courts and county commissions, whereby  
104 transportation and security responsibilities for hearings held  
105 pursuant to the provisions of this article during noncourt

106 hours or on nonjudicial days may be shared in order to  
107 facilitate prompt hearings and to effectuate transportation  
108 of persons found in need of treatment.

109       (e) *Duty of sheriff upon presentment to mental health*  
110 *care facility.* -- Where a person is brought to a mental health  
111 care facility for purposes of evaluation for commitment  
112 under ~~the provisions of~~ this article, if he or she is violent or  
113 combative, the sheriff or his or her designee shall maintain  
114 custody of the person in the facility until the evaluation is  
115 completed or the county commission shall reimburse the  
116 mental health care facility at a reasonable rate for security  
117 services provided by the mental health care facility for the  
118 period of time the person is at the hospital prior to the  
119 determination of mental competence or incompetence.

120       (f) *Duties of Supreme Court of Appeals.* -- The Supreme  
121 Court of Appeals shall provide uniform petition, procedure  
122 and order forms which shall be used in all involuntary  
123 hospitalization proceedings brought in this state.