

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 471

(SENATORS PALUMBO, LAIRD, TUCKER, EDGELL, WILLS, UNGER,
YOST, KLEMPA AND KESSLER (MR. PRESIDENT), *original sponsors*)

[Passed March 7, 2012; in effect from passage.]

AN ACT 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. All Mental
40 Hygiene Commissioners shall be reasonably compensated at

41 a uniform rate determined by the Supreme Court of Appeals.
42 Mental Hygiene Commissioners shall submit all requests for
43 compensation to the administrative director of the courts for
44 payment. Mental Hygiene Commissioners shall discharge
45 their duties and hold their offices at the pleasure of the chief
46 judge of the judicial circuit in which he or she is appointed
47 and may be removed at any time by such chief judge. It shall
48 be the duty of a Mental Hygiene Commissioner to conduct
49 orderly inquiries into the mental health of the individual
50 sought to be committed concerning the advisability of
51 committing the individual to a mental health facility. The
52 Mental Hygiene Commissioner shall safeguard, at all times,
53 the rights and interests of the individual as well as the
54 interests of the state. The Mental Hygiene Commissioner
55 shall make a written report of his or her findings to the
56 circuit court. In any proceedings before any court of record
57 as set forth in this article, the court of record shall appoint
58 an interpreter for any individual who is deaf or cannot speak
59 or who speaks a foreign language and who may be subject to
60 involuntary commitment to a mental health facility.

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

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

76 (d) *Duties of sheriff.* — Upon written order of the circuit
77 court, Mental Hygiene Commissioner or magistrate in the
78 county where the individual formally accused of being

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

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

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

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.

In effect from passage.

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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, 2012.

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Governor