

SB 164

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 164

(By Senator ATTIUMAR, ET AL)



PASSED FEBRUARY 11, 1998

In Effect July 1, 1998 ~~Passage~~

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WEST VIRGINIA SENATE

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Senate Bill No. 164

(BY SENATORS DITTMAR, BALL, FANNING,
OLIVERIO, SCHOONOVER, BUCKALEW AND KIMBLE)

[Passed February 11, 1998; to take effect July 1, 1998.]

AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article thirty-four of said chapter, all relating to municipal court procedures; requiring municipal court judges to complete mandatory training; providing that municipal courts follow the rules of criminal procedure for magistrate courts; providing for appeals from municipal court to circuit court; creating time frames, bonds and stays for such appeals; providing limited record of such court proceedings; providing for the preparation and designation of such records for appeal, electronic recordation of trials and preparation of transcripts of such proceedings; providing circuit court discretion to schedule oral argument, receive memoranda of law and take evidence; providing

factors and standards for appeals of municipal court decisions; establishing time frames for circuit court review of such proceedings; providing actions which the circuit court may take to dispose of such appeals; and clarifying eligibility to the judicial retirement system.

Be it enacted by the Legislature of West Virginia:

That section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article thirty-four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

PART II. MUNICIPAL COURT.

§8-10-2. Municipal court for municipalities.

1 (a) Notwithstanding any charter provision to the con-
2 trary, any city may provide by charter provision and any
3 municipality may provide by ordinance for the creation
4 and maintenance of a municipal court, for the appoint-
5 ment or election of an officer to be known as municipal
6 court judge, and for his or her compensation, and autho-
7 rize the exercise by the court or judge of the jurisdiction
8 and the judicial powers, authority and duties set forth in
9 section one of this article and similar or related judicial
10 powers, authority and duties enumerated in any applica-
11 ble charter provisions, as set forth in the charter or
12 ordinance.

13 (b) Effective the first day of July, one thousand nine
14 hundred ninety-eight, any person who assumes the duties
15 of municipal court judge who has not been admitted to
16 practice law in this state shall attend and complete the
17 next available course of instruction in rudimentary
18 principles of law and procedure. The course shall be
19 conducted by the municipal league or a like association
20 whose members include more than one half of the char-
21 tered cities and municipalities of this state. The instruc-
22 tion must be performed by or with the services of an

23 attorney licensed to practice law in this state for at least
24 three years. Any municipal court judge serving on the
25 first day of July, one thousand nine hundred ninety-eight,
26 shall complete such course within one year, unless he or
27 she has been admitted to the practice of law in this state.
28 Any municipal court judge may, thereafter, attend a
29 course for the purpose of continuing education. The cost
30 of any course referred to in this section shall be paid by
31 the municipality which employs the municipal judge.

32 (c) Only a defendant who has been charged with an
33 offense for which a period of confinement in jail may be
34 imposed is entitled to a trial by jury. If a municipal court
35 judge determines, upon demand of a defendant, to conduct
36 a trial by jury in a criminal matter, it shall follow the
37 procedures set forth in the rules of criminal procedure for
38 magistrate courts promulgated by the supreme court of
39 appeals, except that the jury in municipal court shall
40 consist of twelve members.

41 (d) Effective the first day of July, one thousand nine
42 hundred ninety-eight, a police court judge of any municipi-
43 pality shall thereafter be referred to as the municipal
44 court judge.

ARTICLE 34. JUDICIAL REVIEW.

§8-34-1. General right of appeal; recordation of jury trial; preparation of record.

1 (a) Every person sentenced under this chapter by any
2 mayor, acting in a judicial capacity, or municipal court
3 judge to confinement or to the payment of a fine may
4 appeal that sentence to the circuit court as provided in
5 this section. When the municipality is located in more
6 than one county, the appeal shall be taken to the circuit
7 court of the county in which the major portion of the
8 territory of the municipality is located.

9 (b) For purposes of appeal, when a jury trial is had
10 before a mayor or in municipal court, that court shall be

11 a court of limited record. Trials before a mayor or municipi-
12 pal court when a jury is empaneled shall be recorded
13 electronically. A magnetic tape or other electronic
14 recording medium on which a trial is recorded shall be
15 indexed and securely preserved by the court. When
16 requested by the municipal prosecutor or by the defen-
17 dant, or by any interested person, that court shall provide
18 a duplicate copy of the tape or other electronic recording
19 medium of each trial held. For evidentiary purposes, a
20 duplicate of such electronic recording prepared by the
21 court shall be a "writing" or "recording" as those terms
22 are defined in rule 1001 of the West Virginia rules of
23 evidence, and unless the duplicate is shown not to reflect
24 the contents accurately, it shall be treated as an original
25 in the same manner that data stored in a computer or
26 similar data is regarded as an "original" under such rule.
27 Unless the requesting party is a defendant proceeding as
28 an indigent, the party shall pay to the court an amount
29 equal to the actual cost of the tape or other medium or the
30 sum of five dollars, whichever is greater.

31 (c) If the defendant in such a proceeding waives the right
32 to trial by jury or if no jury trial is required by law, the
33 matter shall be tried by the mayor or municipal court
34 judge sitting without a jury. For purposes of appeal, when
35 a nonjury trial is had before a mayor or municipal court
36 judge that court shall not be a court of limited record and
37 the proceedings shall not be electronically recorded.

38 (d) Any person convicted of an offense by a mayor or
39 municipal court judge may appeal such conviction to
40 circuit court as a matter of right by requesting such
41 appeal within twenty days after the sentencing for such
42 conviction. The mayor or municipal court judge may
43 require the posting of bond with good security conditioned
44 upon the appearance of the defendant as required in
45 circuit court, but such bond may not exceed the maximum
46 amount of any fine which could be imposed for the
47 offense. The bond may be upon the defendant's own

48 recognizance. If no appeal is perfected within such
49 twenty-day period, the circuit court may, not later than
50 ninety days after the sentencing, grant an appeal upon a
51 showing of good cause why such appeal was not filed
52 within the twenty-day period. The filing or granting of an
53 appeal shall automatically stay the sentence of the mayor
54 or municipal court judge.

55 (e) In the case of an appeal of such a proceeding tried
56 before a jury, the hearing on the appeal before the circuit
57 court shall be a hearing on the record. In the case of an
58 appeal of such a proceeding tried before the mayor or
59 municipal court judge without a jury, the hearing on the
60 appeal before the circuit court shall be a trial de novo,
61 triable to the court, without a jury.

62 (f) In the case of an appeal of such a proceeding tried
63 before a jury, the following provisions shall apply:

64 (1) To prepare the record for appeal, the defendant shall
65 file with the circuit court a petition setting forth the
66 grounds relied upon, and designating those portions of the
67 testimony or other matters reflected in the recording, if
68 any, which he or she will rely upon in prosecuting the
69 appeal. The municipal prosecutor may designate addi-
70 tional portions of the recording. Unless otherwise ordered
71 by the circuit court, the preparation of a transcript of the
72 portions of the recording designated by the defendant, and
73 the payment of the cost thereof shall be the responsibility
74 of the defendant: *Provided*, That such costs may be
75 waived due to the defendant's indigence. The circuit court
76 may, by general order or by order entered in a specific
77 case, dispense with preparation of a transcript and review
78 the designated portions of the recording orally.

79 (2) The designated portions of the recording or the
80 transcript thereof, as the case may be, and the exhibits,
81 together with all papers and requests filed in the proceed-
82 ing, constitute the exclusive record for appeal, and shall
83 be made available to the defendant and the municipal

84 prosecutor.

85 (3) After the record for appeal is filed in the office of the
86 circuit clerk, the court may, in its discretion, schedule the
87 matter for oral argument or require the parties to submit
88 written memoranda of law. The circuit court shall
89 consider whether the judgment or order of the mayor or
90 municipal court judge is:

91 (A) Arbitrary, capricious, an abuse of discretion or
92 otherwise not in conformance with the law;

93 (B) Contrary to constitutional right, power, privilege or
94 immunity;

95 (C) In excess of statutory jurisdiction, authority or
96 limitations or short of statutory right;

97 (D) Without observance of procedure required by law;

98 (E) Unsupported by the evidence; or

99 (F) Unwarranted by the facts.

100 (4) The circuit court may take any of the following
101 actions which may be necessary to dispose of the questions
102 presented on appeal, with justice to the defendant and the
103 municipality:

104 (A) Dismiss the appeal;

105 (B) Reverse, affirm or modify the judgment or order
106 being appealed;

107 (C) Remand the case for further proceedings, with
108 instructions to the mayor or municipal court judge;

109 (D) Finally dispose of the action by entering judgment
110 on appeal; or

111 (E) Retain the matter and retry the issues of fact, or
112 some part or portions thereof, as may be required by the
113 provisions of subdivision (5) of this subsection.

114 (5) If the circuit court finds that a record for appeal is

115 deficient as to matters which might be affected by evi-
116 dence not considered or inadequately developed, the court
117 may proceed to take such evidence and make independent
118 findings of fact to the extent that questions of fact and
119 law may merge in determining whether the evidence was
120 such, as a matter of law, as to require a particular finding.
121 If the circuit court finds that the proceedings below were
122 subject to error to the extent that the defendant was
123 effectively denied a jury trial, the circuit court may, upon
124 motion of the defendant, empanel a jury to reexamine the
125 issues of fact, or some part or portions thereof.

126 (6) The review by the court and a decision on the appeal
127 shall be completed within ninety days after the appeal is
128 regularly placed upon the docket of the circuit court.

129 (g) In the case of an appeal of a municipal court pro-
130 ceeding tried without a jury, the defendant shall file with
131 the circuit court a petition for appeal and trial de novo.
132 The exhibits, together with all papers and requests filed in
133 the proceeding, constitute the exclusive record for appeal
134 and shall be made available to the parties.

135 (h) Notwithstanding any other provision of this code to
136 the contrary, there shall be no appeal from a plea of guilty
137 where the defendant was represented by counsel at the
138 time the plea was entered: *Provided*, That the defendant
139 shall have an appeal from a plea of guilty where an
140 extraordinary remedy would lie or where the mayor or
141 municipal court judge lacked jurisdiction.

142 (i) The designation in this section of a mayor, acting as
143 municipal court judge, or of municipal courts as "courts of
144 limited record" shall not be construed to give standing or
145 eligibility to mayors or municipal court judges to partici-
146 pate or be included in the retirement system for judges of
147 courts of record established under the provisions of article
148 nine, chapter fifty-one of this code.

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

Ray Johnson
.....
Chairman Senate Committee

Nich Frantese
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1998.

Carrell E. Jones
.....
Clerk of the Senate

Gregory A. Boyd
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *18th*
day of *February*, 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 2/13/98

Time 10:10 am