WEST VIRGINIA CODE CHAPTER 6 ARTICLE 3

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§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.

(a) (1) The clerk of the Supreme Court of Appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record, appoint any person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may receive, directly or indirectly, any gift or donation from any person, firm or corporation.

(6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any

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sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the Supreme Court of Appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the Attorney General, or any three or more citizens of the county, to require any sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the Attorney General either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his principal and he shall not perform any services or duties, either private or public, except the duties required by law of conservators of the peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by law for the sheriff, when such duties and services are rendered by such local conservator, shall be paid to the sheriff as regular collections of the sheriff's office. The local conservator shall be paid for the public services performed by him a salary of not less than $75 per month out of the county treasury from a fund to be paid into such treasury by a resident or the residents of the community for which he is appointed, for the sole purpose of compensating such local conservator or conservators and no such local conservator shall receive any other compensation, directly or indirectly, from any person, firm, or corporation, for any private or public service, except the salary payable to him for his public services and duties and from such fund, except that he shall be entitled to witness and mileage fees when a witness in a court of record. Each local conservator so appointed shall take the same oath of office required of his principal and any default or misfeasance in the office of such local conservator shall constitute a breach of the conditions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the appointment of a local conservator and has determined that the appointment is proper, he shall select the person whom he proposes to have appointed such conservator and shall notify the county court of the community for which such conservator is to be appointed and the name of the person

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proposed for such appointment. The county court shall thereupon cause notice that the sheriff has recommended the appointment of the person named as conservator for the community named to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The notice shall designate a day not less than five days after the date of the last publication when the county court will act upon the petition and recommendation. Neither the county court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator is to be appointed, or other good reason, the sheriff and his regular deputies and the constables of the county are not sufficient to afford proper local policing of such community and that the person or persons moving for the appointment of such local conservator have made satisfactory arrangements to compensate him for his services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all the powers and duties of a regularly appointed deputy sheriff except that he shall not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but shall not participate in any strike, unemployment boycott, or other industrial or labor dispute, nor serve any court process of any character relating thereto. He shall act as such local conservator only in the unincorporated community for which he is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county court: Provided, however, That the authority of one local conservator shall not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he may effect arrests anywhere in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his regular deputies, or to a regular constable of the county to be dealt with according to law, and his authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of such local conservator shall not constitute the person, firm or corporation making such payment or contribution the employer of such local conservator and no person, firm or corporation

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paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act of such local conservator.

(5) No person appointed such local conservator shall thereby be entitled to carry weapons, but such local conservator may carry weapons when he shall be duly licensed and shall have given bond as provided by section two, article seven, chapter sixty-one of the Code of West Virginia, 1931.

(6) Not more than one local conservator of the peace shall be appointed, to perform the duties of conservator of the peace, for each two thousand five hundred inhabitants of the county as ascertained by the last regular decennial census after deducting the number of inhabitants of the county residing in the incorporated cities, towns and villages in such county. Not more than one local conservator shall be appointed for any unincorporated community unless the population thereof exceed fifteen hundred people and in such case not more than two conservators shall be appointed for such community.

(7) The phrase "unincorporated community" within the meaning of this section shall mean any center of population wherein fifty or more persons reside within an area of not more than one square mile.

(8) The county court and the judge of the circuit court in approving the appointment of a local conservator shall enter of record an order making such appointment and shall show therein the necessity for the appointment, the person or persons on whose motion the appointment is made, the arrangement for the payment of compensation to such local conservator, the unincorporated community or communities, for which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $300, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the Supreme Court of Appeals at the instance of the prosecuting attorney, the Attorney General, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and

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the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

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§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; equipment; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

(a) The sheriff of any county may, for the purposes set forth in this section, designate and appoint a deputy sheriff's reserve, hereinafter referred to as "reserve" or "reserves." A reserve may not be designated or created without the prior approval of the county commission for the establishment of the reserve.

(b) Each sheriff may appoint as members of the reserve bona fide citizens of the county who are of good moral character and who have not been convicted of a felony or other crime involving moral turpitude. Any person appointed shall serve at the will and pleasure of the sheriff and is not subject to the provisions of §7-14-1 et seq. seven of this code. A member of the reserve may not engage in any political activity or campaign involving the office of sheriff or from which activity or campaign the sheriff or candidates for sheriff appointing the member would directly benefit.

(c) Members of the reserves shall not serve as law-enforcement officers, nor carry firearms, except that a member of the reserves may carry a firearm approved by the sheriff while acting in the capacity as a reserve deputy sheriff solely for purpose of defense of self or others, if that member has:

(1) Obtained the written authorization of the sheriff;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law; and

(3) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The member must thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The department may reimburse the member for the cost of the training and requalification.

Members may carry other weapons, provided that the sheriff certifies in writing to the county commission that the reserve has met the special training requirements for the weapon as established by the Governor's Committee on Crime, Delinquency and Corrections. The Governor's Committee on Crime, Delinquency and Corrections may propose legislative rules for promulgation and emergency rules pursuant to the provisions of §29A-3-1 et seq. of this code to establish appropriate training standards. The reserves may be provided with radio communication equipment for the purpose of maintaining contact with the sheriff's department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, the reserves may perform any other duties of a nonlaw-enforcement nature designated by the sheriff or

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by a deputy sheriff designated and appointed by the sheriff for that purpose: Provided, That a member of the reserves may not aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.

(d) Members of the reserves may be uniformed; however, if uniformed, the uniforms shall clearly differentiate these members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves, but prior to service each member of the reserves shall receive appropriate training and instruction in his or her functions and authority as well as the limitations of authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the Constitution of the State of West Virginia, but the taking of the oath does not serve to make the member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) A member of the reserve is not an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers' compensation, civil service, unemployment compensation, public employees retirement, public employees insurance, or for any other purpose. A member of the reserves may not receive any compensation or pay for any services performed as a member, nor may a member use the designated uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff is liable for any of the acts of any member of the reserves except in the case of gross negligence on the part of the county commission or sheriff in the appointment of the member or in the case of gross negligence on the part of either the sheriff or any of his or her deputies in directing any action on the part of the member.

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§6-3-2. Removal of deputies.

Any deputy appointed pursuant to section one of this article, may, at any time, be removed from office by his principal, or by the court, or other tribunal in lieu thereof, by and with the consent of which he was appointed: Provided, however, That nothing herein contained, or elsewhere in the laws of this state provided, except the procedure for removal of officers set forth in section seven article six, chapter six of the Code of West Virginia, 1931, shall empower or be construed to authorize the removal, or revocation of appointment and confirmation of any deputy sheriff by any tribunal, officer or body whatsoever, except by the sheriff by whom he was appointed, unless good cause be shown for such removal, dismissal or revocation of appointment.

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§6-3-3. On death of principal, deputy to act; liability of principal's bond; removal and appointment of deputy; new or additional bond.

If any officer, having appointed a deputy or deputies, shall die during his term of office, his deputy or deputies in office at the time of his death shall continue to discharge the duties of the office in the name of the deceased principal, until his successor shall have been elected or appointed, and shall have qualified.

Any default or misfeasance in office of any deputy while so acting shall constitute a breach of the condition of the official bond of the principal, notwithstanding the death of the principal; but the personal representative of the deceased principal shall have the same right to remove any deputy from office and to appoint another that was possessed by the principal while living.

The sureties on the bond of any deceased principal, or any of them, may require a new or additional bond to be given by the personal representative of such deceased principal, in the same manner and with like effect as if such new or additional bond had been required to be given by such principal in his lifetime; and all the provisions of this chapter in relation to such new or additional bond shall be applicable to proceedings under this section.

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§6-3-4. Judgment on motion against officer or deputy and sureties.

If any officer or his deputy shall make such return upon any order, warrant, or process issued by a court, or the judge or clerk thereof, as entitles any person to recover money from such officer by action, the court to which, or to the clerk's office of which, such return is made, may, on a motion on behalf of such person, give judgment against such officer and his sureties, and against his and their personal representatives, for so much principal and interest as would, at the time such return ought to have been made, be recoverable by such action, with interest thereon at the rate of not less than six nor more than fifteen percent per annum (as the court may deem proper) from that time until payment. Where such return is by deputy, there may also be a like motion and judgment against such deputy and his sureties, and against his and their personal representatives.

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§6-3-5. Judgment on motion by officer against deputy and sureties.

Where any deputy of a sheriff or collector shall commit any default or misconduct in office for which his principal, or the personal representative of such principal, is liable, for which a judgment or decree shall be rendered against either, such principal, or his personal representative, may, on motion, obtain a judgment against such deputy and his sureties, and their personal representatives, for the full amount for which such principal, or his personal representatives, may be so liable, or for which such judgment or decree may have been rendered. But no judgment shall be rendered by virtue of this section for money, for which any other judgment or decree has been previously rendered, against such deputy or his sureties or their personal representatives.

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§6-3-6. Payment by officer or sureties of judgment for default of deputy; remedies.

When any judgment or decree shall be obtained against a sheriff or collector, or his sureties, or their personal representatives, for or on account of the default or misconduct of any such deputy, and shall be paid in whole or in part by any defendant therein, he or his personal representative may, on motion, obtain a judgment or decree against such deputy and his sureties, and their personal representatives for the amount so paid, with interest thereon from the time of such payment, and five percent damages on such amount.

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§6-3-7. Jurisdiction of motion against deputy.

Any motion, under either of the two preceding sections, may be made in the circuit court of the county in which the default or misconduct of the deputy occurred or was committed.

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