

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1951



ENROLLED

HOUSE BILL No. 5

(By Mr. May)



PASSED February 7, 1951

In Effect July 1, 1951 Passage



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House Bill No. 5

(By MR. MAY)

[Passed February 7, 1951; in effect July 1, 1951]

AN ACT to amend and reenact section one, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, relating to certain particulars of trials of criminal cases, including counsel for the accused and remuneration of counsel.

Be it enacted by the Legislature of West Virginia:

That section one, article three, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, be amended and reenacted to read as follows:

Article 3. Trial of Criminal Cases.

Section 1. *Time for Trial; Deposition of Witnesses for Accused; Counsel, Copy of Indictment, and Lists of Jurors for Accused; Remuneration of Appointed Counsel.*—When an indictment is found in a court having jurisdiction, in any county, against a person for a felony, the accused, if in custody, or if he appear in discharge of

7 his recognizance, or voluntarily, shall, unless good cause
8 be shown for a continuance, be tried at the same term. If
9 any witness for the accused be a non-resident of the State,
10 or absent therefrom in any service or employment, so
11 that service of a subpoena cannot be had upon him in
12 this state, or is aged or infirm so that he can not attend
13 upon the court at the trial, the accused may present to
14 the court in which the case is pending, or to the judge
15 thereof in vacation, an affidavit showing such facts, and
16 stating therein what he expects to prove by any such wit-
17 ness, his name, residence, or place of service or employ-
18 ment; and if such court or judge be of the opinion that
19 the evidence of any such witness, as stated in such affi-
20 davit, is necessary and material to the defense of the
21 accused on his trial, an order may be made by such court
22 or judge for the taking of the deposition of any such wit-
23 ness upon such notice to the prosecuting attorney, of the
24 time and place of taking the same, as the court or judge
25 may prescribe; and in such order the court or judge may
26 authorize the employment of counsel, practicing at or
27 near the place where the deposition is to be taken, to

28 cross-examine the witness on behalf of the state, the
29 reasonable expense whereof shall be paid out of the
30 treasury of the state, upon certificate of the court where-
31 in the case is pending. Every deposition so taken may, on
32 motion of the defendant, so far as the evidence therein
33 contained is competent and proper, be read to the jury
34 on the trial of the case as evidence therein. The accused
35 shall be allowed counsel in a felony case, and if he de-
36 sire it in a misdemeanor case to assist him in his defense,
37 and a copy of the indictment and of the list of the jurors
38 selected or summoned for his trial, as provided in the
39 third section of this article, shall be furnished him, upon
40 his request, at any time before the jury is impaneled; and,
41 in every case where the court appoints counsel for the
42 accused and the accused presents an affidavit showing
43 that he can not pay therefor, the court, may, in its dis-
44 cretion, by order entered of record allow an attorney so
45 appointed a fee of not to exceed twenty-five dollars in
46 any misdemeanor case, and a fee of not to exceed fifty
47 dollars in any felony case. In misdemeanor cases, the fee
48 so allowed shall be paid out of the general county fund,

49 and in felony cases shall be paid by the state auditor as
50 other fees in felony cases are paid. The amount so paid, in
51 the event the accused shall not prevail, shall be and con-
52 stitute a judgement of said court against the accused to be
53 recovered as any other judgement for costs.

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

A. R. Winters

Chairman Senate Committee

James M. Loop
Chairman House Committee

Originated in the House of Delegates

Takes effect *July 1, 1951* passage.

Samuel Nease
Clerk of the Senate

J. R. Aliff
Clerk of the House of Delegates

Samuel R. Houston
President of the Senate

W. E. Farmer
Speaker House of Delegates

The within APPROVED this the 15th
day of FEBRUARY, 1951.

Clay L. Patton
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
of West Virginia **FEB 15 1951**
D. PITT O'BRIEN,
SECRETARY OF STATE