

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1964

## ENROLLED

HOUSE BILL No. 61

(By Mr. Christian)

PASSED February 6 1964

In Effect July 1, 1964 Passage



FILED IN THE OFFICE OF  
JOE F. BURNETT  
SECRETARY OF STATE  
THIS DATE 2-13-64

19 #

**ENROLLED**  
**House Bill No. 61**  
(By MR. CHRISTIAN)

[Passed February 6, 1964; in effect July 1, 1964.]

AN ACT to amend and reenact chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended, entitled "An act to establish a Criminal Court in Mercer County," so as to change the name of said court, enlarge its jurisdiction and as so changed and enlarged to continue its existence.

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

That chapter eighteen, acts of the Legislature, regular session, one thousand eight hundred ninety-three, as amended, be amended and reenacted so as to read as follows:

**The Intermediate Court of Mercer County.**

**Section 1. Court Established.**—A court of record of  
2 limited jurisdiction is hereby established and continued

3 in and for the county of Mercer, to be held and presided  
4 over by a judge elected or to be elected or appointed as  
5 provided by this act, which court shall be designated and  
6 known as "The Intermediate Court of Mercer County."

**Sec. 2. Jurisdiction Concurrent with Circuit Court.—**

2 The said court, which is the same court originally estab-  
3 lished by chapter eighteen, acts of the Legislature, regu-  
4 lar session, one thousand eight hundred ninety-three but  
5 with its name and jurisdiction changed as in this act pro-  
6 vided, shall continue to have jurisdiction within the  
7 county of Mercer, concurrent with the circuit court of  
8 said county, of all felonies, misdemeanors and offenses  
9 committed or which may be committed within the said  
10 county of Mercer, and shall also have, concurrent with  
11 the circuit court of said county, jurisdiction, super-  
12 vision and control by appeal, mandamus, prohibition and  
13 certiorari of all proceedings before justices of the peace  
14 of said county or the police court, mayor or other con-  
15 stituted tribunal, board or commission of any city, town  
16 or village in said county. The said court shall likewise  
17 have jurisdiction within said county of Mercer, concur-

18 rent with the circuit court of said county, of all civil  
19 actions or proceedings at law, except where it shall ap-  
20 pear from the pleadings that the matter or thing in  
21 controversy in any such civil action or proceeding at law,  
22 exclusive of interests and costs, exceeds in value the sum  
23 of five thousand dollars, and all summary proceedings at  
24 law and any other manner of action or proceeding at law  
25 authorized by the general laws of West Virginia, as well  
26 as of appeals from judgments of the justices of said  
27 county when such appeals shall lie to the said court in  
28 the same manner and under the same regulations as  
29 provided in the general laws for appeals from justices.  
30 The said court shall likewise have jurisdiction within  
31 said county of Mercer, concurrent with the circuit court  
32 of said county, of suits for divorce, annulment of marriage  
33 and separate maintenance, of bastardy proceedings and  
34 actions for maintenance of illegitimate children as pro-  
35 vided by the general laws of West Virginia, and the said  
36 court shall continue to have jurisdiction within said  
37 county of proceedings for adoption and all juvenile and  
38 other matters of which the aforesaid criminal court of

39 Mercer county was given jurisdiction by the general laws  
40 of West Virginia or of which the court hereby estab-  
41 lished may be given jurisdiction by such general laws.

**Sec. 3. Judge; Election; Term; Qualifications; Re-  
2 moval from Office; Filling Vacancy.**—The judge of the  
3 aforesaid criminal court of Mercer county elected at the  
4 general election held in this state on the Tuesday after  
5 the first Monday in November, one thousand nine hundred  
6 sixty, shall hold his office as judge of said court and of the  
7 court hereby established for the term of eight years from  
8 the first day of January, one thousand nine hundred sixty-  
9 one, and until his successor is duly elected and qualified;  
10 and at the general election in this state to be held on the  
11 Tuesday after the First Monday in November, one thou-  
12 sand nine hundred sixty-eight, and every eight years  
13 thereafter, there shall be elected by the legal voters of  
14 said county a judge of the intermediate court of Mercer  
15 county, who shall be a resident member of the bar of said  
16 county, and shall be disqualified from practicing law in all  
17 the courts of this state during his continuance in office,  
18 who shall preside over said court for the term of eight

19 years from the first day of January succeeding said elec-  
20 tion, and shall be, except as to jurisdiction, subject to the  
21 laws in force governing circuit judges. The judge of said  
22 court may be removed from office for the same reasons,  
23 and in the same manner, as judges of circuit courts. And  
24 if from any cause the office shall become vacant, the va-  
25 cancy shall be filled in the same manner as in the case of a  
26 vacancy in the office of the judge of the circuit court.

**Sec. 4. Salary of Judge; Payment Thereof.**—The judge  
2 of said intermediate court shall receive for his services the  
3 sum of twelve thousand dollars per annum to be paid out  
4 of the county treasury of said county of Mercer.

**Sec. 5. General Powers and Jurisdiction.**—To the ex-  
2 tent of the jurisdiction conferred by this act upon said  
3 intermediate court, all powers, jurisdiction and authority  
4 conferred by law upon circuit courts in the trial of cases  
5 and in respect to proceedings and modes of procedure  
6 authorized or required therein within the county of Mer-  
7 cer are hereby conferred upon and shall be exercised by  
8 said intermediate court. And the judge of said intermedi-  
9 ate court shall have the same powers in vacation as to all

10 matters within the jurisdiction of said court that are now  
11 or may hereafter be conferred by law upon the judge of  
12 the circuit court of said county.

**Sec. 6. Presumption of Jurisdiction.**—It shall not be  
2 necessary in any cause or proceeding in said intermediate  
3 court that the facts authorizing it to take jurisdiction of  
4 the cause or proceeding be set forth upon the record, but  
5 jurisdiction shall be presumed unless the contrary plainly  
6 appears from the record.

**Sec. 7. Power to Punish for Contempt.**—The inter-  
2 mediate court shall have the same powers to punish for  
3 contempt as are conferred by law upon the circuit court.

**Sec. 8. Terms of Court; When and Where Held.**—There  
2 shall be held four terms of the said intermediate court  
3 in each year, which terms shall commence on the first  
4 Monday in January, the first Monday in April, the first  
5 Monday in July, and the first Monday in October of each  
6 year. The terms of said court shall be held at the court-  
7 house in said county.

**Sec. 9. Grand Juries; Regular and Special; Offenses**  
2 **Which May Be Considered; Applicability of General Law;**

**3 Choosing and Impaneling Grand and Petit Jurors; Com-**

**4 pensation of Jurors.**—The said intermediate court shall

5 impanel a grand jury at each term thereof. And said inter-

6 mediate court, at a special or adjourned term thereof,

7 whenever it shall be proper to do so, may order a grand

8 jury to be drawn or summoned to attend such term. All of

9 the provisions of article two, chapter fifty-two of the code

10 of West Virginia, one thousand nine hundred thirty-one,

11 as amended, in regard to grand juries in the circuit court

12 shall apply, as far as applicable, to grand juries in said

13 intermediate court. The grand and petit jurors serving

14 in said court, shall be chosen and impaneled in the same

15 manner as they are chosen and impaneled by law in the

16 circuit court, and shall receive the same compensation as

17 said jurors in the circuit court.

**Sec. 10. Clerk of Court; Fees, Signing of Process, etc.,**

**2 of Court and Execution Thereof.**—The clerk of the circuit

3 court of Mercer county shall act as and perform the duties

4 of the clerk of said intermediate court, and shall collect

5 the same fees as the clerk of the circuit court for similar

6 services, and exercise the same powers and duties arising



7 within the jurisdiction of said intermediate court. All  
8 processes, rules and orders of the said court in the exer-  
9 cise of its jurisdiction, shall be signed by the clerk thereof  
10 and be directed to the sheriffs of the proper counties  
11 wherein the same are to be executed; and they shall be  
12 executed in like manner and with the same effect as  
13 processes issuing from the circuit court of said county.

**Sec. 11. Sheriffs to Execute Process, Duties of Sheriff  
2 of Mercer County; Powers, Liabilities and Fees of Sheriffs  
3 and Other Officers.**—The sheriff of Mercer county and the  
4 sheriffs of the several counties in the state, shall by  
5 themselves or their deputies execute all processes of said  
6 intermediate court, and those issued by the clerk thereof,  
7 directed to them respectively; and all processes emanating  
8 from said intermediate court heretofore or hereafter is-  
9 sued by the clerk thereof shall be directed to and executed  
10 by them in the same manner as is provided by law as to  
11 processes issuing from the circuit court or the clerk there-  
12 of. And the sheriff of Mercer county shall perform the  
13 same duties and services for the intermediate court of  
14 Mercer county, as he is now by law required to perform

15 for the circuit court of said county, and in the execution of  
16 processes, rules and orders of said intermediate court, the  
17 said officer, and other officers of this state, this county,  
18 the several counties of this state, and municipal corpora-  
19 tions in this state situate, shall have the same powers  
20 and rights, be subject to the same liabilities, govern them-  
21 selves by the same rules and principles of law and the  
22 statutes of the state, and be entitled to the same fees as  
23 though the processes, rules and orders issued from the  
24 circuit court of said county.

**Sec. 12. Indictments, Civil Actions and Domestic Re-**  
**lations Cases in Circuit Court May Be Certified to Inter-**  
**mediate Court.**—The judge of the circuit court of said  
4 county may in his discretion certify to said intermediate  
5 court for trial any indictment for any felony or mis-  
6 demeanor which may hereafter be found by a grand jury  
7 impaneled in said circuit court, as well as any civil action  
8 or other proceeding at law within the jurisdiction of  
9 said intermediate court or suit for divorce, annulment  
10 of marriage or separate maintenance which may now  
11 be pending or hereafter instituted in said circuit court,

12 and thereupon the original papers filed in said circuit  
13 court together with a copy of any order entered in the  
14 cause by said court, including any order or judgment  
15 theretofore entered therein, shall be transferred to said  
16 intermediate court, and the cause shall be docketed  
17 therein and proceeded with as though the indictment  
18 had been returned or the cause originally brought and  
19 all prior proceedings had in said intermediate court;  
20 and said intermediate court shall likewise proceed  
21 with all indictments for misdemeanor or felony hereto-  
22 fore found by a grand jury in said criminal court of  
23 Mercer county and all appeals to said court and other  
24 proceedings pending therein as though the indictment  
25 had been returned or the cause originally brought and all  
26 prior proceedings had in said intermediate court.

**Sec. 13. Change of Venue.**—A change of venue of any  
2 cause pending in said intermediate court may be ordered  
3 as provided in section thirteen, article three, chapter  
4 sixty-two of the code of West Virginia, one thousand nine  
5 hundred thirty-one, as amended,

**Sec. 14. County Court to Provide Record Books, etc.,**

**2 Office Space and Secretarial Assistance to Judge; Effect**  
**3 of Certificates of Judge or Clerk.**—It shall be the duty of  
4 the county court of Mercer county to provide all record  
5 books, other books, stationery and postage, as well as  
6 office room and such stenographic or secretarial assistance  
7 to the judge of said intermediate court as may be neces-  
8 sary, and likewise a seal for said court but full faith and  
9 credit shall be given to the record of said court, and the  
10 certificates of its judge or clerk whether the seal of the  
11 court be affixed thereto or not, in like manner and with  
12 the same effect as if the same were records of the circuit  
13 court similarly authenticated.

**Sec. 15. Appeals May Be Allowed and Writs of Error**

**2 Awarded to Judgments, etc., of Judge of Intermediate**  
**3 Court; Appeals in Cases Relating to Public Revenue.**—  
4 Appeals may be allowed, and writs of error and super-  
5 sedeas awarded to the judgments, decrees and orders of  
6 said intermediate court by the circuit court of Mercer  
7 county, or the judge thereof, in all cases or proceedings  
8 as provided in article four, chapter fifty-eight of the

9 code of West Virginia, one thousand nine hundred thirty-  
10 one, as amended, or elsewhere in the general laws of this  
11 state; and in cases relating to the public revenues the right  
12 of appeal shall belong to the state as well as the de-  
13 fendant.

**Sec. 16. Petitions for Appeal, Writ of Error, etc.; Who**  
**2 May Present and to Whom; Laws Governing; Time Limi-**  
**3 tation.**—Any person who is a party to any such cause  
4 wishing to obtain a writ of error, appeal or supersedeas  
5 from any judgment, decree, or order of said intermediate  
6 court may present to the circuit court of Mercer county,  
7 or the judge thereof in vacation, a petition therefor and  
8 the provisions of article four, chapter fifty-eight of the  
9 code of West Virginia, one thousand nine hundred  
10 thirty-one, as amended, concerning appeals to the circuit  
11 courts shall govern the proceedings on such appeal,  
12 writ of error or supersedeas from said intermediate  
13 court as to the duties of the petitioner, the said  
14 courts or judges and clerks thereof: *Provided, however,*  
15 That no such appeal, writ of error or supersedeas from  
16 said intermediate court shall be allowed unless the peti-

17 tion therefor be presented within four months from the  
18 date of such judgment or order.

**Sec. 17. Appeals, etc., Docketed in Circuit Court of  
2 Mercer County; Expeditious Proceeding.**—Every appeal  
3 writ of error or supersedeas from said intermediate court  
4 shall be docketed in the circuit court of Mercer county,  
5 and shall be proceeded in as expeditiously as may be  
6 practicable.

**Sec. 18. Application to Supreme Court of Appeals for  
2 Writ of Error on Rejection of Petition for Appeal by the  
3 Circuit Court.**—In a case wherein the appeal, writ of  
4 error or supersedeas is to the circuit court, and the court  
5 or judge thereof deems the judgment, decree or order  
6 plainly right and rejects it on that ground, if the order of  
7 rejection so states, no further petition shall afterwards be  
8 presented for the same purpose; but the same petition  
9 with any brief in support thereof and the order of rejection  
10 with the transcript of the record may be presented to  
11 the supreme court of appeals, or a judge thereof in vacation,  
12 for an appeal, writ of error or supersedeas, from  
13 said order of rejection; and if allowed the same proceeding

14 may be had thereon as if the same were a petition origi-  
15 nally from the circuit court of said county to the said  
16 court of appeals.

**Sec. 19. Proceedings on Appeals, Writs of Error, etc.,**

2 **Allowed by the Circuit Court.**—The said circuit court  
3 where an appeal, writ of error or supersedeas has been  
4 allowed by such court, or the judge thereof in vacation,  
5 shall upon the hearing thereof, affirm said judgment,  
6 decree or order, if there be no error therein prejudicial  
7 to the appellant, or reverse the same in whole or in part  
8 if erroneous, and remand the same to the said intermedi-  
9 ate court to be further proceeded in and finally deter-  
10 mined. And the clerk of said circuit court shall as soon  
11 as practicable after the adjournment of said court, trans-  
12 mit the decision of said circuit court to the clerk of said  
13 intermediate court.

**Sec. 20. Authority to Grant Writs of Habeas Corpus;**

2 **Requirements for Issuance.**—The intermediate court of  
3 Mercer county, or the judge thereof in vacation, concur-  
4 rent with the supreme court of appeals and the circuit  
5 court of said county, shall have jurisdiction and authority

6 to grant writs of habeas corpus, as provided in article  
7 four, chapter fifty-three of the code of West Virginia,  
8 one thousand nine hundred thirty-one, as amended,  
9 and all provisions of said article shall be applicable to  
10 the granting of such writs by said intermediate court;  
11 but in no case shall such writ be issued by said inter-  
12 mediate court, or the judge thereof in vacation, on the  
13 application of any person unless such person by himself  
14 or by someone in his behalf shall apply for such writ by  
15 petition and show by affidavit or other evidence probable  
16 cause to believe that such person is detained in the  
17 county of Mercer without lawful authority.

**Sec. 21. Prosecuting Attorney to Attend Terms of Court**

2 **and Perform Duties Required by Law.**—The prosecuting  
3 attorney of Mercer county shall attend the terms of  
4 court of said intermediate court, either by himself or his  
5 assistant, and shall perform the duties of his office in  
6 respect to said court and all causes and proceedings pend-  
7 ing therein as required by the general laws of this state.

**Sec. 22. Divorce Commissioner; Qualifications; Duties;**

2 **Fees.**—The intermediate court, or the judge thereof in



3 vacation, may in his discretion, appoint a competent at-  
4 torney in Mercer county as a commissioner to serve as  
5 “divorce commissioner” to said court, as provided for  
6 circuit courts by section twenty-four, article two, chapter  
7 forty-eight, of the code of West Virginia, one thousand  
8 nine hundred thirty-one, as amended. Such commissioner  
9 shall be subject to the same qualifications and require-  
10 ments, shall perform the same duties in respect to cases  
11 tried in said circuit courts, and shall be allowed the same  
12 fees as provided by law for divorce commissioners of the  
13 circuit courts.

**Sec. 23. General Laws Applicable to Court and Judge.—**

2 To the extent of the jurisdiction and authority hereby  
3 conferred upon said intermediate court, the provisions  
4 of sections three and four, article eight, chapter seven  
5 of the code of West Virginia, one thousand nine hundred  
6 thirty-one, as amended, as well as other provisions of  
7 the general laws of this state to the extent applicable,  
8 shall apply to the intermediate court of Mercer county,  
9 and the judge thereof in the same manner and to the  
10 same extent as to the circuit court of Mercer county and  
11 the judge thereof.

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

*O. Roy Parker*

Chairman Senate Committee

*Esther L. Caudall*

Chairman House Committee

Originated in the House.

Takes effect July 1, 1964 passage.

*William H. Thayer*

Clerk of the Senate

*A. Blankenship*

Clerk of the House of Delegates

*Howard W. Carsoz*

President of the Senate

*Julius W. Singeford*

Speaker House of Delegates

The within approved this the 13<sup>th</sup>  
day of February, 1964.

*Wm. R. Barron*

Governor

