

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1966

ENROLLED

SENATE BILL NO. 84

(By Mr. Brotherton)

PASSED Feb. 9 1966

In Effect Ninety days from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 2-15-66

84

ENROLLED
Senate Bill No. 84
(By MR. BROTHERTON)

[Passed February 9, 1966; in effect ninety days from passage.]

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, as amended, relating to time for trial of criminal cases; depositions of witnesses for accused; counsel, copy of indictment, and lists of jurors for accused; and remuneration for appointed 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, as amended, be amended and reenacted to read as follows:

**Section 1. Time for Trial; Depositions of Witnesses for
2 Accused; Counsel, Copy of Indictment, and Lists of Jurors**

3 for Accused; Remuneration for Appointed Counsel.—

4 When an indictment is found in a court having jurisdic-
5 tion, in any county, against a person for a felony, the
6 accused, if in custody, or if he appear in discharge of his
7 recognizance, or voluntarily, shall, unless good cause be
8 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 cannot 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
17 witness, his name, residence, or place of service or em-
18 ployment; and if such court or judge be of the opinion
19 that the evidence of any such witness, as stated in such
20 affidavit, 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
23 witness upon such notice to the prosecuting attorney, of

24 the time and place of taking the same, as the court or
25 judge may prescribe; and in such order the court or
26 judge may authorize the employment of counsel, prac-
27 ticing at or near the place where the deposition is to be
28 taken, to cross-examine the witness on behalf of the state,
29 the reasonable expense whereof shall be paid out of the
30 treasury of the state, upon certificate of the court wherein
31 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. A court of
35 record having criminal jurisdiction may appoint counsel
36 to assist an accused in criminal cases, except traffic viola-
37 tions and violations of municipal ordinances, at any time
38 upon request. A copy of the indictment and of the
39 list of the jurors selected or summoned for his trial,
40 as provided in the third section of this article, shall be
41 furnished him, upon his request, at any time before the
42 jury is impaneled. In every case where the court appoints
43 counsel for the accused and the accused presents an
44 affidavit showing that he cannot pay therefor, the court,

45 may, in its discretion, by order entered of record allow
46 an attorney so appointed a fee of not to exceed twenty-
47 five dollars in any misdemeanor case, and a fee of not
48 to exceed fifty dollars in any felony case. In misdemeanor
49 cases, the fee so allowed shall be paid out of the general
50 county fund, and in felony cases shall be paid by the state
51 auditor as other fees in felony cases are paid. The amount
52 so paid, in the event the accused shall not prevail, shall
53 be and constitute a judgment of said court against the
54 accused to be recovered as any other judgment for costs.

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

O. Roy Parker
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the Senate.

Takes effect *Thirty days from* Passage.

Howard Thye
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Howard E. Carson
President of the Senate

H. Sabau White
Speaker House of Delegates

The within *Approved* this the *15th*
day of *February*, 1966.

Stewart C. Smith
Governor



OFFICE OF THE GOVERNOR
FEB 15 9 13 AM '66

**PRESENTED TO THE
GOVERNOR**

Date 2/14/66

Time 10:50 AM

FILED

FEB 15 7 55 PM '66

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA