

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1971



ENROLLED

HOUSE BILL No. 612

(By Mr. HUFFMAN AND
MR JONES OF RONNE)



PASSED MARCH 13 1971

In Effect JULY 1, 1971 Passage



FILED BY THE CLERK
OF THE HOUSE OF DELEGATES,
SECRETARY OF STATE
APR 2 1971

612

ENROLLED

House Bill No. 612

(By MR. HUFFMAN and MR. JONES, of Roane)

[Passed March 13, 1971; in effect July 1, 1971.]

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 procedures in the trial of criminal cases; appointment and remuneration of 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:

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

- 1 When an indictment is found in a court having juris-
- 2 diction, in any county, against a person for a felony, the

3 accused, if in custody, or if he appear in discharge of
4 his recognizance, or voluntarily, shall, unless good cause
5 be shown for a continuance, be tried at the same term.
6 If any witness for the accused be a nonresident of the
7 state, or absent therefrom in any service or employ-
8 ment, so that service of a subpoena cannot be had upon
9 him in this state, or is aged or infirm so that he cannot
10 attend upon the court at the trial, the accused may
11 present to the court in which the case is pending, or to
12 the judge thereof in vacation, an affidavit showing such
13 facts, and stating therein what he expects to prove by
14 any such witness, his name, residence, or place of ser-
15 vice or employment; and if such court or judge be of
16 the opinion that the evidence of any such witness, as
17 stated in such affidavit, is necessary and material to the
18 defense of the accused on his trial, an order may be
19 made by such court or judge for the taking of the
20 deposition of any such witness upon such notice to the
21 prosecuting attorney, of the time and place of taking
22 the same, as the court or judge may prescribe; and in
23 such order the court or judge may authorize the em-

24 ployment of counsel, practicing at or near the place
25 where the deposition is to be taken, to cross-examine
26 the witness on behalf of the state, the reasonable ex-
27 pense whereof shall be paid out of the treasury of the
28 state, upon certificate of the court wherein the case is
29 pending. Every deposition so taken may, on the motion
30 of the defendant, so far as the evidence therein con-
31 tained is competent and proper, be read to the jury on
32 the trial of the case as evidence therein. A court of record
33 having criminal jurisdiction may appoint counsel to as-
34 sist an accused in criminal cases, except traffic viola-
35 tions and violations of municipal ordinances, at any time
36 upon request. A copy of the indictment and of the list
37 of the jurors selected or summoned for his trial, as pro-
38 vided in section three of this article, shall be furnished
39 him, upon his request, at any time before the jury is im-
40 paneled. In every case where the court appoints counsel
41 for the accused and the accused presents an affidavit
42 showing that he cannot pay therefor, the court shall,
43 by order entered of record allow an attorney so ap-
44 pointed a fee of not to exceed one hundred dollars in

45 any misdemeanor case, and a fee of not to exceed two
46 hundred dollars in any felony case. In misdemeanor
47 cases, the fee so allowed shall be paid out of the general
48 county fund, and in felony cases shall be paid by the
49 state auditor as other fees in felony cases are paid. The
50 amount so paid, in the event the accused shall not prevail,
51 shall be and constitute a judgment of said court against
52 the accused to be recovered as any other judgment for
53 costs.

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

Russell G. Beale
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

Howard Meyer
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

E. Hans McBourne
President of the Senate

Lewis A. McManus
Speaker House of Delegates

The within approved this the 1st
day of April, 1971.

Arha Shaver Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/71

Time 3:15 p.m.

RECEIVED

APR 2 11 52 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA