

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1971

ENROLLED

HOUSE BILL No. 784

(By Mr. SCOTT AND MR. M<sup>C</sup>KENZIE)

PASSED FEBRUARY 11, 1971

In Effect JULY 1, 1971 Passage



FILED IN THE OFFICE  
JOHN D. FORKNER, IV  
SECRETARY OF STATE  
THIS DATE 2-17-71

784

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AN ACT to amend and reenact chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature, regular session, one thousand nine hundred sixty-five, relating to the criminal court for the county of McDowell, changing the name of said court, enlarging its jurisdiction, fixing the salary of the judge thereof, and as so changed and enlarged to continue its existence.

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

That chapter twenty-eight, acts of the Legislature, regular session, one thousand nine hundred seven, as last amended by chapter one hundred seventy-three, acts of the Legislature,

regular session, one thousand nine hundred sixty-five, be amended and reenacted so as to read as follows:

**THE INTERMEDIATE COURT OF McDOWELL COUNTY.**

**§1. Court established.**

1 A court of record of limited jurisdiction is hereby  
2 established and continued in and for the county of Mc-  
3 Dowell, to be held and presided over by a judge elected  
4 or to be elected or appointed as provided by this act,  
5 which court shall be designated and known as "The In-  
6 termediate Court of McDowell County."

**§2. Jurisdiction concurrent with circuit court.**

1 The court, which is the same court originally estab-  
2 lished by chapter thirty-six, acts of the Legislature, reg-  
3 ular session, one thousand eight hundred ninety-three,  
4 but with its name and jurisdiction changed as in this act  
5 provided, shall continue to have jurisdiction within the  
6 county of McDowell, concurrent with the circuit court  
7 of the county, of all felonies, misdemeanors and offenses  
8 committed or which may be committed within the county  
9 of McDowell, and shall also have, concurrent with the  
10 circuit court of the county, jurisdiction, supervision and

11 control by appeal, mandamus, prohibition and certiorari  
12 of all proceedings before justices of the peace of the  
13 county or the police court, mayor or other constituted  
14 tribunal, board or commission of any city, town or village  
15 in the county. The court shall likewise have jurisdic-  
16 tion within the county of McDowell concurrent with the  
17 circuit court of the county, of all civil actions or proceed-  
18 ings at law, except where it shall appear from the plead-  
19 ings that the matter or thing in controversy in any such  
20 civil action or proceeding at law, exclusive of interests and  
21 costs, exceeds in value the sum of fifty thousand dollars,  
22 and all summary proceedings at law and any other man-  
23 ner of action or proceedings at law authorized by the  
24 general laws of West Virginia, as well as of appeals  
25 from judgments of the justices of the county when such  
26 appeals shall lie to the court in the same manner and  
27 under the same regulations as provided in the general  
28 laws for appeals from justices. The court shall likewise  
29 have jurisdiction within the county of McDowell, con-  
30 current with the circuit court of the county, of suits for  
31 divorce, annulment of marriage and separate mainten-

32   ance, of bastardy proceedings and actions for maintenance  
33   of illegitimate children as provided by the general laws  
34   of West Virginia, and the court shall have jurisdiction  
35   within the county of McDowell, concurrent with the cir-  
36   cuit court of the county, of proceedings for adoption,  
37   and all juvenile and other matters of which the aforesaid  
38   criminal court of McDowell county was given jurisdiction  
39   by the general laws of West Virginia or of which the  
40   court hereby established may be given jurisdiction by  
41   such general laws.

**§3. Judge; election; term; qualifications; removal from office;  
      filling vacancy.**

1    The judge of the foresaid criminal court of McDowell  
2    county elected at the general election held in this state  
3    on the Tuesday after the first Monday in November,  
4    one thousand nine hundred sixty-eight, to fill a vacancy  
5    then existing, shall hold his office as judge of the court  
6    and of the court hereby established for the unexpired  
7    term of six years from the first day of January, one thou-  
8    sand nine hundred sixty-six, which term expires on the  
9    last day of December, one thousand nine hundred seventy-

10 two, and until his successor is duly elected and qualified;  
11 and at the general election in this state to be held on the  
12 Tuesday after the first Monday in November, one thou-  
13 sand nine hundred seventy-two, and every eight years  
14 thereafter, there shall be elected by the legal voters of  
15 the county a judge of the intermediate court of Mc-  
16 Dowell county, who shall be a resident member of the  
17 bar of the county, and shall be disqualified from prac-  
18 ticing law in all the courts of this state during his con-  
19 tinuance in office, who shall preside over the court for  
20 the term of eight years from the first day of January  
21 succeeding the election, and shall be, except as to juris-  
22 diction, subject to the laws in force governing circuit  
23 judges. The judge of the court may be removed from  
24 office for the same reasons, and in the same manner,  
25 as judges of circuit courts. And if from any cause the  
26 office shall become vacant, the vacancy shall be filled in  
27 the same manner as in the case of a vacancy in the office  
28 of the judge of the circuit court.

**§4. Salary of judge; payment thereof.**

1 The judge of the intermediate court shall receive for  
2 his services the sum of nineteen thousand dollars per

3 annum to be paid out of the county treasury of the county  
4 of McDowell.

**§5. General powers and jurisdiction.**

1 To the extent of the jurisdiction conferred by this act  
2 upon the intermediate court, all powers, jurisdiction and  
3 authority conferred by law upon circuit courts in the  
4 trial of cases and in respect to proceedings and modes  
5 of procedure authorized or required therein within the  
6 county of McDowell are hereby conferred upon and  
7 shall be exercised by the intermediate court. And the  
8 judge of the intermediate court shall have the same  
9 powers in vacation as to all matters within the juris-  
10 diction of the court that are now or may hereafter be  
11 conferred by law upon the judge of the circuit court of  
12 the county.

**§6. Presumption of jurisdiction.**

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

**§7. Power to punish for contempt.**

1 The intermediate court shall have the same powers to  
2 punish for contempt as are conferred by law upon the  
3 circuit court.

**§8. Terms of court; when and where held.**

1 There shall be held four terms of the intermediate  
2 court in each year, which terms shall commence on the  
3 Tuesday following the second Monday in the months of  
4 January, April, July and October of each year. The  
5 terms of the court shall be held at the courthouse in the  
6 county or in the annex to the courthouse in the county.

**§9. Grand juries; regular and special; offenses which may be considered; applicability of general law; choosing and impaneling grand and petit jurors; compensation of jurors.**

1 The intermediate court shall impanel a grand jury at  
2 each term thereof. The intermediate court, at a special  
3 or adjourned term thereof, whenever it shall be proper  
4 to do so, may order a grand jury to be drawn or summoned to attend such term. All of the provisions of  
5 article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended,



8 in regard to grand juries in the circuit court shall apply,  
9 as far as applicable, to grand juries in the intermediate  
10 court. The grand and petit jurors serving in the court,  
11 shall be chosen and impaneled in the same manner as  
12 they are chosen and impaneled by law in the circuit  
13 court, and shall receive the same compensation as the  
14 jurors in the circuit court.

**§10. Clerk of court; fees, signing of process, etc., of court and execution thereof.**

1 The clerk of the circuit court of McDowell county shall  
2 act as and perform the duties of the clerk of the inter-  
3 mediate court, and shall collect the same fees as the clerk  
4 of the circuit court for similar services, and exercise the  
5 same powers and duties arising within the jurisdiction  
6 of the intermediate court. All processes, rules and orders  
7 of the court in the exercise of its jurisdiction, shall be  
8 signed by the clerk thereof and be directed to the sheriffs  
9 of the proper counties wherein the same are to be exe-  
10 cuted; and they shall be executed in like manner and with  
11 the same effect as processes issuing from the circuit  
12 court of the county.

**§11. Sheriffs to execute process, duties of sheriff of McDowell county; powers, liabilities and fees of sheriffs and other officers.**

1     The sheriff of McDowell county and the sheriffs of the  
2     several counties in the state shall by themselves or their  
3     deputies execute all processes of the intermediate court,  
4     and those issued by the clerk thereof, directed to them  
5     respectively; and all processes emanating from the in-  
6     termediate court heretofore or hereafter issued by the  
7     clerk thereof shall be directed to and executed by them  
8     in the same manner as is provided by law as to processes  
9     issuing from the circuit court or the clerk thereof. And  
10    the sheriff of McDowell county shall perform the same  
11    duties and services for the intermediate court of Mc-  
12    Dowell county, as he is now by law required to perform  
13    for the circuit court of the county, and in the execution  
14    of processes, rules and orders of the intermediate court,  
15    the officer, and other officers of this state, this county,  
16    the several counties of this state, and municipal corpora-  
17    tions in this state situate, shall have the same powers  
18    and rights, be subject to the same liabilities, govern  
19    themselves by the same rules and principles of law and

20 the statutes of the state, and be entitled to the same fees  
21 as though the processes, rules and orders issued from  
22 the circuit court of the county.

**§12. Indictments, civil actions and domestic relations cases in  
circuit court may be certified to intermediate court.**

1 The judge of the circuit court of the county may in his  
2 discretion certify to the intermediate court for trial any  
3 indictment for any felony or misdemeanor which may  
4 hereafter be found by a grand jury impaneled in the  
5 circuit court, as well as any civil action or other pro-  
6 ceeding at law within the jurisdiction of the inter-  
7 mediate court or suit for divorce, annulment of marriage  
8 or separate maintenance which may now be pending or  
9 hereafter instituted in the circuit court, and thereupon  
10 the original papers filed in the circuit court together with  
11 a copy of any order entered in the cause by the court,  
12 including any order or judgment theretofore entered  
13 therein, shall be transferred to the intermediate court,  
14 and the cause shall be docketed therein and proceeded  
15 with as though the indictment had been returned or the  
16 cause originally brought and all prior proceedings had  
17 in the intermediate court; and the intermediate court

18 shall likewise proceed with all indictments for misde-  
19 meanor or felony heretofore found by a grand jury in  
20 the criminal court of McDowell county and all appeals  
21 to the court and other proceedings pending therein as  
22 though the indictment had been returned or the cause  
23 originally brought and all prior proceedings had in the  
24 intermediate court.

**§13. Change of venue.**

1 A change of venue of any cause pending in the inter-  
2 mediate court may be ordered as provided in section  
3 thirteen, article three, chapter sixty-two of the code of  
4 West Virginia, one thousand nine hundred thirty-one, as  
5 amended.

**§14. County court to provide record books, etc., office space  
and secretarial assistance to judge; effect of certificates  
of judge or clerk.**

1 It shall be the duty of the county court of McDowell  
2 county to provide all record books, other books, stationery  
3 and postage, as well as office room and such stenographic  
4 or secretarial assistance to the judge of the intermediate  
5 court as may be necessary, and likewise a seal for the  
6 court but full faith and credit shall be given to the record

7 of the court, and the certificates of its judge or clerk  
8 whether the seal of the court be affixed thereto or not,  
9 in like manner and with the same effect as if the same  
10 were records of the circuit court similarly authenticated.

**§15. Appeals may be allowed and writs of error awarded to judgments, etc., of judge of intermediate court; appeals in cases relating to public revenue.**

1 Appeals may be allowed, and writs of error and super-  
2 sedeas awarded to the judgments, decrees and orders of  
3 the intermediate court by the circuit court of McDowell  
4 county, or the judge thereof, in all cases or proceedings  
5 as provided in article four, chapter fifty-eight of the code  
6 of West Virginia, one thousand nine hundred thirty-one,  
7 as amended, or elsewhere in the general laws of this  
8 state; and in cases relating to the public revenues the  
9 right of appeal shall belong to the state as well as the  
10 defendant.

**§16. Petitions for appeal, writ of error, etc.; who may present and to whom; laws governing; time limitation.**

1 Any person who is a party to any such cause wishing to  
2 obtain a writ of error, appeal or supersedeas from any  
3 judgment, decree, or order of the intermediate court

4 may present to the circuit court of McDowell county, or  
5 the judge thereof in vacation, a petition therefor and the  
6 provisions of article four, chapter fifty-eight of the code  
7 of West Virginia, one thousand nine hundred thirty-one,  
8 as amended, concerning appeals to the circuit courts shall  
9 govern the proceedings on such appeal, writ of error or  
10 supersedeas from the intermediate court as to the duties  
11 of the petitioner, the courts or judges and clerks thereof:  
12 *Provided*, That no such appeal, writ of error or super-  
13 sedeas from the intermediate court shall be allowed unless  
14 the petition therefor be presented within four months  
15 from the date of such judgment or order.

**§17. Appeals, etc., docketed in circuit court of McDowell county; expeditious proceeding.**

1 Every appeal, writ of error or supersedeas from the  
2 intermediate court shall be docketed in the circuit court  
3 of McDowell county, and shall be proceeded in as ex-  
4 peditiously as may be practicable.

**§18. Application to supreme court of appeals for writ of error on rejection of petition for appeal by the circuit court.**

1 In a case wherein the appeal, writ of error or super-  
2 sedeas is to the circuit court, and the court or judge

3 thereof deems the judgment, decree or order plainly  
4 right and rejects it on that ground, if the order of re-  
5 jection so states, no further petition shall afterwards  
6 be presented for the same purpose; but the same petition  
7 with any brief in support thereof and the order of re-  
8 jection with the transcript of the record may be pre-  
9 sented to the supreme court of appeals, or a judge  
10 thereof in vacation, for an appeal, writ of error or super-  
11 sedeas, from said order of rejection; and if allowed the  
12 same proceeding may be had thereon as if the same were  
13 a petition originally from the circuit court of the county  
14 to the court of appeals.

**§19. Proceedings on appeals, writs of error, etc., allowed by  
the circuit court.**

1 The circuit court where an appeal, writ of error or  
2 supersedeas has been allowed by such court, or the judge  
3 thereof in vacation, shall upon the hearing thereof, affirm  
4 the judgment, decree or order, if there be no error therein  
5 prejudicial to the appellant, or reverse the same in whole  
6 or in part if erroneous, and remand the same to the in-  
7 termediate court to be further proceeded in and finally  
8 determined. And the clerk of the circuit court shall as

9 soon as practicable after the adjournment of the court,  
10 transmit the decision of the circuit court to the clerk of  
11 the intermediate court.

**§20. Authority to grant writs of habeas corpus, requirements  
for issuance.**

1 The intermediate court of McDowell county, or the  
2 judge thereof in vocation, concurrent with the supreme *a*  
3 court of appeals and the circuit court of the county, shall  
4 have jurisdiction and authority to grant writs of habeas  
5 corpus, as provided in article four, chapter fifty-three of  
6 the code of West Virginia, one thousand nine hundred  
7 thirty-one, as amended, and all provisions of the article  
8 shall be applicable to the granting of such writs by the  
9 intermediate court; but in no case shall such writ be  
10 issued by the intermediate court, or the judge thereof in  
11 vacation, on the application of any person unless such  
12 person by himself or by someone in his behalf shall  
13 apply for such writ by petition and show by affidavit or  
14 other evidence probable cause to believe that such person  
15 is detained in the county of McDowell without lawful  
16 authority.



**§21. Prosecuting attorney to attend terms of court and perform duties required by law.**

1 The prosecuting attorney of McDowell county shall  
2 attend the terms of court of the intermediate court,  
3 either by himself or his assistant, and shall perform the  
4 duties of his office in respect to the court and all causes  
5 and proceedings pending therein as required by the gen-  
6 eral laws of this state.

**§22. General laws applicable to court and judge.**

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

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

*James H. Beane*  
Chairman Senate Committee

*Phyllis Rutledge*  
Chairman House Committee

Originated in the House.

Takes effect July 1, 1971.

*James D. Myers*  
Clerk of the Senate

*V. A. Blankenship*  
Clerk of the House of Delegates

*George B. Cant*  
President of the Senate

*Sam F. Brawley*  
Speaker House of Delegates

The within *approved* this the *15<sup>th</sup>*  
day of *February*, 1971.

*Arch A. Shaver Jr.*  
Governor



PRESENTED TO THE  
GOVERNOR

RECEIVED

Date 2/15/71

Time 12 noon

FEB 17 3 35 PM '71

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA