

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

## ENROLLED

HOUSE BILL No. 1038

(By Mr. Sparacino and Mrs. Merritt)

PASSED March 9 1972

In Effect 90 days from Passage

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

MAR 29 11 37 PM '72



FILED IN THE OFFICE  
JOHN D. ROCKWELL, II  
SECRETARY OF STATE

THIS DATE 3-29-72

1038

**ENROLLED**

**House Bill No. 1038**

(By MR. SPARACINO and MRS. MERRITT)

[Passed March 9, 1972; in effect July 1, 1972.]

AN ACT to amend and reenact chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, relating to abolition of the criminal court of Raleigh county as heretofore established; creation of a new intermediate court of Raleigh county; jurisdiction; the judges qualifications, term and salary; clerk; duties of sheriff; transfer of pending cases; miscellaneous provisions.

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

That chapter twenty-nine, acts of the Legislature, regular session, one thousand nine hundred seven, be amended and reenacted to read as follows:

**INTERMEDIATE COURT OF RALEIGH COUNTY.**

**§1. Criminal court abolished; intermediate court created.**

1     The criminal court of Raleigh county heretofore created  
2     is hereby abolished and there is hereby created a new  
3     court to be known and designated as the intermediate  
4     court of Raleigh county. For the sole purpose of per-  
5     petuity of retirement benefits for retired judges of the  
6     criminal court, the intermediate court shall be deemed  
7     a successor to the criminal court and such judges shall  
8     be entitled to full benefits under article nine, chapter  
9     fifty-one of the code of West Virginia.

**§2. Intermediate court generally.**

1     The intermediate court of Raleigh county shall be a  
2     court of limited jurisdiction for the county of Raleigh, to

3 be held and presided over by a judge to be appointed or  
4 elected as provided in this chapter. Whenever and wher-  
5 ever the word "court" is hereafter used in this chapter, it  
6 shall be taken to mean and refer to the intermediate court  
7 of Raleigh county, unless the context clearly indicates  
8 otherwise.

### §3. Jurisdiction.

1 The court shall have jurisdiction within Raleigh county,  
2 concurrent with the circuit court of said county, of ac-  
3 tions, causes, matters, proceedings and suits relating to  
4 (a) those matters within the purview of article one, chap-  
5 ter forty-eight of the code of West Virginia, and  
6 of all amendments and reenactments thereof, of which  
7 the circuit court now has exclusive jurisdiction, including  
8 the issuance of a marriage license in an emergency or  
9 under extraordinary circumstances as now provided in  
10 section six-c of said article and chapter; (b) affirmation  
11 of marriages, annulment of marriages, separate mainte-  
12 nance, divorce, alimony, the care, custody, maintenance  
13 and education of children of litigants and the adjudica-  
14 tion of property rights arising out of same and all other  
15 causes and matters arising within the provisions of article  
16 two, chapter forty-eight of the code of West Virginia,  
17 commonly known as "the divorce law," and of all amend-  
18 ments and reenactments thereof; (c) adoption proceed-  
19 ings arising out of article four of the chapter last afore-  
20 said and of all amendments and reenactments thereof;  
21 (d) proceedings for a change of name arising out of article  
22 five of the chapter last aforesaid and of all amendments  
23 and reenactments thereof; (e) the enforcement of support  
24 of dependents arising out of article nine of the chapter  
25 last aforesaid and of all amendments and reenactments  
26 thereof; (f) the care and disposition of delinquent, defec-  
27 tive, neglected and dependent children and juvenile of-  
28 fenders arising out of articles five, six and seven, chapter  
29 forty-nine of the code of West Virginia and of all amend-  
30 ments and reenactments thereof; (g) all proceedings aris-  
31 ing out of article eight, chapter forty-nine of the code of  
32 West Virginia, known as the "Interstate Compact on Ju-  
33 veniles," and of all amendments and reenactments there-  
34 of; (h) compulsory school attendance and truancy aris-

35 ing out of article eight, chapter eighteen of the code of  
36 West Virginia and of all amendments and reenactments  
37 thereof; (i) habeas corpus proceedings involving the  
38 award and custody of children under the age of twenty-  
39 one years; (j) the collection of recognizances and bonds  
40 taken by said court, or of bonds taken by the clerk thereof  
41 in vacation, to secure the payment of judgments for fines  
42 and costs rendered by said court; (k) the approval of com-  
43 promise by fiduciaries of liabilities where acting as guar-  
44 dian for an infant in accordance with the provisions of  
45 section seven, article five, chapter forty-four of the code  
46 of West Virginia and of all amendments and reenactments  
47 thereof; (l) concerning the transfer of securities the prop-  
48 erty of an infant in the name of a fiduciary in accordance  
49 with the provisions of section eight, article five, chapter  
50 forty-four of the code of West Virginia and of all amend-  
51 ments and reenactments thereof; (m) direction to fiduci-  
52 aries concerning moneys belonging to a minor in accor-  
53 dance with the provisions of section one, article six, chap-  
54 ter forty-four of the code of West Virginia, and of all  
55 amendments and reenactments thereof; (n) authority for  
56 investment by a fiduciary when the beneficiary of trust  
57 funds is the property of a minor in accordance with the  
58 provisions of section three, article six, chapter forty-four  
59 of the code of West Virginia and of all amendments and  
60 reenactments thereof, and authority for investment or  
61 disbursement by a guardian or committee for a person  
62 receiving veteran's benefits, in accordance with the pro-  
63 visions of article fifteen, chapter forty-four of the code of  
64 West Virginia and of all amendments and reenactments  
65 thereof; (o) instruction of fiduciaries where minor is ben-  
66 eficiary of an estate or trust as provided in section four,  
67 article six, chapter forty-four of the code of West Vir-  
68 ginia and of all amendments and reenactments thereof;  
69 (p) authorization of disbursements by guardians from in-  
70 come and corpus of the estate of infant wards as provided  
71 in section eight, article ten, chapter forty-four of the code  
72 of West Virginia and of all amendments and reenactments  
73 thereof; (q) sale of personal estate by guardian in accor-  
74 dance with the provisions of section nine, article ten, chap-  
75 ter forty-four of the code of West Virginia and of all

76 amendments and reenactments thereof; (r) proceedings  
77 between guardians and wards in accordance with the pro-  
78 visions of section thirteen, article ten, chapter forty-four  
79 of the code of West Virginia and of all amendments and  
80 reenactments thereof; (s) the approval of compromising  
81 an infant's claim for damages in accordance with the pro-  
82 visions of section fourteen, article ten, chapter forty-four  
83 of the code of West Virginia and of all amendments and  
84 reenactments thereof; (t) the transfer of property of non-  
85 resident infant or nonresident insane person to foreign  
86 guardian in accordance with the provisions of section  
87 three, article eleven, chapter forty-four of the code of  
88 West Virginia and of all amendments and reenactments  
89 thereof; (u) the transfer of proceeds of sale belonging  
90 to nonresident infant to foreign guardian in accordance  
91 with section four, article eleven, chapter forty-four of the  
92 code of West Virginia and of all amendments and reenact-  
93 ments thereof; (v) the approval of the sale, lease, mort-  
94 gage or deeding in trust of infants' lands or insane per-  
95 sons' lands in accordance with the provisions of article  
96 one, chapter thirty-seven of the code of West Virginia  
97 and of all amendments and reenactments thereof; (w)  
98 release of dower of an infant in accordance with the pro-  
99 visions of section nine, article one, chapter thirty-seven  
100 of the code of West Virginia and of all amendments and  
101 reenactments thereof; (x) all matters coming within the  
102 purview of section one, article one, chapter forty-eight of  
103 the code of West Virginia, relating to the age of consent  
104 and of all amendments and reenactments thereof;

105 Said court shall have jurisdiction in actions, causes,  
106 matters, proceedings and suits which would have been  
107 matters in equity prior to the adoption of the West Vir-  
108 ginia rules of civil procedure, which are before it within  
109 its jurisdiction with power to grant injunctions and to  
110 require and take recognizances.

111 The proceedings, modes of procedures, power and juris-  
112 diction conferred by law upon the circuit court of Raleigh  
113 county in any and all said actions, causes, matters, pro-  
114 ceedings and suits, are hereby conferred upon and shall be  
115 exercised by said court.

116 It shall not be necessary in any such actions, causes,  
117 matters, proceedings or suits to set forth upon the record  
118 the facts authorizing said court to take jurisdiction there-  
119 of, but jurisdiction shall be presumed unless the contrary  
120 plainly appears from the record.

**§4. Judge; qualifications, term, appointment and election.**

1 The principal presiding officer of the court shall be a  
2 judge whose qualifications, term, appointment, election  
3 and tenure shall be as follows: The person elected or ap-  
4 pointed to said office of judge shall be a member of the  
5 West Virginia State Bar and a resident of Raleigh county.  
6 At the general election to be held on the Tuesday after  
7 the first Monday in November, one thousand nine hundred  
8 seventy-four, and at the general election to be held at  
9 intervals of eight years thereafter, some attorney, quali-  
10 fied as aforesaid, shall be elected, in the manner provided  
11 by law for the election of circuit judges, to be judge of  
12 said court for the next ensuing term of eight years, be-  
13 ginning on January first next following such election.  
14 Candidates for the office of judge of the court shall be  
15 nominated in the same manner as are candidates for the  
16 office of judge of the circuit court. The judge of the court  
17 may be removed from office for the same reasons and in  
18 the same manner as a judge of the circuit court. If from  
19 any cause the office of judge of the court shall become  
20 vacant including the vacancy to occur when the provisions  
21 of this act become effective, the vacancy shall be filled in  
22 the same manner as in the case of a vacancy in the office  
23 of the judge of the circuit court. Any judge so elected or  
24 appointed shall continue in said office until his successor  
25 is elected and qualified.

**§5. Salary.**

1 The judge of the intermediate court of Raleigh county  
2 shall for his services receive the sum of twenty thousand  
3 five hundred dollars per annum to be paid in monthly in-  
4 stallments out of the county treasury of Raleigh county.  
5 The county court of Raleigh county shall annually make  
6 provisions by appropriate levy and appropriation for the  
7 payment of said salary.

**§6. Clerk; his powers, duties and compensation.**

1 The clerk of the circuit court of Raleigh county shall,  
 2 ex officio, be, act as and perform the duties of clerk of  
 3 the intermediate court of Raleigh county and shall exer-  
 4 cise the same power and duties arising within the juris-  
 5 diction of the court as are performed by him as clerk of  
 6 the circuit court. All processes, rules and order of the  
 7 court, in the exercise of its jurisdiction, shall be signed  
 8 by the clerk thereof to be directed to the sheriffs of the  
 9 proper counties wherein the same are to be executed in  
 10 like manner and with the same effect as processes issuing  
 11 from the circuit court of Raleigh county.

**§7. Power and duties of sheriff.**

1 The sheriff of Raleigh county and the sheriffs of the  
 2 several counties in the state shall by themselves or their  
 3 deputies execute all processes of said court, issued by the  
 4 clerk thereof, directed to them respectively, and all pro-  
 5 cesses emanating from said court shall be directed to and  
 6 be executed by them in the same manner as is provided  
 7 by law as to processes issuing from the circuit court by  
 8 said clerk. The sheriff of Raleigh county shall perform  
 9 the same duties and services for said court as he is now  
 10 by law required to perform for the circuit court of Raleigh  
 11 county. In the execution of processes, rules and orders of  
 12 the court, the sheriff shall have the same powers and  
 13 rights, be subject to the same liabilities, govern himself  
 14 by the same rules and principles of law and the statutes  
 15 of the state, as though said processes issued from the  
 16 circuit court of Raleigh county.

**§8. Transfer of pending causes.**

1 The judge of the circuit court of Raleigh county may, in  
 2 his discretion, on and after the first day of July, one  
 3 thousand nine hundred seventy-two, certify to the  
 4 intermediate court of Raleigh county any portion or all  
 5 of the divorce proceedings, suits for annulment of mar-  
 6 riage and any and all other matters pending in said courts  
 7 and properly coming within the jurisdiction of this court  
 8 as defined in section three hereof, and all such matters,  
 9 suits, actions, petitions and proceedings so certified to the  
 10 intermediate court of Raleigh county shall be docketed

11 and thereafter proceeded with therein according to law.  
12 The judge of the said circuit court, in his discretion, may  
13 also direct the clerk of his court to certify to and to  
14 docket all such matters, suits, actions, petitions, and pro-  
15 ceedings properly within the jurisdiction of the inter-  
16 mediate court of Raleigh county as may be instituted on  
17 and after the first day of July, one thousand nine hundred  
18 seventy-two, in the circuit court in the intermediate  
19 court of Raleigh county. In the event of the absence or  
20 disqualification of the judge of the circuit court, any  
21 matter coming within the purview of this act, pending in  
22 said court, may be certified by the judge of the intermed-  
23 iate court of Raleigh county to the intermediate court of  
24 Raleigh county, docketed therein and proceeded with ac-  
25 cording to law.

26 The judge of the intermediate court of Raleigh county  
27 shall not exercise any criminal jurisdiction except crim-  
28 inal juvenile jurisdiction as provided by law, nor hold  
29 any jury trials.

30 In any action or proceeding where a party is entitled  
31 to a jury trial, and demands the same, or the court orders  
32 a jury trial, the said action or proceeding shall be trans-  
33 ferred by the judge of the intermediate court of Raleigh  
34 county in its entirety to the circuit court for disposition  
35 as though the same had been originally instituted in the  
36 circuit court. For the purpose of effecting such transfer,  
37 the intermediate court of Raleigh county shall have juris-  
38 diction in all matters brought before it.

**§9. Terms of court; maturity of causes; procedure; appoint-  
ment of probation staff, clerical, and secretarial assistants  
and fixing salaries.**

1 For the purpose of maturing, docketing, hearing and  
2 determining all matters, suits, petitions and other pro-  
3 ceedings properly determinable in the intermediate  
4 court of Raleigh county there shall be regularly con-  
5 tinued and held three terms of court each year, beginning  
6 on the third Monday in the months of March, June and  
7 November of each year. Special terms of said court may  
8 be called and held whenever, in the discretion of the  
9 judge of the court, public interest requires such special  
10 terms. The judge of the court shall have like jurisdiction



11 and authority, in vacation of the court, to make and enter  
12 such proper orders in any matter, suit, action, petition or  
13 proceeding pending in the court as the judges of the cir-  
14 cuited courts have under the laws of the state. All matters  
15 arising under the jurisdiction of the court, other than suits  
16 for divorce, separation, annulment of marriages and af-  
17 firmation of marriages, may be heard and determined  
18 either in term time or in vacation: *Provided*, That proper  
19 notice of any such proceedings be given as provided by  
20 law for the particular case.

21 The mode of procedure in cases instituted in this court  
22 shall be the same as that prescribed for the circuit court  
23 in similar causes. The court is authorized and empowered  
24 to appoint such additional officers, commissioners and  
25 probation officers, and clerical and secretarial assistance  
26 as may be authorized by law and as shall enable the court  
27 to discharge all the duties required of it under the pro-  
28 visions of this chapter, and the general laws of the state,  
29 which appointments shall be entered of record in the  
30 office of the circuit clerk, with a copy to be filed with the  
31 county court. Such personnel or staff of the judge shall be  
32 paid such salaries, fees and expenses as may be deter-  
33 mined by the court and authorized by law from any  
34 available source, including federal grant money or by  
35 the county court: *Provided*, That for all such sums  
36 as shall be paid by the county court, the judge shall  
37 first obtain the approval of the county court of Raleigh  
38 county of the expenses to be incurred and the salary or  
39 salaries to be paid. The county court shall at its next  
40 meeting, regular or special, approve or disapprove in  
41 whole or in part, said appointments, in writing, and shall  
42 notify the judge of said court of its action. If the county  
43 court fails or refuses to act on said appointments as here-  
44 in provided, said appointments shall be deemed to have  
45 been approved. If the county court disapproves any ap-  
46 pointment, such appointment shall be nullified to the  
47 extent that the county court shall not be obligated to  
48 pay any expenses or salary for such disapproved appoint-  
49 ment. Such appointments shall be made by the judge  
50 and the appointees shall serve during the pleasure of the  
51 judge.

52 The appointment of the probation officer and secretarial  
53 and other assistants, when made by the judge, shall be  
54 entered on the law order book of the court. A copy of the  
55 order of appointment shall be transmitted to the clerk  
56 of the county court. Thereupon, the county court shall  
57 make provision for payment and shall pay the salaries  
58 of the probation officer, clerical and secretarial assistants  
59 as shown by the order of appointment. The annual sal-  
60 aries provided for in said order of appointment shall be  
61 paid in equal monthly installments. Expenses and mileage  
62 accounts of the probation officer shall be itemized and  
63 verified and presented to and paid by the county court, if  
64 such accounts are approved by the judge. The county  
65 court shall provide such office space, equipment and  
66 supplies for the probation staff, clerical and secretarial  
67 assistants as the judge shall deem necessary and adequate.

**§10. Supplies; finances; seal; court rooms.**

1 It shall be the duty of the county court of Raleigh  
2 county to provide a current West Virginia code and all  
3 record and other books and stationery that may be neces-  
4 sary for the court. Likewise, a seal for the court shall be  
5 provided, but full faith and credit shall be given to the  
6 records of the court and certificates of its judge or clerk,  
7 whether the seal of the court be affixed thereto or not,  
8 in like manner and with the same effect as if the same  
9 were records of the circuit court similarly authenticated.  
10 The county court of Raleigh county shall likewise fur-  
11 nish such rooms, furniture and equipment for the proper  
12 conduct and administration of the court and shall, through  
13 annual levy and appropriations, make provision for the  
14 payment for all such rooms, supplies and equipment and  
15 as well for such clerical, secretarial and other official help  
16 and expenses as may be required by the court.

**§11. Contempt.**

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

**§12. Appeals; limitations thereon.**

1 Appeals may be allowed and writs of error and super-  
2 sedeas awarded to judgments, decrees, rulings and orders

3 of the court, or the judge thereof, by the circuit court  
4 of Raleigh county, or the judge thereof, in all matters  
5 arising within the jurisdiction of this court for which mat-  
6 ters appeals may be allowed and writs of error and super-  
7 sedeas awarded by the supreme court of appeals if such  
8 matters had originally arisen in the circuit court of Ral-  
9 eigh county. In the event the circuit court of Raleigh  
10 county or the judge thereof refuses an application for writ  
11 of error and supersedeas or an appeal, application there-  
12 for may be made direct to the supreme court of appeals  
13 of the state or to any judge thereof. In all such cases such  
14 application shall be made within four months next fol-  
15 lowing the date of the entry of the final order, judgment,  
16 or decree of this court or the circuit court as the case may  
17 be.

**§13. Effective date.**

1 This chapter shall become effective on the first day of  
2 July, one thousand nine hundred seventy-two.

**§14. Separability; repeal.**

1 The provisions of this chapter shall be construed as sep-  
2 arable and severable and, should any provision or part  
3 hereof be held unconstitutional or for any reason invalid,  
4 the remaining provisions or parts shall not be thereby  
5 affected.

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

Russell G. Beall  
Chairman Senate Committee

Stephen J. Rutledge  
Chairman House Committee

Originated in the House.

In Effect July 1, 1972.

Howard W. Carson  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

E. Hans McCaust  
President of the Senate

Lewis R. McManis  
Speaker House of Delegates

The within approved this the 17th  
March  
day of \_\_\_\_\_, 1972.

Richard A. Shaver Jr.  
Governor



PRESENTED TO THE  
GOVERNMENT

Date 3/16/72

Time 2:10 p.m.