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OFFICE OF THE
CLERK OF THE HOUSE
OF DELEGATES
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

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ENROLLED

HOUSE BILL No. 1406

(By Mr. Sommerville and Mr. See)

— ● —

PASSED March 8, 1975

In Effect from Passage



1406

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1406

(By MR. SOMMERVILLE and MR. SEE)

[Passed March 8, 1975; in effect from passage.]

AN ACT to repeal section three-k, article one, chapter seven; section eighteen, article seven, chapter seven; sections thirteen and fourteen, article one, chapter fifty-one; section twelve, article one, chapter fifty-nine; section three, article five, chapter sixty-two; and section five-a, article twelve, chapter sixty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article seven, chapter six; section eight, article six-a, chapter twenty-seven; article five, chapter forty-nine; sections one and three, article five-a, chapter forty-nine; section one, article six, chapter forty-nine; sections twelve and thirteen, article two, chapter fifty-one; sections three, five, six and seven, article seven, chapter fifty-one; sections eight and nine, article eight, chapter fifty-one; sections five, ten and fifteen, article nine, chapter fifty-one; sections three, twenty-one, twenty-three and twenty-four, article one, chapter fifty-two; section thirteen, article two, chapter fifty-two; section one, article eleven, chapter fifty-six; section eleven, article five, chapter fifty-seven; section seventeen, article five, chapter fifty-eight; sections sixteen, twenty-eight, twenty-nine and thirty-one, article one, chapter fifty-nine; section one, article three, chapter sixty-two; section one, article five, chapter sixty-two; and sections one, five, six and twenty-two, article twelve, chapter sixty-two, all of said code; and to

amend article three, chapter twelve of said code by adding thereto a new section, designated section eight-a, all relating to implementation of the "Judicial Reorganization Amendment to the West Virginia Constitution" by effecting the code provisions hereinabove referred to and relating to the particular matters hereinafter described so as to be consistent with a unified court system as the primary fiscal responsibility of the state as opposed to the counties; permitting mileage and certain other expenses and allowances to be paid to judges of the supreme court of appeals and of the various circuit courts; relating to the amount of such expenses and allowances; placing certain limitations on requisitions from the judicial accounts of the state treasury; providing that the state shall bear certain costs attendant with the commitment to mental facilities of certain persons convicted of crimes; providing procedures to be followed in certain juvenile proceedings and the jurisdiction and power of the circuit courts with respect thereto; providing for the recordation of juvenile proceedings and establishing the right to trial by jury and assistance to counsel and the payment of such counsel in such cases; providing for the form of the petition used in delinquency cases and the filing and service thereof and the procedures relating thereto; providing for the various methods of disposition to be used by the court in juvenile cases; prohibiting the placing of certain juveniles in jail; relating to juvenile probation officers, their powers and duties, and their compensation and expenses; relating to juvenile referees, their qualifications, powers, duties and compensation; providing for certain procedures in juvenile neglect cases; providing for the compensation of circuit judges and special judges; relating to compensation and fees for court reporters and the methods of payment; requiring transcript to be furnished indigent person in certain cases and providing for payment therefor; relating to state and county law libraries and the financial support thereof and the duties of the administrative director of the supreme court of appeals and of the various circuit clerks with respect thereto; relating to the appointment under special acts of law clerks and law assistants and compensation thereof; relating to the retirement system for judges and the payments required for the support of such system; relating to the eligibility of persons to participate in such system; authorizing retired judges parti-

icipating in such system to serve as special judges; providing for the compensation of jury commissioners; providing for compensation and the payment of expenses of petit and grand jurors; relating to the time during which grand juries may sit; relating to the membership of the judicial council and designating the administrative director of the supreme court of appeals as secretary of such council; providing for the disposition of exhibits used in evidence in the trial of cases and the use of the proceeds of such disposition; providing for the reproduction of records in appellate cases, the distribution of such records and the payment of costs therefor; relating to the use, collection and disposition of certain fees of sheriffs, clerks of the various county commissions, circuit clerks and prosecuting attorneys and the duties of such persons with respect thereto; providing certain procedures with respect to trial in criminal cases and establishing the right to counsel in such cases; providing for the payment of counsel fees in cases involving indigent defendants; providing for the payment of witnesses in the trial of criminal cases; relating to the authority of circuit courts with respect to placing persons convicted of crimes on probation; relating to the appointment by circuit courts of probation officers, assistant probation officers and clerical assistants and compensation thereof; relating to the appointment under special acts of medical and psychiatric assistants and tenure and compensation thereof; relating to the powers and duties of probation officers; relating to the right to counsel in cases of parole violation and the payment of such counsel by the state in cases involving indigent parolees; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That section three-k, article one, chapter seven; section eighteen, article seven, chapter seven; sections thirteen and fourteen, article one, chapter fifty-one; section twelve, article one, chapter fifty-nine; section three, article five, chapter sixty-two; and section five-a, article twelve, chapter sixty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five and six, article seven, chapter six; section eight, article six-a, chapter twenty-seven; article five, chapter forty-nine; sections one and three, article five-a, chapter forty-nine; section one, article six, chapter forty-nine; sections twelve and thirteen, article two,

chapter fifty-one; sections three, five, six and seven, article seven, chapter fifty-one; sections eight and nine, article eight, chapter fifty-one; sections five, ten and fifteen, article nine, chapter fifty-one; sections three, twenty-one, twenty-three and twenty-four, article one, chapter fifty-two; section thirteen, article two, chapter fifty-two; section one, article eleven, chapter fifty-six; section eleven, article five, chapter fifty-seven; section seventeen, article five, chapter fifty-eight; sections sixteen, twenty-eight, twenty-nine and thirty-one, article one, chapter fifty-nine; section one, article three, chapter sixty-two; section one, article five, chapter sixty-two; and sections one, five, six and twenty-two, article twelve, chapter sixty-two, all of said code, be amended and reenacted; and that article three, chapter twelve of said code, be amended by adding thereto a new section, designated section eight-a, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-5. Mileage and expenses of judges.

1 A judge of the supreme court of appeals and of a circuit
2 court shall be entitled to an allowance for mileage at the rate
3 of fifteen cents for each mile, to be computed according to
4 the distance by the nearest practicable route necessarily travel-
5 ed from his place of residence, to the place of holding any
6 term of court in a county other than that of his residence, and
7 from such place to his residence; and a judge of the circuit
8 court shall be paid the sum of thirty-five dollars per day as
9 expenses while holding court in a county other than that
10 in which he resides: *Provided*, That no judge of a circuit
11 court shall be paid mileage and expenses for holding more
12 than ten terms of court in any county in any one year, includ-
13 ing regular, adjourned and special terms. The mileage and ex-
14 penses provided for in this article shall be paid to any judge
15 out of the state treasury as and when the salary of such
16 judge is payable.

§6-7-6. Allowance to circuit judges for stationery, postage and stenographic help.

1 Each judge of the circuit court shall, in accordance with

2 the rules of the supreme court of appeals, be allowed steno-
3 graphic help necessary in the discharge of the duties of his
4 office, and each judge shall be allowed necessary stationery,
5 payment of postage, and necessary supplies for his office. The
6 judge shall be reimbursed for the actual amounts expended
7 by him for stationery, supplies and postage. Payment for
8 stenographic help shall be made directly to the person per-
9 forming the stenographic work. Such amounts shall be paid
10 monthly out of the state treasury, but not until the judge sub-
11 mits an itemized statement covering the same.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-8a. Limitation on requisitions from judicial accounts.

1 No requisition shall be made upon the auditor for any
2 money appropriated for the judicial system of the state, un-
3 less prior approval shall have been obtained from the supreme
4 court of appeals or its administrative director authorizing such
5 requisition.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 6A. SENTENCING, COMMITMENT AND CONTROL OF SEX OFFENDERS.

§27-6A-8. Credit for time; expenses.

- 1 (a) If a person is convicted of a crime, any time spent in
2 involuntary confinement in a mental health facility as a re-
3 sult of being charged with such crimes, shall be credited to
4 this sentence.
- 5 (b) All medical and psychological expenses attendant upon
6 these proceedings shall be paid by the state.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Circuit courts to have juvenile jurisdiction.

1 The circuit court of the county shall have original jurisdic-
2 tion in proceedings brought by petition under this article.

§49-5-2. "Child" defined; continuing jurisdiction of court.

1 "Child" means a person under the age of eighteen years.
2 When jurisdiction shall have been obtained by the court in the
3 case of any child, such child shall continue under the jurisdic-
4 tion of the court until he becomes eighteen years of age un-
5 less discharged prior thereto or, in the event such child is
6 committed to a correctional or other institution, until he is
7 released therefrom. A person subject to the jurisdiction of the
8 court pursuant to this article may be brought before it by either
9 of the following means and no other.

10 (a) By petition praying that the person be adjudged,
11 neglected or delinquent;

12 (b) Certification from any other court before which such
13 person is brought charged with the commission of a crime.

§49-5-3. Criminal jurisdiction over persons under eighteen years of age.

1 Except as to a violation of law which if committed by an
2 adult would be a capital offense, the court shall hear and de-
3 termine criminal charges in the manner provided in this article,
4 including a charge of violation of a municipal ordinance,
5 against a person who is under eighteen years of age at the
6 time of the alleged offense.

7 If during the pendency of a criminal proceeding against a
8 person in any court other than a circuit court, pursuant to this
9 article, it shall be ascertained, or it shall appear, that the per-
10 son was under the age of eighteen years at the time of the
11 alleged offense, such court, judge, justice of the peace or magis-
12 trate shall immediately transfer the case with all the papers,
13 documents, and testimony connected therewith to the circuit
14 court. The circuit court shall proceed to hear and dispose of the
15 case in the same manner as if it had been instituted in that court
16 in the first instance: *Provided*, That for violations of the traffic
17 laws of West Virginia as contained in chapter seventeen-c of
18 this code, or for the violation of a municipal traffic ordinance,
19 justices of the peace courts, magistrate courts and municipal
20 courts when appropriate shall have concurrent jurisdiction with
21 the circuit court and such persons under the age of eighteen

22 years shall be liable for punishment for violation of such traffic
23 statutes and ordinances in the same manner as adults.

24 Any person who is under the age of eighteen years shall be
25 entitled to be admitted to bail or recognizance in the same
26 manner as a person over the age of eighteen years, and shall
27 have the protection guaranteed by article III, section 5 of the
28 Constitution of West Virginia, and also the right to be ad-
29 mitted to bail or recognizance in the same manner as a person
30 over the age of eighteen years.

§49-5-4. Wards of the court.

1 A person under the age of eighteen years who appears be-
2 fore the circuit court in any capacity shall be deemed to be
3 a ward of the court and protected accordingly. Such court or
4 judge thereof shall request the county health officer in any
5 county employing a full-time health officer, to make a physical
6 and mental examination of the wards of the court as defined in
7 this section. Such health officer shall, as promptly as may be,
8 furnish to the court or judge a written report of such exami-
9 nations on forms to be furnished to said health officer by the
10 court. In those counties not employing a full-time health offi-
11 cer, the court or judge may designate a reputable physician of
12 the county to make such mental and physical examinations and
13 render such written reports. When any such mental and phy-
14 sical examination is made and any such report rendered, the
15 state shall pay to the examining physician a sum not to exceed
16 ten dollars for each such mental and physical examination, up-
17 on certification of the fact of such examination by the court
18 or the judge thereof.

§49-5-5. Record of findings, etc.

1 The findings and orders of the court shall be entered in a
2 book, kept by the clerk of the court for that purpose, known
3 as the "juvenile record."

§49-5-6. Jury trial under article.

1 In a proceeding under this article, an interested person may
2 demand, or the judge of his own motion, may order a jury of
3 twelve persons to try any question of fact.

**§49-5-7. Petitioning court for disposition of suspected delinquents
—Form of petition; filing; service; answer.**

1 (a) If the state department or a reputable person believes
2 that a child is delinquent, the department or person may
3 present a petition setting forth the facts to the circuit court
4 or judge thereof in the county where the child may be.

5 The petition may set forth that it is for the interest of the
6 child and of the state that the child be taken from its parent,
7 guardian, or other custodian and placed under another guard-
8 ianship or custody as determined by the court; and that the
9 parent, guardian or other custodian is unfit properly to care
10 for, protect, train, educate, control or discipline the child, or
11 that the parent, guardian, or other custodian consents that the
12 child may be taken from him.

13 The petition shall be verified by oath, and shall set forth
14 the name and address of the parent, guardian, or other person
15 having custody and control of the child if such name and ad-
16 dress are known to the petitioner.

17 Upon the filing of the petition, the court or judge shall set
18 a time and place for a hearing and proceedings upon the
19 facts.

20 (b) A person named in the petition shall be made a de-
21 fendant and shall be notified of the proceedings by personal
22 service of summons, which shall require the person to appear
23 with the child at the time and place set for the proceedings.
24 If the defendant cannot be found, service may be by publi-
25 cation as a Class II legal advertisement in compliance with
26 the provisions of article three, chapter fifty-nine of this code,
27 and the publication area for such publication shall be the
28 county.

29 (c) A defendant, duly summoned, shall appear and answer,
30 in open court or before the judge in vacation, on the return
31 day of the summons, or if the summons is served less than
32 one day prior to the return day, then on the following day.

33 A defendant notified by publication shall appear and an-
34 swer in open court or before the judge in vacation within
35 twenty days after the date of the first publication.

36 The answer shall have as evidence no greater weight than
37 the petition.

§49-5-8. Temporary disposition.

1 The court or judge may, before the proceedings, make tem-
2 porary disposition of the child in the manner provided in
3 article two of this chapter, or may order the child to be placed
4 in the custody of a probation officer.

§49-5-9. Warrant.

1 The court or judge may, if he deems such action necessary,
2 order the issuance of a warrant against the person having
3 custody and control of the child, to bring the person into
4 court or before the judge; or a warrant against the child to
5 bring the child into court or before the judge.

**§49-5-10. Right to counsel; mandatory advice with respect there-
to; appointment of counsel; payment by state of fee
for appointed attorney.**

1 In any proceeding under the provisions of this article, the
2 child shall have the right to be represented by counsel, and
3 the child and his parents, his guardian, his custodian, or any
4 other person standing in loco parentis to him, or the person
5 named in the petition, must be informed at the outset of the
6 child's right to be represented by counsel, and if neither the
7 child nor any other of the aforementioned persons can pay
8 for the services of counsel, that counsel will be appointed to
9 represent the child. Upon the presentation to the court or
10 judge thereof of a written request for the appointment of coun-
11 sel and an affidavit by the child, or by his parents, the guard-
12 ian of his person, his custodian, or any other person standing in
13 loco parentis to him, or by the person named in the petition,
14 showing that neither the child nor any other of the aforemen-
15 tioned persons can pay for the services of counsel, the court or
16 judge, upon being satisfied as to the truth of the information
17 set forth in the affidavit, shall, by order entered of record, ap-
18 point an attorney at law to represent the child in any pro-
19 ceeding under the provisions of this article, and may, in the
20 exercise of discretion, by order entered of record, allow any
21 attorney so appointed a fee in an amount not to exceed two

22 hundred dollars. Any such fee shall be paid by the state audi-
23 tor in the same manner as fees for appointed counsel are paid
24 in felony cases.

§49-5-11. Methods of disposition by court.

1 With a view to the welfare and interest of the child and of
2 the state, the court or judge may, after the proceedings, make
3 any of the following dispositions:

4 (1) Treat the child as a neglected child, in which
5 case the provisions of article six of this chapter shall
6 apply;

7 (2) Order the child placed under the supervision of a pro-
8 bation officer;

9 (3) If the child be over sixteen years of age at the time of
10 the commission of the offense the court may, if the proceedings
11 originated as a criminal proceeding, enter an order showing
12 its refusal to take jurisdiction as a juvenile proceeding and
13 permit the child to be proceeded against in accordance with
14 the laws of the state governing the commission of crimes or
15 violation of municipal ordinances;

16 (4) Commit the child to an industrial home or correctional
17 institution for minors;

18 (5) Commit the child to any public or private institution
19 or agency permitted by law to care for children;

20 (6) Commit the child to the care and custody of some
21 suitable person who shall be appointed guardian of the person
22 and custodian of the child;

23 (7) Enter any other order which seems to the court to be
24 in the best interest of the child.

§49-5-12. Prosecuting attorney to represent petitioner.

1 The prosecuting attorney, in counties having population in
2 excess of two hundred thousand, shall represent the petitioner
3 in all juvenile proceedings before the court or judge having
4 juvenile jurisdiction in such counties. The prosecuting attorney
5 shall assign one or more full-time assistants for the purpose
6 of representing said petitioners.

7 The county commission shall provide office space for the
8 assistant prosecuting attorney.

§49-5-13. Committing children to jail.

1 A child under sixteen years of age, whether delinquent or
2 otherwise, shall not be committed to a jail or police station,
3 except that any child over fourteen years of age who has been
4 committed to an industrial home or correctional institution
5 may be held in the juvenile department of a jail while awaiting
6 transportation to the institution.

§49-5-14. Notice to be given by clerk to state department.

1 The clerk of the court shall promptly notify the state depart-
2 ment of delinquent children brought before the court or judge
3 and of delinquency proceedings pending.

§49-5-15. Juvenile probation officers; duties; expenses; powers.

1 (a) The commissioner of the state department of welfare
2 shall, with the approval of the court, designate one of the
3 employees of the state department of welfare to act as a
4 juvenile probation officer, and when required one or more em-
5 ployees of the state department of welfare to act as assistant
6 or assistants to such probation officer, and such employee or
7 employees, when so assigned, shall perform their duties under
8 the sole supervision and control of the court and the court shall
9 have the sole power to recommend the transfer or dismissal of
10 employees so assigned. There shall be at least one such
11 juvenile probation officer assigned to each county, but a juve-
12 nile probation officer may be assigned to more than one county.

13 The foregoing provisions of this section shall not be construed
14 as abrogating or affecting in any way the power and authority
15 vested in any court, subject to the approval of and in accordance
16 with the rules of the supreme court of appeals, to select, super-
17 vise and discharge its own probation officers and assistants
18 thereto.

19 (b) The clerk of a court shall notify, if practicable, the chief
20 probation officer of the county when a child is brought before
21 the court or judge. When notified, or if the probation officer
22 otherwise obtains knowledge of such fact, he or one of his
23 assistants shall:

- 24 (1) Make investigation of the case;
- 25 (2) Be present in court, or before the judge, to represent
26 the interests of the child when the case is heard;
- 27 (3) Furnish such information and assistance as the court
28 or judge may require;
- 29 (4) Take charge of the child before and after the trial, as
30 may be directed by the court or judge.
- 31 (c) The necessary expenses incurred by a probation officer
32 acting pursuant to an order issued by a court exercising jurisdic-
33 tion pursuant to this article shall be borne by the state depart-
34 ment.
- 35 (d) A juvenile probation officer is hereby vested with the
36 power and authority of a peace officer to make arrests and
37 perform any other duties ordinarily performed by a peace
38 officer, incident to his office, or necessary or convenient to
39 the performance of his duties.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

**§49-5A-1. Juvenile referee; qualifications; compensation; authority;
"child," etc., defined.**

- 1 In each county, the judge or judges of the circuit court may
2 appoint one person who is qualified by education and exper-
3 ence to serve as juvenile referee on a full-time or part-time
4 basis who shall serve at the will and pleasure of the appointing
5 court. The salary of such referee shall be fixed by the court
6 in accordance with the rules of the supreme court of appeals,
7 and shall be paid out of the state treasury. It shall be the duty
8 of the referee to hold any detention hearing determined neces-
9 sary pursuant to the provisions of section two of this article.
10 Each referee shall also perform such other duties as are
11 assigned to him by the court to carry out the purposes of this
12 article. Referees shall not be permitted to conduct hearings
13 on the merits of any case.
- 14 As used in this article, the terms "child" or "children" shall
15 have the meaning ascribed to those terms elsewhere in this
16 chapter.

§49-5A-3. Orders of juvenile referee or judge following detention hearing; force and effect and finality of such orders.

1 After a detention hearing conducted by a judge or referee an
2 order shall be forthwith entered setting forth the findings of
3 fact and conclusions of law with respect to further detention
4 pending hearing and disposition of the child proceedings in-
5 volving such juvenile. A copy of such order shall be furnished
6 to the court, if entered by a referee, and to the child and his
7 attorney, if any, and to the parent or parents or guardian of
8 the child. A detention order of a judge or referee shall become
9 effective immediately, subject to the right of review provided
10 for in section four of this article, and shall continue in effect
11 until modified or vacated by the judge. In the event any referee
12 under this article shall order further detention, the judge
13 shall within two days of the entry of the referee's order afford
14 to the child a new hearing upon the issue of further detention,
15 to which hearing the provisions of this and the preceding sec-
16 tions shall apply.

ARTICLE 6. PROCEDURE IN NEGLECT CASES.

§49-6-1. Petition to court when child believed neglected—Form, etc.

1 If the state department, or a reputable person, believes that
2 a child is neglected, the department or the person may
3 present a petition setting forth the facts to the circuit
4 court in the county in which the child resides, or to the
5 judge of such court in vacation. The petition shall be
6 verified by the oath of some credible person having knowledge
7 of the facts. Upon the filing of the petition, the court or
8 judge shall set a time and place for a hearing.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-12. Compensation of special judge.

1 The judge so elected or agreed upon shall receive for his
2 services, while sitting as such judge, one hundred dollars per
3 day, to be certified by the court and paid out of the state
4 treasury.

§51-2-13. Salaries of judges of circuit courts.

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county com-
3 mission, board of commissioners or other political subdivision
4 shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be twenty-eight
6 thousand five hundred dollars per year.

ARTICLE 7. OFFICIAL REPORTERS.

§51-7-3. Compensation for attending court and taking notes.

1 The official reporter shall receive, for his services and ex-
2 penses in attending the court or judge and in taking the notes
3 provided for in section two of this article, such salary or other
4 compensation as the court or judge, in accordance with the
5 rules of the supreme court of appeals, may allow. If such sal-
6 ary be allowed, it shall be paid monthly, out of the state
7 treasury. If no such salary be allowed, such other compensa-
8 tion and expenses as may be allowed in civil cases shall be
9 certified by the court or judge to the auditor of the state and
10 the same shall be paid out of the state treasury. Such other
11 compensation and expenses in felony and misdemeanor cases
12 shall be certified to the auditor of the state and paid out of the
13 state treasury. The salary or other compensation provided for
14 in this section shall not be deemed to include the making of
15 typewritten transcripts as provided for in section four of this
16 article.

§51-7-5. Salary in lieu of all other compensation.

1 If neither of the methods of compensation provided for in
2 section three of this article be adopted, a salary may be allowed
3 in lieu of all other compensation, which shall be paid month-
4 ly, out of the state treasury, in such proportions as the court
5 or judge may fix in accordance with the rules of the supreme
6 court of appeals. All fees for services rendered by the official
7 reporter in the discharge of his duties as such, when he is
8 allowed a salary under the provisions of this section, may be
9 collected, and shall, when collected by the sheriff or official
10 reporter, be paid into the treasury of the state; and it shall be
11 the duty of such reporter to make out, sign and deliver to the

12 sheriff a fee bill in every case, civil or criminal, giving the
13 style thereof and the amount due, and from whom, which
14 amount may be collected or levied for by the sheriff, and such
15 fee bill shall have the force and effect of an execution when
16 levied. An official reporter compensated under the provisions
17 of this section shall collect the fees mentioned in section four
18 of this article for any transcript of his shorthand notes of the
19 testimony or proceedings furnished by him to any party, and
20 shall pay the same over to the sheriff of the county in which
21 the services were performed, to be by him accounted for and
22 paid into the state treasury.

§51-7-6. Reporter's fee; how taxed; paid and accounted for.

1 The clerk of the court in which such reporter is employed
2 shall tax as a part of the costs a reporter's fee of not less than
3 five dollars, to be fixed by the court or judge, for each case in
4 which such reporter was engaged. Such costs, when received
5 by the clerk, shall be paid by him to the sheriff, who shall
6 account for and pay such costs, in civil and misdemeanor
7 cases, into the state treasury.

§51-7-7. Transcripts to be furnished indigent persons under conviction upon timely request; payment therefor.

1 In any case wherein an indigent person has filed a notice of
2 intent to seek an appeal or writ of error as specified in section
3 four, article four, or section four, article five, chapter fifty-
4 eight of this code, the court, or judge thereof in vacation, upon
5 written request of such convicted person or his counsel, pre-
6 sented within sixty days after the entry of such judgment, shall,
7 by order entered of record, authorize and direct the court re-
8 porter to furnish a transcript of the testimony and proceedings
9 of the trial, or such part or parts thereof as such convicted
10 person or his counsel shall have indicated in his request to be
11 necessary, to the convicted person, without charge to him, for
12 use in seeking his appeal or writ of error, and the cost of such
13 transcript whether the case be one of misdemeanor or felony,
14 shall be certified by the judge of the court to the auditor of the
15 state and shall be paid out of the treasury of the state from the
16 appropriation for criminal charges.

ARTICLE 8. STATE AND COUNTY LAW LIBRARIES; LAW CLERKS.

§51-8-8. Authority to establish county law libraries; control of circuit judge; rules and regulations.

1 In addition to all other powers and duties now conferred by
2 law upon the supreme court of appeals and the circuit courts,
3 such courts are hereby authorized and empowered to establish
4 county law libraries which shall be wholly under the control
5 and management of the circuit judge, with the assistance of the
6 circuit clerk. The supreme court of appeals may expend funds
7 for the purchase of books or other expenses necessary to the
8 operation of the county law library.

9 All county law libraries presently in existence shall be
10 continued and kept current and the cost thereof, other than
11 for provision of adequate space, shall be borne by the state and
12 charged against the judicial accounts thereof. Such libraries
13 shall be available for use by the public subject to such reason-
14 able rules as may be adopted by the circuit judge. County
15 commissions shall provide adequate space for such libraries.

§51-8-9. Accounts and reports relating to county law libraries.

1 The administrative director of the supreme court of appeals,
2 with the cooperation and assistance of each circuit clerk, shall
3 keep full and complete account of all money transactions in
4 connection with the various county law libraries and of the
5 receipt of all books and other documents lodged in such
6 libraries and shall perform such other duties in connection
7 therewith as may be ordered by the supreme court of appeals.
8 Such administrative director shall make an annual report to
9 the supreme court of appeals within sixty days after the close
10 of each fiscal year, in which he shall state the number of
11 copies of reports, acts of the Legislature and all other books
12 and documents received by each county law library and
13 the disposition made thereof. Such report shall also set forth
14 what money came into his hands during the preceding fiscal
15 year.

§51-8-10. Law clerks.

1 Any circuit court heretofore authorized by special act of the
2 Legislature to appoint a law clerk or law assistant shall con-

3 tinue to have such authority, and all of the provisions of any
 4 such special act or any other special acts amendatory thereof
 5 shall continue to apply, and any such law clerk or law assistant
 6 shall receive the salary most recently authorized in any such
 7 special act, until changed by such circuit court, with the ap-
 8 proval of the supreme court of appeals, by order entered of
 9 record, but such salary shall be paid out of the state treasury.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES.

§51-9-5. Election not to contribute.

1 Notwithstanding any provisions of this article, any judge
 2 may in writing notify the auditor within thirty days after he
 3 takes office, or, if he is in office, on the date this article
 4 becomes effective, then within thirty days from such latter
 5 date, that he elects not to make payments or contributions to
 6 the fund, in which event every judge, so electing, shall not
 7 thereafter at any time be entitled to receive any retirement
 8 pay or benefits under provisions of this article: *Provided*, That
 9 any judge who has so elected not to contribute shall thereafter
 10 be permitted to become eligible for retirement benefits by
 11 paying into the judges' retirement fund all contributions he
 12 would have been required to pay into the fund, together
 13 with interest thereon at four percent, if he had not previously
 14 elected not to contribute. If such notice in writing be given,
 15 any deductions theretofore made from the salary of such
 16 judge and paid into the fund shall be refunded, without
 17 interest, to him by the auditor by warrant drawn on the
 18 fund.

§51-9-10. Services of retired judges.

1 Any retired judge receiving retirement benefits under the
 2 provisions hereof shall serve as special judge of any circuit
 3 court of this state, when such retired judge is selected ac-
 4 cording to law to serve as such special judge in any such
 5 court without charge or compensation, per diem or other-
 6 wise to him, but shall be allowed and paid his traveling
 7 expenses and other actual expenses for lodging and meals
 8 in the same manner and amounts as such expenses of
 9 judges are paid as now or hereafter may be provided for by
 10 statute.

§51-9-15. County commissioners excluded.

- 1 Commissioners of county commissions or of any tribunal
- 2 established in lieu thereof, are excluded from the retirement
- 3 pay and retirement benefits herein provided.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-3. Jury commissioners; appointment and qualifications; term; removal; vacancies; compensation; oath; powers and duties generally.

1 There shall be two jury commissioners of the circuit court
2 of each county. They shall be of opposite politics, citizens
3 of good standing, residents in the county for which they are
4 appointed, and well-known members of the principal political
5 parties thereof; but the chairman of any political party shall
6 be ineligible to appointment, and no jury commissioner shall
7 be eligible to reappointment after he shall have served four
8 consecutive years. They shall be appointed by the circuit
9 court, or the judge thereof in vacation, of their respective
10 counties. Their term of office shall be four years, and shall
11 commence on the first day of June next after their appoint-
12 ment. The jury commissioners appointed by the circuit court
13 or the judge thereof, in office when this code takes effect,
14 shall continue in office, unless removed, until the expiration
15 of their respective terms of office, and their successors shall
16 be appointed, as aforesaid, alternately, so that a period of
17 two years shall intervene between the dates when the terms
18 of office of the two commissioners shall begin and expire.
19 They may be removed from office by the court or judge
20 having the power of appointment, for official misconduct,
21 incompetency, habitual drunkenness, neglect of duty or gross
22 immorality. Vacancies caused by death, resignation or other-
23 wise, shall be filled for the unexpired term in the same
24 manner as the original appointments. They shall receive as
25 compensation for their services, while necessarily employed
26 as such jury commissioners, an amount to be fixed by the
27 judge of the circuit court, in accordance with the rules of
28 the supreme court of appeals, which shall be payable out of

29 the state treasury upon the orders of the circuit court. Before
 30 entering upon the discharge of his duties, a jury commissioner
 31 shall take and subscribe, before the clerk of the circuit court,
 32 who is hereby authorized to administer the same, an oath,
 33 to be filed and preserved by him in his office, to the following
 34 effect:

35 State of West Virginia,

36 County of _____, to wit:

37 I, A _____ B _____, do solemnly
 38 swear that I will support the Constitution of the United
 39 States and the constitution of this state and will faithfully
 40 discharge the duties of jury commissioner to the best of my
 41 skill and judgment, and that I will not place any person upon
 42 the jury list in violation of law, or out of fear, favor or
 43 affection.

**§52-1-21. Compensation of jurors; taxation of jury fees as costs;
 disposition thereof.**

1 Any person summoned as aforesaid, by virtue of a venire
 2 facias or otherwise, to serve as a petit juror, and actually at-
 3 tending upon the court, or attending at the courthouse, at the
 4 time summoned, whether he be called to serve on a jury or
 5 not, shall, for each day he so attends, be entitled to receive
 6 the sum of not less than fifteen and not more than twenty-five
 7 dollars, to be fixed by order entered of record, and the same
 8 mileage and other expenses allowed to witnesses, to be paid out
 9 of the state treasury: *Provided*, That for each day he shall not
 10 actually attend at the courthouse he shall receive nothing and
 11 that he shall be allowed mileage and tolls for necessary travel to
 12 and from his place of residence during the term. When a jury in
 13 any case shall be placed in the custody of the sheriff, he shall
 14 provide for and furnish such jury necessary meals and lodging
 15 while they are in such sheriff's custody, at a reasonable cost to
 16 be determined by an order of the court, and such meals and
 17 lodging shall be paid for out of the state treasury. There shall be
 18 taxed in the costs against any person against whom a judgment
 19 on the verdict of a jury may be rendered in a case of misde-
 20 meanor, and against any person against whom judgment on the
 21 verdict of a jury may be rendered in a civil action, and against

22 any person on whose motion the verdict of a jury is set aside
23 and a new trial granted, a total of ten dollars for jury costs,
24 which, when collected by the circuit clerk from the party,
25 shall be paid by the sheriff into the state treasury. All money
26 so received by the clerk shall be forthwith paid by him to the
27 sheriff, and the clerk and his surety shall be liable therefor on
28 his official bond as for other money coming into his hands
29 by virtue of his office.

30 The clerk of the circuit court of each county in this state
31 shall annually certify to the county court a list of all money so
32 paid to him, and by him paid to the sheriff, and, in addition
33 thereto, a correct list of all the cases in which jury fees have
34 been taxed, and are, at the time, properly due and payable
35 in the state treasury, and the sheriff of the county shall be
36 held to account in his annual settlement for all such moneys
37 collected by him.

**§52-1-23. Record of allowance to jurors; certification to auditor;
failure of clerk to comply with provisions.**

1 The clerk of any court upon which juries are in attendance
2 shall, before the final adjournment of each term, and under the
3 direction of the court, make an entry upon its minutes, stating
4 separately the amount which each juror is entitled to receive
5 out of the state treasury for his services or attendance during
6 the term; and such clerk of any court upon which juries are in
7 attendance, if directed by the court, shall at any time during
8 such term, and under the direction of the court, make an entry
9 upon its minutes, stating separately the amount which each
10 juror is entitled to receive out of the state treasury for his
11 services or attendance during the term. It shall be the duty of
12 such clerk, as soon as practicable after adjournment of the
13 court, to transmit to the auditor certified copies of all orders
14 under this section making allowances payable out of the state
15 treasury. Any such clerk who shall fail to pay over, as re-
16 quired by law, any moneys so received by him, or otherwise
17 to comply with the provisions of this article, shall be deemed
18 guilty of a misdemeanor and fined not less than fifty dollars.

§52-1-24. Payment of compensation.

1 It shall be the duty of the clerk, as soon as practicable after

2 the adjournment of the court, or before the adjournment of the
 3 court at such time as the court may direct, to deliver to each
 4 juror a certified copy of any order under the preceding section
 5 making an allowance to him, payable out of the state treasury;
 6 and the sheriff of such county shall, upon demand, pay to such
 7 juror the amount allowed to him, which shall be repaid to the
 8 sheriff out of the state treasury, upon the production of sat-
 9 isfactory proof that the same has actually been paid by him.
 10 If any sheriff fail to pay any such allowance as required by
 11 law, he may be proceeded against as for a contempt of court.

ARTICLE 2. GRAND JURIES.

§52-2-13. Compensation and mileage of grand jurors.

1 Every person who shall serve upon a grand jury shall be en-
 2 titled to receive for such services not less than fifteen dollars nor
 3 more than twenty-five dollars, to be fixed by the court, for each
 4 day he may so serve, and in addition thereto the same mileage
 5 and other expenses as allowed to witnesses, to be paid out of the
 6 state treasury. But he shall not be paid for more than four days'
 7 service at any one term of the court, except in the counties of
 8 Harrison, McDowell, Fayette, Cabell, Marshall, Marion, Mer-
 9 cer, Wood, Ohio, Mingo, Monongalia, Preston and Summers,
 10 where such grand jurors shall not be paid for more than ten
 11 days' service for any one term of court and except in Kanawha
 12 County where such grand jurors shall not be paid for more than
 13 sixty days' services for any one term of court. The judge of the
 14 court shall fix the compensation for grand jurors, as provided
 15 above, by an order entered of record in such court. The provi-
 16 sions of sections twenty-three and twenty-four of article one of
 17 this chapter, relating to allowance and payment of compensa-
 18 tion and mileage and other expenses to petit jurors where ap-
 19 plicable, shall apply in like respect to grand jurors.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 11. JUDICIAL COUNCIL FOR STUDY OF PROCEDURE AND PRACTICE.

§56-11-1. Created; purpose; composition; qualifications, appointment and political affiliation of members; secretary of council.

1 There is hereby created a judicial council for the continuous

2 study of the organization, rules and methods of procedure
3 and practice of the judicial system of the state. It shall be
4 composed of one judge of the supreme court of appeals,
5 four circuit judges, at least one of whom shall be from a
6 multi-judge circuit and who shall not be the chief judge
7 thereof, and four practicing attorneys and one member of
8 the faculty of the college of law of West Virginia University,
9 who shall be appointed by the governor. Not more than three
10 judges and two attorneys shall be members of any one
11 political party.

12 The administrative director of the supreme court of appeals
13 shall, without additional compensation therefor, serve as
14 secretary of the judicial council.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-11. Disposal of exhibits or articles offered in evidence; disposal of property in hands of law enforcement officials.

1 Any circuit court in this state, or the judge thereof in vaca-
2 tion, may in its discretion by order entered of record dispose
3 of by return to the owner thereof, or by destruction, sale, or
4 otherwise, any exhibit or article introduced or offered in
5 evidence at the hearing, or upon the trial, of any matter or
6 case before such court or judge, and remaining in the custody
7 or control of such court for a period of thirty days after the
8 expiration of the time within which an appeal may be taken
9 from any final order or judgment in such matter or case,
10 if no appeal is taken therefrom, or thirty days, after any
11 final order or judgment of an appellate court, if such appeal
12 is taken therein: *Provided*, That if the ownership of such
13 exhibit or article be known, the owner shall be notified
14 and such exhibit or article shall be returned to him if he
15 so desires.

16 Any sale directed hereunder shall be made upon such
17 notice and terms and by such officer or other person as the
18 court or judge shall direct. The proceeds of any such sale
19 shall be applied to the reasonable costs and expenses of such

20 sale as the court or judge shall allow, and the remainder
21 thereof shall be paid into the state treasury.

22 The provisions of this section shall not apply or extend
23 to the county commission of any county; nor shall any
24 property or article be disposed of hereunder contrary to any
25 other statute which expressly provides a different disposition.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN SUPREME COURT OF APPEALS.

§58-5-17. Court to prescribe method and form of reproducing record; reproduction of record by clerk; distribution; costs.

1 The supreme court of appeals shall by order prescribe
2 the method and form of reproducing records. Such order
3 shall prescribe the number of copies to be reproduced, the
4 contents thereof, the type size and quality of paper and the
5 maximum rate per page that may be charged for the printing
6 or reproduction of such records.

7 The cost of printing or reproduction, photostating and
8 blueprinting, if any, shall be included at the end of the record
9 with the date the same was printed or otherwise reproduced.

10 The clerk shall have the record printed or reproduced
11 when the party obtaining the appeal, writ of error or super-
12 sedeas shall deposit with him a sufficient sum to pay for
13 same. The clerk shall deliver one copy of such record to
14 the judge and clerk of the trial court, two copies to counsel
15 on each side, and retain the remaining copies in his office.
16 He shall cause all copies of the record remaining in his
17 office to be compared with the typewritten transcript certified
18 to the supreme court of appeals and correct all errors that
19 may appear therein. The cost of such printing or reproduc-
20 tion, unless otherwise ordered by the court, shall be taxed
21 against the unsuccessful party, if the judgment, decree or
22 order appealed from be reversed. And should the appellant
23 or plaintiff in error fail for three months after his case has
24 been docketed in the court of appeals to deposit with the
25 clerk of the said court, the sum estimated by said clerk, to
26 pay for the printing or other reproduction of the record, he

27 shall be deemed to have abandoned his appeal or writ of
28 error and the same shall be dismissed; but it may be renewed
29 at any time within eight months from the date of the judg-
30 ment, order or decree appealed from, unless such period be
31 extended, according to the provisions of section four of this
32 article. In every felony and misdemeanor case, the clerk
33 shall have the usual number of records printed or otherwise
34 reproduced at a cost not exceeding the amount fixed by the
35 court, and dispose of the same as in other cases; and upon
36 the certificate of the chief justice of the supreme court of
37 appeals stating that such record has been printed or other-
38 wise reproduced as required by the court, and the amount
39 said clerk is entitled to, the cost of printing or reproducing
40 the same shall be paid to said clerk out of the treasury of
41 the state, and the auditor shall draw his warrant on the
42 treasury for the payment thereof out of the fund for criminal
43 charges.

44 Any increased rate for printing or reproducing records as
45 may be prescribed by order of the court shall apply to all
46 cases docketed in the supreme court of appeals on the effec-
47 tive date of the order of the court, pending reproduction of
48 the record. Such latter cases, however, shall not be subject
49 to dismissal because of any increased rate, where statement
50 for estimated costs has been rendered and paid as provided
51 in this section, but they shall not be placed upon the argument
52 docket until the increased cost thereof shall have been paid
53 in full.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-16. Amount of allowance to witnesses for attendance; how and when made.

1 A person attending any court or other tribunal, under a
2 summons or recognizance as a witness, shall receive not less
3 than ten nor more than twenty dollars, to be fixed by the
4 court or other tribunal, for each day's attendance and fifteen
5 cents per mile for each mile necessarily traveled to the place of
6 attendance, and the same for returning, plus all necessary

7 bridge, ferry and road tolls. On his oath, an entry of the
 8 sum he is entitled to, and for what, and by what party it is
 9 to be paid, shall be made. When the attendance is before either
 10 house or a committee of the Legislature, such entry shall be
 11 made by the clerk of such house or the chairman of such com-
 12 mittee, and in other cases by the clerk of the court or other tri-
 13 bunal before which, or by the person before whom, the witness
 14 attended. A witness summoned or recognized to attend in sev-
 15 eral cases may have the entry made against any one of the
 16 parties by whom he is summoned, or for whom he is sworn
 17 as a witness, but no witness shall be allowed for his attendance
 18 in more than one case at the same time. But no compensation
 19 shall be allowed to a witness before a grand jury. This section
 20 shall not apply to witnesses before justices of the peace.

§59-1-28. Use and disposition of fees of sheriffs, clerks and prosecuting attorneys.

1 All fees, costs, percentages, penalties, commissions, allow-
 2 ances, compensation, income and all other perquisites of what-
 3 ever kind which by law may now or hereafter be collected or
 4 received as compensation for services by any clerk of the
 5 county commission, sheriff, clerk of the circuit court and prose-
 6 cuting attorney, shall be collected and received by such offi-
 7 cer for the sole use of the treasury of the county in which he is
 8 an officer, and shall be held as public moneys belonging to the
 9 county fund, and shall be accounted for and paid over as such
 10 in the manner hereinafter provided. Fees are held to be earned
 11 at the time the service is rendered and not at the time the matter
 12 is finally adjudicated.

§59-1-29. Collection of such fees.

1 Each clerk of the county commission, sheriff, clerk of the cir-
 2 cuit court and prosecuting attorney shall have charge of and
 3 collect the fees, costs, percentages, penalties, commissions, al-
 4 lowances, compensation, income and all other perquisites of
 5 whatever kind which are now or may hereafter be allowed by
 6 law. Whenever there remain due the county and unpaid, for a
 7 period of more than six months, any fees, costs, percentages,
 8 penalties, commissions, allowances, compensation, income or
 9 any other perquisites of any kind, it shall be the duty of the

10 county commission, or other tribunal in lieu thereof, by the pro-
11 secuting attorney, to proceed to the collection thereof in the cir-
12 cuit court, upon motion whereof the defendant and the sureties
13 on his bond shall have at least twenty days' notice, or in any
14 other manner provided for by law, and the amount so collected
15 shall be paid into the county treasury to the credit of the
16 general county fund.

§59-1-31. Monthly payments; how credited; report required.

1 Each of the officers named in section twenty-nine of this
2 article shall at the end of each month pay into the county trea-
3 sury all fees, costs, percentages, penalties, commissions, com-
4 pensation, income and all other perquisites of whatever kind
5 collected by his office during such month, which money shall
6 be credited to the general county fund. All such officers shall
7 cause to be made a quarterly report to the administrative di-
8 rector of the supreme court of appeals, which shall indicate
9 the money received by them during such quarter and the
10 source and nature of such money. Such report shall be made
11 within thirty days following the close of each quarter.

CHAPTER 62. CRIMINAL PROCEDURE.

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 any county, against a per-
2 son for a felony or misdemeanor, the accused, if in custody,
3 or if he appear in discharge of his recognizance, or voluntarily,
4 shall, unless good cause be shown for a continuance, be tried
5 at the same term. If any witness for the accused be a nonresi-
6 dent of the state, or absent therefrom in any service or em-
7 ployment, so that service of a subpoena cannot be had upon
8 him in this state, or is aged or infirm so that he cannot attend
9 upon the court at the trial, the accused may present to the
10 court in which the case is pending, or to the judge thereof in
11 vacation, an affidavit showing such facts, and stating therein
12 what he expects to prove by any such witness, his name, resi-
13 dence, or place of service or employment; and if such court

14 or judge be of the opinion that the evidence of any such wit-
 15 ness, as stated in such affidavit, is necessary and material to
 16 the defense of the accused on his trial, an order may be made
 17 by such court or judge for the taking of the deposition of any
 18 such witness upon such notice to the prosecuting attorney, of
 19 the time and place of taking the same, as the court or judge
 20 may prescribe; and in such order the court or judge may autho-
 21 rize the employment of counsel, practicing at or near the
 22 place where the deposition is to be taken, to cross-examine the
 23 witness on behalf of the state, the reasonable expense whereof
 24 shall be paid out of the treasury of the state, upon certificate
 25 of the court wherein the case is pending. Every deposition so
 26 taken may, on the motion of the defendant, so far as the evi-
 27 dence therein contained is competent and proper, be read to
 28 the jury on the trial of the case as evidence therein. A court of
 29 record may appoint counsel to assist an accused in criminal
 30 cases at any time upon request. A copy of the indictment and
 31 of the list of the jurors selected or summoned for his trial, as
 32 provided in section three of this article, shall be furnished him,
 33 upon his request, at any time before the jury is impaneled. In
 34 every case where the court appoints counsel for the accused
 35 and the accused presents an affidavit showing that he cannot
 36 pay therefor, the court shall, by order entered of record allow
 37 an attorney so appointed a fee of not to exceed one hundred
 38 dollars in any misdemeanor case, and a fee of not to exceed
 39 two hundred dollars in any felony case. In misdemeanor and
 40 felony cases, the fee so allowed shall be paid by the state
 41 auditor as other fees in felony cases are paid. The amount so
 42 paid, in the event the accused shall not prevail, shall be and
 43 constitute a judgement of said court against the accused to be
 44 recovered as any other judgment for costs.

ARTICLE 5. COSTS IN CRIMINAL CASES.

§62-5-1. Payment of witnesses.

1 Sections sixteen and seventeen of article one, and section
 2 sixteen of article two, chapter fifty-nine of this code shall
 3 apply to a person attending as a witness under a recognizance
 4 or summons in a criminal case whether the same be a felony
 5 or misdemeanor, as well as to a person attending under a
 6 summons in a civil case, except that in a criminal case, a

7 person residing out of this state, who attends a court therein
8 as a witness, shall be allowed by such court a proper
9 compensation for attendance and travel to and from the
10 place of his abode; the amount of the same to be fixed by
11 such court. Such compensation and other allowances shall,
12 in all criminal cases be paid out of the treasury of the state.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-1. Courts having authority to place offenders on probation.

1 Any circuit court of this state shall have authority as pro-
2 vided in this article to place on probation any person con-
3 victed of a crime.

§62-12-5. Probation officers and assistants.

1 Each circuit court, subject to the approval of the supreme
2 court of appeals and in accordance with its rules, is autho-
3 rized to appoint a probation officer and clerical assistants
4 to serve during the pleasure of the appointing court, and in
5 addition in counties having a population of more than
6 forty thousand, such court also subject to the approval
7 of the supreme court of appeals and in accordance with its
8 rules, is authorized to appoint additional probation officers
9 and clerical assistants.

10 The appointment of such probation officers, assistant pro-
11 bation officers and clerical assistants shall be in writing and
12 entered on the order book of the court by the judge making
13 such appointment and a copy of said order of appointment
14 shall be delivered to the administrative director of the supreme
15 court of appeals. The said order of appointment shall state
16 the monthly salary fixed by said judge and approved by the
17 supreme court of appeals, to be paid the probation officer,
18 assistant probation officer, if any, or clerical assistants so
19 appointed.

20 The salary of probation officers, assistant probation officers
21 and clerical assistants shall be paid monthly or semimonthly, as
22 the supreme court of appeals by rule may direct and they shall
23 be reimbursed for all reasonable and necessary expenses actual-
24 ly incurred in the line of duty in the field. Such salary and
25 expenses shall be paid by the state from the judicial accounts

26 thereof. The county commission shall provide adequate office
27 space for the probation officer and his assistants to be ap-
28 proved by the appointing court. Such equipment and supplies
29 as may be needed by the probation officer and his assistants
30 shall be provided by the state and the cost thereof shall be
31 charged against the judicial accounts of the state.

32 No judge shall appoint any probation officer, assistant
33 probation officer or clerical assistant who is related to him
34 either by consanguinity or affinity.

35 A judge of a circuit court whose circuit comprises more
36 than one county may appoint a probation officer and a
37 clerical assistant in each county of such circuit or may
38 appoint the same person as a probation officer and also the
39 same person as a clerical assistant in two or more such
40 counties in such circuit.

41 In lieu of, or in addition to the probation officers, assistant
42 probation officers and clerical assistants provided for in this
43 section, any circuit judge may avail himself of the services
44 of state probation and parole officers; and any such services
45 which may be provided to the court or judge by said state
46 probation and parole officers, shall be rendered at no addi-
47 tional cost to the state, county or judge so using them. The
48 board of probation and parole may assist any probation
49 officer, upon request, with information relative to procedure,
50 printed forms, and technique applicable to probation methods.

51 Nothing contained in this section shall in any manner alter,
52 modify, affect or supersede the appointment or tenure of any
53 probation officer, medical assistant or psychiatric assistant ap-
54 pointed by any court under any special act of the Legislature
55 heretofore enacted, and the salary or compensation of any such
56 person shall remain as specified in the most recent amendment
57 of any such special act until changed by such court, with ap-
58 proval of the supreme court of appeals, by order entered of
59 record, and any such salary or compensation shall be paid
60 out of the state treasury.

§62-12-6. Powers and duties of probation officers.

- 1 Each probation officer shall investigate all cases referred
- 2 to him for investigation by the court and shall report in writing

3 thereon. He shall furnish to each person released on probation
4 under his supervision a written statement of the conditions of
5 his probation together with a copy of the rules and regulations
6 prescribed by the court for the supervision of probationers. He
7 shall keep himself informed concerning the conduct and con-
8 dition of those under his supervision and shall report thereon
9 in writing as often as the court may require. He shall use all
10 practicable and suitable methods to aid and encourage them
11 and to bring about improvement in their conduct and con-
12 dition. He shall keep detailed records of his work, shall keep
13 accurate and complete accounts of and give receipts for all
14 money collected from persons under his supervision, and
15 shall pay over the money to such person as the court may
16 designate. He shall give bond with good security, to be ap-
17 proved by the court, in a penalty of not less than one thousand
18 nor more than three thousand dollars, as the court may de-
19 termine. He shall also perform such other duties as the court
20 may require. He shall have authority, with or without an order
21 or warrant, to arrest any probationer.

**§62-12-22. Appointment of counsel for parole violators; authority
to appoint; payment of counsel.**

1 Any person accused of a violation of his parole, as set forth
2 in this article, may be represented by counsel at any hearing
3 held for the purpose of determining whether his parole should
4 be revoked. In the event the person accused of a violation of
5 his parole is unable to pay for counsel and desires to have
6 counsel appointed for him, he shall present his application for
7 the appointment of counsel and an affidavit reflecting his
8 inability to pay for such counsel to the circuit court in the
9 county in which such person is confined or in the county in
10 which the hearing is to be held for the purpose of determining
11 whether his parole should be revoked, or to the judge thereof
12 in vacation. If it appears to the satisfaction of the court or
13 judge that such person is in fact unable to pay for counsel,
14 such court or judge may appoint counsel to represent such
15 person. In every case where counsel is so appointed, the court,
16 by order entered of record, shall allow such appointed counsel
17 a fee not to exceed two hundred dollars, said fee to be paid
18 from the fund allocated by the state for the payment of crim-

19 inal charges in the same manner as is provided for the pay-
20 ment of fees in felony cases as set forth in section one, article
21 three of this chapter.

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

James L. Davis
Chairman Senate Committee

Charles C. Chustion Jr.
Chairman House Committee

Originated in the House.

Takes effect from passage.

John P. Dillon Jr.
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

W. J. Brotherton Jr.
President of the Senate

Louis F. McManus
Speaker House of Delegates

The within approved this the 25th
March, 1975.

Andrew Chavetz
Governor



PRESENTED TO THE
GOVERNOR

Date 3/21/75

Time 2:50 p.m.

100-11174-100
B-1011174-100