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OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1976



ENROLLED

HOUSE BILL No. 1087

Originating in the
~~Senate~~ *House Committee on the Judiciary*



PASSED March 13, 1976

In Effect from Passage



FILED IN THE OFFICE
JAMES R. McCARTNEY
SECRETARY OF STATE

THIS DATE 4/7/76

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ENROLLED

H. B. 1087

(Originating in the House Committee on the Judiciary)

[Passed March 13, 1976; in effect from passage.]

AN ACT to amend and reenact chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code, all relating to implementing the judicial reform amendment; creating a magistrates court system within the state; abolition of the offices of justice of the peace and constable; designating officer to arrest person accused of illegal voting and delivering affidavits of illegal voting to a magistrate; clarifying the manner of qualifying of security officers and their responsibilities; designating the judicial powers and duties of mayors; jurisdiction of municipal courts; removal of certain jurisdictions from municipal judges; election of magistrates; order of listing magistrate candidates on ballot; extension of filing deadline for candidates for magistrate; number of magistrates; salary of magistrates; qualification of magistrates; educational courses; exemptions for certain persons previously serving as justice of the peace from qualifications; magistrate's oath of office; removal and disciplinary procedures; filling of vacancies in office of magistrate; position of chief magistrate; qualifications, duties and salary of

magistrate court clerks; appointment of magistrate assistants; requiring bond; location of magistrate court offices by determination of circuit judge; payment of expenses of magistrate courts; prohibited conduct by a magistrate and providing a criminal penalty therefor; requiring magistrates to serve temporarily at other locations within and outside of the county; duty of sheriff to serve process and act as bailiff of magistrates court; maintaining provisions of law relating to justices of the peace in effect until the first day of January, one thousand nine hundred seventy-seven; providing for transition of judicial business to magistrates court; maintaining validity of acts and decisions of justices of the peace; authorizing supervisory rules; setting civil jurisdiction at one thousand five hundred dollars; civil jurisdiction generally; venue; giving magistrates criminal jurisdiction over all misdemeanors; establishing court costs in civil and criminal cases; providing procedures for disposition of costs between county and state; creation of a special county fund; disposition of certain justice of the peace fees and costs; disposition of fees, fines and forfeitures; posting security for costs by nonresident plaintiff; requiring sheriff to collect unpaid costs and fines; requiring the keeping of certain records; requiring financial audit by the chief inspector of public offices; providing procedure for institution of civil actions and criminal proceedings; requiring appointment of counsel for indigent defendants in criminal proceedings; providing that service of civil process shall be accomplished in the same manner as process from circuit courts; providing procedure whereby parties notify magistrate of desire for trial or confession of judgment; allowing removal to another magistrate by filing an affidavit of prejudice; removal to circuit court; allowing counterclaims; requiring sworn evidence for default judgment; requiring dismissal without prejudice of actions not within jurisdiction of magistrate; providing for dismissal of actions under certain circumstances; applying rules of evidence to magistrates court; mandatory and discretionary continuances; requiring the appointment of guardian ad litem in certain instances; providing for the issuance of subpoenas and subpoenas duces tecum; preserving certain communications privileged and prohibiting incompetent testimony; allowing evidentiary depositions; requiring magistrate to hold trials in misdemeanors rather than preliminary hearings when requested by

defendant; providing for jury trials and jury selection; requiring timely entry of judgment; allowing magistrate to set aside judgment in certain instances; contempt powers of magistrate and providing fine and imprisonment; providing procedure for automatic appeal to circuit court; providing for appeal bond; providing for enforcement of civil judgments; providing for filing of judgment in offices of circuit clerk and county clerk; increasing service of process fees to be charged by sheriff and requiring fees thereby collected from magistrates court to be dedicated to sheriff's budget; relating to jurisdiction of justices of the peace and magistrates with respect to parking violations on college campuses; relating to responsibilities and duties of security officers employed by the board of regents; relating to responsibilities and duties of special railroad policemen; and providing certain criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code be amended and reenacted, all to read as follows:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-1. Magistrate court created.

1 There is hereby created in each county of this state a
 2 magistrate court with such numbers of magistrates for each
 3 court as are hereafter provided. There shall be elected by the
 4 voters of each county, at the general election to be held in
 5 the year one thousand nine hundred seventy-six, and in every
 6 fourth year thereafter, such number of magistrates as is
 7 provided in section two of this article. The filing fee for the
 8 office of magistrate shall be one percent of the annual

9 salary. The term of magistrates shall be for four years and shall
10 begin on the first day of January of the year following the year
11 of election.

12 In counties where voting machines or electronic voting sy-
13 stems are used, the procedures of section eleven, article four,
14 chapter three and section twelve, article four-a of said chapter
15 three of this code shall apply respectively to the election of
16 magistrates in the same manner as they apply to the election of
17 members of the House of Delegates.

18 Notwithstanding the provisions of section seven, article
19 five, chapter three of this code, for purposes of the primary
20 election to be held in the year one thousand nine hundred
21 seventy-six, the last day for filing certificates of candidacy
22 for the office of magistrate shall be extended to the twenty-
23 seventh day of February of that year.

§50-1-2. Number of magistrates.

1 In each county which has less than thirty thousand in
2 population there shall be elected two magistrates. In each
3 county which has thirty thousand or more in population but
4 less than sixty thousand in population there shall be elected
5 three magistrates; except that in the county of McDowell there
6 shall be elected four magistrates. In each county which has six-
7 ty thousand or more in population but less than one hundred
8 thousand in population there shall be elected four magistrates.
9 In each county which has one hundred thousand or more in
10 population but less than two hundred thousand in population
11 there shall be elected seven magistrates. In each county which
12 has two hundred thousand or more in population there shall
13 be elected ten magistrates. For the purpose of this article,
14 the population of each county shall be considered to be the
15 population as determined by the last preceding census taken
16 under the authority of the United States government. No
17 change in the number of magistrates caused by the publication
18 of more recent such census figures shall be effective until
19 the next regular election for such office occurring after the
20 year of such publication.

§50-1-3. Salary of magistrates.

1 The salary of each magistrate shall be paid by the state.
2 Magistrates who serve five thousand or less in population
3 shall be paid annual salaries of seven thousand dollars.
4 Magistrates who serve more than five thousand in population
5 but less than ten thousand in population shall be paid annual
6 salaries of ten thousand dollars. Magistrates who serve ten
7 thousand or more in population but less than fifteen thou-
8 sand in population shall be paid annual salaries of fourteen
9 thousand dollars. Magistrates who serve fifteen thousand or
10 more in population shall be paid annual salaries of eighteen
11 thousand dollars. For the purpose of determining the popu-
12 lation served by each magistrate, the number of magistrates
13 authorized for each county shall be divided into the popula-
14 tion of each county. Magistrates shall be paid once a month.

§50-1-4. Qualifications of magistrates; training; bond; continuing education.

1 Each magistrate shall be at least twenty-one years of age,
2 shall have a high school education or its equivalent, shall
3 not have been convicted of any felony or any misdemeanor in-
4 volving moral turpitude and shall reside in the county of his
5 election. No magistrate shall be a member of the immediate
6 family of any other magistrate in the county. In the event more
7 than one member of an immediate family shall be elected in a
8 county, only the member receiving the highest number of votes
9 shall be eligible to serve. For purposes of this section, immed-
10 iate family means the relationship of mother, father, sister,
11 brother, child or spouse. Notwithstanding the foregoing provi-
12 sions of this section, each person who held the office of justice
13 of the peace on the fifth day of November, one thousand nine
14 hundred seventy-four, and who served in or performed the
15 functions of such office for at least one year immediately prior
16 thereto shall be deemed qualified to run for the office of mag-
17 istrate in the county of his residence.

18 No person shall assume the duties of magistrate unless he
19 shall have first attended and completed a course of instruction
20 in rudimentary principles of law and procedure which shall be
21 given between the date of election and the beginning of the

22 magistrate's term in accordance with the supervisory rules of
23 the supreme court of appeals.

24 All magistrates shall be required to attend such other
25 courses of continuing educational instruction as may be
26 required by supervisory rule of the supreme court of appeals.
27 Failure to attend such courses of continuing educational in-
28 struction without good cause shall constitute neglect of duty.
29 Such courses shall be provided at least once every other year.
30 Persons attending such courses outside of the county of their
31 residence shall be reimbursed by the state for expenses actually
32 incurred not to exceed thirty-five dollars per day and for
33 travel expenses at the rate of fifteen cents per mile for one
34 round trip.

35 Each magistrate shall, before assuming the duties of office,
36 take an oath of office to be administered by the circuit judge
37 of the county, or the chief judge thereof if there is more than
38 one judge of the circuit court. Each magistrate shall maintain
39 the qualifications for office at all times.

40 Each magistrate who serves five thousand or less in popu-
41 lation shall devote such time to his public duties as shall be
42 required by rule or regulation of the judge of the circuit court,
43 or the chief judge thereof if there is more than one judge of the
44 circuit court. Each magistrate who serves more than five thou-
45 sand in population shall devote full time to his public duties.
46 As nearly as practicable the work load and the total number of
47 hours required shall be divided evenly among the magistrates
48 in a county by such judge.

§50-1-5. Removal from office; disciplinary procedures.

1 A magistrate may be removed from office in the manner
2 provided in section seven, article six, chapter six of this code.
3 In addition to the grounds for removal enumerated in section
4 three, article six, chapter six of this code, a magistrate may be
5 removed from office for conviction of a felony, for conviction
6 of a misdemeanor involving moral turpitude or a duty of the
7 office or for willful violation of this chapter or any rule, regu-
8 lation or order provided for in this chapter. In addition to
9 other methods provided by law, removal proceedings may be

10 initiated upon the motion of a judge of the circuit court of the
11 county.

12 A magistrate may be censured or temporarily suspended in
13 accordance with the rules of the supreme court of appeals.

§50-1-6. Vacancy in office of magistrate.

1 When a vacancy occurs in the office of magistrate the judge
2 of the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall fill the same by ap-
4 pointment until the next general election and the person so
5 appointed shall hold office until his successor is elected and
6 qualified.

7 At such general election a magistrate shall be elected for
8 the unexpired term. Such circuit judge shall cause a notice
9 of such election to be published prior to such election as a
10 Class II-0 legal advertisement in compliance with the provi-
11 sions of article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be the county in-
13 volved. If the vacancy occurs before the primary election held
14 to nominate candidates to be voted for at the general election,
15 at which any such vacancy is to be filled, candidates to fill
16 such vacancy shall be nominated at such primary election in
17 accordance with the time requirements and the provisions
18 and procedures prescribed in article five, chapter three of this
19 code. Otherwise, they shall be nominated by the county
20 executive committee in the manner provided in section nine-
21 teen, article five, chapter three of this code, as in the case of
22 filling vacancies in nominations, and the names of the per-
23 sons so nominated and certified to the clerk of the circuit court
24 of such county, shall be placed upon the ballot to be voted
25 at such next general election.

§50-1-7. Chief magistrates; administrative responsibility.

1 The judge of the circuit court, or the chief judge thereof if
2 there is more than one judge of the circuit court, may appoint
3 one of the magistrates, to serve at the will and pleasure of such
4 circuit court judge, as the chief magistrate of the county. The
5 chief magistrate, if there is one, shall be responsible for all of
6 the administrative functions required of the magistrate court

7 in each county by this code and as required by rules and regu-
8 lations of the supreme court of appeals. These functions shall
9 include, but not be limited to, supervising the circuit clerk or
10 magistrate court clerk in the establishment and maintenance
11 of a centralized docketing system, submitting all reports re-
12 quired by law and promptly notifying such circuit court judge
13 that additional magistrates are required to handle the cases
14 then pending in the magistrate court of said county.

§50-1-8. Magistrate court clerks; duties; duties of circuit clerk.

1 In each county having three or more magistrates the judge of
2 the circuit court, or the chief judge thereof if there is more
3 than one judge of the circuit court, shall appoint a magistrate
4 court clerk. In all other counties such judge may appoint a
5 magistrate court clerk or may by rule require the duties of the
6 magistrate court clerk to be performed by the clerk of the
7 circuit court. In any county a magistrate court clerk may be
8 appointed prior to the first day of January, one thousand nine
9 hundred seventy-seven. The magistrate court clerk shall serve
10 at the will and pleasure of such circuit judge.

11 Magistrate court clerks shall be paid a monthly salary by the
12 state. Magistrate court clerks serving magistrates who serve
13 five thousand or less in population shall be paid up to two hun-
14 dred fifty dollars per month. Magistrate court clerks serving
15 magistrates who serve more than five thousand in population
16 but less than ten thousand in population shall be paid up to
17 four hundred fifty dollars per month. Magistrate court clerks
18 serving magistrates who serve more than ten thousand in popu-
19 lation but less than fifteen thousand in population shall be
20 paid up to five hundred fifty dollars per month. Magistrate
21 court clerks serving magistrates who serve fifteen thousand or
22 more in population shall be paid up to six hundred fifty dol-
23 lars per month. For the purpose of determining the population
24 served by each magistrate, the number of magistrates autho-
25 rized for each county shall be divided into the population of
26 each county. The salary of the magistrate court clerk shall be
27 established by the judge of the circuit court, or the chief judge
28 thereof if there is more than one judge of the circuit court,
29 within the limits set forth in this section.

30 In addition to such other duties as may be imposed by the
31 provisions of this chapter or by the rules of the supreme court
32 of appeals or the judge of the circuit court, or the chief judge
33 thereof if there is more than one judge of the circuit court, it
34 shall be the duty of the magistrate court clerk to establish and
35 maintain appropriate dockets and records in a centralized
36 system for magistrate court, to assist in the preparation of such
37 reports as may be required of the court and to carry out on
38 behalf of the magistrates, or chief magistrate, if a chief mag-
39 istrate is appointed, the administrative duties of the court.

40 Magistrate court clerk or, if there is no magistrate court
41 clerk in the county, the clerk of the circuit court shall have the
42 authority to issue all manner of civil process in magistrate
43 court.

§50-1-9. Magistrate assistants; salary; duties; appointment of additional assistants.

1 In each county there shall be one magistrate assistant for
2 each magistrate serving magistrate court. Each magistrate
3 assistant shall be appointed by the magistrate under whose
4 authority and supervision and at whose will and pleasure he
5 shall serve. Such assistant shall not be a member of the im-
6 mediate family of any magistrate, shall not have been convicted
7 of a felony or any misdemeanor involving moral turpitude and
8 shall reside in the county where appointed. For the purpose of
9 this section, immediate family shall mean the relationships of
10 mother, father, sister, brother, child or spouse.

11 A magistrate assistant shall have such duties, clerical or
12 otherwise, as may be assigned by the magistrate and as may be
13 prescribed by the rules of the supreme court of appeals or the
14 judge of the circuit court, or the chief judge thereof if there
15 is more than one judge of the circuit court. In addition to
16 such duties, magistrate assistants shall have the duty to prepare
17 the summons in civil actions, to collect all costs, fees, fines,
18 forfeitures and penalties which may be payable to the court, to
19 submit such moneys, along with an accounting thereof, to
20 appropriate authorities as provided by law, and to submit such
21 reports as by law may be required.

22 Magistrate assistants shall be paid a monthly salary by

23 the state. Magistrate assistants serving magistrates who serve
24 five thousand or less in population shall be paid up to two
25 hundred fifty dollars per month. Magistrate assistants serving
26 magistrates who serve more than five thousand in population
27 but less than ten thousand in population shall be paid up to
28 four hundred fifty dollars per month. Magistrate assistants
29 serving magistrates who serve more than ten thousand in
30 population but less than fifteen thousand in population shall be
31 paid up to five hundred fifty dollars per month. Magistrate
32 assistants serving magistrates who serve fifteen thousand or
33 more in population shall be paid up to six hundred fifty dol-
34 lars per month. For the purpose of determining the population
35 served by each magistrate, the number of magistrates authorized
36 for each county shall be divided into the population of each
37 county. The salary of the magistrate assistant shall be
38 established by the magistrate within the limits set forth in
39 this section. The salary of an additional magistrate assistant
40 appointed pursuant to the provisions of this section shall be
41 established by the person making the appointment of such
42 additional magistrate assistant within such limits.

43 If required by work load and upon the recommendation of
44 the judge of the circuit court, or the chief judge thereof if there
45 is more than one judge of the circuit court, the supreme court
46 of appeals may by rule provide for additional magistrate
47 assistants. When an additional magistrate assistant is
48 authorized, such rule shall allow the appointment to be made
49 by the magistrate when such magistrate assistant shall be
50 working exclusively under the supervision of one magistrate
51 but otherwise shall allow the appointment to be made by
52 such judge.

§50-1-10. Bond required; oath.

1 Each magistrate court clerk and magistrate assistant shall
2 take an oath of office and shall post a bond in the penalty of
3 twenty-five thousand dollars with sufficient surety approved by
4 the administrative director of the supreme court of appeals or
5 the judge of the circuit court, or the chief judge thereof if
6 there is more than one judge of the circuit court, which bond
7 shall be conditioned upon the faithful performance of the
8 duties of the office. The state shall pay the cost of such bond

9 and the administrative director of the supreme court of ap-
10 peals may obtain, in lieu of individual bonds, a bond including
11 more than one magistrate court clerk or magistrate assistant.

§50-1-11. Offices for magistrates; location; expenses.

1 Subject to the rules of the supreme court of appeals, the
2 location of offices for magistrates shall be determined by order
3 of the judge of the circuit court, or the chief judge thereof if
4 there is more than one judge of the circuit court. When re-
5 quired by geography or population dispersion and in order to
6 make such offices accessible to the public, such order may re-
7 quire more than one location for each magistrate. As near as
8 practicable within a county, all office accommodations shall
9 be comparable. All expenses of acquiring or renting such of-
10 fices and utility and telephone expenses thereof shall be paid
11 by the county. All other expenses, including but not limited to
12 expenses for furniture, equipment and supplies, shall be paid
13 by the state. The administrative director of the supreme court
14 of appeals shall supply each magistrate with a current copy of
15 the West Virginia code which shall remain the property of the
16 state.

§50-1-12. Conduct of office; penalty.

1 Magistrates shall be subject to and shall abide by the code
2 of judicial ethics as adopted and amended by the supreme
3 court of appeals. In addition to such conduct as may be regu-
4 lated by the rules of the supreme court of appeals, no magis-
5 trate, magistrate court clerk or magistrate assistant shall

6 (a) Acquire or hold any interest in any matter which is be-
7 fore the magistrate court;

8 (b) Purchase, either directly or indirectly, any property be-
9 ing sold upon execution issued by the magistrate court;

10 (c) Act as agent or attorney for any party in any proceeding
11 in any magistrate court in the state; or

12 (d) Engage in, or assist in, any remunerative endeavor, ex-
13 cept the duties of his office, while on the premises of the mag-
14 istrate court office.

15 Any person who violates the provisions of this section shall
16 be guilty of official misconduct and shall be guilty of a mis-
17 demeanor, and, upon conviction thereof, shall be fined not
18 more than five hundred dollars. Any judgment rendered in-
19 volving conduct in violation of this section shall be void.

§50-1-13. Temporary service within or outside of county.

1 The chief justice of the supreme court or judge of the cir-
2 cuit court of the county in which a magistrate is elected, or the
3 chief judge thereof if there is more than one judge of the cir-
4 cuit court, may order a magistrate to serve temporarily at loca-
5 tions within the county other than at the regular office or of-
6 fices of such magistrate.

7 The chief justice of the supreme court of appeals or judge
8 of the circuit court of the county in which a magistrate is
9 elected, or the chief judge thereof if there is more than one
10 judge of the circuit court, may by order direct a magistrate to
11 serve temporarily in any other county within the judicial cir-
12 cuit for such purposes as the judge may direct. Such magis-
13 trate's authority, to the extent ordered by such judge, shall be
14 equal to the jurisdiction and authority of a magistrate elected
15 in the county to which such magistrate is ordered to serve.
16 Such temporary assignment may not exceed sixty days in length
17 in any given calendar year, except with the consent of the
18 transferred magistrate. Magistrates shall be reimbursed for
19 such reasonable expenses incurred in service outside of the
20 county as provided for by rule of the supreme court of appeals.

§50-1-14. Duties of sheriff; service of process; bailiff.

1 It shall be the duty of each sheriff to execute all civil and
2 criminal process from any magistrate court which may be di-
3 rected to such sheriff. Process shall be served in the same
4 manner as provided by law for process from circuit courts.

5 Notwithstanding any provision contained therein to the con-
6 trary, the provisions of section thirty-one, article three, chapter
7 fifty-six of this code relating to service of process on nonresi-
8 dent operators of motor vehicles shall apply to actions in mag-
9 istrate courts.

10 Subject to the supervision of the chief justice of the supreme
11 court of appeals or of the judge of the circuit court, or the
12 chief judge thereof if there is more than one judge of the cir-
13 cuit court, it shall be the duty of the sheriff, or his designated
14 deputy, to serve as bailiff of a magistrate court upon the re-
15 quest of the magistrate. Such service shall also be subject to
16 such administrative rules as may be promulgated by the su-
17 preme court of appeals. The writ of mandamus shall lie on
18 behalf of a magistrate to enforce the provisions of this section.

§50-1-15. Transitional provisions.

1 Except as the same may be otherwise amended by act of
2 the Legislature, and except for the provisions of article
3 twenty of this chapter, all of the provisions of chapter fifty
4 of this code existing immediately prior to the effective date
5 of this chapter shall remain in full force and effect until the
6 first day of January, one thousand nine hundred seventy-
7 seven.

8 Immediately after the expiration of his term of office and
9 in no event later than thirty days thereafter each justice of
10 the peace shall pay over to appropriate authorities or persons
11 such moneys as may be held by him and submit such reports to
12 such authorities or persons as are required by law.

13 Every justice of the peace, upon the expiration of his term
14 of office, shall forthwith deliver his official docket, together
15 with such dockets of his predecessors as he may have, to the
16 magistrate court clerk or, if there is no magistrate court clerk,
17 to the clerk of the circuit court, who shall maintain such
18 dockets as directed by the supreme court of appeals
19 or by the judge of the circuit court, or the chief
20 judge thereof if there is more than one judge of the circuit
21 court.

22 No act done by a justice of the peace prior to the first day
23 of January, one thousand nine hundred seventy-seven, shall be
24 affected by virtue of the abolition of the office of justice of
25 the peace. Matters pending before a justice of the peace
26 prior to such date or which might otherwise require further
27 action by a justice of the peace shall be handled by the
28 magistrate to whom such matter is assigned or in such other

29 manner as may be ordered by the judge of the circuit court,
30 or the chief judge thereof if there is more than one judge of
31 the circuit court.

§50-1-16. Supervisory rules.

1 The supreme court of appeals is hereby authorized to
2 promulgate rules to carry out the intent of this chapter and to
3 exercise rule-making authority granted by article eight of
4 the constitution of West Virginia. Rules promulgated by the
5 judge of a circuit court, or the chief judge thereof, pursuant
6 to the provisions of this chapter shall be subordinate and
7 subject to the rules of the supreme court of appeals or the
8 orders of the chief justice thereof.

**§50-1-17. Reference to justice of the peace; abolition of the office
of constable.**

1 On and after the first day of January, one thousand nine
2 hundred seventy-seven, the phrase "justice of the peace"
3 and the word "justice," when used in a context meaning
4 "justice of the peace," shall be construed to mean magistrate
5 as created by the provisions of this chapter. At such time the
6 office of constable shall be abolished, and the duties previously
7 performed by constables shall be assumed by deputy sheriffs or
8 by such other persons as elsewhere provided in this code.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the peace,
3 magistrate courts shall have jurisdiction of all civil actions in
4 which the damages or the value of property sought is not more
5 than one thousand five hundred dollars. Magistrate courts
6 shall have jurisdiction of matters involving unlawful entry or
7 detainer of real estate so long as the title to such real estate
8 is not in dispute. Magistrate courts shall have jurisdiction of
9 actions on bonds given pursuant to the provisions of this
10 chapter.

11 Magistrate courts shall not have jurisdiction of actions in
12 equity, of matters in eminent domain, of matters in which the

13 title to real estate is in issue, of proceedings seeking satisfac-
14 tion of liens through the sale of real estate, of actions for false
15 imprisonment, of actions for malicious prosecution or of ac-
16 tions for slander or libel or of any of the extraordinary remed-
17 ies set forth in chapter sixty-three of this code.

18 Magistrates, magistrate court clerks and magistrate as-
19 sistants shall have the authority to administer any oath or
20 affirmation, to take any affidavit or deposition, unless otherwise
21 expressly provided by law, and to take, under such regulations
22 as are prescribed by law, the acknowledgment of deeds and
23 other writings.

§50-2-2. Venue.

1 The provisions of article one, chapter fifty-six of this
2 code, relating to venue of actions in circuit courts, shall
3 apply to venue of actions in magistrate courts as if the
4 same were set forth fully herein.

§50-2-3. Criminal jurisdiction.

1 In addition to jurisdiction granted elsewhere to magistrate
2 courts or a justice of the peace, magistrate courts shall have
3 jurisdiction of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on warrants
5 charging felonies committed within the county. A magistrate
6 shall have the authority to issue arrest warrants in all criminal
7 matters, to issue warrants for search and seizure and, except
8 in cases involving capital offenses, to set and admit to bail.

9 Magistrate courts shall have the jurisdiction of violations of
10 subsection (c), section four hundred one, article four, chapter
11 sixty-a of this code under the provisions of section four hun-
12 dred seven of such article, and may discharge the defendant
13 under the provisions of section four hundred seven of said
14 article four. The exercise of such jurisdiction shall not pre-
15 clude the right of the accused to petition the circuit court
16 of the county for probation under the provisions of section
17 four, article twelve, chapter sixty-two of this code.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts in
2 civil actions and shall be collected in advance:

- 3 (a) For filing and trying any civil action and for all
4 services connected therewith but excluding ser-
5 vices regarding enforcement of judgment \$10.00
- 6 (b) For each service regarding enforcement of a
7 judgment including execution, suggestion, gar-
8 nishment and suggestee execution \$ 3.00
- 9 (c) For each bond filed in a case \$ 1.00
- 10 (d) For taking deposition of witness for each hour or
11 portion thereof \$ 1.00
- 12 (e) For taking and certifying acknowledgement of a
13 deed or other writing or taking oath upon an
14 affidavit \$.50
- 15 (f) For mailing any matter required or provided by
16 law to be mailed by certified or registered mail
17 with return receipt \$ 1.00

18 Costs incurred in a civil action shall be reflected in any
19 judgment rendered thereon. The provisions of section one,
20 article two, chapter fifty-nine of this code, relating to the pay-
21 ment of costs by poor persons, shall be applicable to all costs
22 in civil actions.

§50-3-2. Costs in criminal proceedings.

1 In each criminal case tried in a magistrate court in which the
2 defendant is convicted there shall be imposed, in addition to
3 such other costs, fines, forfeitures or penalties as may be al-
4 lowed by law, costs in the amount of ten dollars. No such costs
5 shall be collected in advance.

6 A magistrate shall assess costs in the amount of two dollars
7 and fifty cents for issuing a sheep warrant, appointment and
8 swearing appraisers and docketing the same.

9 In each criminal case which must be tried by the circuit

10 court but in which a magistrate renders some service, costs in
11 the amount of ten dollars shall be imposed by the magistrate
12 court and shall be certified to the clerk of the circuit court in
13 accordance with the provisions of section six, article five, chap-
14 ter sixty-two of this code.

§50-3-3. Disposition of fines, forfeitures and penalties.

1 All fines, forfeitures and penalties collected in magistrate
2 courts in a criminal proceeding shall be submitted on or before
3 the tenth day of the month following the month of their
4 collection to the magistrate court clerk or, if there is no magis-
5 trate court clerk, to the clerk of the circuit court together with
6 such information as may be required by the rules of the su-
7 preme court and by the rules of the chief inspector of public
8 offices. Such moneys shall thereupon be paid to the sheriff
9 subject to, and to be distributed in accordance with, the pro-
10 visions of section fifteen, article five, chapter seven of this
11 code.

§50-3-4. Disposition of costs.

1 All costs collected in magistrate courts in a civil or criminal
2 proceeding shall be submitted on or before the tenth day
3 of the month following the month of their collection to the
4 magistrate court clerk or, if there is no magistrate court clerk,
5 to the clerk of the circuit court along with such information as
6 may be required by the rules of the supreme court and by the
7 rules of the chief inspector of public offices. Such clerk shall
8 pay such costs into the special county fund hereafter created
9 during each fiscal year until there shall have been paid a sum
10 equal to ten thousand dollars multiplied by the number of
11 magistrates authorized for such county. All costs collected in
12 excess of such sum during a fiscal year shall be paid to the state.
13 Notwithstanding the provisions of section two, article nineteen,
14 chapter fifty of this code to the contrary, all costs and fees col-
15 lected by justices of the peace on or after the first day of July,
16 one thousand nine hundred seventy-six, shall be paid into said
17 special county fund hereafter created.

18 There is hereby created in each county a special county fund
19 designated as the magistrate court fund. No moneys shall be

20 appropriated from the fund except for the purposes provided
21 for in this section. Any money remaining in the magistrate
22 court fund on the thirtieth day of June, one thousand nine
23 hundred seventy-nine, and on the thirtieth day of June of each
24 year thereafter, shall be paid to the state.

25 A county may appropriate and spend from such fund such
26 sums as shall be necessary to defray the expenses of providing
27 bailiff and service of process services by the sheriff, to defray
28 the cost of acquiring or renting magistrate court offices and
29 providing utilities and telephones therefor, to defray the ex-
30 pense of such other services which by the terms of this chap-
31 ter are to be provided to magistrate court by the county and
32 to pay to justices of the peace such sums as they may be en-
33 titled to by law.

§50-3-5. Security bond for costs.

1 A magistrate may and upon the request of a defendant shall
2 require the posting of security by a nonresident plaintiff to
3 cover costs. Such security shall be in an amount and in such
4 form as the magistrate shall determine. In the event costs
5 remain unpaid by such plaintiff the magistrate court may satisfy
6 the same through the security posted and may proceed for such
7 purposes in the name of the defendant.

§50-3-6. Collection of costs and fines.

1 The magistrate court may issue execution or employ other
2 means of enforcing judgment to collect fines and costs imposed
3 in proceedings before the court and tax the cost thereof as a
4 part of the execution or other process. Such execution or other
5 process shall be directed to the sheriff for collection. The
6 sheriff shall collect the fees prescribed for his services from
7 the party from whom the fine or costs are being collected.
8 Money so collected shall be paid by the sheriff to the
9 magistrate court and shall be paid by the magistrate court in
10 the manner provided by law.

§50-3-7. Records of magistrate court; reports.

1 Records of the judicial transactions of magistrate court shall
2 be kept as required by the rules of the supreme court of ap-
3 peals. If, after judgment is rendered in a matter, no appeal is

4 taken within the time allotted, the records of such proceedings
5 shall be forwarded to the magistrate court clerk or, if there
6 is no magistrate court clerk, to the clerk of the circuit court.
7 Such records shall be maintained by such clerk in accordance
8 with the rules of the supreme court of appeals.

9 Records of the financial dealings of the magistrate court
10 shall be kept as may be required by the rules of the chief in-
11 spector of public offices, who shall promulgate such rules only
12 after consultation with the supreme court of appeals.

13 A magistrate court shall prepare and submit such reports as
14 may be required by the rules of the supreme court of appeals
15 or by the chief inspector of public offices.

§50-3-8. Audit.

1 Each magistrate court shall be subject to an annual financial
2 audit which shall be accomplished by the chief inspector of
3 public offices. A report of such audit shall be made to the
4 supreme court of appeals, the circuit court of the county and
5 the legislative auditor.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-1. Commencement of civil actions.

1 There shall be one form of civil action in magistrate court.
2 Civil actions shall be commenced by the payment of the fees
3 required by article three of this chapter and by providing any
4 magistrate or magistrate assistant with a concise statement,
5 either oral or written, of the nature of the cause of action.
6 Such statement must be sufficient to notify the defendant of
7 the subject matter of the action. The magistrate assistant shall
8 immediately prepare a summons in such form and containing
9 such information as may be required by the rules of the
10 supreme court of appeals. The summons shall be dated the
11 same day the request therefor is received and the appropriate
12 fees received, and the action shall be deemed commenced as of
13 that day. The magistrate assistant shall thereupon forward the
14 matter to the magistrate court clerk together with any service
15 of process fees which may have been collected.

16 Upon receipt of the matter by the magistrates court clerk,
17 such clerk shall docket the same in a central docket. Such clerk
18 shall thereupon assign the action for trial to the magistrate in
19 whose office it was filed unless it shall be necessary to assign
20 it to some other magistrate in order to maintain an equitable
21 distribution of cases among the magistrates. In the event it is
22 necessary to assign the matter to some other magistrate, such
23 clerk, as near as practicable, shall assign it to a magistrate
24 whose office is accessible to all parties and who can properly
25 serve the interests of the parties. The judge of the circuit court,
26 or the chief judge thereof if there is more than one judge of the
27 circuit court, shall by rule determine when it shall be necessary
28 to assign an action to a magistrate other than the magistrate
29 before whom it was filed in order to maintain such equitable
30 distribution of cases. After the matter is assigned, the magis-
31 trate court clerk shall make note of the assignment on the
32 summons, sign the summons and forward it, together with any
33 service of process fees which may have been collected, to the
34 sheriff for service of process.

§50-4-2. Commencement of criminal actions.

1 Criminal actions shall be commenced by warrant obtained
2 and executed in compliance with the provisions of article one,
3 chapter sixty-two of this code.

4 Even though any matter may be assigned to another magis-
5 trate for the purpose of preliminary examination or trial, in
6 addition to such assigned magistrate, the magistrate originating
7 such warrant shall retain the authority to admit to bail.

§50-4-3. Appointment of counsel.

1 In any criminal proceeding in a magistrate court in which
2 the applicable statutes authorize a sentence of confinement the
3 magistrate shall forthwith advise a defendant of his right to
4 counsel and his right to have counsel appointed if such defend-
5 ant cannot afford to retain counsel. In the event a defendant
6 requests that counsel be appointed and executes an affidavit
7 that he is unable to afford counsel, the magistrate shall stay
8 further proceedings and shall request the judge of the circuit
9 court, or the chief judge thereof if there is more than one
10 judge of the circuit court, to appoint counsel. Such judge shall

11 thereupon appoint counsel. If there is no judge sitting in the
12 county at the time of the request then the clerk of the circuit
13 court shall appoint counsel from a list of attorneys in ac-
14 cordance with the rules established by such judge of the circuit
15 court. Counsel shall be paid for his services in accordance with
16 the provisions of section one, article three, chapter sixty-two
17 of this code.

§50-4-4. Manner of service in civil cases.

1 Service of process in civil actions shall be made in the same
2 manner as is provided for service of process in trial courts of
3 record.

§50-4-5. Return in civil action.

1 Each summons in a civil action shall notify the defendant
2 that he must appear within twenty days after service of the
3 summons upon him or that he must otherwise notify the
4 magistrate court by that time that he wishes to contest the
5 matter.

6 If the magistrate court is notified by the defendant that he
7 wishes to contest the matter a trial date shall be set and all
8 parties notified thereof. Such trial date shall be at least five
9 days from notification thereof unless all parties consent other-
10 wise thereto.

11 If no appearance or other notification is made within twenty
12 days after the service of the summons on the defendant, judg-
13 ment by default may be entered in accordance with the pro-
14 visions of section ten of this article.

§50-4-6. Return date in criminal proceedings.

1 When a warrant is executed in a criminal proceeding the
2 defendant shall be notified of the return date set by the court.
3 The defendant shall appear before the magistrate on or before
4 the return date. In the event a trial or preliminary examina-
5 tion is not expressly waived by such defendant, the magistrate
6 shall set a date for such trial or preliminary examination and
7 shall notify all parties.

§50-4-7. Removal to another magistrate.

1 Any party to a civil or criminal proceeding before a magis-

2 trate in any county wherein there is more than one magistrate
3 may file an affidavit that the magistrate before whom the mat-
4 ter is pending has a personal bias or prejudice either against
5 him or in favor of any opposite party or that such magistrate
6 has counseled with any opposite party with respect to the mer-
7 its of the proceeding. The affidavit shall state the facts and
8 reasons for belief in the truth thereof. The supreme court of
9 appeals shall provide a form affidavit which shall be made
10 available to all parties and which shall comply with the require-
11 ments of this section.

12 Upon the filing of such affidavit before the trial or hearing,
13 the magistrate shall transfer all matters relating to the case
14 to the magistrate court clerk, who shall thereupon assign and
15 transfer the matter to be heard by some other magistrate within
16 the county upon a rotation basis to be established by the
17 judge of the circuit court, or the chief judge thereof if there is
18 more than one judge of the circuit court. Such removal and
19 assignment shall be permitted, however, only if there is some
20 other magistrate in the county before whom the matter had
21 not been previously pending. No party shall be entitled to
22 cause such a removal more than once.

23 The magistrate to whom the matter is assigned shall set a
24 new return date not more than five days from his receipt of the
25 matter, shall notify all parties thereof, and shall proceed with
26 the matter as if it had been originally assigned to him.

§50-4-8. Removal to circuit court.

1 At any time before trial in a civil action involving more
2 than one hundred dollars any party may, upon payment of a
3 fee in the amount of ten dollars, cause such action to be re-
4 moved to the circuit court. The magistrate court, upon receiving
5 such fee and request for removal shall forward the same along
6 with all appropriate documents to the clerk of the circuit
7 court. Such fee shall be paid into the county treasury.
8 The matter shall then be heard by the circuit court.

§50-4-9. Counterclaim.

1 A defendant in a civil action may at any time within twenty
2 days after the service of process on him commence a separate

3 action as a counterclaim and if such counterclaim arises from
4 the same transaction or occurrence that is the subject matter of
5 the initial claim they shall be tried together. The requirements
6 of law relating to the payment of fees and service of process
7 shall apply to counterclaims. The failure to institute a counter-
8 claim permitted by this section shall not preclude the
9 institution of an action on such claim at a later date.

§50-4-10. Judgment before trial.

1 If a defendant in a civil action fails to appear or other-
2 wise notify the magistrate court within twenty days after the
3 service of the summons upon him that he wishes to contest the
4 action, the magistrate may enter judgment as justice may re-
5 quire as follows:

6 (a) The magistrate shall enter judgment by default only
7 upon affidavit or sworn testimony reflecting the nature of the
8 claim, whether or not it is for a sum certain or for a sum which
9 can by computation be made certain, the defendant's failure
10 to appear or otherwise notify the court within twenty days after
11 service of the summons upon him that he wishes to contest the
12 action and supporting the relief sought. In the event the plain-
13 tiff's claim is not for a sum certain or for a sum which can by
14 computation be made certain, the court shall require such fur-
15 ther proof by affidavit or sworn testimony as is necessary to
16 determine the propriety of the relief sought.

17 (b) No judgment by default shall be rendered against a
18 person who is an infant, incompetent person or incarcerated
19 convict unless such person is represented in the action by a
20 guardian ad litem, guardian, committee, curator or other like
21 fiduciary.

22 Upon motion made by the defendant within twenty days
23 after the entry of such judgment, the magistrate may, for good
24 cause shown, set aside the judgment and set the matter for
25 trial.

26 If a defendant offers to confess judgment at any time, the
27 magistrate shall take the same in writing and enter judgment for
28 the amount confessed plus costs. In the event the amount
29 claimed by plaintiff exceeds the amount confessed by defendant
30 the plaintiff may request that the matter be set for trial. If

31 plaintiff's recovery therein does not exceed the amount
32 confessed, costs shall be assessed against the plaintiff.

§50-4-11. Dismissal of actions for lack of jurisdiction.

1 If at any time a magistrate determines that an action
2 involves a matter outside of or an amount in excess of the
3 jurisdiction of the magistrate court, the action shall be dismis-
4 sed without prejudice. Judgment shall be awarded against the
5 plaintiff in such event for any costs incurred by defendant. A
6 plaintiff may, at any time before such dismissal, forgive in
7 writing any amounts which may be in excess of the monetary
8 limitation of the court's jurisdiction and confer jurisdiction
9 thereby.

§50-4-12. Dismissal of action.

1 A magistrate may render judgment against the plaintiff
2 dismissing his action with prejudice to a new action and
3 awarding costs to the defendant when (a) the plaintiff fails
4 to appear and prosecute his action at the proper time for
5 appearance; (b) the plaintiff fails or refuses to testify when
6 properly required to do so; or (c) the plaintiff fails to give
7 security for costs when properly required to do so. In
8 cases (a) and (b) if the plaintiff shows cause why his action
9 should not be dismissed, the magistrate may set aside such
10 judgment and continue the matter before him or may dismiss
11 the action without prejudice.

12 A magistrate shall dismiss a claim without prejudice if the
13 summons is defective or erroneous and cannot properly be
14 amended.

15 A magistrate may dismiss a claim without prejudice if the
16 plaintiff requests such dismissal before trial.

17 The dismissal of a claim shall not affect the right of any
18 party to proceed to trial upon a counterclaim.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-1. General rules of procedure.

1 Except as the same may be inconsistent with the provisions
2 of this chapter or with rules adopted by the supreme court of

3 appeals, the provisions of law relating to trials and admissibility
4 of evidence in circuit court shall apply to trials in magistrate
5 courts.

§50-5-2. Continuances.

1 A magistrate shall continue the holding of a trial or hearing
2 upon the motion of any party for a period of time not less than
3 five nor more than ten days, and such mandatory continuance
4 shall be available to each party once. A magistrate may con-
5 tinue the holding of a trial or hearing at any time upon his
6 own motion or, if good cause is shown, upon the motion of any
7 party. In criminal proceedings when the defendant is in custody,
8 the state shall not have the right to a continuance but may be
9 granted a continuance for no more than five days if good
10 cause is shown. In criminal proceedings when the defen-
11 dant is in custody, the magistrate may continue the matter no
12 more than once on his own motion but such continuance shall
13 not be for more than forty-eight hours.

§50-5-3. Appointment of guardian ad litem.

1 No infant, incompetent person or convict shall proceed or
2 be proceeded against in a civil action in magistrate court unless
3 the provisions of this section are complied with.

4 Whenever an infant, incompetent person or convict has a
5 duly qualified representative, such as a guardian, curator, com-
6 mittee or other like fiduciary, such representative may sue or
7 defend on behalf of the infant, incompetent person or con-
8 vict. If a person under any disability does not have a duly
9 qualified representative he may sue by his next friend. The
10 magistrate shall appoint some suitable person who shall not
11 be required to be an attorney at law as guardian ad litem for
12 an infant, incompetent person or convict not otherwise repre-
13 sented in an action.

§50-5-4. Subpoenas.

1 A magistrate or magistrate assistant shall, upon the request
2 of any party, issue a subpoena compelling the attendance and
3 testimony of a witness or a subpoena duces tecum compelling
4 the production of some writing or other object. The court shall

5 require the sheriff to enforce such subpoena or subpoena duces
6 tecum and may punish the willful disregard thereof by finding
7 such person in contempt in accordance with the provisions of
8 section ten of this article. Witness fees and mileage shall be cal-
9 culated and paid as in the circuit court.

§50-5-5. Persons incompetent to testify; privileged communication.

1 No person shall be compelled to testify at any proceeding in
2 magistrate court as to any communication privileged by law.
3 No person shall be compelled to testify as to any matter about
4 which he is deemed incompetent by law to testify.

§50-5-6. Evidentiary depositions.

1 In a civil case the evidentiary deposition of any witness
2 residing out of the county or unable to attend court may be
3 taken by any party upon reasonable notice to all other parties.

§50-5-7. Right to trial in criminal cases.

1 Every defendant charged in a magistrate court in a criminal
2 proceeding which is within the jurisdiction of the court shall
3 have the right to a trial on the merits in the magistrate court.

§50-5-8. Trial by jury.

1 Any party to a civil action is entitled to a trial by jury
2 when the amount in controversy exceed twenty dollars or
3 involves possession to real estate. Any defendant in any
4 criminal action shall be entitled to a trial by jury, and any
5 verdict must be unanimous. A defendant in a criminal pro-
6 ceeding may waive a jury trial so long as he is advised of his
7 right to a jury trial and such waiver is made in writing. A mag-
8 istrate court jury shall consist of six persons, to be selected
9 from a panel of ten persons. The selection and summoning of
10 jurors shall be conducted in accordance with the rules and
11 regulations of the supreme court of appeals. Jurors shall be
12 paid by the state in accordance with such rules.

§50-5-9. Judgment.

1 In every criminal case in which the defendant is in custody,
2 a magistrate shall enter judgment immediately upon the con-
3 clusion of the trial or hearing. In all other proceedings, a

4 magistrate shall enter judgment within twenty-four hours of
5 the conclusion of the trial or hearing.

§50-5-10. Setting aside judgment.

1 Upon motion made within twenty days after judgment by
2 any party in a civil action or by the defendant in a criminal
3 action, the magistrate who heard the matter may, upon good
4 cause shown, set aside judgment and order a new trial. All par-
5 ties shall be given notice of such motion and an opportunity to
6 be heard.

§50-5-11. Contempt.

1 A magistrate may punish for contempt of court a person
2 guilty of any of the following acts, and in no other case:

3 (a) Contemptuous or insolent behavior towards such mag-
4 istrate while engaged in the trial of a case or in any other
5 judicial proceeding;

6 (b) Any breach of the peace, willful disturbance, or
7 indecent conduct in the presence of such magistrate while so
8 engaged, or so near as to obstruct or interrupt the proceedings;

9 (c) Violence or threats of violence to such magistrate,
10 or any officer, juror, witness, or party going to, attending,
11 or returning from, any judicial proceeding before the court
12 with respect to anything done or to be done in the course of
13 such proceeding;

14 (d) Misbehavior of any officer of the county acting in his
15 official capacity with respect to any action or judicial pro-
16 ceeding had or pending before the court, or any process
17 judgment, order or notice therein; or

18 (e) Willful resistance, in the presence of the magistrate, by
19 an officer of the court, juror, witness, party or other person
20 to any lawful process or order of the court.

21 A magistrate may, if necessary, issue a warrant of arrest
22 for such person, who shall be given an opportunity to be
23 heard. In the event such person is adjudged guilty of con-
24 tempt, the person may be fined not more than fifty dollars for
25 the first offense. For a second offense occurring during the

26 same proceeding the person may be fined not more than one
27 hundred dollars. For the third or any subsequent offense oc-
28 ccurring during the same proceeding, the person may be fined
29 not more than one hundred dollars, or imprisoned in the county
30 jail not more than ten days, or both fined and imprisoned.

§50-5-12. Appeals in civil cases.

1 Any person may appeal the judgment of a magistrate court to
2 the circuit court as a matter of right by requesting such appeal
3 not later than twenty days after such judgment is rendered
4 or not later than twenty days after a decision is rendered
5 upon a motion to set aside such judgment. Such person shall be
6 required to post a bond with good security in a reasonable
7 amount not less than the reasonable court costs of the appeal
8 nor more than the sum of the judgment and the reasonable
9 court costs of the appeal, upon the condition that such person
10 will satisfy the judgment and any court costs which may be
11 rendered against him on any such appeal. No bond shall be
12 required of any governmental agency or authority or of a per-
13 son who has filed an affidavit pursuant to section one, article
14 two, chapter fifty-nine of this code. If no appeal is perfected
15 within such twenty-day period, the circuit court of the county
16 may, not later than ninety days after the date of judgment,
17 grant an appeal upon a showing of good cause why such appeal
18 was not perfected within such twenty-day period. The filing or
19 granting of an appeal shall automatically stay further proceed-
20 ings to enforce the judgment. Trial in circuit court shall be
21 de novo.

§50-5-13. Appeals in criminal cases.

1 Any person convicted of an offense in a magistrate court
2 may appeal such conviction to circuit court by requesting such
3 appeal within twenty days of the sentencing for such con-
4 viction. The magistrate may require the posting of bond with
5 good security conditioned upon the appearance of the defen-
6 dant as required in circuit court, but such bond may not ex-
7 ceed the maximum amount of any fine which could be im-
8 posed for the offense. Such bond may be upon the defendant's
9 own recognizance. An appeal may be granted by a judge of
10 the circuit court of the county within ninety days from the date

11 of sentencing. The filing or granting of an appeal shall auto-
12 matically stay the sentence of the magistrate. Trial in circuit
13 court shall be de novo.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

1 The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are clearly
4 applicable only to courts of record, shall apply to the enforce-
5 ment of judgments rendered in magistrate court and process
6 therefor shall issue from magistrate court. Process issued in
7 violation of such provisions shall be void. The form of all such
8 process shall be in accord with the rules of the supreme court
9 of appeals. No such process shall issue until after twenty days
10 after the judgment is rendered or, if a motion to set aside such
11 judgment is then pending, until after twenty days after the de-
12 termination of such motion.

§50-6-2. Filing of transcript in office of circuit clerk; issuance of process thereon; entry on lien docket.

1 A certified transcript of judgment rendered by a magistrate
2 court may be filed in the office of the circuit court upon pay-
3 ment of a fee of one dollar. The circuit clerk shall keep such
4 records and indices as may be required by the rules of the sup-
5 reme court of appeals. Such judgments may also be docketed in
6 the judgment lien book kept in the office of the clerk of the
7 county commission in the same manner and with the same
8 effect as circuit court judgments.

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-39. Illegal voting; affidavit; arrest; procedure.

1 If at any time during the election any qualified voter shall
2 make affidavit, before a commissioner of election, that any
3 person who has voted is an illegal voter in such precinct, the
4 person accused shall at once be arrested by any dep-
5 uty sheriff or other person designated by the election com-
6 missioners to make the arrest, and by him delivered to the civil

7 authorities. Any person desiring to make such affidavit shall be
8 admitted to the election room for that purpose. Immediately
9 after the close of the election, the commissioners of election
10 shall deliver such affidavit to some justice of the peace in the
11 magisterial district, or magistrate in the county, who shall pro-
12 ceed thereon as if the affidavit had been made before him.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2b. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.

1 In addition to the other powers given and assigned to the
2 commissioner in this chapter, he is hereby authorized to ap-
3 point bona fide residents of this state to act as security officers
4 upon any premises owned or leased by the state of West Vir-
5 ginia and under the jurisdiction of the commissioner, subject
6 to the conditions and restrictions hereinafter imposed. Before
7 entering upon the performance of his duties as such security
8 officer, each person so appointed shall qualify therefor in the
9 same manner as is required of county officers by taking and
10 filing an oath of office as required by article one, chapter
11 six of this code. No such person shall have authority to carry
12 a gun or any other dangerous weapon until he shall have ob-
13 tained a license therefor in the manner prescribed by section
14 two, article seven, chapter sixty-one of this code.

15 It shall be the duty of any person so appointed and qualified
16 to preserve law and order on any premises under the jurisdic-
17 tion of the commissioner to which he may be assigned by the
18 commissioner. For this purpose he shall as to offenses com-
19 mitted on such premises have and may exercise all the powers
20 and authority and shall be subject to all the responsibilities of
21 a deputy sheriff of the county. The assignment of security offi-
22 cers to any premises under the jurisdiction of the commissioner
23 shall not be deemed to supersede in any way the authority or
24 duty of other peace officers to preserve law and order on such
25 premises.

26 The commissioner may at his pleasure revoke the authority

27 of any such officer by filing a notice to that effect in the office
28 of the clerk of each county in which his oath of office was
29 filed, and in the case of officers licensed to carry a gun or
30 other dangerous weapons by notifying the clerk of the circuit
31 court of the county in which the license therefor was granted.

**CHAPTER 8. MUNICIPAL LAW,
MUNICIPALITIES AND COUNTIES;
INTERGOVERNMENTAL RELATIONS.**

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1. Powers and duties of mayor.

1 When not otherwise provided by charter provision or general
2 law, the mayor of every municipality shall be the chief execu-
3 tive officer of such municipality, shall have the powers and
4 authority granted in this section, and shall see that the or-
5 dinances, orders, bylaws, acts, resolutions, rules and regula-
6 tions of the governing body thereof are faithfully executed.
7 He shall have jurisdiction to hear and determine any and
8 all alleged violations thereof and to convict and sentence
9 persons therefor. He shall also, until the first day of January,
10 one thousand nine hundred seventy-seven, be ex officio a
11 justice and conservator of the peace within the municipality,
12 and shall, within the same, have and exercise all of the powers,
13 both civil and criminal, and perform all duties vested by
14 law in a justice of the peace, except that he shall have no
15 jurisdiction in civil cases or causes of action arising without
16 the corporate limits of the municipality. He shall have, until
17 the first day of January, one thousand nine hundred seventy-
18 seven, the same power to issue attachments in civil suits as a
19 justice of his county has, though the cause of action arose
20 without the corporate limits of his municipality, but he shall
21 have no power to try the same and such attachments shall be
22 returnable and be heard before some justice of his county.
23 Upon complaint he shall have authority to issue a search war-
24 rant in connection with the violation of a municipal ordinance.
25 Any search warrant, warrant of arrest or other process issued
26 by him may be directed to the chief of police or any member
27 of the police department or force of the municipality, and the
28 same may be executed at any place within the county or

29 counties in which the municipality is located. He shall have
30 control of the police of the municipality and may appoint
31 special police officers whenever he deems it necessary, except
32 when otherwise provided by law, and subject to the police
33 civil service provisions of article fourteen of this chapter if
34 such civil service provisions are applicable to his municipality,
35 and it shall be his duty especially to see that the peace and
36 good order of the municipality are preserved, and that persons
37 and property therein are protected; and to this end he may
38 cause the arrest and detention of all riotous and disorderly
39 individuals in the municipality before issuing his warrant
40 therefor. He shall have power to issue executions for all
41 fines, penalties and costs imposed by him, or he may require
42 the immediate payment thereof, and in default of such pay-
43 ment, he may commit the party in default to the jail of the
44 county or counties in which such municipality is located, or
45 other place of imprisonment within the corporate limits of
46 such municipality, if there be one, until the fine or penalty
47 and costs shall be paid, but the term of imprisonment in such
48 case shall not exceed thirty days. He shall, from time to
49 time, recommend to the governing body such measures as he
50 may deem needful for the welfare of the municipality. The
51 expense of maintaining any individual committed to a county
52 jail by him, except it be to answer an indictment, or, until the
53 first day of January, one thousand nine hundred seventy-seven,
54 be under the provisions of sections eight and nine, article
55 eighteen, chapter fifty of this code, shall be paid by the muni-
56 cipality and taxed as part of the costs of the proceeding.

§8-10-2. Police court or municipal judge for municipalities.

1 Notwithstanding any charter provision to the contrary, any
2 city may provide by charter provision and any municipality may
3 provide by ordinance for the creation and maintenance of a
4 police or municipal court, for the appointment or election of
5 an officer to be known as police court judge or municipal
6 court judge, and for his compensation, and authorize the
7 exercise by such court or judge of such of the jurisdiction and
8 the judicial powers, authority and duties set forth in section
9 one of this article and similar or related judicial powers,
10 authority and duties enumerated in any applicable charter
11 provisions, as set forth in the charter or ordinance. Such

12 court or judge shall in all events have the criminal jurisdiction
 13 of a justice of the peace or magistrate court, but such
 14 jurisdiction shall expire on the first day of January, one
 15 thousand nine hundred seventy-seven.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9. OFFENSES GENERALLY.

§16-9-8. Jurisdiction of courts.

1 Until the first day of January, one thousand nine hundred
 2 seventy-seven, justices of the peace and municipal judges shall
 3 have concurrent jurisdiction with the circuit courts of this
 4 state for violations under sections one to seven, both inclusive,
 5 of this article.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13h. Acquisition and operation of college or university parking facilities.

1 The board of regents is hereby authorized to construct,
 2 maintain and operate automobile parking facilities upon any
 3 premises owned or leased at any college or university under its
 4 jurisdiction for use by students, faculty, staff and visitors. Such
 5 facilities shall be open to use on such terms and subject to such
 6 reasonable regulations as may be prescribed by the board of
 7 regents. A summary of the regulations shall be posted con-
 8 spicuously in each parking area.

9 The board of regents shall have authority to charge fees for
 10 use of the parking facilities under its control. All moneys col-
 11 lected for such use shall be paid into a special fund which is
 12 hereby created in the state treasury. The moneys in such fund
 13 shall be used first to pay the cost of maintaining and operating
 14 such facilities, but any excess not needed for this purpose may
 15 be used for the acquisition of property by lease or purchase and
 16 the construction thereon of additional parking facilities. Any
 17 money in the fund not needed immediately for the acquisition,
 18 construction, maintenance or operation of such facilities may
 19 be temporarily invested by the institution in the state sinking
 20 fund.

21 Whenever a vehicle is parked on any college or university
22 parking facility in violation of the posted regulations, the insti-
23 tution shall have authority to remove the vehicle, by towing or
24 otherwise, to an established garage or parking lot for storage
25 until called for by the owner or his agent. The owner shall be
26 liable for the reasonable cost of such removal and storage, and
27 until payment of such cost the garage or parking lot operator
28 may retain possession of the vehicle subject to a lien for the
29 amount due. Notice to this effect shall be posted conspicuously
30 in each parking area. The garage or parking lot operator may
31 enforce his lien for towing and storage in the manner provided
32 in section fourteen, article eleven, chapter thirty-eight of this
33 code, for the enforcement of other liens.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

**§18-26-8a. Security officers; appointment; qualifications; author-
ity; compensation and removal.**

1 The West Virginia board of regents is hereby authorized
2 to appoint bona fide residents of this state to act as security
3 officers upon any premises owned or leased by the state of West
4 Virginia and under the jurisdiction of the board of regents,
5 subject to the conditions and restrictions hereinafter imposed.
6 Before entering upon the performance of his duties as such
7 security officer in any county, each person so appointed shall
8 qualify therefor in the same manner as is required of county
9 officers by the taking and filing an oath of office as required
10 by article one, chapter six of this code and by posting an
11 official bond as required by article two, chapter six of this
12 code. No such person shall have authority to carry a gun or
13 any other dangerous weapon until he shall have obtained a
14 license therefor in the manner prescribed by section two, article
15 seven, chapter sixty-one of this code.

16 It shall be the duty of any person so appointed and quali-
17 fied to preserve law and order on any premises under the jur-
18 isdiction of the board of regents to which he may be assigned
19 by the president of the college or university. For this pur-
20 pose he shall as to offenses committed on such premises have
21 and may exercise all the powers and authority and shall be
22 subject to all the responsibilities of a deputy sheriff of the

23 county. The assignment of security officers to any premises
 24 under the jurisdiction of the board shall not be deemed to
 25 supersede in any way the authority or duty of other peace offi-
 26 cers to preserve law and order on such premises. In addition,
 27 the security officers appointed under provisions of this section
 28 shall have authority to assist local peace officers on public high-
 29 ways in the control of traffic in and around premises owned by
 30 the state of West Virginia whenever such traffic is generated as
 31 a result of athletic or other activities conducted or sponsored
 32 by a state college or university.

33 The salary of all such security officers shall be paid by the
 34 board of regents. Each institution may furnish each such secur-
 35 ity officer with an official uniform to be worn while on duty
 36 and shall furnish and require each such officer while on duty
 37 to wear a shield with an appropriate inscription and to carry
 38 credentials certifying to his identity and to his authority as a
 39 security officer.

40 The board of regents may at its pleasure revoke the authority
 41 of any such officer and the president of the college or univer-
 42 sity shall report the termination of employment of any such
 43 security officer by filing a notice to that effect in the office of
 44 the clerk of each county in which his oath of office was filed,
 45 and in the case of officers licensed to carry a gun or other
 46 dangerous weapon by notifying the clerk of the circuit court of
 47 the county in which the license therefor was granted.

CHAPTER 59. FEES, ALLOWANCES AND COSTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

- 1 A sheriff shall charge and collect the following fees:
- 2 For serving on any person a declaration in ejectment,
 3 or an order, notice, summons or other process where
 4 the body is not taken, except a subpoena served
 5 on a witness, and making return thereof \$3.00
- 6 For summoning a witness 3.00
- 7 For serving on any person an attachment or other
 8 process under which the body is taken 3.00

9	For levying an attachment on real estate and making	
10	the return	3.00
11	For making any other levy	3.00
12	For conveying a prisoner to or from jail, for each mile	
13	of necessary travel either in going or returning15
14	For taking any bond	1.00
15	When a jury is sworn in court, for summoning and	
16	impaneling such jury	1.00
17	For serving a writ of possession	3.00
18	For issuing receipt to purchaser at delinquent tax sale	1.00

19 The county commission, giving due regard to the cost there-
 20 of, may from time to time prescribe the amount which the
 21 sheriff may charge for keeping any property or in removing any
 22 property. When, after distraining or levying, he neither sells nor
 23 receives payment, and either takes no bond or takes one which
 24 is not forfeited, he shall, if guilty of no default, have (in addi-
 25 tion to the one dollar for a bond, if one was taken) a fee of three
 26 dollars, unless this be more than half of what his commission
 27 would have amounted to if he had received payment; in which
 28 case he shall (whether a bond was taken or not) have a fee of
 29 one dollar at the least, and so much more as is necessary to
 30 make the said half of his commissions. The commission to be
 31 included in a forthcoming bond (when one is taken) shall be
 32 five percent on the first three hundred dollars of the money
 33 for which the distress or levy is made, and two percent on the
 34 residue of such money; but such commission shall not be
 35 received, in whole or in part, except as hereinbefore provided,
 36 unless the bond be forfeited, or the amount (including the
 37 commission) be paid to the plaintiff. An officer receiving
 38 payment in money, or selling property, shall have the like
 39 commission of five percent on the first three hundred dollars
 40 of the money paid or proceeds from such sale, and two percent
 41 on the residue, except that when such payment or sale is
 42 on an execution on a forthcoming bond, his commission shall
 43 be only half what it would be if the execution were not on
 44 such bond.

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

1 All fees, costs, percentages, penalties, commissions, al-
 2 lowances, compensation, income and all other perquisites
 3 of whatever kind which by law may now or hereafter be col-
 4 lected or received as compensation for services by any clerk
 5 of the county commission, sheriff, clerk of the circuit court or
 6 of any court of limited jurisdiction, and prosecuting attorney,
 7 shall be collected and received by such officer for the sole
 8 use of the treasury of the county in which he is an officer,
 9 and shall be held as public moneys belonging to the county
 10 fund, and shall be accounted for and paid over as such
 11 in the manner hereinafter provided. Nothing in this article
 12 shall be construed to require any county officer to pay into
 13 the county treasury any fees earned prior to the twenty-first
 14 day of May, nineteen hundred and fifteen. Fees are held to
 15 be earned at the time the service is rendered and not at the
 16 time the matter is finally adjudicated.

17 Notwithstanding any provision of law to the contrary, all
 18 fees collected by a sheriff for service of all manner of process
 19 from magistrate court, in addition to such other funds as
 20 may be provided by the county commission, shall be dedicated
 21 by the county commission to the office of sheriff for providing
 22 bailiff and service of process services for magistrate court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-41. Willful injury to railroad property; shooting or throwing missiles into passenger car; misconduct of passenger; employees conservators of the peace; special railroad policemen; penalties.

1 Any person who shall willfully and unlawfully injure, impair,
 2 weaken, destroy or misplace any building, bridge, rail, track,
 3 sidetrack, switch, rail bonds, spur track, work engine, machine,
 4 locomotive, handcar, depot, car, trestle, telegraph line, tele-
 5 graph pole, telegraph wire, telegraph instrument, or any other
 6 instrument, machine, invention, or mechanical or electrical

7 appliance whatever, which may be, or now is used by any
8 company operating or using any railroad or traction line or
9 system, or other line or work of internal improvement, in this
10 state; or who shall obstruct any corporation which is the owner
11 or lessee of any railroad or traction line or system, or other
12 work of internal improvement, in this state, in the use of any
13 such property, shall be guilty of a misdemeanor, and, upon con-
14 viction, shall be fined not exceeding one thousand dollars and
15 imprisoned not exceeding six months. If the death of any per-
16 son occur in consequence of any such unlawful act, the per-
17 son or persons committing the same shall be guilty of murder
18 and punished accordingly. Or if any person on a train, or loco-
19 motive, or passenger car, on any railroad or traction line or
20 system, is maimed or disfigured by reason of any such unlaw-
21 ful act, the person convicted of causing the same shall be guilty
22 of a felony, and shall be confined in the penitentiary not less
23 than one nor more than twenty years.

24 If any person shall shoot or throw stones, or other dangerous
25 missiles at or into any passenger car, or other railroad or trac-
26 tion car used for carrying passengers, or other persons, while
27 any such passenger or other person is within the same, he shall
28 be guilty of a felony, and, upon conviction, shall be confined
29 in the penitentiary not less than one nor more than ten years.
30 And if any person, whether a passenger or not, shall, while on
31 any passenger car or on any train of cars, behave in a riotous
32 or disorderly manner, he shall be guilty of a misdemeanor,
33 and, upon conviction, shall be fined not less than twenty-five
34 nor more than two hundred dollars, and may, in the discretion
35 of the court, be confined in jail not less than one nor more than
36 six months, and may be ejected from such car or train by the
37 person or persons in charge thereof; and such force as is neces-
38 sary for that purpose may be used by such person or persons
39 in charge of such passenger car or train of cars, with such
40 other persons as they may call to their aid.

41 The conductor of every passenger car and flagmen and
42 brakemen employed on such car, as well as the conductor of
43 every train of railroad or traction cars, shall have all the
44 powers of a conservator of the peace while in charge of such
45 car or train.

46 Any railroad company owning, or leasing and operating, or
47 using any railroad or traction line or system lying wholly or
48 partially within this state, whether such railroad be operated
49 by steam or electric power, may apply to the governor to ap-
50 point such citizen or citizens of this state as such railroad com-
51 pany may designate, to act as special police officers for such
52 railroad or traction company, with the consent of such citizen
53 or citizens; and the governor may, upon such application, ap-
54 point and commission such person or persons, or so many of
55 them as he may deem proper, as such special police officers.
56 Every police officer so appointed shall appear before some
57 person authorized to administer oaths and take and subscribe
58 the oath prescribed in the fifth section of the fourth article of
59 the constitution, and shall file such oath with the clerk of the
60 county commission, or other tribunal in lieu thereof, of the
61 county in which he shall reside. He shall also file certified cop-
62 ies of such oath in the office of the secretary of state, and in the
63 office of the clerk of the county commission, or other tribunal
64 established in lieu thereof, of each county through which such
65 railroad or any portion thereof may extend. Every police offi-
66 cer appointed under the provisions of this section shall be a
67 conservator of the peace within each county in which any part
68 of such railroad may be situated, and in which such oath or a
69 certified copy thereof shall have been filed with the clerk of
70 the county commission or other tribunal established in lieu
71 thereof; and, in addition thereto, he shall possess and may exer-
72 cise all the powers and authority, and shall be entitled to all the
73 rights, privileges and immunities, within such counties, as are
74 now or hereafter may be vested in or conferred upon a deputy
75 sheriff of such county. Any appointment made by the gover-
76 nor under the provisions of this section may be revoked by him
77 for good cause shown, and such police officers may be removed
78 from office for official misconduct, incompetence, habitual
79 drunkenness, neglect of duty or gross immorality, in the same
80 manner in which regularly elected or appointed county officers
81 may be removed from office. Whenever any such railroad
82 company shall desire to dispense with the services of any such
83 police officer, it may file a notice to that effect, under its
84 corporate seal, attested by its secretary, in each of the several
85 offices in which such oath or certified copy thereof shall have

86 been filed; and, thereupon, the powers of such police officer
87 shall cease and determine. Such police officers may wear such
88 uniform and badge of authority, or either, as the railroad com-
89 pany, upon whose application they were appointed, may de-
90 signate, and such railroad company shall pay them for all
91 services rendered by them pursuant to such appointment.

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

James L. Davis

Chairman Senate Committee

Blair C. Chastain

Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Dillon, Jr.

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. B. Taylor

President of the Senate

Lewis P. McMan

Speaker House of Delegates

The within *approved* this the *6th*
day of *April*, 1976.

Aruba P. Shroyer, Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/31/76

Time 4:00 P.M.