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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983



ENROLLED

Committee Substitute for
SENATE BILL NO. 580

(By Mr. *Bellmer*)



PASSED *March 12,* 1983

In Effect *ninty days from* Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 580
(MR. BOETTNER, *original sponsor*)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-b, relating to mandatory civil service coverage for certain correctional officers in certain counties and permissive civil service coverage for certain correctional officers in other counties on or after the effective date of said article fourteen-b, relating to appointment, promotion, reinstatement, removal, discharge, suspension and reduction of correctional officers covered by civil service; providing definitions; relating to population determination; relating to a county civil service commission for civil service for correctional officers, the appointment of its members and the removal of such members; relating to the clerk of and an office and supplies for any such civil service commission; requiring appropriations to carry out provisions of said article; relating to the powers and duties of any such civil service commission; relating to rules and regulations of any such civil service commission and notice and distribution of such rules and regulations; providing for probationary appointments of correctional officers covered by civil

service; relating to application for competitive examination, age requirements and exceptions; relating to competitive and medical examinations for appointment or promotion as a correctional officer, and notice of competitive examinations; requiring the state civil service commission to prepare and prescribe competitive examinations for correctional officers; specifying circumstances under which competitive and medical examination shall not be required; relating to training, examination and age of persons employed as correctional officers on the effective date of this article; relating to the refusal to examine or certify and review of such refusal; relating to eligibility lists from which appointments are made; specifying procedures for appointments from an eligibility list and procedures for objecting to and removing any name from any such list; relating to filling a vacancy when there is no eligibility list; relating to filling vacancies by promotion, and eligibility for promotion; prohibiting any inquiry as to political or religious opinion or affiliation and prohibiting discrimination on the basis thereof; prohibiting certain political activity of correctional officers and authorizing a petition for vacating an appointment because of political activity; relating to action on such petition and judicial review with respect thereto; requiring training and retraining programs for and satisfactory completion thereof by correctional officers; relating to the removal, discharge, suspension or reduction in rank or pay of correctional officers and judicial review with respect thereto; relating to reduction in number of correctional officers; specifying that correctional officers subject to this article may not serve as correctional officers after attaining age sixty-five; vacations and sick leave for correctional officers; establishing various criminal offenses and providing criminal penalties; establishing procedures for optional civil service coverage of correctional officers; providing a repealer clause; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fourteen-b, to read as follows:

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-1. Appointments and promotions of correctional officers.

1 Notwithstanding the provisions of article three, chapter
2 six, and article seven, chapter seven of this code, all
3 appointments and promotions of full-time correctional
4 officers, as defined in section two of this article, in the
5 offices of sheriffs of counties of twenty-five thousand
6 population or more, shall be made only according to
7 qualifications and fitness to be ascertained by
8 examinations, which, so far as practicable, shall be
9 competitive, as hereinafter provided. On and after the
10 effective date of this article, no person shall be appointed,
11 promoted, reinstated, removed, discharged, suspended or
12 reduced in rank or pay as a full-time correctional officer, as
13 defined in said section two, of any county in the state of
14 West Virginia subject to the provisions hereof, in any
15 manner or by any means other than those prescribed in this
16 article.

§7-14B-2. Definitions; population.

1 (a) For the purpose of this article:

2 (1) "Appointing officer" or "appointing sheriff" shall
3 mean the sheriff of the county in which the appointment of a
4 correctional officer shall be made pursuant to this article;
5 and

6 (2) "Correctional officer" shall mean persons appointed
7 by a sheriff whose sole duties as such correctional officer
8 are within the scope of active operation and management of
9 the county jail.

10 (b) For the purpose of this article, population shall be
11 determined by reference to the last preceding census taken
12 under the authority of the United States or of the
13 Legislature of West Virginia.

§7-14B-3. Civil service commission.

1 There shall be a civil service commission in each county
2 having a population of twenty-five thousand or more. Each
3 such civil service commission shall consist of five
4 commissioners, two of whom shall be appointed by the bar
5 association of such county, one of whom shall be appointed
6 by the correctional officer association of such county, and
7 two of whom shall be appointed by the county commission

8 of such county. In the event the bar association or
9 correctional officer association shall fail to make an
10 appointment within the time prescribed in this section
11 therefor, then such appointment shall be made by the
12 county commission. The persons appointed commissioners
13 shall be qualified voters of the county for which they are
14 appointed, and at least three of the commissioners shall be
15 persons in full sympathy with the purposes of this article.
16 Not more than three of the commissioners, at any one time,
17 shall be members of the same political party. The
18 commissioners in each county shall be appointed as follows:
19 Within sixty days from the effective date of this article, the
20 authorities having the power to appoint members to the
21 civil service commission shall appoint the five
22 commissioners, the first two to be appointed by the bar
23 association of the county shall serve for six years from the
24 date of his appointment, the one to be appointed by the
25 correctional officer association of the county shall serve for
26 four years from the date of his appointment, and the two to
27 be appointed by the county commission of the county shall
28 serve for a term of two years from the date of his
29 appointment. All subsequent appointments shall be made
30 for terms of six years. In the event that any commissioner of
31 the civil service commission shall cease to be a member
32 thereof by virtue of death, final removal or other cause, a
33 new commissioner shall be appointed to fill the unexpired
34 term of that commissioner within ten days after said ex-
35 commissioner shall have ceased to be a member of the
36 commission. Such appointment shall be made by the
37 authority who appointed the commissioner who is no longer
38 a member of the commission. Each year the members of the
39 commission shall, together, elect one of their number to act
40 as president of the commission for a term of one year. The
41 county commission may at any time remove a commissioner
42 for good cause, which shall be stated in writing and made a
43 part of the records of the commission: *Provided*, That once
44 the county commission has removed any commissioner,
45 such county commission shall within ten days thereafter
46 file in the office of the clerk of the circuit court of the county
47 a petition setting forth in full the reason for the removal and
48 praying for the confirmation of the circuit court of the
49 action of the county commission in removing the said

50 commissioner. A copy of the petition shall be served upon
51 the commissioner so removed simultaneously with its filing
52 in the office of the clerk of the circuit court and shall have
53 precedence on the docket of the circuit court and shall be
54 heard by the court as soon as practicable upon the request of
55 the removed commissioner. All rights hereby vested in the
56 circuit court may be exercised by the judge thereof in
57 vacation. In the event that no term of the circuit court is
58 being held at the time of the filing of the petition, and the
59 judge thereof cannot be reached in the county wherein the
60 petition was filed, the petition shall be heard at the next
61 succeeding term of the circuit court, whether regular or
62 special, and the commissioner so removed shall remain
63 removed until a hearing is had upon the petition of the
64 county commission. The circuit court, or the judge thereof
65 in vacation, shall hear and decide the issues presented by
66 the petition. The county commission or commissioner, as
67 the case may be, against whom the decision of the circuit
68 court or judge thereof in vacation shall be rendered shall
69 have the right to petition the supreme court of appeals for a
70 review of the decision of the circuit court or the judge
71 thereof in vacation as in other civil cases. In the event that
72 the county commission shall fail to file its petition in the
73 office of the clerk of the circuit court, as hereinbefore
74 provided, within ten days after the removal of the
75 commissioner, such commissioner shall immediately
76 resume his position as a member of the civil service
77 commission.

78 Any resident of the county shall have the right at any time
79 to file charges against and seek the removal of any member
80 of the civil service commission. The charges shall be filed in
81 the form of a petition in the office of the clerk of the circuit
82 court of the county. A copy of the petition shall be served
83 upon the commissioner sought to be removed. The petition
84 shall be matured for hearing and heard as a civil action by
85 the circuit court of the county for which the commissioner
86 serves as a member of the civil service commission or by the
87 judge thereof in vacation. The party against whom the
88 decision of the circuit court or judge thereof in vacation
89 shall be rendered shall have the right to petition the
90 supreme court of appeals for a review of the decision of the
91 circuit court or judge thereof in vacation as in other civil
92 cases.

93 No commissioner shall hold any other office (other than
94 the office of notary public) under the United States, this
95 state, or any municipality, county or other political
96 subdivision thereof; nor shall any commissioner serve on
97 any political party committee or take any active part in the
98 management of any political campaign.

§7-14B-4. Clerk of commission.

1 The clerk of the county commission shall be ex officio
2 clerk of the civil service commission and shall supply to the
3 commission all necessary clerical and stenographic services
4 for the work of the civil service commission.

§7-14B-5. Office and supplies for commission; appropriations required.

1 It shall be the duty of the county commission of every such
2 county to cause suitable and convenient rooms and
3 accommodations to be assigned and provided, furnished,
4 heated and lighted for carrying on the work and
5 examinations of the civil service commission. The civil
6 service commission may order from the proper authorities
7 the necessary stationery, postage stamps, official seal and
8 other articles to be supplied, and the necessary printing to
9 be done, for its official use. It shall be the duty of the county
10 commission and other county officials of every such county
11 to aid the civil service commission in all proper ways in
12 carrying out the provisions of this article, and to allow the
13 reasonable use of public buildings, and to heat and light the
14 same, for holding examinations and investigations and in
15 all proper ways to facilitate the same.

16 The county commission of each such county is hereby
17 required to appropriate sufficient funds for the purpose of
18 carrying out the provisions of this article.

§7-14B-6. Powers and duties of commission.

1 The civil service commission in each such county shall:
2 (1) Promulgate and enforce rules and regulations for
3 carrying into effect the provisions of this article. All rules
4 and regulations so prescribed may, from time to time, be
5 added to, amended or rescinded.

6 (2) Keep minutes of its own proceedings and records of
7 its examinations and other official actions. All
8 recommendations of applicants for the position of

9 correctional officer received by the commission or by the
10 sheriff shall be kept and preserved for a period of ten years,
11 and all such records, recommendations of former employees
12 excepted, and all written causes of removal, filed with the
13 commission, shall, subject to reasonable rule and
14 regulation, be open to public inspection.

15 (3) Make investigations, either sitting as a body or
16 through a single commissioner, concerning all matters
17 touching the enforcement and effect of the provisions of this
18 article and the rules and regulations promulgated
19 hereunder or concerning the action of any examiner or
20 subordinate of the commission or any person in the public
21 service with respect to the execution of this article; and, in
22 the course of such investigations, each commissioner shall
23 have the power to administer oaths and affirmations and to
24 take testimony.

25 (4) Have power to subpoena and require the attendance
26 of witnesses and the production of books and papers
27 pertinent to the investigations and inquiries herein
28 authorized, and examine them and such public records as it
29 shall require in relation to any matter which it has the
30 authority to investigate. The fee of such witness for
31 attendance and travel shall be the same as for witnesses
32 before the circuit courts of this state and shall be paid from
33 the appropriation for the incidental expenses of the
34 commission. All officers in the public service and their
35 deputies, clerks, subordinates and employees shall attend
36 and testify when required to do so by the commission. Any
37 disobedience to, or neglect of, any subpoena issued by the
38 commissioners, or any one of them, to any person, shall be
39 held a contempt of court, and shall be punished by the
40 circuit court of the county in which the civil service
41 commission is located, or the judge thereof in vacation, as if
42 such subpoena has been issued by the court. The judge of the
43 circuit court shall, upon the application of any one
44 commissioner, in any such case, cause the process of that
45 court to issue to compel any person or persons disobeying or
46 neglecting any such subpoena to appear and to give
47 testimony and produce evidence before the commissioner,
48 or any one of them, and shall have power to punish any such
49 contempt.

50 (5) Prepare a position classification and promotion
51 plan.

52 (6) Make an annual report to the county commission and
53 sheriff showing its own actions, its rules and regulations,
54 including all exceptions thereto in force, and the practical
55 effects thereof, and any suggestions it may have for the
56 more effectual accomplishment of the purposes of this
57 article. Such report shall be available for public inspection
58 five days after it shall have been delivered to the county
59 commission and sheriff.

**§7-14B-7. Rules and regulations of commission; notice and
distribution thereof; probationary period for
appointees.**

1 The civil service commission in each such county shall
2 promulgate rules and regulations providing for both
3 competitive and medical examinations for the position of
4 correctional officer in each such county subject to the
5 provisions of this article, for appointments to the position of
6 correctional officer and for promotions and for such other
7 matters as are necessary to carry out the purposes of this
8 article. Any such commission shall have the power and
9 authority to require by rules and regulations a physical
10 fitness examination as part of its competitive examination
11 or as a part of its medical examination. Due notice of the
12 contents of all rules and regulations and of any
13 modifications thereof shall be given, by mail, in due season
14 to the appointing officer, and said rules and regulations and
15 any modifications thereof shall also be printed for public
16 distribution. All original appointments on and after the
17 effective date of this article, to any position of correctional
18 officer in any county subject to the provisions of this article
19 shall be for a probationary period of one year: *Provided,*
20 That at any time during the probationary period the
21 probationer may be discharged for just cause in the manner
22 provided in section seventeen of this article. If, at the close
23 of this probationary period, the conduct or capacity of the
24 probationer has not been satisfactory to the appointing
25 sheriff, the probationer shall be notified, in writing, that he
26 will not receive absolute appointment, whereupon his
27 employment shall cease; otherwise, his retention in the
28 position of correctional officer beyond the probationary
29 term shall be equivalent to his absolute appointment.

§7-14B-8. Form of application; age requirements; exceptions.

1 The civil service commission in each such county shall
2 require persons applying for admission to any competitive
3 examination provided for under this article or under the
4 rules and regulations of the commission to file in its office,
5 within a reasonable time prior to the proposed competitive
6 examination a formal application in which the applicant
7 shall state under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place and
10 date of his birth;

11 (3) His health and his physical capacity for the position
12 of correctional officer;

13 (4) His business, employments and residences for at
14 least three previous years; and

15 (5) Such other information as may reasonably be
16 required, relative to the applicant's qualifications and
17 fitness for the position of correctional officer.

18 Blank forms for such applications shall be furnished by
19 the commission, without charge, to all persons requesting
20 the same. The commission may require, in connection with
21 the application, such certificates of citizens, physicians or
22 others, having pertinent knowledge concerning the
23 applicant, as the good of the service may require.

24 No application for original appointment shall be received
25 on and after the effective date of this article, if the person
26 applying is less than eighteen years of age or more than
27 forty-five years of age at the date of his application:
28 *Provided*, That in the event any applicant formerly served
29 as a correctional officer for a period of more than one year in
30 the county to which he makes application, and resigned as a
31 correctional officer at a time when there were no charges of
32 misconduct or other misfeasance pending against him,
33 within a period of two years preceding the date of his
34 application, and at the time of his application resides
35 within the county in which he seeks appointment by
36 reinstatement, then such applicant shall be eligible for
37 appointment by reinstatement in the discretion of the civil
38 service commission, even though such applicant shall be
39 over the age of forty-five years, provided he is not sixty-five
40 years of age or over, and such applicant, providing his
41 former term of service as a correctional officer so justifies,

42 may be reappointed by reinstatement without a competitive
43 examination, but such applicant shall undergo a medical
44 examination; and if such applicant shall be so appointed by
45 reinstatement as aforesaid, he shall be the lowest in rank in
46 the jail next above the probationers of the office.

**§7-14B-9. Character and notice of competitive examinations;
qualifications of applicants; competitive
examinations to be prescribed by state civil
service commission; press representatives;
posting eligible list; medical examinations;
exceptions as to and training of correctional
officers serving on effective date of article.**

1 All competitive examinations for appointments or
2 promotions to all positions of correctional officer shall be
3 practical in their character, and shall relate to such matters,
4 and include such inquiries, as will fairly and fully test the
5 comparative merit and fitness of the person or persons
6 examined to discharge the duties of the position sought by
7 him or them. The state civil service commission shall
8 prepare and prescribe, from time to time, the competitive
9 examination to be given by the civil service commission of
10 each such county. All competitive examinations shall be
11 open to all applicants who have fulfilled the preliminary
12 requirements specified in other sections of this article.

13 Adequate public notice of the date, time and place of
14 every competitive examination held under the provisions of
15 this article, together with information as to the position to
16 be filled, shall be given at least two weeks prior to such
17 competitive examination. The civil service commission in
18 each county shall adopt reasonable rules and regulations
19 for permitting the presence of representatives of the press at
20 any such competitive examinations. Such commission shall
21 post, in a public place at its office, the eligible list,
22 containing the names and grades of those who have passed
23 such competitive examinations for positions as correctional
24 officer, under this article, and shall indicate thereon such
25 appointments as may be made from said list.

26 All applicants for appointment or promotion to any
27 position as a correctional officer in any such county who
28 have passed the competitive examination specified above
29 shall, before being appointed or promoted, undergo a

30 medical examination which shall be conducted under the
31 supervision of a board composed of two doctors of medicine
32 appointed for such purpose by the sheriff of the county.
33 Such board must certify that an applicant is free from any
34 bodily or mental defects, deformity or diseases which might
35 incapacitate him from the performance of the duties of the
36 position desired and is physically fit to perform such duties
37 before said applicant shall be appointed or promoted to any
38 position. Notwithstanding the first sentence of this
39 paragraph, in the event the commission deems it expedient,
40 the medical examination may be given prior to the
41 competitive examination, and if the medical examination is
42 not passed as aforesaid, the applicant shall not be admitted
43 to the competitive examination.

44 All correctional officers who are employed as
45 correctional officers on the effective date of this article,
46 shall be considered to have been appointed under the
47 provisions of this article without regard to their age, and
48 without competitive examination or medical examination,
49 and shall hold their positions in accordance therewith for
50 one year from the effective date of this article. The civil
51 service commission shall, however, establish or prescribe a
52 training program for correctional officers who are
53 employed as such on the effective date of this article, giving
54 due consideration to available training personnel and
55 programs. Such correctional officers shall complete a two-
56 hundred-hour basic correctional officer's training course as
57 certified by the West Virginia department of corrections
58 within a twelve-month period following appointment.

59 However, persons who have (1) completed a basic
60 correctional officers training course or equivalent within
61 the past three years prior to appointment or (2) who have
62 been employed as a correctional officer in a jail for three
63 years out of the last five years prior to appointment may be
64 certified as correctional officers without basic training if in
65 the judgment of the commission such persons are otherwise
66 qualified. A correctional officer failing to qualify under the
67 provisions of this paragraph may be continued in his
68 position at the discretion of the sheriff but in no event for a
69 period of more than one year. Such person may be
70 reexamined at the discretion of the civil service commission
71 of the county and may qualify as provided in this
72 paragraph.

§7-14B-10. Refusal to examine or certify; review thereof.

1 The commission may refuse to examine an applicant, or
2 after examination to certify as eligible one, who is found to
3 lack any of the established preliminary requirements for
4 the examination or position of correctional officer for
5 which he applies; or who is physically so disabled as to be
6 rendered unfit for the performance of the duties of the
7 position of correctional officer desired; or who is addicted
8 to the habitual use of intoxicating liquors or drugs; or who
9 has been convicted of a felony; or who has been guilty of
10 infamous or notoriously disgraceful conduct; or who has
11 been dismissed from public service for delinquency or
12 misconduct; or who has made a false statement of any
13 material fact, or practiced or attempted to practice any
14 deception or fraud in his application, in any such
15 examination, or in securing his eligibility; or who refuses to
16 comply with the rules and regulations of the commission.

17 If any applicant feels aggrieved by the action of the
18 commission in refusing to examine him, or after
19 examination in refusing to certify him as eligible, the
20 commission shall, at the request of such applicant, appoint
21 a date, time and place for a public hearing, at which time the
22 applicant may appear, by himself or by counsel or in person
23 and with counsel, and the commission shall then review its
24 refusal to make such examination or certification, and
25 testimony shall be taken. The commission shall subpoena,
26 at the expense of the applicant, any competent witnesses
27 requested by him. After such review, the commission shall
28 file in its records the testimony taken and shall make a
29 decision, which decision shall be final and not subject to
30 judicial review, but under no circumstances shall the
31 provisions of this article be construed, in the case of a
32 refusal to examine an applicant for promotion or to certify
33 an applicant as eligible for promotion, as depriving such
34 applicant of his right to seek a writ of mandamus, if the
35 application for such writ is made within twenty days from
36 the date of the decision (made after hearing as aforesaid)
37 refusing to examine or to certify him as eligible for
38 promotion.

§7-14B-11. Appointments from eligible list.

1 On and after the effective date of this article, every
2 position of correctional officer, unless filled by promotion,

3 reinstatement or reduction, shall be filled only in the
 4 manner specified in this section. The appointing sheriff
 5 shall notify the civil service commission of any vacancy in a
 6 position of correctional officer which he desires to fill, and
 7 shall request the certification of eligibles. The commission
 8 shall forthwith certify, from the eligible list, the names of
 9 the three persons thereon who received the highest averages
 10 at preceding competitive examinations held under the
 11 provisions of this article within a period of three years next
 12 preceding the date of the prospective appointment. The
 13 appointing sheriff shall, thereupon, with sole reference to
 14 the relative merit and fitness of the candidates, make an
 15 appointment from the three names so certified: *Provided*,
 16 That should he make objection to the commission to one or
 17 more of these persons for any of the reasons stated in section
 18 ten of this article, and should such objection be sustained by
 19 the commission after a public hearing along the lines of the
 20 hearing provided for in said section ten, if any such hearing
 21 is requested, the commission shall thereupon strike the
 22 name of that person from the eligible list, and certify the
 23 next highest name for each person so stricken. As each
 24 subsequent vacancy occurs, in the same or another position,
 25 precisely the same procedure shall be followed: *Provided*,
 26 *however*, That after any name has been three times rejected
 27 for the same or another position in favor of a name or names
 28 below it on the same list, the name shall be stricken from the
 29 list. When there are a number of positions of the same kind
 30 to be filled at the same time, each appointment shall,
 31 nevertheless, be made separately and in accordance with
 32 the foregoing provisions. When an appointment is made
 33 under the provisions of this section, it shall be, in the first
 34 instance, for the probationary period of twelve months, as
 35 provided in section seven of this article.

**§7-14B-12. Noncompetitive examination for filling vacancy;
 provisional appointment.**

1 Whenever there are urgent reasons for filling a vacancy in
 2 any position of correctional officer and there is no list of
 3 persons eligible for appointment after a competitive
 4 examination, the appointing sheriff may nominate a person
 5 to the civil service commission for noncompetitive
 6 examination; and if such nominee shall be certified by the
 7 commission as qualified, after such noncompetitive

8 examination and a medical examination, he may be
9 appointed provisionally to fill such vacancy until a
10 selection and appointment can be made after competitive
11 examination in the manner prescribed in section eleven of
12 this article; but the provisional appointment shall not
13 continue for a longer period than three months, nor shall
14 successive provisional appointments be made to the same
15 position, under the provisions of this section.

§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions of correctional officer on and after
2 the effective date of this article, shall be filled, so far as
3 practicable by promotion from among persons holding
4 positions in the next lower grade. Promotions shall be based
5 upon merit and fitness to be ascertained by competitive
6 examinations to be provided by the civil service commission
7 and upon the superior qualifications of the persons
8 promoted, as shown by their previous service and
9 experience: *Provided*, That no person shall be eligible for
10 promotion from the lower grade to the next higher grade
11 until such person shall have completed at least two years'
12 service in the next lower grade.

§7-14B-14. No inquiry shall be made concerning political or religious opinions or affiliations of applicants, etc.

1 No question in any form of application or in or during any
2 examination shall be so framed as to elicit information
3 concerning the political or religious opinions or affiliations
4 of any applicant; nor shall inquiry be made concerning such
5 opinions or affiliations; and all disclosures thereof shall be
6 discountenanced. No discrimination shall be exercised,
7 threatened, or promised by any person in the sheriff's office
8 against, or in favor of, an applicant, eligible or correctional
9 officer in the office of any sheriff of any county subject to
10 the provisions of this article because of his political or
11 religious opinions or affiliations.

§7-14B-15. Political activity of correctional officers prohibited; petition for vacating appointment; action on petition; appeal.

1 (a) On and after the effective date of this article, no

2 correctional officer covered by the provisions of this article
3 shall engage in any political activity of any kind, character
4 or nature whatsoever, except to cast his vote at any election
5 or shall act as an election official in any municipal, county
6 or state election. Any correctional officer violating the
7 provisions of this section shall have his appointment
8 vacated and he shall be removed, in accordance with the
9 pertinent provisions of this section.

10 (b) Any three residents of the county may file their
11 written petition with the civil service commission thereof
12 setting out therein the grounds upon which a correctional
13 officer of such county should be removed for a violation of
14 subsection (a) of this section. Notice of the filing of such
15 petition shall be given by the commission to the accused
16 correctional officer, which notice shall require him to file a
17 written answer to the charges set out in the petition within
18 thirty days of the date of such notice. The petition and
19 answer thereto, if any, shall be entered upon the records of
20 the civil service commission. If the answer is not filed
21 within the time stated, or any extension thereof for cause
22 which in the discretion of the civil service commission may
23 be granted, an order shall be entered by the commission
24 declaring the appointment of the correctional officer
25 vacated. If such answer is filed within the time stated, or
26 any extension thereof for cause which in the discretion of
27 the civil service commission may be granted, the accused
28 correctional officer may demand within such period a
29 public hearing on the charges, or the civil service
30 commission may, in its discretion and without demand
31 therefor, set a date and time for a public hearing on the
32 charges which hearing shall be within thirty days of the
33 filing of said answer, subject, however, to any continuances
34 which may in the discretion of the civil service commission
35 be granted. A written record of all testimony taken at such
36 hearing shall be kept and preserved by the civil service
37 commission, which record shall be sealed and not be open to
38 public inspection if no appeal be taken from the action of
39 the commission. The commission at the conclusion of the
40 hearing, or as soon thereafter as possible, shall enter an
41 order sustaining in whole or in part the charges made, or
42 shall dismiss the charges as unfounded. In the event the
43 charges are sustained in whole or in part, the order shall

44 also declare the appointment of such correctional officer to
45 be vacated and thereupon the sheriff shall immediately
46 remove the correctional officer from his office and from the
47 payroll of the county. Notice of the action of the commission
48 shall be given by registered letter to the county commission
49 and the sheriff. If the sheriff fails to immediately comply
50 with the order of the commission, he shall be punished for
51 contempt, upon application of the commission to the circuit
52 court of the county.

53 (c) An appeal from the ruling of the commission may be
54 had in the same manner and within the same time as
55 specified in section seventeen of this article for an appeal
56 from a ruling of a commission after hearing held in
57 accordance with the provisions of said section seventeen.

**§7-14B-16. Training and retraining programs for all
correctional officers required.**

1 (a) The civil service commission of any such county shall
2 establish or prescribe a training program which every
3 correctional officer first appointed a correctional officer of
4 such county on or after the effective date of this article,
5 must satisfactorily complete during his probationary
6 period.

7 (b) The civil service commission of any such county
8 shall also establish or prescribe annual retraining programs
9 of at least forty hours which every correctional officer,
10 whether first appointed such correctional officer before or
11 after the effective date of this article, must satisfactorily
12 complete from time to time after the effective date of this
13 article, in order to continue as a correctional officer of such
14 county or to be eligible for promotion.

**§7-14B-17. Removal, discharge, suspension or reduction in
rank or pay; appeal; reduction in force;
mandatory retirement age.**

1 (a) On and after the effective date of this article, no
2 correctional officer of any county shall be removed,
3 discharged, suspended or reduced in rank or pay except for
4 just cause, which shall not be religious or political, except
5 as provided in section fifteen of this article; and no such
6 correctional officer shall on and after the effective date of
7 this article, be removed, discharged, suspended or reduced
8 except as provided in this article and in no event until he

9 shall have been furnished with a written statement of the
10 reasons for such action. In every case of such removal,
11 discharge, suspension or reduction, a copy of the statement
12 of reasons therefor and of the written answer thereto, if the
13 correctional officer sought to be removed, discharged,
14 suspended or reduced desires to file such written answer,
15 shall be furnished to the civil service commission and
16 entered upon its records. If the correctional officer sought
17 to be removed, discharged, suspended or reduced shall
18 demand it, the civil service commission shall grant him a
19 public hearing, which hearing shall be held within a period
20 of ten days from the filing of the charges in writing or the
21 written answer thereto, whichever shall last occur. At such
22 hearing the burden shall be upon the removing,
23 discharging, suspending or reducing sheriff, hereinafter in
24 this section referred to as "removing sheriff," to justify his
25 action, and in the event the removing sheriff fails to justify
26 his action before the commission, then the correctional
27 officer removed, discharged, suspended or reduced shall be
28 reinstated with full pay, forthwith and without any
29 additional order, for the entire period during which he may
30 have been prevented from performing his usual
31 employment, and no charges shall be officially recorded
32 against his record. The correctional officer, if reinstated or
33 exonerated, shall, if represented by legal counsel, be
34 awarded an attorney fee of no more than two hundred fifty
35 dollars and such fee shall be determined by the commission
36 and paid by the removing sheriff from county funds. A
37 written record of all testimony taken at such hearing shall
38 be kept and preserved by the civil service commission,
39 which record shall be sealed and not be open to public
40 inspection, if no appeal be taken from the action of the
41 commission.

42 (b) In the event that the civil service commission shall
43 sustain the action of the removing sheriff, the correctional
44 officer removed, discharged, suspended or reduced on or
45 after the effective date of this article, shall have an
46 immediate right of appeal to the circuit court of the county.
47 In the event that the commission shall reinstate the
48 correctional officer removed, discharged, suspended or
49 reduced, the removing sheriff shall have an immediate right
50 of appeal to said circuit court. Any appeal must be taken

51 within ninety days from the date of entry by the civil service
52 commission of its final order. Upon an appeal being taken
53 and docketed with the clerk of the circuit court of said
54 county, the circuit court shall proceed to hear the appeal
55 upon the original record made before the commission and
56 no additional proof shall be permitted to be introduced. The
57 circuit court's decision shall be final, but the correctional
58 officer or removing sheriff, as the case may be, against
59 whom the decision of the circuit court is rendered shall have
60 the right to petition the supreme court of appeals for a
61 review of the circuit court's decision as in other civil cases.
62 Such correctional officer or removing sheriff shall also have
63 the right, where appropriate, to seek in lieu of an appeal, a
64 writ of mandamus. The correctional officer, if reinstated or
65 exonerated by the circuit court shall, if represented by legal
66 counsel, be awarded an attorney fee not to exceed five
67 hundred dollars, and if reinstated or exonerated by the
68 supreme court of appeals, shall be awarded an attorney fee
69 not to exceed five hundred dollars, and such fees shall be
70 paid by the removing sheriff from county funds: *Provided*,
71 That the aggregate amount of attorney fees awarded by the
72 commission, the circuit court and the supreme court of
73 appeals, shall not exceed one thousand dollars for any
74 member litigant.

75 (c) The removing sheriff and the correctional officer
76 sought to be removed, discharged, suspended or reduced
77 shall at all times, both before the civil service commission
78 and upon appeal, be given the right to employ counsel to
79 represent them.

80 (d) If for reasons of economy or other reasons it shall, on
81 and after the effective date of this article, be deemed
82 necessary by any appointing sheriff to reduce the number of
83 his correctional officers, he shall follow the procedure set
84 forth in this subsection. The reduction in the numbers of the
85 correctional officers of the county shall be effected by
86 suspending the last man or men, including probationers,
87 who have been appointed as correctional officers:
88 *Provided*, That in the event the number of correctional
89 officers shall again be increased in numbers to the strength
90 existing prior to such reduction of correctional officers, the
91 correctional officers suspended under the terms of this
92 subsection shall be reinstated in the inverse order of their

93 suspension before any new appointments of correctional
94 officers in the county shall be made.

95 (e) Notwithstanding any other provision of this article,
96 no correctional officer in any county subject to the
97 provisions of this article shall, on or after the effective date
98 of this article, serve as a correctional officer in any county
99 subject to the provisions of this article after he attains the
100 age of sixty-five.

§7-14B-17a. Vacations for correctional officers.

1 The county commission of each county shall allow the
2 correctional officer in its employ vacation time accrued in
3 the following manner: For correctional officers with less
4 than five years of service, vacation time shall be accrued at
5 the rate of one and one-quarter days for each calendar
6 month of service; for correctional officers with five to ten
7 years of service, vacation time shall be accrued at the rate of
8 one and one-half days for each calendar month of service;
9 for correctional officers with ten to fifteen years of service,
10 vacation time shall be accrued at the rate of one and three-
11 quarters days for each calendar month of service; and for
12 correctional officers with fifteen or more years of service,
13 vacation time shall be accrued at the rate of two days for
14 each calendar month of service.

15 Each correctional officer shall only receive vacation time
16 for each month in which he shall have worked one hour
17 more than one half the normal working hours in a given
18 month as prescribed by the sheriff.

19 Accrued vacation time may be carried forward from one
20 calendar year to the next, in accordance with county policy.

§7-14B-17b. Sick leave.

1 (a) The county commission of each county shall allow
2 the correctional officer sick leave with pay to be computed
3 as follows: Correctional officers shall be entitled to one and
4 one-half days sick leave for each calendar month worked, or
5 greater part thereof.

6 (b) Sick leave shall be granted only when illness on the
7 part of or injury to the correctional officer incapacitates
8 him for duty: *Provided*, That the sheriff of the county in
9 which the correctional officer is employed shall have the
10 authority to require the correctional officer to produce a

11 statement from an attending physician for each day of sick
12 leave beyond two days. This statement shall include dates of
13 treatment and also state that the correctional officer was
14 unable to work. In the absence of the required physician's
15 statement, annual leave shall be charged for the entire
16 period.

17 (c) Correctional officers may accumulate yearly sick
18 leave in accordance with policy to be established by the
19 county commission.

20 (d) In the event of illness, a correctional officer may take
21 emergency sick leave without pay after all accrued sick
22 leave, annual leave and compensatory time available to
23 such full-time correctional officer has been exhausted:
24 *Provided*, That the total number of days sick leave and
25 emergency sick leave used during such illness shall not
26 exceed the total number of days of sick leave which may be
27 accumulated under the provisions of subsection (c) of this
28 section by any correctional officer with the same number of
29 years of service.

§7-14B-18. Offenses and penalties.

1 Any person who makes an appointment or promotion to
2 any position, or selects a person for employment, contrary
3 to the provisions of this article, or willfully refuses or
4 neglects otherwise to comply with, or to conform to, any of
5 the provisions of this article, or violates any of such
6 provisions, shall be deemed guilty of a misdemeanor.

7 Any commissioner or examiner, or any other person, who
8 shall willfully, by himself or in cooperation with one or
9 more persons, defeat, deceive or obstruct any person with
10 respect to his right of examination or registration according
11 to this article, or to any rules and regulations promulgated
12 pursuant thereto, or who shall willfully or corruptly, falsely
13 mark, grade, estimate or report upon such examination or
14 proper standing of any person so examined, registered, or
15 certified, pursuant to the provisions of this article, or aid in
16 so doing, or who shall willfully or corruptly furnish to any
17 person any special or secret information, for the purpose of
18 either improving or injuring the prospects or chances of
19 appointment or promotion to any position of any person so
20 examined, registered or certified, or to be so examined,
21 registered, or certified; or who shall impersonate any other
22 person, or permit or aid in any manner any other person to

23 impersonate him, in connection with any examination or
24 registration, or application or request to be examined or
25 registered, shall, for each offense, be deemed guilty of a
26 misdemeanor.

27 Any person convicted of any such misdemeanor offense
28 shall be fined not less than fifty nor more than one thousand
29 dollars, or imprisoned in the county jail not more than one
30 year, or both fine and imprisoned, in the discretion of the
31 court.

**§7-14B-19. County commission of counties with a population
of less than twenty-five thousand may place
correctional officers under civil service; protest
and election with respect thereto.**

1 The county commission of any county having a
2 population of less than twenty-five thousand may by order
3 entered of record provide that the provisions of this article
4 providing civil service for correctional officers shall apply
5 to such county on and after the effective date of this article.

6 A copy of such order, together with a notice advising the
7 qualified voters of such county of their right to protest the
8 placing of correctional officers of such county under civil
9 service, shall be published as a Class II-0 legal
10 advertisement in compliance with the provisions of article
11 three, chapter fifty-nine of this code and the publication
12 area for such publication shall be the county.

13 In the event fifteen percent of the qualified voters of such
14 county protest such order, by petition duly signed by them
15 in their own handwriting (which petition may be signed in
16 any number of counterparts) and filed with the county clerk
17 of such county within sixty days after publication of such
18 copy and notice, such order shall not become effective
19 unless and until it is ratified by a majority of the legal votes
20 cast with respect to the question of civil service coverage for
21 the correctional officers of such county by the qualified
22 voters of such county at a regular or special election. Any
23 such election shall be conducted and superintended and the
24 results thereof ascertained as provided by law for regular or
25 special elections, as the case may be.

26 Whenever the correctional officers of any county are
27 placed under civil service pursuant to the provisions of this
28 section, such civil service system for the correctional
29 officers of such county shall thereupon become mandatory

30 and all of the provisions of this article shall apply to the
31 correctional officers of such county with like effect as if said
32 county had a population of twenty-five thousand or more.

§7-14B-20. Inconsistent acts repealed; once established civil service remains mandatory.

1 All acts and parts of acts of the Legislature, whether
2 general, special or local, in relation to correctional officers
3 inconsistent with the provisions of this article shall be, and
4 the same are; hereby repealed to the extent of such
5 inconsistency.

6 Any civil service system for correctional officers in any
7 county with a population of twenty-five thousand or more
8 shall remain mandatory and shall be governed by the
9 provisions of this article even if the population of such
10 county shall at any time decrease below twenty-five
11 thousand.

§7-14B-21. Severability.

1 If any provision of this article or its application to any
2 person or circumstance is held unconstitutional or invalid,
3 such unconstitutionality or invalidity shall not affect other
4 provisions or applications of this article, and to this end the
5 provisions of this article are hereby declared to be
6 severable.

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

Carroll E. Adams
.....
Chairman Senate Committee

Donald Anello
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jedidiah C. Smith
.....
Clerk of the Senate

Donald L. Kopp
.....
Clerk of the House of Delegates

Waverly P. McCreary
.....
President of the Senate

Henry M. Lee Jr.
.....
Speaker House of Delegates

The within *is approved* this the *29*
day of *March*, 1983.

..... *John A. Poyner*
Governor

RECEIVED

83 MAR 31 AID: 44

OFFICE
SECY. OF STATE