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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

HOUSE BILL No. 2908

(By ~~Mr.~~ *Delegates Flanigan and J. Martin*)

— ● —

Passed March 8, 1991

In Effect 90 Days from Passage

ENROLLED
H. B. 2908

(By DELEGATES FLANIGAN AND J. MARTIN)

[Passed March 8, 1991; in effect ninety days from passage.]

AN ACT to repeal sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one of said article; to amend and reenact section ten, article nine of said chapter; and to amend and reenact section nine, article twelve, chapter sixty-two, relating to circuit court judges; providing twenty-third circuit with three judges; reconstituting eleventh and thirty-first circuits; providing for concurrent jurisdiction as to single judge circuits; providing for term of office for new judges; providing that supreme court shall set terms of court; providing for a panel of senior judges; payment of senior judges; and conditions of probation.

Be it enacted by the Legislature of West Virginia:

That sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one of said article be amended and reenacted; that section ten, article nine of said chapter be amended and reenacted; and that section nine, article twelve, chapter sixty-two be amended and reenacted to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following
2 judicial circuits with the following number of judges:

3 The counties of Brooke, Hancock and Ohio shall
4 constitute the first circuit and shall have four judges;
5 the counties of Marshall, Tyler and Wetzel shall
6 constitute the second circuit and shall have two judges;
7 the counties of Doddridge, Pleasants and Ritchie shall
8 constitute the third circuit and shall have one judge; the
9 counties of Wood and Wirt shall constitute the fourth
10 circuit and shall have three judges; the counties of
11 Calhoun, Jackson and Roane shall constitute the fifth
12 circuit and shall have one judge; the county of Cabell
13 shall constitute the sixth circuit and shall have four
14 judges; the county of Logan shall constitute the seventh
15 circuit and shall have two judges; the county of
16 McDowell shall constitute the eighth circuit and shall
17 have two judges; the county of Mercer shall constitute
18 the ninth circuit and shall have two judges; the county
19 of Raleigh shall constitute the tenth circuit and shall
20 have three judges; the counties of Greenbrier and
21 Pocahontas shall constitute the eleventh circuit and shall
22 have two judges; the county of Fayette shall constitute
23 the twelfth circuit and shall have two judges; the county
24 of Kanawha shall constitute the thirteenth circuit and
25 shall have seven judges; the counties of Braxton, Clay,
26 Gilmer and Webster shall constitute the fourteenth
27 circuit and shall have two judges; the county of Harrison
28 shall constitute the fifteenth circuit and shall have two
29 judges; the county of Marion shall constitute the
30 sixteenth circuit and shall have two judges; the county
31 of Monongalia shall constitute the seventeenth circuit
32 and shall have two judges; the county of Preston shall
33 constitute the eighteenth circuit and shall have one
34 judge; the counties of Barbour and Taylor shall consti-
35 tute the nineteenth circuit and shall have one judge; the
36 county of Randolph shall constitute the twentieth circuit
37 and shall have one judge; the counties of Grant, Mineral
38 and Tucker shall constitute the twenty-first circuit and

39 shall have two judges; the counties of Hampshire, Hardy
40 and Pendleton shall constitute the twenty-second circuit
41 and shall have one judge; the counties of Berkeley,
42 Jefferson and Morgan shall constitute the twenty-third
43 circuit and shall have three judges; the county of Wayne
44 shall constitute the twenty-fourth circuit and shall have
45 one judge; the counties of Lincoln and Boone shall
46 constitute the twenty-fifth circuit and shall have two
47 judges; the counties of Lewis and Upshur shall consti-
48 tute the twenty-sixth circuit and shall have one judge;
49 the county of Wyoming shall constitute the twenty-
50 seventh circuit and shall have one judge; the county of
51 Nicholas shall constitute the twenty-eighth circuit and
52 shall have one judge; the counties of Mason and Putnam
53 shall constitute the twenty-ninth circuit and shall have
54 two judges; the county of Mingo shall constitute the
55 thirtieth circuit and shall have one judge; and the
56 counties of Monroe and Summers shall constitute the
57 thirty-first circuit and shall have one judge: *Provided,*
58 That the Kanawha County circuit court shall be a court
59 of concurrent jurisdiction with each single judge circuit
60 where the sitting judge in such single judge circuit is
61 unavailable by reason of sickness, vacation or other
62 reason.

63 The term of office of the second and third circuit court
64 judges of the twenty-third circuit created by the
65 provisions of this section shall commence on the first day
66 of January, one thousand nine hundred and ninety-three.
67 Any judge in office at the time of the effective date of
68 this section shall continue as a judge of the circuit as
69 constituted under prior enactments of this section,
70 unless sooner removed or retired as provided by law,
71 until the thirty-first day of December, one thousand nine
72 hundred ninety-two.

73 (b) The terms of office of all circuit court judges shall
74 be for eight years, the first commencing on the first day
75 of January, one thousand nine hundred eighty-five, and
76 ending on the thirty-first day of December, one thousand
77 nine hundred ninety-two. Subsequent terms of said
78 judges shall be for eight years.

79 (c) Beginning with the primary and general elections

80 to be conducted in the year one thousand nine hundred
81 ninety-two, in all judicial circuits having two or more
82 judges there shall be, for election purposes, numbered
83 divisions corresponding to the number of circuit judges
84 in each circuit. Each judge shall be elected at large from
85 the entire circuit. In each numbered division of a
86 judicial circuit, the candidates for nomination or
87 election shall be voted upon and the votes cast for the
88 candidates in each division shall be tallied separately
89 from the votes cast for candidates in other numbered
90 divisions within the circuit. The candidate receiving the
91 highest number of the votes cast within a numbered
92 division shall be nominated or elected, as the case may
93 be.

94 (d) The supreme court shall, by rule, establish the
95 terms of court of circuit judges. Until such rule is
96 effective, terms of court shall continue to be set in
97 accordance with the last enactment of sections one-a
98 through one-ee of this article prior to the repeal of such
99 sections.

§51-9-10. Services of senior judges.

1 The West Virginia Supreme Court of Appeals is
2 authorized and empowered to create a panel of senior
3 judges to utilize the talent and experience of former
4 circuit court judges and supreme court justices of this
5 state. The supreme court of appeals shall promulgate
6 rules providing for said judges and justices to be
7 assigned duties as needed and as feasible toward the
8 objective of reducing caseloads and providing speedier
9 trials to litigants throughout the state: *Provided*, That
10 reasonable payment shall be made to said judges and
11 justices on a per diem basis: *Provided, however*, That the
12 per diem and retirement compensation of a senior judge
13 shall not exceed the salary of a sitting judge, and
14 allowances shall also be made for necessary expenses as
15 provided for special judges under articles two and nine
16 of this chapter.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

1 Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any
5 other state, or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which
8 placed him on probation.

9 (3) That he shall comply with the rules and regula-
10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 In addition, the court may impose, subject to modifi-
14 cation at any time, any other conditions which it may
15 deem advisable, including, but not limited to, any of the
16 following:

17 (1) That he shall make restitution or reparation, in
18 whole or in part, immediately or within the period of
19 probation, to any party injured by the crime for which
20 he has been convicted.

21 (2) That he shall pay any fine assessed and the costs
22 of the proceeding in such installments as the court may
23 direct.

24 (3) That he shall make contribution from his earnings,
25 in such sums as the court may direct, for the support
26 of his dependents.

27 (4) That he shall, in the discretion of the court, be
28 required to serve a period of confinement in the county
29 jail of the county in which he was convicted for a period
30 not to exceed one third of the minimum sentence
31 established by law or one third of the least possible
32 period of confinement in an indeterminate sentence, but
33 in no case shall such period of confinement exceed six
34 consecutive months. The court shall have authority to
35 sentence the defendant within such six-month period to
36 intermittent periods of confinement including, but not
37 limited to, weekends or holidays and may grant unto the

38 defendant intermittent periods of release in order that
39 he may work at his employment or for such other
40 reasons or purposes as the court may deem appropriate:
41 *Provided*, That the provisions of article eleven-a of this
42 chapter shall not apply to such intermittent periods of
43 confinement and release except to the extent that the
44 court may direct. If a period of confinement is required
45 as a condition of probation, the court shall make special
46 findings that other conditions of probation are inadequate and that a period of confinement is necessary.

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

Homer Heck

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Barrett E. Holmes

Clerk of the Senate

Donald G. Kopp

Clerk of the House of Delegates

Kurt Buntz

President of the Senate

Robert C. Hall

Speaker of the House of Delegates

The within *is approved* this the *14*
day of *April* 1991.

Gaston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/91

Time

9:50 am