

**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2012**

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 471**

(SENATORS PALUMBO, LAIRD,  
TUCKER, EDGELL, WILLS, UNGER, YOST, KLEMPA  
AND KESSLER (MR. PRESIDENT), ORIGINAL SPONSORS)

[PASSED MARCH 7, 2012; IN EFFECT FROM PASSAGE.]

OFFICE OF THE  
SECRETARY OF STATE  
WEST VIRGINIA

2012 MAR 20 PM 4:01

FILED

SB 471

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[Passed March 7, 2012; in effect from passage.]

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AN ACT to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the West Virginia Supreme Court of Appeals to establish a reasonable rate of compensation for mental hygiene services; and establishing a payment procedure for the compensation.

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

That §27-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1. Appointment of Mental Hygiene Commissioner; duties of Mental Hygiene Commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.**

- 1 (a) *Appointment of Mental Hygiene Commissioners.* —
- 2 The chief judge in each judicial circuit of this state shall

3 appoint a competent attorney and may, if necessary, appoint  
4 additional attorneys to serve as Mental Hygiene Commis-  
5 sioners to preside over involuntary hospitalization hearings.  
6 Mental Hygiene Commissioners shall be persons of good  
7 moral character and of standing in their profession and they  
8 shall, before assuming the duties of such commissioner, take  
9 the oath required of other special commissioners as provided  
10 in article one, chapter six of this code.

11 All persons newly appointed to serve as Mental Hygiene  
12 Commissioners shall attend and complete an orientation  
13 course, within one year of their appointment, consisting of at  
14 least three days of training provided annually by the Su-  
15 preme Court of Appeals. In addition, existing Mental  
16 Hygiene Commissioners and any magistrates designated by  
17 the chief judge of a judicial circuit to hold probable cause  
18 and emergency detention hearings involving involuntary  
19 hospitalization shall attend and complete a course provided  
20 by the Supreme Court of Appeals, which course shall  
21 include, but not be limited to, instruction on the manifesta-  
22 tions of mental illness and addiction. Persons attending such  
23 courses outside the county of their residence shall be reim-  
24 bursed out of the budget of the Supreme Court — General  
25 Judicial for reasonable expenses incurred. The Supreme  
26 Court shall establish rules for such courses, including rules  
27 providing for the reimbursement of reasonable expenses as  
28 authorized herein.

29 (b) *Duties of Mental Hygiene Commissioners.* —

30 (1) Mental Hygiene Commissioners may sign and issue  
31 summonses for the attendance, at any hearing held pursuant  
32 to section four, article five of this chapter, of the individual  
33 sought to be committed; may sign and issue subpoenas for  
34 witnesses, including subpoenas duces tecum; may place any  
35 witness under oath; may elicit testimony from applicants,  
36 respondents and witnesses regarding factual issues raised in  
37 the petition; and may make findings of fact on evidence and  
38 may make conclusions of law, but such findings and conclu-  
39 sions shall not be binding on the circuit court. All Mental  
40 Hygiene Commissioners shall be reasonably compensated at

41 a uniform rate determined by the Supreme Court of Appeals.  
42 Mental Hygiene Commissioners shall submit all requests for  
43 compensation to the administrative director of the courts for  
44 payment. Mental Hygiene Commissioners shall discharge  
45 their duties and hold their offices at the pleasure of the chief  
46 judge of the judicial circuit in which he or she is appointed  
47 and may be removed at any time by such chief judge. It shall  
48 be the duty of a Mental Hygiene Commissioner to conduct  
49 orderly inquiries into the mental health of the individual  
50 sought to be committed concerning the advisability of  
51 committing the individual to a mental health facility. The  
52 Mental Hygiene Commissioner shall safeguard, at all times,  
53 the rights and interests of the individual as well as the  
54 interests of the state. The Mental Hygiene Commissioner  
55 shall make a written report of his or her findings to the  
56 circuit court. In any proceedings before any court of record  
57 as set forth in this article, the court of record shall appoint  
58 an interpreter for any individual who is deaf or cannot speak  
59 or who speaks a foreign language and who may be subject to  
60 involuntary commitment to a mental health facility.

61 . (2) A Mental Hygiene Commissioner appointed by the  
62 circuit court of one county or multiple county circuit may  
63 serve in such capacity in a jurisdiction other than that of his  
64 or her original appointment if such be agreed upon by the  
65 terms of a cooperative agreement between the circuit courts  
66 and county commissions of two or more counties entered into  
67 to provide prompt resolution of mental hygiene matters  
68 during noncourt hours or on nonjudicial days.

69 (c) *Duties of prosecuting attorney.* — It shall be the duty  
70 of the prosecuting attorney or one of his or her assistants to  
71 represent the applicants in all final commitment proceedings  
72 filed pursuant to the provisions of this article. The prosecut-  
73 ing attorney may appear in any proceeding held pursuant to  
74 the provisions of this article if he or she deems it to be in the  
75 public interest.

76 (d) *Duties of sheriff.* — Upon written order of the circuit  
77 court, Mental Hygiene Commissioner or magistrate in the  
78 county where the individual formally accused of being

79 mentally ill or addicted is a resident or is found, the sheriff  
80 of that county shall take said individual into custody and  
81 transport him or her to and from the place of hearing and the  
82 mental health facility. The sheriff shall also maintain  
83 custody and control of the accused individual during the  
84 period of time in which the individual is waiting for the  
85 involuntary commitment hearing to be convened and while  
86 such hearing is being conducted: *Provided*, That an individ-  
87 ual who is a resident of a state other than West Virginia  
88 shall, upon a finding of probable cause, be transferred to his  
89 or her state of residence for treatment pursuant to subsection  
90 (p), section four of this article: *Provided, however*, That  
91 where an individual is a resident of West Virginia but not a  
92 resident of the county in which he or she is found and there  
93 is a finding of probable cause, the county in which the  
94 hearing is held may seek reimbursement from the county of  
95 residence for reasonable costs incurred by the county  
96 attendant to the mental hygiene proceeding. Notwithstand-  
97 ing any provision of this code to the contrary, sheriffs may  
98 enter into cooperative agreements with sheriffs of one or  
99 more other counties, with the concurrence of their respective  
100 circuit courts and county commissions, whereby transporta-  
101 tion and security responsibilities for hearings held pursuant  
102 to the provisions of this article during noncourt hours or on  
103 nonjudicial days may be shared in order to facilitate prompt  
104 hearings and to effectuate transportation of persons found in  
105 need of treatment.

106 (e) *Duty of sheriff upon presentment to mental health*  
107 *care facility.* — Where a person is brought to a mental health  
108 care facility for purposes of evaluation for commitment  
109 under this article, if he or she is violent or combative, the  
110 sheriff or his or her designee shall maintain custody of the  
111 person in the facility until the evaluation is completed or the  
112 county commission shall reimburse the mental health care  
113 facility at a reasonable rate for security services provided by  
114 the mental health care facility for the period of time the  
115 person is at the hospital prior to the determination of mental  
116 competence or incompetence.

117       (f) *Duties of Supreme Court of Appeals.* — The Supreme  
118 Court of Appeals shall provide uniform petition, procedure  
119 and order forms which shall be used in all involuntary  
120 hospitalization proceedings brought in this state.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

FILED

2012 MAR 20 PM 4:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

The within approved this the 20<sup>th</sup>  
March  
Day of ....., 2012.

.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 15 2012

Time 1:50pm