

1 **Senate Bill No. 38**

2 (By Senators Jenkins, Barnes, Plymale, Sypolt and D. Facemire)

3 _____
4 [Introduced January 12, 2011; referred to the Committee on the
5 Judiciary; and then to the Committee on Finance.]

6 _____
7
8
9
10 A BILL to amend and reenact §7-8-14 of the Code of West Virginia,
11 1931, as amended, relating to requiring defendants who are
12 sentenced to jail to pay the costs of incarceration; and
13 requiring the sentencing court to conduct a hearing at or
14 before sentencing to determine the individual's ability to pay
15 the costs.

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

17 That §7-8-14 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 8. JAIL AND JAILER.**

20 **§7-8-14. Reimbursement for costs of incarceration.**

21 (a) Notwithstanding any provision ~~to the~~ in this code to the
22 contrary and in addition to any fine, cost assessment or fee
23 authorized or required to be imposed upon a ~~person~~ defendant by

1 virtue of his or her conviction of a criminal provision of this
2 code, or a lawfully enacted ordinance of a political subdivision of
3 this state, a ~~person~~ defendant convicted and incarcerated in a
4 regional jail by virtue of ~~said the~~ conviction ~~may~~ shall, subject
5 to the provisions of this section, be assessed the costs of up to
6 thirty days of ~~his or her~~ the defendant's incarceration.

7 (b) Prior to any ~~person~~ defendant being required to pay the
8 cost of his or her incarceration pursuant to the provisions of
9 subsection (a) of this section, the sentencing court, at or before
10 sentencing, shall hold a hearing ~~shall be held before the~~
11 ~~sentencing court~~ to determine ~~his or her~~ the defendant's ability to
12 pay. The court may not sentence a defendant to pay his or her
13 costs of incarceration unless ~~he or she~~ the defendant is or in the
14 foreseeable future will be able to pay them. In determining the
15 amount and method of payment of costs, the court shall take account
16 of the financial resources of the defendant and the nature of the
17 burden that payment of costs will impose.

18 (c) A defendant who has been sentenced to pay costs and who is
19 not in willful default in the payment of the costs may at any time
20 petition the sentencing court for remission of the payment of costs
21 or of any unpaid portion of the costs. If it appears to the
22 satisfaction of the court that payment of the amount due will
23 impose manifest hardship on the defendant or the defendant's family
24 or dependents, the court may excuse payment of all or part of the

1 amount due in costs, or modify the method of payment.

NOTE: The purpose of this bill is to require a court to conduct a hearing at the time it sentences a defendant to jail to determine the defendant's ability to pay the costs of the defendant's incarceration. The bill requires the court to require the defendant to pay for up to thirty days of incarceration in jail if it finds the defendant is or will be able in the foreseeable future to pay.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.