

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 471**

5 (SENATORS PALUMBO, LAIRD, TUCKER, EDGELL, WILLS, UNGER, YOST, KLEMPA AND
6 KESSLER (MR. PRESIDENT), *original sponsors*)

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8 _____
9 [Passed March 7, 2012; in effect from passage.]
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12 AN ACT to amend and reenact §27-5-1 of the Code of West Virginia,
13 1931, as amended, relating to authorizing the West Virginia
14 Supreme Court of Appeals to establish a reasonable rate of
15 compensation for mental hygiene services; and establishing a
16 payment procedure for the compensation.

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

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

20 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

21 **§27-5-1. Appointment of Mental Hygiene Commissioner; duties of**
22 **Mental Hygiene Commissioner; duties of prosecuting**
23 **attorney; duties of sheriff; duties of Supreme Court**
24 **of Appeals; use of certified municipal law-enforcement**

1 **officers.**

2 (a) *Appointment of Mental Hygiene Commissioners.* -- The chief
3 judge in each judicial circuit of this state shall appoint a
4 competent attorney and may, if necessary, appoint additional
5 attorneys to serve as Mental Hygiene Commissioners to preside over
6 involuntary hospitalization hearings. Mental Hygiene Commissioners
7 shall be persons of good moral character and of standing in their
8 profession and they shall, before assuming the duties of such
9 commissioner, take the oath required of other special commissioners
10 as provided 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 course,
13 within one year of their appointment, consisting of at least three
14 days of training provided annually by the Supreme Court of Appeals.
15 In addition, existing Mental Hygiene Commissioners and any
16 magistrates designated by the chief judge of a judicial circuit to
17 hold probable cause and emergency detention hearings involving
18 involuntary hospitalization shall attend and complete a course
19 provided by the Supreme Court of Appeals, which course shall
20 include, but not be limited to, instruction on the manifestations
21 of mental illness and addiction. Persons attending such courses
22 outside the county of their residence shall be reimbursed out of
23 the budget of the Supreme Court -- General Judicial for reasonable
24 expenses incurred. The Supreme Court shall establish rules for

1 such courses, including rules providing for the reimbursement of
2 reasonable expenses as authorized herein.

3 (b) *Duties of Mental Hygiene Commissioners.* --

4 (1) Mental Hygiene Commissioners may sign and issue summonses
5 for the attendance, at any hearing held pursuant to section four,
6 article five of this chapter, of the individual sought to be
7 committed; may sign and issue subpoenas for witnesses, including
8 subpoenas duces tecum; may place any witness under oath; may elicit
9 testimony from applicants, respondents and witnesses regarding
10 factual issues raised in the petition; and may make findings of
11 fact on evidence and may make conclusions of law, but such findings
12 and conclusions shall not be binding on the circuit court. All
13 Mental Hygiene Commissioners shall be reasonably compensated at a
14 uniform rate determined by the Supreme Court of Appeals. Mental
15 Hygiene Commissioners shall submit all requests for compensation to
16 the administrative director of the courts for payment. Mental
17 Hygiene Commissioners shall discharge their duties and hold their
18 offices at the pleasure of the chief judge of the judicial circuit
19 in which he or she is appointed and may be removed at any time by
20 such chief judge. It shall be the duty of a Mental Hygiene
21 Commissioner to conduct orderly inquiries into the mental health of
22 the individual sought to be committed concerning the advisability
23 of committing the individual to a mental health facility. The
24 Mental Hygiene Commissioner shall safeguard, at all times, the

1 rights and interests of the individual as well as the interests of
2 the state. The Mental Hygiene Commissioner shall make a written
3 report of his or her findings to the circuit court. In any
4 proceedings before any court of record as set forth in this
5 article, the court of record shall appoint an interpreter for any
6 individual who is deaf or cannot speak or who speaks a foreign
7 language and who may be subject to involuntary commitment to a
8 mental health facility.

9 (2) A Mental Hygiene Commissioner appointed by the circuit
10 court of one county or multiple county circuit may serve in such
11 capacity in a jurisdiction other than that of his or her original
12 appointment if such be agreed upon by the terms of a cooperative
13 agreement between the circuit courts and county commissions of two
14 or more counties entered into to provide prompt resolution of
15 mental hygiene matters during noncourt hours or on nonjudicial
16 days.

17 (c) *Duties of prosecuting attorney.* -- It shall be the duty
18 of the prosecuting attorney or one of his or her assistants to
19 represent the applicants in all final commitment proceedings filed
20 pursuant to the provisions of this article. The prosecuting
21 attorney may appear in any proceeding held pursuant to the
22 provisions of this article if he or she deems it to be in the
23 public interest.

24 (d) *Duties of sheriff.* -- Upon written order of the circuit

1 court, Mental Hygiene Commissioner or magistrate in the county
2 where the individual formally accused of being mentally ill or
3 addicted is a resident or is found, the sheriff of that county
4 shall take said individual into custody and transport him or her to
5 and from the place of hearing and the mental health facility. The
6 sheriff shall also maintain custody and control of the accused
7 individual during the period of time in which the individual is
8 waiting for the involuntary commitment hearing to be convened and
9 while such hearing is being conducted: *Provided*, That an individual
10 who is a resident of a state other than West Virginia shall, upon
11 a finding of probable cause, be transferred to his or her state of
12 residence for treatment pursuant to subsection (p), section four of
13 this article: *Provided, however*, That where an individual is a
14 resident of West Virginia but not a resident of the county in which
15 he or she is found and there is a finding of probable cause, the
16 county in which the hearing is held may seek reimbursement from the
17 county of residence for reasonable costs incurred by the county
18 attendant to the mental hygiene proceeding. Notwithstanding any
19 provision of this code to the contrary, sheriffs may enter into
20 cooperative agreements with sheriffs of one or more other counties,
21 with the concurrence of their respective circuit courts and county
22 commissions, whereby transportation and security responsibilities
23 for hearings held pursuant to the provisions of this article during
24 noncourt hours or on nonjudicial days may be shared in order to

1 facilitate prompt hearings and to effectuate transportation of
2 persons found in need of treatment.

3 (e) *Duty of sheriff upon presentment to mental health care*
4 *facility.* -- Where a person is brought to a mental health care
5 facility for purposes of evaluation for commitment under this
6 article, if he or she is violent or combative, the sheriff or his
7 or her designee shall maintain custody of the person in the
8 facility until the evaluation is completed or the county commission
9 shall reimburse the mental health care facility at a reasonable
10 rate for security services provided by the mental health care
11 facility for the period of time the person is at the hospital prior
12 to the determination of mental competence or incompetence.

13 (f) *Duties of Supreme Court of Appeals.* -- The Supreme Court
14 of Appeals shall provide uniform petition, procedure and order
15 forms which shall be used in all involuntary hospitalization
16 proceedings brought in this state.