

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 471**

4 (By Senators Palumbo, Laird, Tucker, Edgell, Wills, Unger, Yost,  
5 Klempa and Kessler (Mr. President))

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7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported February 9, 2012.]  
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12 A Bill 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. ~~The~~  
13 ~~circuit court, by order entered of record, shall allow the~~  
14 ~~commissioner a reasonable fee for services rendered in connection~~  
15 ~~with each case.~~ All Mental Hygiene Commissioners shall be  
16 reasonably compensated at a uniform rate determined by the Supreme  
17 Court of Appeals. Mental Hygiene Commissioners shall submit all  
18 requests for compensation to the administrative director of the  
19 courts for payment. Mental Hygiene Commissioners shall discharge  
20 their duties and hold their offices at the pleasure of the chief  
21 judge of the judicial circuit in which he or she is appointed and  
22 may be removed at any time by such chief judge. It shall be the  
23 duty of a Mental Hygiene Commissioner to conduct orderly inquiries  
24 into the mental health of the individual sought to be committed

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

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

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

1 public interest.

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

1 transportation and security responsibilities for hearings held  
2 pursuant to the provisions of this article during noncourt hours or  
3 on nonjudicial days may be shared in order to facilitate prompt  
4 hearings and to effectuate transportation of persons found in need  
5 of treatment.

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

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