

H. B. 4292

(By Delegates Miley, Frazier, Longstreth,
Barill, Jones and Manchin

[By the Request of the Supreme Court of Appeals]

[Introduced January 25, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A Bill 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 fee 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.**

(a) *Appointment of Mental Hygiene Commissioners.* -- The chief

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

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

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

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

1 times, the rights and interests of the individual as well as the
2 interests of the state. The mental hygiene commissioner shall make
3 a written report of his or her findings to the circuit court. In
4 any 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
10 individual who is a resident of a state other than West Virginia
11 shall, upon a finding of probable cause, be transferred to his or
12 her state of residence for treatment pursuant to ~~the provisions of~~
13 subsection (p), section four of this article: *Provided, however*,
14 That where an individual is a resident of West Virginia but not a
15 resident of the county in which he or she is found and there is a
16 finding of probable cause, the county in which the hearing is held
17 may seek reimbursement from the county of residence for reasonable
18 costs incurred by the county attendant to the mental hygiene
19 proceeding. Notwithstanding any provision of this code to the
20 contrary, sheriffs may enter into cooperative agreements with
21 sheriffs of one or more other counties, with the concurrence of
22 their respective circuit courts and county commissions, whereby
23 transportation and security responsibilities for hearings held
24 pursuant to the provisions of this article during noncourt hours or

1 on nonjudicial days may be shared in order to facilitate prompt
2 hearings and to effectuate transportation of persons found in need
3 of treatment.

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

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

NOTE: The purpose of this bill is to authorize the Supreme Court of Appeals to establish a reasonable rate of compensation for mental hygiene services instead of a circuit court. The bill also requires Mental Hygiene Commissioners to submit compensation requests to the administrative director of the courts for payment.

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

be added.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the West Virginia Supreme Court of Appeals.