

**Senate Bill No. 471**

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

[Introduced February 1, 2012; referred to the Committee on the  
Judiciary; and then to the Committee on 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**

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

1 expenses incurred. The Supreme Court shall establish rules for  
2 such courses, including rules providing for the reimbursement of  
3 reasonable expenses as authorized herein.

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

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

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

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

21 (c) *Duties of prosecuting attorney.* -- It shall be the duty  
22 of the prosecuting attorney or one of his or her assistants to  
23 represent the applicants in all final commitment proceedings filed

1 pursuant to the provisions of this article. The prosecuting  
2 attorney may appear in any proceeding held pursuant to the  
3 provisions of this article if he or she deems it to be in the  
4 public interest.

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

1 proceeding. Notwithstanding any provision of this code to the  
2 contrary, sheriffs may enter into cooperative agreements with  
3 sheriffs of one or more other counties, with the concurrence of  
4 their respective circuit courts and county commissions, whereby  
5 transportation and security responsibilities for hearings held  
6 pursuant to the provisions of this article during noncourt hours or  
7 on nonjudicial days may be shared in order to facilitate prompt  
8 hearings and to effectuate transportation of persons found in need  
9 of treatment.

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

21       (f) *Duties of Supreme Court of Appeals.* -- The Supreme Court  
22 of Appeals shall provide uniform petition, procedure and order  
23 forms which shall be used in all involuntary hospitalization

1 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.