

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 261**

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

Reported on February 11, 2019]

1 A BILL to amend and reenact §50-1-2, §50-1-6, and §50-1-9a of the Code of West Virginia, 1931,  
2 as amended, all relating generally to magistrate courts; establishing the number of  
3 magistrates to serve in each county of the state; providing immediately for one additional  
4 magistrate than is currently serving to serve in Berkeley County; providing immediately for  
5 one additional magistrate than is currently serving to serve in Jefferson County; providing  
6 for one additional magistrate in than is currently serving to serve Logan County beginning  
7 on July 1, 2019; providing for one additional magistrate than is currently serving to serve  
8 in Monongalia County beginning on July 1, 2019; providing immediately for one additional  
9 magistrate than is currently serving to serve in Putnam County; providing for election of  
10 one less magistrate than is currently serving by eliminating one magisterial office in  
11 McDowell County beginning on January 1, 2021; providing for the initial filling of vacancies  
12 in newly created magisterial offices; and increasing the total number of magistrate court  
13 deputy clerks that may be appointed in the state.

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

**ARTICLE 1. COURTS AND OFFICERS.**

**§50-1-2. Number of magistrates.**

- 1 (a) Upon the effective date of this section, the number of magistrates serving in each  
2 county shall be as follows:
- 3 (1) Barbour County shall have two magistrates.
  - 4 (2) Berkeley County shall have six magistrates.
  - 5 (3) Boone County shall have two magistrates.
  - 6 (4) Braxton County shall have two magistrates.
  - 7 (5) Brooke County shall have two magistrates.
  - 8 (6) Cabell County shall have seven magistrates.
  - 9 (7) Calhoun County shall have two magistrates.
  - 10 (8) Clay County shall have two magistrates.

CS for SB 261

- 11           (9) Doddridge County shall have two magistrates.
- 12           (10) Fayette County shall have four magistrates.
- 13           (11) Gilmer County shall have two magistrates.
- 14           (12) Grant County shall have two magistrates.
- 15           (13) Greenbrier County shall have three magistrates.
- 16           (14) Hampshire County shall have two magistrates.
- 17           (15) Hancock County shall have three magistrates.
- 18           (16) Hardy County shall have two magistrates.
- 19           (17) Harrison County shall have five magistrates.
- 20           (18) Jackson County shall have two magistrates.
- 21           (19) Jefferson County shall have four magistrates.
- 22           (20) Kanawha County shall have ten magistrates.
- 23           (21) Lewis County shall have two magistrates.
- 24           (22) Lincoln County shall have two magistrates.
- 25           (23) Logan County shall have three magistrates, except that beginning on July 1, 2019,
- 26 Logan County shall have four magistrates.
- 27           (24) Marion County shall have four magistrates.
- 28           (25) Marshall County shall have three magistrates.
- 29           (26) Mason County shall have two magistrates.
- 30           (27) McDowell County shall have three magistrates, except that beginning on January 1,
- 31 2021, McDowell County shall have two magistrates.
- 32           (28) Mercer County shall have five magistrates.
- 33           (29) Mineral County shall have two magistrates.
- 34           (30) Mingo County shall have three magistrates.

- 35           (31) Monongalia County shall have four magistrates, except that beginning on July 1,  
36 2019, Monongalia County shall have five magistrates.
- 37           (32) Monroe County shall have two magistrates.
- 38           (33) Morgan County shall have two magistrates.
- 39           (34) Nicholas County shall have three magistrates.
- 40           (35) Ohio County shall have four magistrates.
- 41           (36) Pendleton County shall have two magistrates.
- 42           (37) Pleasants County shall have two magistrates.
- 43           (38) Pocahontas County shall have two magistrates.
- 44           (39) Preston County shall have three magistrates.
- 45           (40) Putnam County shall have four magistrates.
- 46           (41) Raleigh County shall have five magistrates.
- 47           (42) Randolph County shall have three magistrates.
- 48           (43) Ritchie County shall have two magistrates.
- 49           (44) Roane County shall have two magistrates.
- 50           (45) Summers County shall have two magistrates.
- 51           (46) Taylor County shall have two magistrates.
- 52           (47) Tucker County shall have two magistrates.
- 53           (48) Tyler County shall have two magistrates.
- 54           (49) Upshur County shall have two magistrates.
- 55           (50) Wayne County shall have three magistrates.
- 56           (51) Webster County shall have two magistrates.
- 57           (52) Wetzel County shall have two magistrates.
- 58           (53) Wirt County shall have two magistrates.

59 (54) Wood County shall have four magistrates.

60 (55) Wyoming County shall have three magistrates.

61 (b) Initial appointment. – Magistrates shall be appointed to fill initial vacancies in the  
62 magisterial offices created by the amendments to this section during the 2019 Regular Session  
63 according to the requirements of §50-1-6 of this code. Thereafter, magistrates shall be elected to  
64 such offices as required by §50-1-1 of this code.

**§50-1-6. Vacancy in office of magistrate.**

1 (a) Subject to the provisions of ~~section one, article ten, chapter three of this code~~ §3-10-1  
2 and §3-10-3 of this code, when a vacancy occurs in the office of magistrate or when an additional  
3 magisterial office is created by statute to commence before the expiration of the term of office for  
4 sitting magistrates, the judge of the circuit court, or the chief judge thereof if there is more than  
5 one judge of the circuit court, shall fill the same by appointment.

6 (b) At a nonpartisan judicial election in which a magistrate is elected for an unexpired term,  
7 the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall  
8 cause a notice of such election to be published prior to such election as a Class II-0 legal  
9 advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the  
10 publication area for such publication shall be the county involved.

**§50-1-9a. Magistrate court deputy clerks; duties; salary.**

1 (a) Whenever required by workload and upon the recommendation of the judge of the  
2 circuit court, or the chief judge of the circuit court if there is more than one judge of the circuit  
3 court, the Supreme Court of Appeals may, by rule, provide for the appointment of magistrate court  
4 deputy clerks, not to exceed ~~seventy-two~~ 77 in number. The magistrate court deputy clerks shall  
5 be appointed by the judge of the circuit court, or the chief judge if there is more than one judge of  
6 the circuit court, to serve at his or her will and pleasure under the immediate supervision of the

7 magistrate court clerk.

8 (b) Magistrate court deputy clerks shall have the duties, clerical or otherwise, as may be  
9 assigned by the magistrate court clerk and as may be prescribed by the rules of the Supreme  
10 Court of Appeals or the judge of the circuit court or the chief judge, if there is more than one judge  
11 of the circuit court. Magistrate court deputy clerks may also exercise the power and perform the  
12 duties of the magistrate court clerk as may be delegated or assigned by the magistrate court clerk.

13 (c) A magistrate court deputy clerk may not be an immediate family member of any  
14 magistrate, magistrate court clerk, magistrate assistant, or judge of the circuit court within the  
15 same county; may not have been convicted of a felony or any misdemeanor involving moral  
16 turpitude; and must reside in this state. For purposes of this subsection, "immediate family  
17 member" means a mother, father, sister, brother, child, or spouse.

18 (d) Magistrate court deputy clerks shall be paid an annual salary by the state on the same  
19 basis and in the same amounts established for magistrate assistants in each county, as provided  
20 in §50-1-9 of this code.

21 (e) Notwithstanding any provision of this code to the contrary, the amendments made to  
22 section nine of this article during the 2013 First Extraordinary Session, and the effects of those  
23 amendments on subsection (d) of this section, are effective upon passage and are retroactive to  
24 January 1, 2013.

25 (f) Beginning January 1, 2017, the annual salary of all magistrate court deputy clerks is  
26 \$39,348. After the effective date of this section, a general salary increase granted to state  
27 employees, whose salaries are not set by statute, expressed as a percentage increase or an  
28 across-the-board increase, may also be granted to magistrate court deputy clerks.

NOTE: The purpose of this bill is to codify the number of magistrates serving in the state and within each county following the 2020 election cycle and to increase the number of magistrate court deputy clerks that may be appointed in the state.

§50-1-2 has been completely rewritten; therefore, it has been completely underscored.

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