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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2259

(By Delegate Staton, Fleischauer,
Amores and Faircloth)



Passed April 12, 1997

In Effect Ninety Days From Passage

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H. B. 2259

(BY DELEGATES STATON, FLEISCHAUER, AMORES AND FAIRCLOTH)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact section six, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two of said chapter; to amend and reenact section two-a, article three of said chapter; to amend and reenact sections two and seven, article four of said chapter; to amend and reenact section nine, article five of said chapter; to amend and reenact section five, article one, chapter sixty-two of said code; and to amend and reenact section five, article one-c of said chapter, all relating to magistrate courts generally; to vacancies in the office of magistrate; to venue and change of venue in magistrate court criminal cases; enforcement of payment of costs, fines, fees, forfeitures, restitution or penalties imposed by magistrates in criminal cases; payment by credit card; circumstances under which payment may be made in installments; suspension of privilege to drive a motor vehicle if payment in full is not timely made; procedure for obtaining a license to drive for employment purposes; suspension of privilege to hunt if payment in full of amount imposed for hunting violation is not timely made; suspension of privilege to fish if payment in full of amount imposed for fishing violation is not timely made; enforcement of requirement to appear or respond in criminal cases; suspension of privilege to drive motor vehicle if defendant in criminal case fails to timely appear or respond when required until final judgment, and, if

convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to hunt if defendant charged with hunting violation fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to fish if defendant charged with fishing violation fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; authority of magistrate to order restitution in criminal cases; duties of magistrate clerk to issue and deliver abstracts of unpaid judgments and releases of judgments; duties of prosecuting attorney to file abstracts and releases of judgments; duties of county clerk to record and index abstracts and releases of judgments; commencement of criminal prosecutions; procedures to be followed when disqualification of magistrate asserted; time requirement to render a finding of guilty or not guilty and impose a sentence in a magistrate criminal case; procedure for delivery of prisoner before magistrate; complaint for person arrested without warrant; and return of recognizance and disposition of deposits.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article two of said chapter be amended and reenacted; that section two-a, article three of said chapter be amended and reenacted; that sections two and seven, article four of said chapter be amended and reenacted; that section nine, article five of said chapter be amended and reenacted; that section five, article one, chapter sixty-two of said code be amended and reenacted; and that section five, article one-c of said chapter be amended and reenacted, all to read as follows:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. MAGISTRATE COURTS.

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

1 Subject to the provisions of section one, article ten,
2 chapter three of this code, when a vacancy occurs in the
3 office of magistrate, the judge of the circuit court, or the
4 chief judge thereof if there is more than one judge of the
5 circuit court, shall fill the same by appointment.

6 At a general election in which a magistrate is elected
7 for an unexpired term, the circuit judge, or the chief judge
8 thereof if there is more than one judge of the circuit court,
9 shall cause a notice of such election to be published prior
10 to such election as a Class II-0 legal advertisement in
11 compliance with the provisions of article three, chapter
12 fifty-nine of this code, and the publication area for such
13 publication shall be the county involved. If the vacancy
14 occurs before the primary election held to nominate
15 candidates to be voted for at the general election, at which
16 any such vacancy is to be filled, candidates to fill such
17 vacancy shall be nominated at such primary election in
18 accordance with the time requirements and the provisions
19 and procedures prescribed in article five, chapter three of
20 this code. Otherwise, they shall be nominated by the
21 county executive committee in the manner provided in
22 section nineteen, article five, chapter three of this code, as
23 in the case of filling vacancies in nominations, and the
24 names of the persons so nominated and certified to the
25 clerk of the circuit court of such county shall be placed
26 upon the ballot to be voted at such next general election.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-2. Venue; change of venue.

1 (a) The provisions of article one, chapter fifty-six of
2 this code, relating to venue of actions in circuit courts,
3 shall apply to venue of actions in magistrate courts as if
4 the same were set forth fully herein.

5 (b) The circuit court may, on the petition of the
6 accused and for good cause shown, order the venue of the
7 trial of a criminal case in magistrate court to be removed
8 to some other county. Upon the filing of the petition, the
9 proceedings in magistrate court shall be stayed until
10 disposition by the circuit court. When the venue is so
11 changed, the court making the order shall determine the

12 county to which the case is to be removed and order the
13 defendant to appear on some certain day before the court
14 to which the case is removed. Where the defendant is in
15 custody, the court may, if appropriate, order the defendant
16 confined in a jail convenient to the court to which the case
17 is removed. Upon receipt of the order changing venue, the
18 magistrate court shall certify copies of its file of the case
19 to the court to which the case is removed, and such court
20 shall proceed with the case as if the prosecution had been
21 originally therein, and for that purpose the certified copies
22 aforesaid shall be sufficient.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment by credit card or payment plan; suspension of licenses for failure to make payments or appear or respond; restitution; liens.

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, fees, forfeitures, restitution or
3 penalties in accordance with rules promulgated by the
4 supreme court of appeals. Any charges made by the credit
5 company shall be paid by the person responsible for
6 paying the cost, fine, forfeiture or penalty.

7 (b) Unless otherwise required by law, a magistrate
8 court may collect a portion of any costs, fines, fees,
9 forfeitures, restitution or penalties at the time the amount
10 is imposed by the court so long as the court requires the
11 balance to be paid in accordance with a payment plan
12 which specifies: (1) The number of payments to be made;
13 (2) the dates on which such payments are due; and (3) the
14 amounts due for each payment.

15 (c)(1) If any costs, fines, fees, forfeitures, restitution
16 or penalties imposed by the magistrate court in a criminal
17 case are not paid within three months from the date of
18 judgment and the expiration of any stay of execution, the
19 magistrate court clerk or, upon judgment rendered on
20 appeal, the circuit clerk shall notify the commissioner of
21 the division of motor vehicles of the failure to pay. Upon
22 such notice, the division of motor vehicles shall suspend
23 any privilege the person defaulting on payment may have

24 to operate a motor vehicle in this state, including any
25 driver's license issued to the person by the division of
26 motor vehicles, until such time that all the costs, fines, fees,
27 forfeitures, restitution or penalties are paid in full. The
28 suspension shall be imposed in accordance with the
29 provisions of section six, article three, chapter seventeen-b
30 of this code: *Provided*, That any person who has had his
31 or her license to operate a motor vehicle in this state
32 suspended pursuant to this subsection and his or her
33 failure to pay is based upon inability to pay may, if he or
34 she is employed on a full or part-time basis, petition to the
35 circuit court for an order authorizing him or her to
36 operate a motor vehicle solely for employment purposes.
37 Upon a showing satisfactory to the court of inability to
38 pay, employment and compliance with other applicable
39 motor vehicle laws, the court shall issue such an order.

40 (2) In addition to the provisions of subdivision (1) of
41 this subsection, if any costs, fines, fees, forfeitures,
42 restitution or penalties imposed or ordered by the
43 magistrate court for a hunting violation described in
44 chapter twenty of this code are not paid within three
45 months from the date of judgment and the expiration of
46 any stay of execution, the magistrate court clerk or, upon
47 a judgment rendered on appeal, the circuit clerk shall
48 notify the director of the division of natural resources of
49 such failure to pay. Upon such notice, the director of the
50 division of natural resources shall suspend any privilege
51 the person failing to appear or otherwise respond may
52 have to hunt in this state, including any hunting license
53 issued to the person by the division of natural resources,
54 until all the costs, fines, fees, forfeitures, restitution or
55 penalties are paid in full.

56 (3) In addition to the provisions of subdivision (1) of
57 this subsection, if any costs, fines, fees, forfeitures,
58 restitution or penalties imposed or ordered by the
59 magistrate court for a fishing violation described in
60 chapter twenty of this code are not paid within three
61 months from the date of judgment and the expiration of
62 any stay of execution, the magistrate court clerk or, upon
63 a judgment rendered on appeal, the circuit clerk shall
64 notify the director of the division of natural resources of

65 such failure to pay. Upon such notice, the director of the
66 division of natural resources shall suspend any privilege
67 the person failing to appear or otherwise respond may
68 have to fish in this state, including any fishing license
69 issued to the person by the division of natural resources,
70 until all the costs, fines, fees, forfeitures, restitution or
71 penalties are paid in full.

72 (d)(1) If a person charged with any criminal violation
73 of this code fails to appear or otherwise respond in court,
74 the magistrate court shall notify the commissioner of the
75 division of motor vehicles thereof within fifteen days of
76 the scheduled date to appear, unless the person sooner
77 appears or otherwise responds in court to the satisfaction
78 of the magistrate. Upon such notice, the division of motor
79 vehicles shall suspend any privilege the person failing to
80 appear or otherwise respond may have to operate a motor
81 vehicle in this state, including any driver's license issued
82 to the person by the division of motor vehicles, until final
83 judgment in the case and, if a judgment of guilty, until
84 such time that all the costs, fines, fees, forfeitures,
85 restitution or penalties imposed are paid in full. The
86 suspension shall be imposed in accordance with the
87 provisions of section six, article three, chapter seventeen-b
88 of this code.

89 (2) In addition to the provisions of subdivision (1) of
90 this subsection, if a person charged with any hunting
91 violation described in chapter twenty of this code fails to
92 appear or otherwise respond in court, the magistrate court
93 shall notify the director of the division of natural
94 resources of such failure thereof within fifteen days of the
95 scheduled date to appear, unless the person sooner appears
96 or otherwise responds in court to the satisfaction of the
97 magistrate. Upon such notice, the director of the division
98 of natural resources shall suspend any privilege the person
99 failing to appear or otherwise respond may have to hunt in
100 this state, including any hunting license issued to the
101 person by the division of natural resources, until final
102 judgment in the case and, if a judgment of guilty, until
103 such time that all the costs, fines, fees, forfeitures,
104 restitution or penalties imposed are paid in full.

105 (3) In addition to the provisions of subdivision (1) of
106 this subsection, if a person charged with any fishing
107 violation described in chapter twenty of this code fails to
108 appear or otherwise respond in court, the magistrate court
109 shall notify the director of the division of natural
110 resources of such failure thereof within fifteen days of the
111 scheduled date to appear, unless the person sooner appears
112 or otherwise responds in court to the satisfaction of the
113 magistrate. Upon such notice, the director of the division
114 of natural resources shall suspend any privilege the person
115 failing to appear or otherwise respond may have to fish in
116 this state, including any fishing license issued to the
117 person by the division of natural resources, until final
118 judgment in the case and, if a judgment of guilty, until
119 such time that all the costs, fines, fees, forfeitures,
120 restitution or penalties imposed are paid in full.

121 (e) In every criminal case which involves a
122 misdemeanor violation, a magistrate may order restitution
123 where appropriate when rendering judgment.

124 (f)(1) If all costs, fines, fees, forfeitures, restitution or
125 penalties imposed by a magistrate court and ordered to be
126 paid are not paid within three months from the date of
127 judgment and the expiration of any stay of execution, the
128 clerk of the magistrate court shall notify the prosecuting
129 attorney of the county of such nonpayment and provide
130 the prosecuting attorney with an abstract of judgment.
131 The prosecuting attorney shall file the abstract of
132 judgment in the office of the clerk of the county
133 commission in the county where the defendant was
134 convicted and in any county wherein the defendant resides
135 or owns property. The clerks of the county commissions
136 shall record and index the abstracts of judgment without
137 charge or fee to the prosecuting attorney, and when so
138 recorded, the amount stated to be owing in the abstract
139 shall constitute a lien against all property of the defendant.

140 (2) When all the costs, fines, fees, forfeitures,
141 restitution or penalties described in subdivision (2) of this
142 subsection for which an abstract of judgment has been
143 recorded are paid in full, the clerk of the magistrate court
144 shall notify the prosecuting attorney of the county of such

145 payment and provide the prosecuting attorney with a
146 release of judgment, prepared in accordance with the
147 provisions of section one, article twelve, chapter thirty-
148 eight of this code, for filing and recordation pursuant to
149 the provisions of this subdivision. Upon receipt from the
150 clerk, the prosecuting attorney shall file the release of
151 judgment in the office of the clerk of the county
152 commission in each county where an abstract of the
153 judgment was recorded. The clerks of the county
154 commissions shall record and index the release of
155 judgment without charge or fee to the prosecuting
156 attorney.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-2. Commencement of criminal prosecutions.

1 Except where the provisions of this code or rule of the
2 supreme court of appeals permit the commencement of a
3 criminal prosecution through the issuance of a citation, a
4 criminal prosecution shall be commenced by the filing of
5 a complaint in accordance with the requirements of rules
6 of the supreme court of appeals.

§50-4-7. Disqualification of magistrate.

1 A motion for the disqualification of a magistrate
2 in a magistrate court proceeding shall be filed in
3 accordance with the requirements of the rules of the
4 supreme court of appeals.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-9. Verdict and sentence.

1 (a) In every criminal case in which the defendant is
2 in custody, a magistrate shall render a finding of guilty or
3 not guilty immediately upon the conclusion of the trial or
4 hearing. In all other proceedings, a magistrate shall
5 render a finding of guilty or not guilty no later than the
6 next succeeding day after the conclusion of the trial or
7 hearing, excluding Saturdays, Sundays and legal holidays.

8 (b)(1) Sentence shall be imposed in open court
9 within sixty days from the date of the finding of guilt
10 except where sentence is required to be imposed within a

11 lesser period under the provisions of subdivision (2) of
12 this subsection.

13 (2) Sentence shall be imposed in open court upon a
14 defendant in custody on or before the date of the
15 expiration of the time equivalent to the maximum
16 sentence that may be imposed for the offense. In
17 determining the date, the magistrate shall include in the
18 computation any credit to which the defendant is entitled
19 for the time of confinement spent by the defendant in jail
20 awaiting trial and sentencing.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-5. Same — Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.

1 (a) (1) An officer making an arrest under a warrant
2 issued upon a complaint, or any person making an arrest
3 without a warrant for an offense committed in his presence
4 or as otherwise authorized by law, shall take the arrested
5 person without unnecessary delay before a magistrate of
6 the county where the arrest is made.

7 (2) If a person arrested without a warrant is brought
8 before a magistrate, a complaint shall be filed forthwith in
9 accordance with the requirements of rules of the supreme
10 court of appeals.

11 (3) An officer executing a warrant shall make return
12 thereof to the magistrate before whom the defendant is
13 brought.

14 (b) (1) Notwithstanding any other provision of this
15 code to the contrary, if a person arrested without a warrant
16 is brought before a magistrate prior to the filing of a
17 complaint, a complaint shall be filed forthwith in
18 accordance with the requirements of rules of the supreme
19 court of appeals, and the issuance of a warrant or a
20 summons to appear is not required.

21 (2) When a person appears initially before a
22 magistrate either in response to a summons or pursuant to

23 an arrest with or without a warrant, the magistrate shall
24 proceed in accordance with the requirements of the
25 applicable provisions of the rules of the supreme court of
26 appeals.

ARTICLE 1C. BAIL.

**§62-1C-5. Recognizance and deposits subject to order of court
or magistrate.**

1 The recognizance shall be returnable to and all
2 deposits shall be held by the court before whom the
3 defendant is to appear or does appear, and upon the
4 transfer of the case to any other court the recognizance
5 shall be returnable to and transmitted together with any
6 deposits to such other court.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Kathy Schoonover
Chairman Senate Committee

Nick Fontasia
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell R. White
Clerk of the Senate

Gregory M. Boy
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

Robert L. Taylor
Speaker of the House of Delegates

The within *is approved* this the *7th*
day of *May*, 1997.

Earl K. Rayburn
Governor

PRESENTED TO THE

GOVERNOR

Date 4/29/97

Time 2:52 pm