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Veto

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



## ENROLLED

SENATE BILL NO. 561

(By Senator WOOTEN, ET AL)



PASSED APRIL 12, 1997

In Effect NINETY DAYS FROM Passage

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WEST VIRGINIA LEGISLATURE

**ENROLLED**

**Senate Bill No. 561**

(BY SENATORS WOOTON, BALL, DITTMAR, FANNING,  
HUNTER, OLIVERIO, ROSS, SNYDER, WHITE,  
BUCKALEW, DEEM AND SCOTT)

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

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AN ACT to amend and reenact section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article thirty-four of said chapter, all relating to municipal powers, authority and duties, requiring police court and municipal court judges to complete mandatory training; providing that those courts will follow the magistrate procedural rules; providing for appeals from mayoral judicial exercise, police court or municipal court to circuit court; creating time frames, bonds, and stays for such appeals; providing limited record of such court proceedings; providing for the preparation and designation of such records for appeal, electronic recordation of trials and preparation of tran-

scripts of such proceedings; providing circuit court discretion to schedule oral argument, receive memoranda of law, and take evidence; providing factors for the circuit court to consider on such appeal and the time frame for circuit court review of such proceedings; and providing actions which the circuit court may take to dispose of such appeals.

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

That section two, article ten, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article thirty-four of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

**PART II. POLICE COURT OR MUNICIPAL COURT.**

**§8-10-2. Police court or municipal court for municipalities.**

1 (a) Notwithstanding any charter provision to the con-  
2 trary, any city may provide by charter provision and any  
3 municipality may provide by ordinance for the creation  
4 and maintenance of a police or municipal court, for the  
5 appointment or election of an officer to be known as  
6 police court judge or municipal court judge, and for his or  
7 her compensation, and authorize the exercise by the court  
8 or judge of the jurisdiction and the judicial powers,  
9 authority and duties set forth in section one of this article  
10 and similar or related judicial powers, authority and  
11 duties enumerated in any applicable charter provisions, as  
12 set forth in the charter or ordinance.

13 (b) Effective the fifteenth day of July, one thousand  
14 nine hundred ninety-seven, no person may assume the  
15 duties of police judge or municipal court judge unless  
16 either he or she has first been admitted to the practice of  
17 law in this state or he or she has first attended and  
18 completed a course of instruction in rudimentary princi-  
19 ples of law and procedure which shall be given in accor-  
20 dance with the supervisory rules of the supreme court of  
21 appeals.

22 (c) When a police court or municipal court conducts a  
23 trial by jury in a criminal matter, it shall follow the

24 procedures set forth in the rules of procedure for magis-  
25 trate courts promulgated by the supreme court of appeals  
26 except that the jury in police court or municipal court  
27 shall consist of twelve members.

**ARTICLE 34. JUDICIAL REVIEW.**

**§8-34-1. General right of appeal; recordation of jury trial;  
preparation of record.**

1 (a) Every person sentenced under this chapter by any  
2 mayor, acting in a judicial capacity, or police court judge  
3 or municipal court judge to imprisonment or to the  
4 payment of a fine may appeal that sentence to the circuit  
5 court as provided in this section. When the municipality  
6 is located in more than one county, the appeal shall be  
7 taken to the circuit court of the county in which the major  
8 portion of the territory of the municipality is located.

9 (b) For purposes of appeal, when a jury trial is had  
10 before a mayor or in police court or municipal court, that  
11 court shall be a court of limited record. Trials before a  
12 mayor or police or municipal court when a jury is empan-  
13 eled shall be recorded electronically. A magnetic tape or  
14 other electronic recording medium on which a trial is  
15 recorded shall be indexed and securely preserved by that  
16 court. When requested by the prosecutor or by the  
17 defendant, or by any interested person, that court shall  
18 provide a duplicate copy of the tape or other electronic  
19 recording medium of each trial held. For evidentiary  
20 purposes, a duplicate of such electronic recording pre-  
21 pared by that court shall be a "writing" or "recording" as  
22 those terms are defined in rule 1001 of the West Virginia  
23 rules of evidence, and unless the duplicate is shown not to  
24 reflect the contents accurately, it shall be treated as an  
25 original in the same manner that data stored in a com-  
26 puter or similar data is regarded as an "original" under  
27 such rule. Unless the requesting party is a defendant  
28 proceeding as an indigent, the party shall pay to the court  
29 an amount equal to the actual cost of the tape or other  
30 medium or the sum of five dollars, whichever is greater.

31 (c) If the defendant in such a proceeding waives the right  
32 to trial by jury or if no jury trial is required by law, the

33 matter shall be tried by the mayor, police court or municipi-  
34 pal court sitting without a jury. For purposes of appeal,  
35 when a nonjury trial is had before a mayor or in police  
36 court or municipal court, that court shall not be a court of  
37 limited record and the proceedings shall not be electroni-  
38 cally recorded.

39 (d) Any person convicted of an offense by a mayor or in  
40 a police court or municipal court may appeal such convic-  
41 tion to circuit court as a matter of right by requesting such  
42 appeal within twenty days after the sentencing for such  
43 conviction. The mayor, police court or municipal court  
44 judge may require the posting of bond with good security  
45 conditioned upon the appearance of the defendant as  
46 required in circuit court, but such bond may not exceed  
47 the maximum amount of any fine which could be imposed  
48 for the offense. The bond may be upon the defendant's  
49 own recognizance. If no appeal is perfected within such  
50 twenty-day period, the circuit court may, not later than  
51 ninety days after the sentencing, grant an appeal upon a  
52 showing of good cause why such appeal was not filed  
53 within the twenty-day period. The filing or granting of an  
54 appeal shall automatically stay the sentence of the mayor,  
55 police court or municipal court.

56 (e) In the case of an appeal of such a proceeding tried  
57 before a jury, the hearing on the appeal before the circuit  
58 court shall be a hearing on the record. In the case of an  
59 appeal of such a proceeding tried before the mayor, police  
60 judge or municipal judge without a jury, the hearing on  
61 the appeal before the circuit court shall be a trial de novo,  
62 triable to the court, without a jury.

63 (f) In the case of an appeal of such a proceeding tried  
64 before a jury, the following provisions shall apply:

65 (1) To prepare the record for appeal, the defendant shall  
66 file with the circuit court a petition setting forth the  
67 grounds relied upon, and designating those portions of the  
68 testimony or other matters reflected in the recording, if  
69 any, which he or she will rely upon in prosecuting the  
70 appeal. The prosecutor may designate additional portions  
71 of the recording. Unless otherwise ordered by the circuit

72 court, the preparation of a transcript of the portions of the  
73 recording designated by the defendant, and the payment  
74 of the cost thereof shall be the responsibility of the  
75 defendant: *Provided*, That such costs may be waived due  
76 to the defendant's indigence. The circuit court may, by  
77 general order or by order entered in a specific case,  
78 dispense with preparation of a transcript and review the  
79 designated portions of the recording aurally.

80 (2) The designated portions of the recording or the  
81 transcript thereof, as the case may be, and the exhibits,  
82 together with all papers and requests filed in the proceed-  
83 ing, constitute the exclusive record for appeal, and shall  
84 be made available to the defendant and the prosecutor.

85 (3) After the record for appeal is filed in the office of the  
86 circuit clerk, the court may, in its discretion, schedule the  
87 matter for oral argument or require the parties to submit  
88 written memoranda of law. The circuit court shall  
89 consider whether the judgment or order of the mayor,  
90 police court or municipal court is:

91 (A) Arbitrary, capricious, an abuse of discretion or  
92 otherwise not in conformance with the law;

93 (B) Contrary to constitutional right, power, privilege or  
94 immunity;

95 (C) In excess of statutory jurisdiction, authority or  
96 limitations or short of statutory right;

97 (D) Without observance of procedure required by law;

98 (E) Unsupported by the evidence; or

99 (F) Unwarranted by the facts.

100 (4) The circuit court may take any of the following  
101 actions which may be necessary to dispose of the questions  
102 presented on appeal, with justice to the defendant and the  
103 municipality:

104 (A) Dismiss the appeal;

105 (B) Reverse, affirm, or modify the judgment or order  
106 being appealed;

107 (C) Remand the case for further proceedings, with  
108 instructions to the mayor, police court or municipal court;

109 (D) Finally dispose of the action by entering judgment  
110 on appeal; or

111 (E) Retain the matter and retry the issues of fact, or  
112 some part or portions thereof, as may be required by the  
113 provisions of subdivision (5) of this subsection.

114 (5) If the circuit court finds that a record for appeal is  
115 deficient as to matters which might be affected by evi-  
116 dence not considered or inadequately developed, the court  
117 may proceed to take such evidence and make independent  
118 findings of fact to the extent that questions of fact and  
119 law may merge in determining whether the evidence was  
120 such, as a matter of law, as to require a particular finding.  
121 If the circuit court finds that the proceedings below were  
122 subject to error to the extent that the defendant was  
123 effectively denied a jury trial, the circuit court may, upon  
124 motion of the defendant, empanel a jury to re-examine the  
125 issues of fact, or some part or portions thereof.

126 (6) The review by the court and a decision on the appeal  
127 shall be completed within ninety days after the appeal is  
128 regularly placed upon the docket of the circuit court.

129 (g) In the case of an appeal of a mayoral, police court or  
130 municipal court proceeding tried without a jury, the  
131 defendant shall file with the circuit court a petition for  
132 appeal and trial de novo. The exhibits, together with all  
133 papers and requests filed in the proceeding, constitute the  
134 exclusive record for appeal and shall be made available to  
135 the parties.

136 (h) Notwithstanding any other provision of this code to  
137 the contrary, there shall be no appeal from a plea of guilty  
138 where the defendant was represented by counsel at the  
139 time the plea was entered: *Provided*, That the defendant  
140 shall have an appeal from a plea of guilty where an  
141 extraordinary remedy would lie or where the mayor,  
142 police court or municipal court lacked jurisdiction.

143 (i) The designation in this section of a mayor, acting as  
144 police or municipal court judge, or of police court or

145 municipal courts as "courts of limited record" shall not be  
146 construed to give standing or eligibility to mayors, police  
147 court or municipal court judges to participate or be  
148 included in the retirement system for judges of courts of  
149 record established under the provisions of article nine,  
150 chapter fifty-one of this code.



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

*Randy Schomver*  
.....  
Chairman Senate Committee

*Nick Fantasia*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Carroll E. Hays*  
.....  
Clerk of the Senate

*Gregory M. Boy*  
.....  
Clerk of the House of Delegates

*Ed Bay Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is disapproved* the *16<sup>th</sup>*  
.....  
day of *April* ..... 1997.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

4/15/97

Time

3:20 PM