

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2910

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[Introduced January 12, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §50-1-2, §50-1-3, and §50-1-13 of the Code of West Virginia, 1931,
2 as amended, all relating generally to magistrates; relating to the allocation of magistrates
3 serving in each county; setting a standardized formula for magistrate apportionment;
4 providing for adjustment of those numbers of magistrates every 10 years following the
5 census; removing the cap of 158 magistrates statewide; requesting the Chief Justice of
6 the Supreme Court of Appeals develop a rule creating a system in which magistrates may
7 be assigned on a temporary rotating basis outside the county of their election or
8 appointment to preside over initial appearances, petitions for domestic violence,
9 emergency protective orders, emergency mental hygiene petitions, emergency juvenile
10 delinquency petitions, and applications for issuance of search warrants in counties in
11 which he or she was not elected or appointed; granting the court authority to organize the
12 system on a circuit-wide or regional basis as the court chooses; clarifying that magistrates
13 may preside remotely if the Supreme Court of Appeals determines it appropriate; and
14 eliminating antiquated language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each county of this state shall be
2 determined in accordance with the provisions of this section.

3 (b) The number of magistrates serving in each county of the state shall comport with the
4 numbers certified by the Supreme Court of Appeals to the ballot commissioners of each county
5 on or before January 31, ~~2000~~ 2023, for purposes of the primary and general elections to be held
6 in the year ~~2000~~ 2024. For all elections after January 1, 2024, the number of magistrates serving
7 in each county of the state shall comport with the numbers established by application of the
8 method set forth in this section.

9 (c)(1) The Legislature finds that there exists among the various counties large and
10 unwarranted disparities of caseload between the magistrate courts. ~~The Legislature further finds~~
11 ~~that the disparity causes an inequity with regard to magistrate court resources and the ability of~~
12 ~~the courts to effectively meet the needs of the citizens of this state who need to avail themselves~~
13 ~~of this judicial resource. The Legislature further finds that the system currently in place for~~
14 ~~allocating magistrate court resources which has been in effect since the year 1991 produces~~
15 ~~certain anomalies which cause quadrennial reallocation of magistrate resources based upon said~~
16 ~~anomalies which in turn cause a waste of funds, inequitable workloads, unnecessary shifting of~~
17 ~~resources and confusion among the various counties.~~

18 (2) ~~The office of Legislative Services is hereby directed to undertake a comprehensive~~
19 ~~study of the magistrate courts of the various counties to determine, among other things, the work~~
20 ~~performed by various personnel in the magistrate court system, how work time is spent by said~~
21 ~~employees and to report its findings no later than December 10, 2001, to the joint standing~~
22 ~~committee on the judiciary. In order to be fair and equitable in the distribution of such magistrates,~~
23 magistrates shall be allocated utilizing the following formula:

24 (A) There shall be at least two magistrates allocated to each county; and

25 (B) For each 15,500 residents in excess of an initial population of 15,500, an additional
26 magistrate shall be assigned to a county; or

27 (C) If any county falls below the population requirements set forth in subdivision (B) by
28 less than 7,000 residents and, by result, would be required to reduce its number of current
29 magistrates, the Supreme Court of Appeals shall review the caseload of any such county,
30 including cases handled per year per magistrate and total cases per county. If, in the opinion of
31 the Supreme Court of Appeals, the caseload is sufficient to justify the current magistrate number
32 allocated, then the current number of magistrates shall be retained.

33 (3) ~~The division of criminal justice and highway safety shall, in conjunction with the~~
34 ~~administrative office of the West Virginia Supreme Court of Appeals, compile for consideration by~~

35 ~~the Legislature statistical information and documentation regarding caseloads, cases handled per~~
36 ~~year per magistrate, cases per county, cases per circuit and provide to the President of the Senate~~
37 ~~and the Speaker of the House of Delegates no later than the first day of the 2002 regular session~~
38 ~~of the Legislature, their recommendations for improving the magistrate process, better utilization~~
39 ~~of court resources, including, but not limited to, categorizing the various types of cases heard in~~
40 ~~magistrate court and developing a new weighted formula to evaluate types of cases by the amount~~
41 ~~of time necessary to bring said cases to a resolution~~

42 (d) Notwithstanding the other provisions of this section, the allowable number of
43 magistrates allocated to each county shall be adjusted according to the varying population of each
44 county utilizing the above formula, every 10 years following the decennial census of the United
45 States, in the year following legislative and Congressional redistricting. ~~serving the counties of~~
46 ~~Berkeley and Nicholas on March 1, 2001, shall be increased by one in each county, effective July~~
47 ~~1, 2001. The initial appointment to the position shall be made in accordance with the provisions~~
48 ~~of section six of this article.~~

§50-1-3. Salaries of magistrates.

1 (a) ~~The Legislature finds and declares that:~~

2 (1) ~~The West Virginia Supreme Court of Appeals has held that a salary system for~~
3 ~~magistrates which is based upon the population that each magistrate serves does not violate the~~
4 ~~equal protection clause of the Constitution of the United States;~~

5 (2) ~~The West Virginia Supreme Court of Appeals has held that a salary system for~~
6 ~~magistrates which is based upon the population that each magistrate serves does not violate~~
7 ~~section 39, article VI, of the Constitution of West Virginia;~~

8 (3) ~~The Administrative Office of the Supreme Court of Appeals of West Virginia has stated~~
9 ~~that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and~~
10 ~~rational manner by which magistrates should be compensated for work performed;~~

11 ~~(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less~~
12 ~~than 7,300 in population and a second tier for magistrates serving 7,300 or more in population is~~
13 ~~no longer rational and equitable given current statistical information relating to population and~~
14 ~~caseload; and~~

15 ~~(5) That, by January 1, 2017, all magistrates should be compensated equally.~~

16 ~~(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer~~
17 ~~than 7,300 in population shall be paid annual salaries of \$51,125 and magistrates who serve~~
18 ~~7,300 or more in population shall be paid annual salaries of \$57,500.~~

19 ~~(c) For the purpose of determining the population served by each magistrate, the number~~
20 ~~of magistrates authorized for each county shall be divided into the population of each county. For~~
21 ~~the purpose of this article, the population of each county is the population as determined by the~~
22 ~~last preceding decennial census taken under the authority of the United States government.~~

23 ~~(d) Notwithstanding any provision of this code to the contrary, the amendments made to~~
24 ~~this section during the 2013 First Extraordinary Session are effective upon passage and are~~
25 ~~retroactive to January 1, 2013.~~

26 ~~(e) On or before July 1, 2013, the Joint Committee on Government and Finance shall~~
27 ~~request a study by the National Center for State Courts, working in conjunction with the~~
28 ~~Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted~~
29 ~~caseloads in each of the magistrate courts in this state, and present recommendations as to how~~
30 ~~the present resources and personnel in the magistrate court system could be better apportioned~~
31 ~~to equitably and timely meet the collective needs of the magistrate court system in West Virginia.~~
32 ~~Based on the findings and data generated by that study, the National Center for State Courts shall~~
33 ~~make recommendations as to the equitable redistribution of personnel and resources, by~~
34 ~~temporary or permanent reassignment, to better meet the needs and weighted loads that are~~
35 ~~demonstrated to exist in the various magistrate courts in this state. This study shall be presented~~
36 ~~to the Joint Committee on Government and Finance no later than December 1, 2014, and shall~~

37 ~~include recommendations and proposed legislation resulting from such study and shall also~~
38 ~~include a plan to continue the efficient delivery of justice by the magistrate court system and the~~
39 ~~justification for equalization of pay for all magistrates. As a part of the submitted study, the plan~~
40 ~~shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to~~
41 ~~include holding court or delivering services to adjacent counties with higher caseloads, as part of~~
42 ~~their regular duties, or being on call as needed to serve other needs in other adjacent counties or~~
43 ~~within the same judicial circuit.~~

44 ~~On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall~~
45 ~~present its recommendations to the Legislature regarding how to allocate or assign a maximum~~
46 ~~of 158 magistrates throughout this state to improve the magistrate process, and more equitably~~
47 ~~distribute the magistrate court resources to efficiently and effectively meet the needs of the~~
48 ~~citizens of this state.~~

49 ~~(f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017,~~
50 ~~all magistrates shall be compensated equally and the annual salary of all magistrates shall be~~
51 ~~\$57,500.~~

52 ~~(g) Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the~~
53 ~~annual salary of a magistrate shall be \$60,375, and beginning July 1, 2022, the annual salary of~~
54 ~~a magistrate shall be \$63,250.~~

§50-1-13. Temporary service within or outside of county.

1 (a) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the
2 county in which a magistrate is elected, or the chief judge thereof if there is more than one judge
3 of the circuit court, may order a magistrate to serve temporarily at locations within the county other
4 than at the regular office or offices of the magistrate.

5 (b) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the
6 county in which a magistrate is elected, or the chief judge thereof if there is more than one judge
7 of the circuit court, may by order direct a magistrate to serve temporarily in any other county within

8 the judicial circuit for such purposes as the judge may direct. The magistrate's authority, to the
9 extent ordered by the judge, shall be equal to the jurisdiction and authority of a magistrate elected
10 in the county to which the magistrate is ordered to serve. The temporary assignment may not
11 exceed 60 days in length in any given calendar year, except with the consent of the transferred
12 magistrate.

13 ~~(c) A magistrate who is temporarily assigned to a county with a higher salary schedule for~~
14 ~~magistrates than the salary schedule in the county from which the magistrate was elected, shall~~
15 ~~be reimbursed for the difference of the salary in the assigned county and the lower salary which~~
16 ~~the magistrate received in the county of election, prorated for the number of days of the temporary~~
17 ~~assignment. An assigned magistrate may not be reimbursed on a pro rata basis for less than the~~
18 ~~salary received in the county of that magistrate's election~~

19 ~~(d) (c) A magistrate serving outside the county in which he or she is elected or appointed~~
20 shall be reimbursed for reasonable expenses incurred in service outside of the county, as
21 provided by rule of the Supreme Court of Appeals.

22 ~~(d) The Supreme Court of Appeals is requested to develop a rule creating a system in~~
23 ~~which magistrates shall, on a periodic alternating basis, be assigned to preside over initial~~
24 ~~appearances, petitions for domestic violence, emergency protective orders, emergency mental~~
25 ~~health petitions, emergency juvenile delinquency petitions, and applications for the issuance of~~
26 ~~search warrants arising on a circuit-wide or other regional basis as determined by the Supreme~~
27 ~~Court of Appeals. The authority of that magistrate shall be equal to the jurisdiction and authority~~
28 ~~of a magistrate elected or appointed in any county in which he or she is directed to preside.~~

29 ~~(e) Nothing in this section should be construed to prohibit proceedings authorized by~~
30 ~~subsection (d) of this section being held remotely if that is determined appropriate by the Supreme~~
31 ~~Court of Appeals.~~

NOTE: The purpose of this bill is to establish factors by which magistrates are allocated for each county and allow adjustment every 10 years following the census.

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