

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 503

By Senator Helton

[Introduced February 14, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §6-3-1 of the Code of West Virginia, 1931, as amended, relating to
2 appointment of more than one chief deputy by the sheriff.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

**§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties;
compensation; vacating appointment of deputy sheriff; removal of conservators.**

1 (a) (1) The clerk of the Supreme Court of Appeals, or of any circuit, criminal, common
2 pleas, intermediate or county ~~court~~ commission, or of any tribunal established by law in lieu
3 thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any
4 person or persons his or her deputy or deputies.

5 (2) A sheriff, surveyor of lands, or assessor may, with the consent of the county ~~court~~
6 commission duly entered of record, appoint any person or persons his or her deputy or deputies:
7 Provided, That the sheriff may have and appoint more than one chief deputy by and with the
8 consent of the county commission.

9 (3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires
10 it, may, with the assent of said ~~court~~ the commission, duly entered of record, appoint any person or
11 persons his or her deputy or deputies to perform any temporary service or duty.

12 (4) Each deputy so appointed shall take the same oath of office required of his or her
13 principal, and may, during his or her continuance in office, perform and discharge any of the official
14 duties of his or her principal, and any default or misfeasance in office of the deputy shall constitute
15 a breach of the conditions of the official bond of his or her principal.

16 (5) A sheriff in any county in which there are more than four deputies shall devote his or her
17 full time to the performance of the services or duties required by law of ~~such~~ the sheriff, and ~~he~~ the
18 sheriff shall may not receive any compensation or reimbursement, directly or indirectly, from any
19 person, firm or corporation for the performance of any private or public services or duties:
20 Provided, That any such sheriff may retain or make any investment and receive income therefrom,

21 unless ~~such~~ the investment is otherwise prohibited by law or will impair his or her independence of
22 judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the
23 services or duties of his or her office. A sheriff in any county in which there are four or fewer
24 deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote
25 his or her full time to the services or duties of his or her office as sheriff or his or her employment as
26 deputy sheriff, as the case may be; but any such sheriff or deputy sheriff ~~shall~~ may not engage in
27 any business or transaction, accept other employment or make any investment which is otherwise
28 prohibited by law or which will impair his or her independence of judgment in the exercise of, or
29 might reasonably tend to conflict with the proper discharge of, the services or duties of his or her
30 office as sheriff or his or her employment as deputy sheriff, as the case may be. A sheriff and his or
31 her deputies in any county, irrespective of the number of deputies, ~~shall~~ may receive for the
32 performance of their public services and duties no compensation or remuneration except such as
33 may be regularly provided and paid out of public funds to the amount and in the manner provided
34 by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may
35 receive, directly or indirectly, any gift or donation from any person, firm or corporation.

36 (6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff
37 ~~shall~~ may appoint or continue the appointment of any deputy contrary to the provisions hereof. Any
38 sheriff or deputy sheriff who shall violate any of the provisions of this section ~~shall be~~ is guilty of a
39 misdemeanor, and, upon conviction thereof, shall be fined not less than \$500 nor more than
40 \$5,000, or confined in jail not to exceed one year, or both, ~~in the discretion of the court~~ fined and
41 confined.

42 (7) Circuit courts shall have jurisdiction in equity and mandamus, and the Supreme Court
43 of Appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting
44 attorney, the Attorney General, or any three or more citizens of the county, to require any sheriff
45 and the county ~~court~~ commission to vacate the appointment of any deputy, the appointment of
46 which is made or continued in violation of the provisions hereof. Any such proceeding may be

47 instituted and prosecuted by the Attorney General either in the circuit court of Kanawha county or
48 in the county for which ~~such~~ the appointment was made.

49 (b) (1) Any resident or group of residents of any unincorporated community, as hereinafter
50 defined, may petition the sheriff for the appointment of a local conservator of the peace and ~~such~~
51 the sheriff, when in his or her opinion the public interests require it, may with the assent of ~~said~~
52 county ~~court~~ commission and the judge of the circuit court duly entered of record, either in term or
53 vacation of any such court, appoint any person or persons a local conservator or conservators of
54 the peace to perform the duties of a conservator of the peace outside of any incorporated city, town
55 or village. No person ~~shall~~ may be appointed ~~such~~ local conservator of the peace who has not
56 been a bona fide resident and taxpayer of the county for at least one year prior to his or her
57 appointment. ~~Such~~ The local conservator of the peace during his or her continuance in office, may
58 perform and discharge any of the official duties of the sheriff, subject nevertheless to the
59 provisions of this section. No local conservator so appointed ~~shall~~ may be subject to the direction
60 or control of any person other than his or her principal and he or she ~~shall~~ may not perform any
61 services or duties, either private or public, except the duties required by law of conservators of the
62 peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local
63 conservator ~~shall~~ may be entitled to collect or receive any fees provided by law to be paid to the
64 sheriff or to a deputy sheriff, but all fees provided by law for the sheriff, when such duties and
65 services are rendered by ~~such~~ the local conservator, shall be paid to the sheriff as regular
66 collections of the sheriff's office. The local conservator shall be paid for the public services
67 performed by him or her a salary of not less than \$75 per month out of the county treasury from a
68 fund to be paid into ~~such~~ the treasury by a resident or the residents of the community for which he
69 or she is appointed, for the sole purpose of compensating ~~such~~ the local conservator or
70 conservators and no such local conservator ~~shall~~ may receive any other compensation, directly or
71 indirectly, from any person, firm, or corporation, for any private or public service, except the salary
72 payable to him or her for his or her public services and duties and from such fund, except that he or

73 she shall be entitled to witness and mileage fees when a witness in a court of record. Each local
74 conservator so appointed shall take the same oath of office required of his or her principal and any
75 default or misfeasance in the office of such local conservator shall constitute a breach of the
76 conditions of the official bond of his or her principal.

77 (2) When the sheriff ~~shall have~~ has been petitioned for the appointment of a local
78 conservator and has determined that the appointment is proper, he or she shall select the person
79 whom he or she proposes to have appointed such conservator and shall notify the county ~~court~~
80 commission of the community for which ~~such~~ the conservator is to be appointed and the name of
81 the person proposed for ~~such~~ that appointment. The county ~~court~~ commission shall thereupon
82 cause notice that the sheriff has recommended the appointment of the person named as
83 conservator for the community named to be published as a Class II legal advertisement in
84 compliance with the provisions of article three, chapter fifty-nine of this code, and the publication
85 area for such publication shall be the county. The notice shall designate a day not less than five
86 days after the date of the last publication when the county ~~court~~ commission will act upon the
87 petition and recommendation. Neither the county ~~court~~ commission nor the judge of the circuit
88 court shall assent and approve the appointment of such local conservator until such publication
89 has been made. The costs of the publication shall be paid by the person or persons petitioning for
90 the appointment of the conservator.

91 No local conservator ~~shall~~ may be appointed except it be made to appear to the
92 satisfaction of the county ~~court~~ commission and the judge of the circuit court that because of the
93 lack of sufficient funds, geographical location of the unincorporated community for which ~~such~~ the
94 conservator is to be appointed, or other good reason, the sheriff and his or her regular deputies
95 and the constables of the county are not sufficient to afford proper local policing of such community
96 and that the person or persons moving for the appointment of such local conservator have made
97 satisfactory arrangements to compensate him or her for his or her services as ~~such~~ the local
98 conservator of the peace.

(3) ~~Such~~ The local conservator of the peace ~~shall have~~ may exercise all the powers and duties of a regularly appointed deputy sheriff except that he or she ~~shall~~ may not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he or she is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but he or she shall not participate in any strike, unemployment boycott, or other industrial or labor dispute, nor serve any court process of any character relating thereto. He or she shall act as ~~such~~ the local conservator only in the unincorporated community for which he or she is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county ~~court~~ commission: *Provided, however,* That the authority of one local conservator ~~shall~~ may not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he or she may effect arrests anywhere in the county. He or she may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he or she is appointed. Any person arrested by ~~such~~ the local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his or her regular deputies, or to a regular constable of the county to be dealt with according to law, and his or her authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of ~~such~~ the local conservator ~~shall~~ may not constitute the person, firm or corporation making ~~such~~ the payment or contribution the employer of such local conservator and no person, firm or corporation paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act

125 of such local conservator.

126 (5) No person appointed ~~such~~ local conservator ~~shall thereby be entitled to~~ may carry
127 weapons, but ~~such~~ the local conservator may carry weapons when he ~~or she shall be~~ is duly
128 licensed and ~~shall have~~ has given bond as provided by §61-7-2 of this code.

129 (6) Not more than one local conservator of the peace ~~shall~~ may be appointed, to perform
130 the duties of conservator of the peace, for each 2,500 inhabitants of the county as ascertained by
131 the last regular decennial census after deducting the number of inhabitants of the county residing
132 in the incorporated cities, towns and villages in ~~such~~ the county. Not more than one local
133 conservator ~~shall~~ may be appointed for any unincorporated community unless the population
134 thereof ~~exceed~~ exceeds 1,500 people and in such case not more than two conservators ~~shall~~ may
135 be appointed for ~~such~~ that community.

136 (7) The phrase "unincorporated community" within the meaning of this section ~~shall mean~~
137 means any center of population wherein 50 or more persons reside within an area of not more than
138 one square mile.

139 (8) The county ~~court~~ commission and the judge of the circuit court in approving the
140 appointment of a local conservator shall enter of record an order making such appointment and
141 shall show therein the necessity for the appointment, the person or persons on whose motion the
142 appointment is made, the arrangement for the payment of compensation to ~~such~~ the local
143 conservator, the unincorporated community or communities, for which the appointment is made,
144 including the general boundary of each unincorporated community for which he ~~or she~~ is
145 appointed.

146 (9) No local conservator ~~shall~~ may act as an election official or remain in, about or near any
147 voting place or place of political convention, further than is necessary for him ~~or her~~ to promptly
148 cast his ~~or her~~ vote and retire from the voting place.

149 (10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this
150 subsection ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less

151 than \$50 nor more than \$300, or be confined in the county jail not more than six months, or both
152 ~~fined and confined, in the discretion of the court; and it shall be the duty of the sheriff and the~~
153 county ~~court~~ commission ~~to~~ shall forthwith revoke his or her appointment irrespective of any
154 criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a
155 proceeding in mandamus shall lie in the Supreme Court of Appeals at the instance of the
156 prosecuting attorney, the Attorney General, or of any three or more citizens of the community for
157 which ~~such~~ the conservator is appointed, to require the performance of ~~such~~ that duty by the sheriff
158 and the county ~~court~~ commission.

159 (11) ~~Such~~ The local conservator shall serve during the joint will and pleasure of the sheriff
160 and the county ~~court~~ commission and his or her appointment may be revoked by order entered of
161 record by the county ~~court~~ commission either with or without the assignment of cause therefor.

162 A local conservator may be removed by the judge of the circuit court, either in term or
163 vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause,
164 upon the petition of three or more residents of the community for which he or she has been
165 appointed. The petition shall set forth the cause or causes for which such removal is asked and
166 shall show that demand for removal has been made of the sheriff and the county ~~court~~ commission
167 and that the sheriff and the county ~~court~~ commission have failed to remove the local conservator.
168 At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall
169 fix a time and place for a hearing thereon, which time shall not be less than 10 days after the filing
170 of the petition, and shall cause a copy thereof to be served upon the sheriff and ~~such~~ the local
171 conservator at least 10 days before the hearing thereon.

NOTE: The purpose of this bill is to allow the appointment of more than one chief deputy by the sheriff.

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