



Amicus

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Clerk collects \$200 for Docketing Appeals

Due to the enactment of Senate Bill 428 during the 2011 Legislative session, the Clerk of the Supreme Court began charging a \$200 filing fee on June 16, 2011, for docketing appeals in certain cases.

All appeals from a circuit court final order—except appeals in criminal cases—are subject to the fee. The fee does not apply to appeals from the Workers' Compensation Board of Review or to original jurisdiction cases filed in the Supreme Court, such as *mandamus*, prohibition and *habeas corpus*.

The fee is due at the time the appeal is docketed by the Clerk, which is when the Notice of Appeal is filed. The fee must be paid by check, payable to the **State of West Virginia** in the amount of \$200. (Plans are currently underway to accept credit card payments online.)

If a fee waiver application has been granted by the lower tribunal, then the fee waiver is still applicable for purposes of appeal. A party who has been granted a fee waiver is under a continuing obligation to inform the Court of any change in circumstances that may affect the fee waiver determination. If your case is subject to a fee waiver you must inform the Clerk in the Notice of Appeal and attach a copy of the lower court's order that approved a fee waiver.

If a case that is subject to the filing fee requirement is filed without the accompanying fee, the Scheduling Order will contain a deadline for payment of the filing fee. If non-payment is not cured within the deadline set forth in the Scheduling Order, then the case will be subject to dismissal.

Questions? Call the Clerk's Office during business hours at (304) 558-2601.



From the Chief

INTERMEDIATE APPEALS COURT:

We don't need it and we can't afford it.

With the conclusion of the 2011 Legislative Session and more than six months of experience under the new W. Va. Rules of Appellate Procedure, it is a good time to assess the need (or lack thereof) for an intermediate appeal court (IAC) in West Virginia, and to discuss what such a system would **really** cost.

Is an Intermediate Appeals Court Needed in West Virginia?

A frequent argument made in support of an IAC is that it would guarantee the right of every litigant to a full appeal with a written decision. But the newly revised Rules of Appellate Procedure have already accomplished that goal. The Supreme Court's review of all properly prepared petitions for appeals has (since December 1, 2010) been one hundred percent non-discretionary. As the old saying goes, the proof is in the pudding. From January 1 through April 4, 2011, the Court has issued 111 decisions on the merits. During the same period of time last year, the Court had issued 21 decisions on the merits. This is an increase of **over four hundred percent** in the number of cases **decided on the merits**. This year, the decisions on the merits include 91 Memorandum Decisions issued under the Revised Rules. Those memorandum decisions explain the reasons why the Court is affirming or reversing the lower court's decision, and may even be cited in legal argument and used for guidance among the circuit courts. This is much like the federal system, which proponents of an IAC have touted as a model of a desirable goal.

Thus, it is difficult to understand why the Chamber of Commerce continues to argue that there is no guaranteed right of appeal in West Virginia. Furthermore, it is ironic that the legislation so strongly supported by the Chamber would actually **remove the right of appeal** for several categories of cases such as workers compensation, Public Service Commission appeals, administrative appeals, and misdemeanor criminal convictions. Consequently, the bill so strongly favored by the Chamber of Commerce would actually deprive many people of the guaranteed right to an appeal which everyone now enjoys. These litigants deserve an appeal just as much as every other litigant.

Furthermore, an IAC as envisioned by the State Senate bill would result in substantial delay to litigants achieving finality in their legal disputes . . . not just the kind of typical delay that comes with

any legal process, but indeed institutional delay. It would take longer for every litigant to get a final decision in a case, because after the IAC reached a decision, it could still be appealed to the Supreme Court. Delay not only creates a longer period of time without issue resolution, but obviously would substantially increase the attorneys' fees and other costs to all litigants. All sides in both personal and business disputes should be resolved as promptly as possible and with finality. A system that piles higher costs and longer delays on litigants will not facilitate this goal.

Unnecessary delay also has human costs, sometimes far greater than can be measured by money. For instance, children who are the subject of abuse and neglect proceedings would be more likely to wait a lot longer for permanent families. Crime victims and their families would suffer greater emotional and temporal obstacles to real closure. And families in the midst of divorce (which unfortunately is the way most West Virginians interface with the court system) would definitely have a higher cost and misery index.

So who would benefit by delay? The greatest beneficiary would be lawyers who work by the hour . . . primarily defense lawyers, who often must achieve a certain number of billable hours as a requirement of their employment. One must wonder whether the lawyers who represent Chamber business members have convinced their clients that an IAC is in their best interests. This may be why the Chamber of Commerce so actively continues to seek an IAC. However, a cold, hard look at the increased expense and delay to business litigants demonstrates this reasoning is way off-base. Business people want to get their disputes resolved in a timely and cost-efficient manner. An IAC will not accomplish that goal.

WHAT WOULD AN IAC REALLY COST THE TAXPAYERS OF WEST VIRGINIA?

I have never previously personally opposed the concept of an IAC, nor has the Supreme Court taken a position as a body on this issue. However, it is clear that no realistic assessment of what it would actually cost the taxpayers has ever been made by its proponents.

The legislative estimate was that a three-judge intermediate appellate court would cost \$5.2 million. While it is not at all clear that a three-judge panel could handle such an expansive workload, even assuming that three judges would suffice, the ultimate costs to taxpayers would be far higher than what has been previously projected by the proponents of such a court. Here, then, is just a partial list of some of the cost considerations that they did not take into account:

Physical Facilities

>Courtroom - Traveling the state and "borrowing" local courtrooms is not practical for two reasons: Trial courtrooms are not set up to be appellate courtrooms. The cost of modifying facilities for a multi-judge court and *per diem* travel costs for the judges, their staffs, and the clerk's office staff would be very large. Special benches would have to be built in each location, as county commissions do when the Supreme Court hears argument dockets outside of Charleston. In the busier circuits, it would be difficult even to gain access to courtrooms on a regular basis. It would be cheaper to house the court in one location, although that too would require inevitable set-up costs.

>Storage - A minimum of 2,000 square feet of on-site storage for case files, records from lower courts, etc., and 5,000 square feet off-site space would be needed for the Clerk's Office. At \$12 to \$15 per square foot, that's another \$60,000 to \$75,000 per year for the off-site storage alone, with some \$24,000 to \$30,000 needed for the on-site storage rent. Space for the clerk's office where the public could access documents, like a lobby/reception area, in the amount of approximately four hundred square feet would add an additional \$8,000 a year.

Systems & Technology

>Development of a document management system for the clerk's office (software, servers, and scanners) would cost approximately \$50,000. Development and maintenance of a case management system for the clerk's office and licenses for 42 employees to use it would be about \$125,000 annually.

>The fiscal note takes into account the salaries of two security officers, but not the initial equipment costs, which would approximate \$52,700. (An x-ray machine would be \$35,000; metal detector \$3,200; two guns for two officers total of \$1,400; cameras and monitor and installation, \$6,500; panic buttons, \$3,000; and ballistic material built into the bench, \$3,600).

Other Public Funds

>An IAC will have major financial consequences to the budgets of other public entities related to the court system. It is unclear whether circuit clerks would be expected to provide services to the IAC; but if so, many would clearly need substantial additional resources. According to a March 22, 2011, *Charleston Daily Mail* story, the Attorney General's office has already had to hire six lawyers, two paralegals, and two secretaries to cope with the increased work caused by the Supreme Court's Revised Rules of Appellate Procedure, because the Court now requires a response to every appeal, including criminal cases. That workload would definitely increase if all those criminal defendants had yet another level of appeal. Public Defenders Services and court-appointed defense attorneys would have substantially increased costs, which are paid by taxpayers. There are about 45,000 cases that can potentially be appealed each year, of which about 9,000 are criminal cases.

A party in a civil case has to weigh costs when deciding whether to appeal. Criminal defendants represented by public defenders – either through Public Defender Services or by individual court-appointed defense attorneys – do not. It's all on the taxpayers' tab. Because they do not pay their attorneys, they have nothing to lose from continuing the appeal process as long as possible. There would need to be more attorneys to prepare those cases and present those cases, yet public defender services are already consistently under budgeted. The Sheriff's departments and police departments would have more costs. Attorneys handling appeals to the intermediate appellate court likely would not be the same attorneys who handled the initial trial or the same attorneys who later handle appeals to the Supreme Court. That means more work for investigating officers and attorneys. That's time officers could be investigating other crimes or patrolling.

Thus, with any IAC, not just the one designed in SB307, taxpayers would be paying more both to defend and prosecute criminal cases, more for clerk's staff and judicial staff, more for record-keeping and more for storage of records, not to mention more for currently non-existent facilities to house the court itself.

So why would the state want to establish a new level of judiciary when we haven't even gotten through half a year of the Revised Rules of Appellate Procedure? The Revised Rules address issues raised by proponents of intermediate appellate courts with less cost and delay.

While the power of the Supreme Court would be far greater with an IAC, the judicial budget would also increase dramatically. Because our state constitution gives the court system authority to set its own budget, we have tried to be responsible stewards of public funds; and at the Supreme Court, we are more interested in operating the court system in a frugal, effective manner than in gaining more power and authority or wasting taxpayer funds.

In summary, now that all appeals are being heard and resolved on the merits in written opinions, an additional level of courts that people would have to go through to achieve finality just doesn't make sense.

So as so many West Virginia families are having to say about unneeded expenditures: We don't need it and we can't afford it.

Chief Justice Workman creates commission to review juvenile justice facilities, procedures

Chief Justice Margaret L. Workman on June 13 announced that the Supreme Court had established a commission to look into the West Virginia juvenile justice system.

“We take seriously our commitment not only to public safety, but also to doing the very best we can to provide safety and effective rehabilitative services to young people who are detained as a result of court orders,” Chief Justice Workman said.

The Adjudicated Juvenile Rehabilitation Review Commission will examine the Division of Juvenile Services’ operations plan and programs at the Industrial Home for Youth in Salem and at the Honey Rubenstein Center in Davis. The commission will report its findings to the full Court. The review can be expanded to other facilities and programs operated by the Division of Juvenile Services and the Department of Health and Human Resources if the commission deems it necessary.

Chief Justice Workman is chairwoman of the panel. She has appointed the following members to the commission.

- Supreme Court Administrative Director Steve Canterbury, former Executive Director of the Regional Jail and Correctional Facility Authority (in that capacity he directed construction of several correctional facilities, including the residence hall at the Industrial Home for Youth in Salem);
- Circuit Judge Gary Johnson of the Twenty-Eighth Judicial Circuit (Nicholas County), also Chairman of the Court Improvement Program Board;
- Circuit Judge J. Lewis Marks, Jr., of the Fifteenth Judicial Circuit (Harrison County);
- Judge Jeffrey B. Reed of the Fourth Judicial Circuit (Wood and Wirt Counties), former Chairman of the Court Improvement Program Board;
- Jefferson County Magistrate Gail C. Boober;
- Cindy Largent-Hill (Morgan County), former Director of the Division of Juvenile Services and current Director of Programs for Timber Ridge Schools;
- The Rev. Mr. Rue Thompson (Upshur County), Director for State Facilities, Holy Rosary Parish;
- Attorney Jane Moran (Mingo County), original member of the Juvenile Justice Committee in the 1980s and current member of the Court Improvement Program Board;
- Professor Megan Annitto, Director of the Center for Law and Public Service at West Virginia University College of Law;
- Sam Hickman (Kanawha County), Chief Executive Officer, National Association of Social Workers, West Virginia Chapter;
- _ Dr. Jorea Marple, Superintendent of Schools, State of West Virginia; and
- _ The Rev. Matthew Watts, President and CEO of Hope Community Development Association and senior pastor of Grace Bible Church in Charleston.

The commission had an organizational meeting in July.

Supreme Court directs Business Court Committee to proceed; Committee agrees on name, jurisdiction, definitions

In its June Administrative Conference, the Supreme Court approved of the Business Court Committee's proposal to allow the committee to develop rules and procedures to create a Business Court in West Virginia. The Court also directed the Committee to consider any changes in the West Virginia Code that may need to be enacted in the 2012 Legislative session to allow a business court to be established.

The Committee met at the Judicial Conference in June and again in a conference call on July 14 and came to a consensus on several issues. The Committee will meet in August to refine its plan for rules and procedures. It then will invite a group of defense and plaintiffs' attorneys and representatives of business to work with it on refining the written rules before releasing them for public comment and public hearings, said the Chairman, Judge Darrell Pratt of the Twenty-Fourth Judicial Circuit (Wayne County). The issues on which the Committee has decided are listed below.

- The Committee plans to have written rules available for public comment and public hearings before the end of 2011 and proposed legislation available for the 2012 legislative session.
- The proposed business court should be called a Complex Commercial Litigation Court.
- It would have five to seven judges who also would be active circuit judges appointed by the Chief Justice of the Supreme Court to serve terms of between three and seven years each. The judges would have a background in business or commercial litigation and would receive special training by the National Association of Business Court Judges.
- The proposed Complex Commercial Litigation Court would have statewide jurisdiction and operate in five to seven regional divisions based around the state's largest population areas.
- Either party in a case could file a Certificate of Designation for a case to be handled in the Complex Commercial Litigation Court. A presiding circuit court judge also could designate a case to be handled in the Complex Commercial Litigation Court, or both parties could agree that the case would be handled in the court. There would be an additional filing fee.
- Mediation would be mandatory in all cases assigned to the new court. The Complex Commercial Litigation Court judges would act as the mediators.
- Time standards and case management rules would be designed to move cases expeditiously through the court process to a final resolution.
- The Court would use electronic filing as well as traditional paper filing.
- It would be presumptively mandatory for certain types of cases to be handled by the court. Conversely, certain types of cases would be presumptively non-complex commercial cases and would NEVER be handled by the court.

Other members of the committee are Circuit Judge Donald Cookman of the Twenty-Second Judicial Circuit (Hampshire, Hardy and Pendleton Counties); Circuit Judge Rudolph J. Murensky, II of the Eight Judicial Circuit (McDowell County); Circuit Judge James J. Rowe of the Eleventh Judicial Circuit (Greenbrier and Pocahontas Counties); Circuit Judge Susan B. Tucker of the Seventeenth Judicial Circuit (Monongalia County); and Circuit Judge Christopher Wilkes of the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties).

Those cases that would be presumptively mandatory and WOULD be handled by the court would be

- Disputes between two or more businesses involving contracts, sales, and Uniform Commercial Code disputes;
- The purchase or sale of a business;
- Non-consumer debts;
- The internal affairs of a business (like shareholder disputes);
- Trade secrets;
- Non-compete agreements;
- Intellectual property cases;
- Securities cases;
- Commercial insurance coverage disputes;
- Malpractice lawsuits involving corporations, corporate lawyers, corporate accountants, corporate consultants, corporate executives; and
- Torts between businesses.

The types of cases that could NEVER be handled by the Complex Commercial Litigation Court would be

- Consumer litigation, including product liability, personal injury, wrongful death, and consumer class action cases;
- Employee occupational health and safety cases involving injuries in the workplace;
- Consumer environmental actions, like cases involving toxic spills and chemical exposure;
- Consumer malpractice lawsuits, including lawsuits against doctors and hospitals;
- Administrative lawsuits against government agencies, including tax disputes;
- Consumer or residential real estate or landlord disputes;
- Domestic relations cases, even those involving a business; and
- Criminal cases, even those involving a business.

Justice Davis to lead statewide anti-truancy effort

Justice Robin Jean Davis on July 28 announced an unprecedented new effort to coordinate judicial truancy programs in West Virginia. Beginning this fall, Justice Davis will appear at fourteen regional meetings of school superintendents, principals, and others to discuss ways the court system can work with them and other community officials to keep children in school.

The regional meetings are tentatively planned for Wheeling, Morgantown, Parkersburg, Clarksburg, Elkins, Keyser, Martinsburg, Point Pleasant, Charleston, Summersville, Lewisburg, Huntington, Logan, and Beckley. Dates and venues have not been selected.

Justice Davis has been appointed by the Supreme Court to coordinate the efforts of circuit judges who work with schools to reduce truancy rates. The Court hopes a Justice's leadership will encourage more judges and schools to work together.

Justice Davis spoke on July 28 to more than 170 teachers and school service personnel who were attending a week-long summer school sponsored by the American Federation of Teachers-West Virginia at the Camp Dawson Conference Center in Kingwood, Preston County.

Justice Davis' speech in Kingwood was so well received that the American Federation of Teachers-West Virginia and the West Virginia School Service Personnel Association immediately voted to endorse the judicial anti-truancy plan.

Some circuit judges in West Virginia already have initiated truancy programs. At the regional meetings, Justice Davis will discuss those programs as examples of ideas that work. The purpose of the regional meetings, however, will be to begin to tailor similar programs that would work best in individual communities.

"In some areas, especially rural areas, a judge is a respected member of the community. Judges want to use that position to let children know that someone other than a teacher does care about them, even if they may not have anyone at home who does. We judges want to be your backup," Justice Davis told the teachers.

In Kingwood, Justice Davis talked about programs that are conducted by Judge Alan Moats in the Nineteenth Judicial Circuit (Barbour and Taylor Counties), Judge Gary Johnson in the Twenty-Eighth Judicial Circuit (Nicholas County), Circuit Judge Eric O'Briant in the Seventh Judicial Circuit (Logan County), Judge James Young in Twenty-Fourth Judicial Circuit (Wayne County), Judge John Hatcher in the Twelfth Judicial Circuit (Fayette County), and Judge Phillip Stowers in the Twenty-Ninth Judicial Circuit (Putnam County).

Truancy also was the topic of a meeting during the spring Judicial Conference in Charleston in June. Circuit Judges from around West Virginia were joined in that discussion by State Schools Superintendent Jorea Marple; Board of Education President Priscilla Haden; Senate Education Chairman Robert Plymale, D-Wayne; and House Education Chairwoman, Mary Poling, D-Barbour. They agreed that the three branches of government should work together on the issue.

As a follow up to that meeting, Judge Moats was a featured speaker on August 1 at the "Act Now for Student Success" meeting at the Embassy Suites Hotel in Charleston, sponsored by the West Virginia Department of Education. Judge Moats talked about "Truancy, Dropouts, and Drugs" and community engagement.

Court redesigning website, adds Lead Web Designer position

Since its creation in the late 1990s, the amount of information on the West Virginia Judiciary website has grown at least tenfold. The public and court employees expect that the Court will maintain a modern and useful website. In fact, operating a website is a critical component of providing access to the courts. For the past several years, the Supreme Court's Internet Committee has worked on a re-design of the Court's website.

On July 18, Lead Web Designer Isaac Counts joined the staff of the Clerk's Office. Isaac is a welcome addition to the dedicated team of people who currently work on the website. In the short term, he will focus on implementing the re-design, which is scheduled for later this fall. Over the long term, Isaac will help to expand online services, improve case management operations within the Clerk's Office through developing internal web designs, and help move toward creating a more paperless court environment. He comes to the Court with a bachelor's degree in graphic design and demonstrated excellence in creating useable and standards-compliant websites.



The following is a link to the new West Virginia Judiciary website. To view the new website, see <http://clerkwebstage1.courtswv.gov> or <http://10.200.241.32>. Please read "About This Redesign" on the main page, written by Supreme Court Clerk Rory Perry, for an explanation of the history of the redesign process and new features.

During the month of August, the Internet Committee is soliciting comments from court employees. Please focus comments on correcting any inaccuracies in the text, evaluating the ease of navigation between pages, and discussing the overall user experience. Send your comments to angie.smith@courtswv.gov.

Awards

West Virginia's mental health registry honored

West Virginia's Mental Health Registry was showcased during the FBI's Mid-Eastern Regional NIAA meeting on Wednesday, April 6, in Charleston.

The FBI asked West Virginia to host this regional meeting because of the state's significant accomplishment in developing and deploying the nation's most advanced electronic reporting system for people who have been committed for treatment of a mental illness or who have been determined to be unable to handle their own affairs due to mental illness.

The reporting system enters records into both West Virginia's Central State Mental Health Registry established under W.Va. Code § 61-7A-1 and into the federal National Instant Criminal Background Check System (NICS).

The meeting at the Charleston Marriott Town Center was a training seminar for the FBI and selected law enforcement, legal, and mental health administrators from West Virginia, Kentucky, Ohio, Pennsylvania, Maryland, and Virginia and so was not open to the public or the press. It focused on the federal reporting requirements of NICS and the NICS Improvement Amendments Act of 2007 (NIAA). Congress enacted NIAA after the Virginia Tech shootings.

NIAA aims to prevent ineligible persons from obtaining firearms by increasing the number of records available to NICS. It requires each state to provide the Bureau of Justice Statistics with information on the number of records they may hold that might disqualify an individual from obtaining or possessing firearms, including records on mental health disqualifiers. It also provides required time frames for reporting those records. In 2011, states must report at least 50 percent of eligible records or risk losing a percentage of federal Crime Omnibus funds.

NIAA also requires states to develop "relief from disabilities" processes through which individuals prohibited from possessing firearms because of disqualifying mental health conditions can regain firearm possession rights by proving that the disqualifying conditions no longer exist.

Legislation to bring West Virginia's relief process into compliance with federal law requirements did not pass this year, but revising legislation will likely again be before West Virginia's Legislature next session, said Linda Richmond Artimez, Director of Mental Hygiene and Treatment Court Services for the Supreme Court of Appeals of West Virginia. The failure to implement an approved "relief from disabilities" program renders a state ineligible for the NICS Act Record Improvement Program (NARIP), a grant program funded by Congress and administered by the Bureau of Justice Statistics.

The West Virginia Supreme Court Administrative Office began developing a computerized system to automate reporting of individuals prohibited by state and federal laws from purchasing or possessing firearms shortly after the NIAA was passed in 2007. That Act and West Virginia's Central Mental Health Registry law went into effect in 2008. The Court's Division of Technology Services, with the help of a multi-disciplinary team led by the Court's Division of Mental Hygiene and Treatment Court Services, created an automated electronic reporting system.

Mental hygiene commissioners began reporting appropriate involuntary commitment cases in June 2009 and began reporting adult guardian and conservator cases in 2010. Designated magistrates began reporting involuntary commitment cases under their jurisdiction on April 1.

The West Virginia reporting system is still under development to include persons found incompetent to stand trial by reason of mental illness and those found not guilty in a criminal proceeding by reason of mental illness. Ongoing work will next address those areas.

Supreme Court employee wins Young Lawyer of the Year award



Jennifer D. Singletary of the Administrative Office was named the 2011 West Virginia Young Lawyer of the Year, an award given by the Young Lawyers Section of the West Virginia State Bar.

The award is given annually to an attorney who has brought honor and distinction to the legal profession through a commitment to community service and the citizens of West Virginia. Ms. Singletary was recognized at a Bar reception in Charleston on April 15.

"I was very surprised by the phone call, and, of course, honored in that moment and at the banquet. It's been the most significant recognition in my adult life so far."

As Special Projects Counsel, Ms. Singletary oversees several Supreme Court projects, including community corrections initiatives, elder law issues, and language access in the courts.

Ms. Singletary has an undergraduate degree from West Virginia State College. She started her career as a legal assistant at the Kanawha County Public Defender's Office in the 1990s.

She received her master's degree in humanities from Marshall University Graduate College in 2001. She also worked simultaneously toward a law degree by going to Cincinnati's College of Law from 1998 to 2001. After returning to Charleston, Ms. Singletary began working as an attorney at the Kanawha County Public Defender's Office.



Judge James Mazzone named Jurist of the Year

The West Virginia Association of Justice named First Judicial Circuit (Brooke, Hancock, Ohio Counties) Judge James Mazzone as Outstanding Jurist of the Year..

The decision was unanimous during a May association meeting. Judge Mazzone, who has been a judge for eleven years, told the *State Journal* that he was shocked when he heard the news.

“I was in the middle of a trial in Hancock County, and I received a message from my office. So I called them, and that’s when I heard about it,” he to the newspaper. “I was very surprised and flattered at the same time.”

Judge Mazzone was chosen among eight other nominated judges.

He received his bachelor’s degree in accounting from West Virginia University in 1985 and received his law degree from the law school there three years later.

IMPORTANT MESSAGE ABOUT MILEAGE

The IRS has announced the mileage reimbursement rate for vehicles has been increased from \$.51 per mile to \$.555 per mile for the last six months of 2011.

2012 Legal Holiday Schedule

News Year’s Day, Sunday, Jan. 1	Off Monday, Jan. 2
Martin Luther King Day, Monday, Jan. 16	Off same day
Presidents’ Day, Monday, Feb. 20	Off same day
Primary Election Day, Tuesday, May 8	Off same day
Memorial Day, Monday, May 28	Off same day
West Virginia Day, Wednesday, June 20	Off same day
Independence Day, Wednesday, July 4	Off same day
Labor Day, Monday, Sept. 3	Off same day
Columbus Day, Monday, Oct. 8	Off same day
General Election Day, Tuesday, Nov. 6	Off same day
Veteran’s Day, Sunday, Nov. 11	Off Monday, Nov. 12
Thanksgiving, Thursday, Nov. 22	Off Thur. 22 and Fri. 23
Christmas Day, Tuesday, Dec. 25	Off same day
New Year’s Day 2013, Tuesday, Jan. 1	Off same day

Transitions

Fairmont attorney named circuit judge

Marion County native Michael John Aloï was appointed by acting Governor Earl Ray Tomblin as circuit judge for the Sixteenth Judicial Circuit (Marion County) on July 8.

Judge Aloï's swearing-in ceremony will be held at 4 p.m. August 4 in the Marion County Courthouse but his first day on the bench will be August 1. He will fill the judicial vacancy created by the July 31 retirement of Judge Fred L. Fox II.

Judge Aloï has practiced law for 28 years. He is a founding partner of the Fairmont-based injury law firm of Manchin & Aloï.

Judge Aloï graduated from West Virginia Wesleyan College and West Virginia University College of Law. He is Past President of the West Virginia State Bar (2002-2003) and Past President of the Marion County Bar Association (1996-1997). In April 2006, he was honored as a Foundation Fellow by the West Virginia State Bar Foundation. He received a Certificate of Merit from the West Virginia State Bar in 2008 for outstanding service.

The Farmington resident is married to Dr. Susan Aloï and they have four children: Joey, Alexander, Hannah, and Iris.



State Law Librarian appointed new Director of Judicial Education



Sara Thompson has been appointed the Director of Judicial Education, effective July 2011. Alison Chambers, the former director, has accepted the position of Deputy Counsel in the Supreme Court's Office of Counsel.

Ms. Thompson has been with the Court for five years as the Education and Outreach Services Librarian. Ms. Thompson received her undergraduate degrees in History and Criminal Justice from Marshall University, a law degree from Capital University Law School, and a master's degree in Library and Information Science from Kent State University.

The Administrative Office wishes to thank Ms. Chambers for her excellent service as Director of Judicial Education and for her other service in the Administrative Office. We wish her much success in her new position with the Court.

Kanawha assistant court administrator retires after 22 years

Assistant court administrator Judy Blaker retired on June 30 after twenty-two years serving residents of Kanawha County.

Ms. Blaker's duties included assigning attorneys to those who can't afford them and assisting with financial aid forms. When she first started her job, the office staff also assigned all cases to judges, but computers handle that task now.

Ms. Blaker said she hoped to catch up on reading, tennis, and traveling during retirement. She also hopes to visit her children and grandchildren more.

Family Court Judge assistant dies

Angie Lester of Logan passed away Monday, June 20, from injuries she received in an automobile accident.

Ms. Lester was 50 years old. She worked for Ninth Family Court Circuit Judge Jason Harwood in Logan County. She is a former employee of the Logan County Prosecutor's Office and *The Logan Banner*.

Drug courts continue to flourish around West Virginia

Drug courts continue to change lives in West Virginia. Justice Brent Benjamin was on hand in Wood County when the first youth graduated from that program on May 25, and he was there in Monongalia County when that juvenile drug court celebrated its opening June 2. He attended a combined adult and juvenile drug court graduation in Logan on June 17, a juvenile drug court graduation in Weirton on August 1, and is scheduled to attend a juvenile drug court graduation in Boone County on August 9.

"Drug courts work," said Justice Benjamin, who tries to attend every drug court graduation and opening. "If they save one life, they are a good thing, but they save a lot more than that."

Drug courts also save taxpayer money because they can keep youths and adults out of the court system and, eventually, prison. Mike Lacy, Director of Probation Services, said 65 percent of inmates in the West Virginia regional jails in 2008 were there at least in part because of substance abuse problems.

West Virginia has eleven adult drug courts serving twenty-nine counties and ten juvenile drug courts serving twelve counties, including those that have opened since January 1. Wayne County, which has a juvenile drug court, is planning to open an adult drug court that also will be supervised by Circuit Judge Darrell Pratt.

Justice Benjamin and fifteen drug court judges and magistrates received three and a half days of training at the national drug court conference held in July in Washington, D.C.

Robes to Schools

A circuit judge and two magistrates participated in Robes to Schools activities before summer break began.

Judge Robert A. Waters of the Fourth Judicial Circuit (Wirt and Wood Counties) and his wife, Wood County Magistrate Robin Waters, spoke to about one hundred eighth-grade students at Jackson Middle School on May 27.

The judge and magistrate talked to West Virginia Studies classes taught by William F. Hughes, Jr., about due process in magistrate courts and circuit courts in West Virginia.

Kanawha County Magistrate Julie Yeager presided over a mock trial in the Kanawha County Judicial Annex on April 27. The bench trial was performed in front of an audience of students from Craig Giffin's criminal law class from Kanawha Valley Community and Technical College. Magistrate Yeager wrote the mock trial script, which concerned a domestic battery case that would typically be heard in magistrate court. She has used the mock trial in other educational settings.

In May, Thirteenth Judicial Circuit (Kanawha County) Judge Tod J. Kaufman read "Wild Fox," by Cherie Mason, to second- and third-grade students at Sharon-Dawes Elementary School in Cabin Creek, Kanawha County.

Supreme Court hosts winners of *West Virginia Law Adventure*

Classes from three middle schools and one high school had the opportunity in April to perform mock trial scripts in front of Chief Justice Margaret Workman and Justice Thomas McHugh at the finale of this year's *West Virginia Law Adventure*, the Supreme Court's civic education program for middle school and high school students.

Chief Justice Workman heard the case performed by students from Kanawha County's Herbert Hoover High School on April 15. Sixth graders and seventh graders from Jackson Middle School in Wood County, eighth graders from Western Greenbrier Middle School in Greenbrier County, and mixed grade students from Horace Mann Middle School in Kanawha County performed before Justice McHugh on April 29.

Students' trips to the Supreme Court are paid for by a grant from the West Virginia Bar Foundation. Ten schools from seven counties participated in the program - which requires students to write the scripts themselves - this academic year.



Students from Herbert Hoover High School perform a mock trial for Chief Justice Margaret Workman on April 15. Photo by Michael Switzer

Cross-Training Conferences draw hundreds

More than 680 participants attended three child abuse and neglect cross-training conferences in July at Snowshoe Mountain Resort, Bridgeport, and Logan to learn about child abuse and neglect procedure. Participants included judges, attorneys, social workers, probation officers, court-appointed special advocates, counselors, nurses, domestic violence advocates, foster parents, and others from around West Virginia interested in child protection.

The three two-day seminars were sponsored by the Supreme Court of Appeals of West Virginia, its West Virginia Court Improvement Program Board, and the West Virginia Coalition Against Domestic Violence.

The theme of this year's conference – Paving Paths to Permanency – was an emphasis on planning for timely permanent placements of children. Attendees learned the procedure of a Chapter 49 child abuse and neglect case, received the latest updates on child abuse and neglect law, explored specialized topics, and learned how to collaborate across disciplines to identify and address child abuse and neglect.



In May, Administrative Office employees donated bags, toys, and personal care items to the Carry-On Campaign, which provides these items to children in foster care.

Sponsors of the event include Mission WV, Inc.; State Department of Health and Human Resources; U.S. Attorney's Office, Northern and Southern Districts; WV Child Advocacy Network; WV Endangered Children Task Force; and WV Prosecuting Attorney's Institute. *Photo by April Harless*

Last SOISO officers to be hired

The Division of Probation Services in August is beginning the process of hiring specialized sex offender intensive supervision officers, or SOISOs, for the last region in West Virginia. Region IV consists of Kanawha, Calhoun, Jackson, Roane, Braxton, Clay, Gilmer, Webster, and Nicholas counties.

The specialized officers work under provisions of the Child Protection Act of 2006 (House Bill 101, passed June 14, 2006). The law requires extended supervision for sex offenders, especially those convicted of crimes against children.

Supreme Court Chief Justice Margaret L. Workman swore in six new officers on July 8 to work in Region One, which consists of Berkeley, Jefferson, Morgan, Mineral, Grant, Tucker, Hampshire, Hardy, and Pendleton Counties. Those officers are Floyd Keith Ackerman, Aura Bell, Michael DeHaven, Daniel Smith, Patricia Smith, and Robin Solak. Chief Justice Workman also swore into office Trena Hopkins, who works in Region V.

The officers' only duty is to supervise sex offenders under the direction of circuit courts. The officers work non-traditional hours, including evenings, weekends and holidays, to provide intensive community supervision of offenders. The officers work with treatment providers and polygraphers to ensure that those they supervise comply with the conditions of their probation and parole, which can include electronic monitoring. The officers work out of their cars and do not have traditional offices

The first group of sex offender probation officers was hired in November 2008. The supervision program is being expanded one region at a time throughout the state. There are now twenty-seven SOISO officers in forty-four counties.



From left: Daniel Smith, Robin Solak, Trena Hopkins, Aura Brill, Keith Ackerman, Mike DeHaven, and Patricia Smith are sworn in by Chief Justice Margaret L. Workman on July 8, 2011, as the newest Sex Offender Intensive Supervision Officers. *Photo courtesy of Patricia Smith*

Justices discuss FOIA with visitors from Republic of Georgia

Three Supreme Court justices spoke on April 4 with a group from the Republic of Georgia during their visit to the United States to learn about the Freedom of Information Act.

Chief Justice Margaret Workman, Justice Robin Jean Davis, and Justice Thomas McHugh, talked with representatives of government agencies, non-government organizations and a regional journalist. The group was in West Virginia for one week to learn about FOIA on the federal, state and local levels.



From right: Justice Robin Jean Davis, Chief Justice Margaret Workman, Justice Thomas McHugh, Clerk Rory Perry, and General Counsel Kirk Brandfass speak with visitors from the Republic of Georgia on April 4 in the Supreme Court Chamber. *Photo by Jennifer Bundy*

The main discussion focused on Supreme Court cases dealing with FOIA, costs associated with filing a FOIA, time limits for responding to FOIA requests, and repercussions if someone does not give out public documents.

Facilitator Natia Jikia said the goal of the trip is for the Georgians to get experience on how FOIA is implemented here because the Republic of Georgia is now adopting its own law. The visit was arranged by Sudhakar R. Jamkhandi, president of the Center for International Understanding in Princeton, Mercer County.

Justices speak around West Virginia

The Supreme Court of Appeals is committed to improving access to the courts and knowledge about the court system, and to further that goal the Justices speak at forums around the state.

Chief Justice Margaret L. Workman was the main speaker at several events this spring and summer. On April 8 she spoke at the West Virginia University College of Law as the school dedicated its Child and Family Law Clinic. Chief Justice Workman talked about how the clinic and a law school class supported by the Court's Court Improvement Program address the legal needs of children and their families so that children can live in a safe and well environment.



Chief Justice Workman at Fairmont State. *Photo courtesy of Sarah Hensley*

On May 20, Chief Justice Workman was the luncheon speaker at the Mountain State Bar Association's 2011 Annual Continuing Legal Education Seminar at Fairmont State University. That evening she participated in a Girl Scout Dine-Around at a home in Hedgesville. The informal event for Senior and Ambassador Girl Scouts was designed to give girls who have demonstrated leadership potential the opportunity to meet professional women, develop a network, and gain wisdom and guidance from successful female leaders. The Dine-Around in Hedgesville was hosted by the Women's Advisory Board of the Girl Scout Council of the Nation's Capital, which serves girls in Washington, D.C., and 25 counties in Maryland, Virginia, and West Virginia.

On May 21, Chief Justice Workman gave the commencement address at Blue Ridge Community and Technical College. The college has about 3,800 students, and 260 graduated that night.

On May 26, Chief Justice Workman talked about John Adams and his contribution to the rule of law at the McDowell County Law Day event in Welch.

Supreme Court Justice Robin Jean Davis also has given several speeches. On May 15 she spoke at the Oak Hill Holiday Lodge to the graduates of Leadership Fayette County, a program for exceptional high school students modeled after Leadership West Virginia. Justice Davis also was a speaker June 2 at the West Virginia Association for Justice Convention and Seminar in Charleston.

On June 6, Justice Menis E. Ketchum spoke at the naturalization ceremony at in the Robert C. Byrd United States Courthouse in Charleston. About fifty people became naturalized citizens at the event.

In July, Justice Davis and Justice Brent D. Benjamin were guests on the West Virginia Media television show "Decision Makers." The Justices appeared on two shows that aired July 24 and July 31.

W.Va. work to combat domestic violence hot topic at conferences

Family Court Services Director Lisa Tackett has been hitting the lecture circuit.

She was invited to speak at the NICS User Conference in Dallas, Texas, on May 12 about West Virginia's Domestic Violence Registry, multi-disciplinary cross-training conferences, and the changes to West Virginia law and procedure regarding Domestic Violence.

She spoke again at the U.S. Attorney's Office and West Virginia Coalition Against Domestic Violence conference on July 18 about "Prosecuting Domestic Violence, Sexual Assault and Stalking Cases in Federal Court." Specifically, she talked about the Domestic Violence Registry, differences between state and federal law on how West Virginia defines firearms and who is prohibited from possessing firearms, and changes in 2010 and 2011 law and procedural rules on stalking, harassment, and domestic violence.

From June 1-4, she and eleven family court judges, family court staff, and magistrates attended the Association of Family and Conciliation Courts annual conference in Orlando, Florida. The theme of the conference was "Research, Policy and Practice: What's Gender Got to do with it?" The West Virginia group focused on the domestic violence track at the conference, and their attendance was paid for by a domestic violence grant obtained by my Ms. Tackett's office from the West Virginia Division of Justice and Community Services.

State Law Library News

As part of the Library's partnership with the Central West Virginia Earned Income Tax Coalition (EITC) to provide tax preparation assistance for low-to middle-income taxpayers, IRS-certified Library staff members completed more than three hundred tax returns this year at two judicial library locations in Charleston and Martinsburg. Special tax preparation events included Super Saturday on April 2 at the State Law Library and Tuesday, April 5, at the Money Smart Conference at the Charleston Marriott Hotel.

State Law Library staff members successfully completed 179 tax returns, a 66 percent increase over last year. Law Librarian Heather McClung, Twenty-Third Judicial Circuit Law Librarian, prepared 123 returns. Other staff members scheduled appointments, assisted patrons with general tax questions, and referred those with special situations to other agencies. The project resulted in taxpayers receiving \$217,158 in federal refunds, \$42,311 of which was Earned Income Credit.

On April 30 the Library hosted a joint Bicycle and Motorcycle safety law workshop. Bruce Wilson, Reference Librarian, discussed the laws of the road in West Virginia, types of bicycle equipment, lamps and reflectors, requirements for helmets for children and adults, and common sense safety strategies. He also discussed local organizations that promote bicycle riding and safety and provided contact information. An officer from the Charleston Police Department was on hand to explain motorcycle safety measures.

In May, Library staff researched and previewed a new Integrated Library System (ILS) for the State Law Library. The ILS is the core of library operations used to manage, control, and disseminate information about library acquisitions, cataloging, serials, and online public access catalog (OPAC). The new ILS will greatly enhance and add value to library services and processes by streamlining operations behind the scenes. It also will provide patrons with a more readily searchable and user-friendly OPAC. Some of the features of the new system include local and remote access to our collection via any Web browser, iPad, smartphone, or other handheld device, a free Library app for download, direct access to reserve, review, or recommend a book, and photo jackets to identify books. The new system also will have fully searchable links to electronic resources such Hein Online, with access to full-text law reviews and Bar journals. Other databases that also will be available are the RIA tax program and EBSCO host, including *Index to Legal Periodicals* and *Legal Information Reference Center™*, which contain hundreds of full-text publications and thousands of legal forms. The full-text legal reference books are provided through Nolo Press, the nation's oldest and most-respected provider of legal information for consumers and small businesses. The new ILS will be purchased and rolled out throughout the

court system by the end of 2011.

On May 2, the Library celebrated Law Day. This year's theme was "The Legacy of John Adams: From Boston to Guantanamo Bay" and focused on attorneys who have had the courage to represent unpopular causes and clients in order to ensure that justice is served. The Library showed portions of the HBO documentary "John Adams," highlighting the struggle faced by our second president as he represented British soldiers charged with murder for firing upon and killing five civilian protestors during what became known as the "Boston Massacre."



A wood-cut map of the West Virginia judicial circuits that was handcrafted by Library Assistant Jimmy Carpenter.
Photo by Corey Sanchez

In May and June, the library offered a "Surviving Credit Card Debt" workshop. Highlights included detailed information on how to order, review, and understand a credit report, correct misinformation contained in the report, deal with debt collection calls, and write effective letters to creditors.

On June 17, the Library held an open house in honor of West Virginia Day. Participants were offered a 35-minute tour of the Capitol Building including the Senate Chamber, the Governor's reception room, and the Governor's mansion. Participants also tested their knowledge of West Virginia by playing a West Virginia trivia game. A highlight of the day was a contest involving a wood-cut map puzzle of the West Virginia judicial circuits handcrafted by Library Assistant Jimmy Carpenter. Participants were timed on how quickly they could assemble the map. Randall Wagner of the Administrative Office was the winner. At noon the 65-minute documentary film "Welcome to Coalwood" was shown in the Library training room.

Laws passed in the 2011 Legislative session that affect the courts

The following are summaries of laws the 2011 Legislature passed during its regular session which in some way affect the court system. Links to the enrolled bills can be found on the [Legislature's website](#).

House Bill No. 2001: Providing that inmates serving life sentences shall be considered for parole only once every three years

W. Va. CODE: §62-12-13 Amended

SUMMARY: This Act provides that inmates serving life sentences with the possibility of parole may be considered for parole only once in every three-year period.

COMMENTS: In 2010, the Legislature enacted SB218, which mandated that the Parole Board review these cases annually. Victim rights groups objected that the “yearly review” requirement placed an unfair burden on them to annually relive the facts of the crime.

EFFECTIVE: January 25, 2011

House Bill No. 2159: Relating to prohibiting members of the news media from being compelled to testify

W. Va. CODE: §57-3-10 New Code

SUMMARY: This Act defines a “reporter” and provides that no reporter shall be compelled to testify in any civil, criminal, administrative, or grand jury proceeding in any court in West Virginia concerning the confidential source of any published or unpublished information obtained by the reporter. The exceptions are if such testimony is necessary to prevent imminent death, serious bodily injury, or unjust incarceration.

Additionally, a reporter shall not be compelled to produce any information or testimony that would identify a confidential source without the consent of the confidential source, unless such testimony is necessary to prevent imminent death, serious bodily injury or unjust incarceration.

EFFECTIVE: June 10, 2011

House Bill No. 2362: Increasing penalties for financial exploitation of an elderly person or incapacitated adult

W. Va. CODE: §61-2-29b Amended

SUMMARY: This Act provides that a person who intentionally misappropriates or misuses the funds or assets of an elderly person, protected person, or incapacitated adult is guilty of larceny and shall be ordered to pay restitution.

COMMENTS: This section has been completely rewritten.

EFFECTIVE: June 10, 2011

House Bill No. 2451: Relating to victim impact statements

W. Va. CODE: §61-11A-2 Amended

SUMMARY: This Act provides that immediate family members of a person killed during the commission of a felony or misdemeanor are permitted to make a victim impact statement to the Court. The Act also amends the duty of the prosecutor to advise victims, or family members of deceased victims, from “shall” advise to “shall make reasonable efforts to advise” those entitled to notice.

EFFECTIVE: June 10, 2011

House Bill No. 2505: Adding synthetic cannabinoids and hallucinogens and stimulants to the Schedule I list of controlled substances

W. Va. CODE: §60A-1-101 Amended

§60A-2-204 Amended

§60A-4-401 Amended

SUMMARY: This Act adds several specified cannabinoids, hallucinogens, and stimulants to the Schedule 1 list of drugs and other substances prohibited from sale and possession. This category includes substances commonly known as “K2”, “Spice,” and synthetic, cocaine-like substances, including “bath salts” or “plant feeder.”

EFFECTIVE: June 10, 2011

House Bill No. 2520: Relating to centers for housing young adult offenders

W. Va. CODE: §25-4-6 Amended

SUMMARY: Currently, juveniles committed to the Anthony Center have to be between the ages of eighteen and twenty-three years old. No offender may be over the age of twenty-five at the time of commitment. This Act provides that such offenders are eligible for commitment to the Anthony Center if they were between eighteen and twenty-four years old at the time the offense was committed

House Bill No. 2551: Relating generally to estates and trusts

W. Va. CODE: Numerous

SUMMARY: This Act amends current state law by inserting the provisions of the Uniform Trust Code recommended by the National Conference of Commissioners on Uniform State Laws in 2005. The Uniform Trust Code was thoroughly reviewed by the Probate Committee of the West Virginia Bar to ensure that the provisions of the bill incorporate the law, practice, and customs in place in the State of West Virginia for trusts and related probate matters.

The Uniform Trust Code is divided into eleven articles. Only Article 2 relates specifically to the Judiciary. Article 2, Judicial Proceedings, deals with jurisdiction over a trust in any state. It states the rule that a trust is not supervised by a court unless there is a proceeding by an interested person that invokes the jurisdiction of the appropriate court. The venue for administration of the trust is the location that has jurisdiction over the trustee and beneficiaries of that trust.

COMMENTS: This Act is 121 pages. This Summary has been limited to only the purpose of the Act and the section that deals directly with the Judiciary.

EFFECTIVE: June 10, 2011

House Bill No. 2750: Adding consideration of sexual assault in issuing an order to temporarily or permanently end a parent-child relationship

W. Va. CODE: §49-6-3 Amended
§49-6-5 Amended

SUMMARY: This Act adds the commission of certain sexual offenses to an already existing list of crimes that affect whether a child will be removed from a home.

Under current law, there are several situations when the Department of Health and Human Resources is not required to make “reasonable efforts to preserve the family.” The current list of crimes includes murder, voluntary manslaughter, and unlawful or malicious wounding of the child, the child’s other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.

This Act adds to the list of offenses the commission of sexual assault or abuse of the child, the child’s other parent, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.”

EFFECTIVE: June 7, 2011

House Bill No. 2864: Relating to the creation of a misdemeanor crime of unlawful restraint

W. Va. CODE: §61-2-14g New
§61-2-28 Amended

SUMMARY: This Act creates a misdemeanor offense of unlawful restraint. Unlawful restraint is defined as the intentional restraint of another by use, attempted use, or threatened use of force without proper legal authority. The penalty for a conviction of this offense is confinement in jail for not more than one year and/or a fine of \$1,000.

This Act provides two affirmative defenses for unlawful restraint:

- 1) The defendant acted reasonably and in good faith to protect the person from imminent physical danger; or
- 2) The person restrained was a child less than eighteen years old and the actor was a parent or legal guardian, or a person acting under authority granted by a parent or legal guardian of the child, or a teacher or other school personnel acting in his or her official capacity.

Further, this Act provides a specific exemption for law enforcement officers who restrain a person in the performance of their duty.

In connection with criminal offenses of domestic battery and domestic assault, this Act expands the scope of the aggravated penalties for subsequent offenses.

EFFECTIVE: June 9, 2011

House Bill No. 2879: Salary Increases for certain public employees

W. Va. CODE:	§6-7-2a	Amended
	§15-2-5	Amended
	§18A-4-2	Amended
	§18A-4-5	Amended
	§18A-4-5c	Amended
	§18A-4-5d	Amended
	§18A-4-8a	Amended
	§20-7-1c	Amended
	§50-1-3	Amended
	§51-1-10a	Amended
	§51-2-13	Amended
	§51-2A-6	Amended

SUMMARY: This Act provides salary increases for school teachers, State Police, natural resource officers, and certain judicial officers. Specifically, effective July 1, 2011, judicial officers will be compensated at the following salaries:

Supreme Court Justices, \$136,000; Circuit Court Judges, \$126,000; Family Court Judges, \$94,500; Magistrates, Tier 1 \$51,125 and Tier 2 \$57,500.

COMMENTS: Public Employee increases of two percent were included in the Budget Bill.

EFFECTIVE: March 12, 2011

House Bill No. 2885: Allowing guardian or conservator to be employed or in an employment contract with a behavioral health provider

W. Va. CODE:	§44A-1-8	Amended
	§44A-1-15	New

SUMMARY: This Act provides that a person employed pursuant to a written contract or other employment arrangement with a licensed provider of behavioral health services for the purpose of providing services to a protected person may be appointed by a court as the guardian or conservator of the protected person if

- 1) The payment for services provided under the contract or employment agreement is made pursuant to a waiver program;
- 2) The person is related to the protected person by blood, marriage or adoption;
- 3) The contract or arrangement is disclosed in writing to the court; and,
- 4) The court finds that the appointment is in the best interest of the protected person.

This provision is limited in application to persons employed pursuant to the Department of Health and Human Resources waiver program authorized by section 1915(c) of the Social Security Act.

EFFECTIVE: June 9, 2011

House Bill No. 2939: Clarifying the definition of compensation for purposes of calculating required contributions to the Public Employees Retirement System

W. Va. CODE:	§5-10-2	Amended
	§5-10-18	Amended
	§5-10-21	Amended
	§5-10-24	Amended
	§5-10-25	Amended
	§5-10-44	Amended
	§5-10-48	Amended

SUMMARY: This Act makes substantive changes relating to the Public Employees Retirement System and provides for administrative clarification and clean-up of existing practice and policy.

Specifically; this Act

- 1) Clarifies the definition of compensation for the purpose of withholding contributions for the system or for the purpose of calculating a member's final average salary and provides that lump sum or other payments paid to members that do not constitute regular salary or wage payments are not considered as compensation for "withholding" purposes. The Consolidated Public Retirement Board has final power to decide what constitutes compensation.
- 2) Clarifies that when a member withdraws his or her accumulated contributions, he or she ceases to be a member of the retirement system.
- 3) Clarifies that the deficiencies in repayment of the full amount required when a former member is re-employed with a participating public employer and wants to have his or her former service restored be treated as overpayments or excess contributions.
- 4) Changes to Code to require that on or after July 1, 2011, any new member must have five or more years of actual, contributory service to qualify for retirement, even if he or she would otherwise qualify for a retirement based on the "rule of 80."
- 5) Requires a retiree, upon divorce or remarriage, to certify under penalty of perjury, that he or she is not restricted by the provisions of a court order from changing any of his or her retirement benefit options.
- 6) Clarifies that in order for a member to receive disability benefits he or she must qualify and have been employed by a participating public employer within twelve months of his or her incapacitation.
- 7) Clarifies procedures to be utilized in the correction process for either underpayments or overpayments made by employees or employers.
- 8) Changes from ten years to fifteen year the "look-back" period for calculating final average salary.

EFFECTIVE: June 6, 2011

House Bill No. 3000: Making it lawful to hunt coyotes with a green colored light

W. Va. CODE: §20-2-5 Amended

SUMMARY: Currently, it is unlawful to use “artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal.” However, a person may hunt coyotes by the use of amber or red-colored artificial light.

This Act adds green artificial light to the permissible types of lighting that may be used to hunt coyotes.

Violation of this provision is a misdemeanor subject to a fine of not less than \$100 nor more than \$500 and confinement in jail for not less than ten days nor more than one hundred days.

EFFECTIVE: June 9, 2011

House Bill No. 3054: Relating to DNA data collection

W. Va. CODE: §15-2B-3 Amended

§15-2B-6 Amended

§15-2B-7 Amended

§15-2B-9 Amended

§15-2B-10 Amended

§15-2B-12 Amended

§15-2B-15 New

§15-2B-6 New

SUMMARY: This Act changes the way DNA evidence is collected, used, and stored. Specifically, this Act

- 1) Provides definitions for “CODIS,” “Conviction,” “Criminal justice agency,” “Division,” “Interim Plan,” “Management Rules,” “Partial Match,” “Qualifying Offense,” and “Registering Agency.”
- 2) Eliminates a current requirement that DNA evidence be destroyed;
- 3) Clarifies that all people who must register as sex offenders must also provide a DNA sample;
- 4) Requires samples from offenders who are transferred to West Virginia from another state;
- 5) Requires any person who should have given a sample but for some reason was overlooked to provide a sample;
- 6) Allows agencies who have custody or control of a person who must give a sample to establish policies for DNA collection and to contract with third parties to collect samples;
- 7) Requires non-incarcerated persons who were convicted of a qualifying offense to provide samples;
- 8) States that DNA samples are not public records;

- 9) Allows the use of DNA data in the identification of human remains;
- 10) Levies a fee of \$150 to be paid by the person who is required to give the sample;
- 11) Allows the State Police to use “partial match analysis” as “an investigative tool” in the investigation of more serious crimes;
- 12) Provides any court sentencing a person convicted of a qualifying offense to probation shall order, as a condition of such probation, that the convicted person report to the local sheriff’s department to provide a DNA sample within thirty days.

EFFECTIVE: June 6, 2011

House Bill No. 3105: Providing immunity from civil or criminal liability for first responders who use force to enter a residence

W. Va. CODE: §55-7-26 New

SUMMARY: This Act provides that a first responder is not liable for any civil damages or criminal liability resulting from the forcible entry of a home, business, or other structure in responding to a documented 911 call for emergency medical assistance, as long as the first responder knocked or made other reasonable efforts to summon the persons inside; did not receive a response within a reasonable amount of time; and has a good faith belief that forcible entry is necessary to prevent imminent harm or to render medical attention.

A first responder is defined broadly and includes law enforcement, firefighters, EMS, and anyone else who responds to calls for emergency medical assistance.

EFFECTIVE: June 10, 2011

House Bill No. 3134: Relating to child support enforcement

W. Va. CODE: §48-1-204 Amended

§48-1-244 Amended

§48-1-302 Amended

§48-14-408 Amended

§48-14-410 Amended

§48-24-106 Amended

SUMMARY: This Act extends, from twenty-four to sixty months, the operating interval of amnesty agreements used to facilitate the repayment of past-due child support. The Act also requires employers to notify the Bureau for Child Support Enforcement two weeks prior to the issuance of any bonus equal to, or in excess of, \$100. This provision is to allow the Child Support Enforcement Bureau to make a determination of whether the employee owes an arrearage. If so, the Bureau will issue an income withholding notice to the employer resulting in attachment of the bonus pay.

EFFECTIVE: June 10, 2011

House Bill No. 3144: Creating a criminal offense and adding misdemeanor criminal penalties for picketing or disrupting funerals

W. Va. CODE: §61-8-15 New

SUMMARY: This Act provides that no person may carry out a demonstration during a funeral ceremony or within five hundred feet of a cemetery. Demonstrations may not take place during the sixty minutes proceeding or the sixty minutes following a funeral or memorial service and may not include an individual willfully making any noise or diversion that disturbs or tends to disturb the peace or good order of a funeral or memorial service or ceremony.

EFFECTIVE: June 10, 2011

House Bill No. 3205: Reducing jail sentence for successful completion of education and rehabilitation programs

W. Va. CODE: §31-20-5d Amended

SUMMARY: This Act makes available to inmates a new alcohol and/or drug awareness program. The \$25 fee for each class is due upon enrollment. If an inmate is unable to pay the fee in full at the time of enrollment, it may be paid through deductions from his or her inmate trust account. No more than one half of the amount in the inmate trust account during any one-week period may be deducted for the payment of classes.

Additionally, an inmate who completes a special course at a jail facility is granted five days good-time credit for each course. Provided, however, that an inmate may not, through this process, earn more than thirty days of good-time credit.

EFFECTIVE: June 7, 2011

House Bill No. 3225: Expanding the definition of harassment, intimidation, or bullying

W. Va. CODE: §18-2C-2 Amended

§18-2C-3 Amended

SUMMARY: This Act expands the definition of school bullying to include an electronic act, communication, transmission, or threat. It defines these acts as including, but as not limited to, acts administered by telephone, computer, pager, or any electronic or wireless device, and any transmission of an image or voice email or text message using any such device if such actions cause physical or emotional harm to a student, or disrupt or interfere with the orderly operation of a school.

Additionally, this Act extends the areas where school-related bullying laws apply to include school buses and school bus stops. County boards of education are required to collect information concerning school-related bullying and the West Virginia Department of Education is required to compile the information submitted by county boards and report this information to the Legislative Oversight Committee on Education Accountability.

EFFECTIVE: June 10, 2011

Senate Bill No. 60: Relating to certain supervisory duties of circuit probation officers

W. Va. CODE: §62-12-5 Amended
§62-12-26 Amended

SUMMARY: This Act clarifies that until a specially trained “multi-judicial circuit probation officer” is available to supervise sex offenders, a regular probation officer is authorized to supervise such offenders. Once a multi-judicial circuit probation officer becomes available, the extended supervision transfers to the specially trained officer.

COMMENTS: This bill was requested by Mike Lacy, Director of Probation Services.

EFFECTIVE: March 4, 2011

Senate Bill No. 61: Relating generally to juvenile drug courts

W. Va. CODE: §49-5-2b New
§62-12-4 Amended

SUMMARY: This Act authorizes the Supreme Court to appoint hearing officers to operate juvenile drug courts. These hearing officers are limited to current or senior status circuit judges or family court judges.

COMMENTS: This bill was requested by Mike Lacy, Director of Probation Services.

EFFECTIVE: June 2, 2011

Senate Bill No. 93: Relating to escape from the custody of the Director of Juvenile Services

W. Va. CODE: §61-5-12b Amended (Completely rewritten)

SUMMARY: This Act rewrites provisions of the offense of escape from the Director of the Division of Juvenile Services’ custody. This bill distinguishes between adults and minors. Current law provides that an escape is a misdemeanor, regardless of the age of the escapee.

This Act provides that a minor who escapes or attempts to escape from the custody of the Director is guilty of a delinquent act. Additionally, the Act provides that an adult, or any minor who has been transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape from the custody of the Director, shall be guilty of the crime of escape. If the offender was detained for a felony offense or an offense that would have been a felony if committed by an adult, he or she is guilty of a felony, and upon conviction, is to be imprisoned for not more than five years. If the offender was detained for a misdemeanor, or what would have been a misdemeanor if committed by an adult, he or she is guilty of a misdemeanor, and upon conviction, is to be confined in jail for not more than one year.

EFFECTIVE: June 8, 2011

Senate Bill No. 186: Relating to issuing subpoena to aid in criminal investigations involving certain crimes against minors

W. Va. CODE: §62-1G-1 New
§62-1G-2 New

SUMMARY: This Act creates a process whereby a magistrate or circuit judge may issue an administrative subpoena to Internet service providers when a law enforcement agency is investigating certain specified offenses against a minor. The application for such subpoena must be in writing and on a form approved by the Supreme Court of Appeals of West Virginia.

Law enforcement may request that an administrative subpoena be issued when officers have a reasonable suspicion that an electronic service provider has been used in the commission of

- A sexual offense against a minor,
- Stalking when the victim is a minor, or
- Child kidnapping.

The Act specifies the types of information that may be obtained through the use of the administrative subpoena. Law enforcement authorities are prohibited from examining the contents of electronic communications without first obtaining a search warrant from an appropriate court.

Further, the Act provides immunity to companies complying with the terms of the administrative subpoenas issued pursuant to this section.

EFFECTIVE: June 9, 2011

Senate Bill No. 213: Relating to crimes using computers, telephones, and electronic devices

W. Va. CODE: §61-3C-14a Amended
§61-8-16 Amended

SUMMARY: This Act amends the West Virginia Computer and Electronic Communications Device Crime and Abuse Act to include the transmission of prohibited texts, images, pictures, videos, and other non-voice data via handheld and mobile devices to another person's computer, email account, or other cell phone or handheld device.

Violation of the provisions of this section constitutes a misdemeanor punishable by a fine of not more than \$500, or confinement in jail for not more than six months, or both.

EFFECTIVE: June 9, 2011

Senate Bill No. 216: Modifying definition of “imminent danger to physical well-being of a child”

W. Va. CODE: §49-1-3 Amended

SUMMARY: This Act amends the definition of “imminent danger to the physical well-being of the child” to include a parent, guardian, or custodian’s abuse of alcohol, drugs, or other controlled substances when such abuse is to the extent it may have impaired parenting skills to such a degree that it poses an imminent risk to a child’s health or safety.

EFFECTIVE: June 5, 2011

Senate Bill No. 228: Creating School Dropout Prevention and Recovery Act

W. Va. CODE: §18-5B-11 New
§18-8-3 Amended
§18-8-6 Amended

SUMMARY: This Act creates the Local Solutions Dropout and Prevention Pilot Program to reduce the number of high school dropouts in West Virginia. Specifically, this Act creates innovation zones that would be implemented by the State Board of Education. Further, the State Board of Education is required to develop a statewide system that will be part of the West Virginia Education Information System in order to provide early warning indicators of students at risk of not completing high school. The system is required to include, but is not limited to, information concerning student attendance, academic performance, and disciplinary infractions.

EFFECTIVE: March 12, 2011

Senate Bill No. 256: Adding online address and verification to the Sex Offender Registration Act

W. Va. CODE: §15-12-10 Amended

SUMMARY: This Act requires convicted sex offenders to register their email and other online identities the same way they register their physical addresses with the West Virginia State Police.

EFFECTIVE: June 5, 2011

Senate Bill No. 349: Requiring bittering agent be placed in certain engine coolants and anti-freezes

W. Va. CODE: §16-43-1 New
§16-43-2 New

SUMMARY: This Act provides that after January 1, 2012, it will be illegal to manufacture or sell engine coolant and antifreeze in West Virginia unless a bittering agent has been added to it.

Any person who violates the provision is guilty of a misdemeanor and shall be fined not more than \$100. Each day of violation constitutes a separate offense.

This Act does not apply to the sale of a motor vehicle that contains engine coolant or antifreeze; a wholesale container of engine coolant or antifreeze designed to contain 55 gallons or more; or engine coolant or antifreeze reformulated through on-site recycling.

EFFECTIVE: June 7, 2011

Senate Bill No. 532: Relating to fraud and abuse in Medicaid program

W. Va. CODE:	§9-7-1	Amended
	§9-7-2	Amended
	§9-7-3	Amended
	§9-7-3a	New
	§9-7-4	Amended
	§9-7-5	Amended
	§9-7-5a	New
	§9-7-6	Amended
	§9-7-6a	New
	§9-7-8	Amended

SUMMARY: This Act grants additional powers to the existing Department of Health and Human Resources Medicaid Fraud Unit, allowing the Medicaid Fraud Unit to request research warrants and criminal complaints, upon a finding of probable cause. Additionally, the Secretary of the Department of Health and Human Resources has the authority to investigate financial exploitations, perform investigations, present and swear or affirm criminal complaints, and request search warrants if the Secretary, or his or her designee, has probable cause to believe that a person has engaged in Medicaid fraud.

The Act grants the DHHR Medicaid Fraud Unit the power to work with prosecutors and to bring cases in the venue where the fraud occurred or where any defendant conducts business. The Act also provides immunity from civil liability for DHHR employees who lawfully and in good faith carry out this Act.

Further, this Act provides that in addition to other venues permitted by law, a criminal prosecution may be brought in Kanawha County Circuit Court, in any county in which the defendant is conducting business, or where any of the conduct constituting a violation has occurred.

EFFECTIVE: June 10, 2011