

Bowles Rice

**WEST VIRGINIA
MUNICIPAL LEAGUE**

ANNUAL MUNICIPAL JUDGE TRAINING

Floyd M. Sayre, III, Esq.
November 1, 2022
Charleston, WV

Agenda

- **Welcome - Overview of Training Session**
- **Session I – Ethics and Municipal Courts WV Ethics Commission**
- **Session II - Medical Cannabis - DUI and Possession of Marijuana**
- **Session III – Update of law**
- **Session IV - Municipal Ordinances and Municipal Court**
- **Session V – DMV – Administrative hearings**
- **Session VI – Review of Criminal Law**
- **Session VII – Traffic School and other services
provided by WVML and West Virginia Association of
Municipal Judges**
- **Session VIII - Roundtable Discussion and Wrap up**

A WORD OF CAUTION

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.

Session II – Medical Cannabis and DUI - Drugs

Committee Substitute for SB 5

- Relating to creating the West Virginia Medical Cannabis Act;
- Creating the West Virginia Medical Cannabis Commission;
- Setting responsibilities for the West Virginia Medical Cannabis Commission;
- Creating a special revenue account known as the West Virginia Medical Cannabis Commission Fund;

Committee Substitute for SB 5

- Setting requirements for becoming a certifying physician;
- Requiring reporting to the Controlled Substances monitoring database;
- Setting out conditions for which cannabis may be used;

Committee Substitute for SB 5

- Setting forth certain parameters for licensed growers and grower agents; requiring a certain percentage of licenses be granted to persons in veterans agriculture programs;
- Providing an exception for a qualifying patient to grow a specified amount without a license;

Committee Substitute for SB 5

- Authorizing the commission to license dispensaries and register dispensary agents;
- Authorizing the commission to license medical cannabis processors and register processor agents;
- Authorizing testing laboratories;

Committee Substitute for SB 5

- Criminal records checks
- Persons licensed, registered and authorized under the act may not be subject to arrest, prosecution or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis;

Committee Substitute for SB 5

- Creating a new criminal offense of distributing, possessing, manufacturing or using cannabis that has been diverted from an authorized medicinal use;
- Stating conduct related to cannabis that is not protected by the provisions of the act;
- Empowering the Governor to suspend implementation of the act if the Governor determines certain federal action may occur

§16A-2-1. Definitions

- (5) “Certified medical use” means the acquisition, possession, use or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation or administration of medical cannabis by caregiver, for use as part of the treatment of the patient’s serious medical condition, as authorized in a certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

§16A-2-1. Definitions

- (14) “Form of medical cannabis” means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity or percentage of medical cannabis or particular active ingredient.

§16A-2-1. Definitions

- (16) “Grower” means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

§16A-2-1. Definitions

- (31) “Serious medical condition” means any of the following, as has been diagnosed as part of a patient’s continuing care:
 - (A) Cancer.
 - (B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.
 - (C) Amyotrophic lateral sclerosis.
 - (D) Parkinson’s disease.

§16A-2-1. Definitions

- (E) Multiple sclerosis.
- (F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.
- (G) Epilepsy.
- (H) Neuropathies.
- (I) Huntington's disease.
- (J) Crohn's disease.

§16A-2-1. Definitions

- (K) Post-traumatic stress disorder.
- (L) Intractable seizures.
- (M) Sickle cell anemia.
- (N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or has proved ineffective as determined as part of continuing care.

§16A-3-2. Lawful use of medical cannabis

- (1) Medical cannabis may only be dispensed to:
 - (A) a patient who receives a certification from a practitioner and is in possession of a valid identification card issued by the bureau; and
 - (B) a caregiver who is in possession of a valid identification card issued by the bureau.

§16A-3-2. Lawful use of medical cannabis

- (2) Subject to rules promulgated under this act, medical cannabis may only be dispensed to a patient or caregiver in the following forms:
 - (A) Pill;
 - (B) Oil;
 - (C) Topical forms, including gels, creams or ointments;
 - (D) A form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form until dry leaf or plant forms become

§16A-3-2. Lawful use of medical cannabis

- (2) Subject to rules promulgated under this act, medical cannabis may only be dispensed to a patient or caregiver in the following forms:
 - (E) Tincture;
 - (F) Liquid; or
 - (G) Dermal patch.

§16A-3-2. Lawful use of medical cannabis

- (3) Unless otherwise provided in rules adopted by the bureau medical cannabis may not be dispensed to a patient or a caregiver in dry leaf or plant form.

§16A-3-2. Lawful use of medical cannabis

- (4) An individual may not act as a caregiver for more than five patients.
- (5) A patient may designate up to two caregivers at any one time.
- (6) Medical cannabis that has not been used by the patient shall be kept in the original package in which it was dispensed.

§16A-3-2. Lawful use of medical cannabis

- (7) A patient or caregiver shall possess an identification card whenever the patient or caregiver is in possession of medical cannabis.
- (8) Products packaged by a grower/processor or sold by a dispensary shall only be identified by the name of the grower/processor, the name of the dispensary, the form and species of medical cannabis, the percentage of tetrahydrocannabinol and cannabidiol contained in the product.

§16A-3-3. Unlawful use of medical cannabis

- (b) It shall be unlawful to:
 - (1) Smoke medical cannabis.
 - (2) Except as provided under subsection (c), incorporate medical cannabis into edible form or sell in edible form.
 - (3) Grow medical cannabis unless the grower/processor has received a permit from the bureau under this act.
 - (4) Grow or dispense medical cannabis unless authorized as a health care medical cannabis organization under article thirteen of this chapter

§16A-3-3. Unlawful use of medical cannabis

- (b) It shall be unlawful to:
 - (5) Dispense medical cannabis unless the dispensary has received a permit from the bureau under this act.
- (c) Edible medical cannabis. — Nothing in this act shall be construed to preclude the incorporation of medical cannabis into edible form by a patient or a caregiver in order to aid ingestion of the medical cannabis by the patient.

§16A-5-1. Identification cards.

- (a) Issuance. — The bureau may issue an identification card to a patient who has a certification approved by the bureau and to a caregiver designated by the patient.
- An identification card issued to a patient shall authorize the patient to obtain and use medical cannabis as authorized by this act. An identification card issued to a caregiver shall authorize the caregiver to obtain medical cannabis on behalf of the patient.

§16A-5-2. Caregivers

- (a) Requirements. —
- (1) If the patient designates a caregiver, the application shall include the name, address and date of birth of the caregiver, and other individual identifying information required by the bureau and the following:
 - (A) Federal and state criminal history record information
 - (B) If the caregiver has an identification card for the caregiver or another patient, the expiration date of the

§16A-5-2. Caregivers

- (b) Criminal history. — A caregiver shall submit fingerprints for the purpose of obtaining criminal history record checks, and the West Virginia State Police or its authorized agent shall submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the applicant and obtaining a current record of any criminal arrests and convictions.

§16A-5-6. Minors.

- If a patient is under eighteen years of age, the following shall apply:
 - (1) The patient shall have a caregiver.
 - (2) A caregiver must be one of the following.
 - (A) A parent or legal guardian of the patient.
 - (B) An individual designated by a parent or legal guardian.
 - (C) An appropriate individual approved by the bureau upon a sufficient showing that no parent or legal guardian is appropriate or available.

§16A-5-10. Prohibitions

- The following prohibitions shall apply:
- (1) A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than three nanograms of active THC per milliliter of blood in serum:
 - (A) Chemicals which require a permit issued by the Federal Government or a state government or an agency of the Federal Government or a state government.

§16A-5-10. Prohibitions

- The following prohibitions shall apply:
 - (B) High-voltage electricity or any other public utility.
 - (C) Vehicle, aircraft, train, boat or heavy machinery.
- (2) A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical cannabis.

§16A-5-10. Prohibitions

- The following prohibitions shall apply:
- (3) A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

§16A-5-10. Prohibitions

- The following prohibitions shall apply:
- (4) A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical cannabis. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

§16A-7-6. County Prohibition

- A county may pass an ordinance by vote of the residents of the county to prohibit the operation or location of a medical cannabis organization within that particular county.
- The prohibition under this section shall remain in effect unless and until changed by a subsequent vote.

§16A-12-1. Criminal diversion of medical cannabis by practitioners

- In addition to any other penalty provided by law, a practitioner who intentionally and knowingly certifies a person as being able to lawfully receive medical cannabis or who otherwise provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis, is guilty of a felony.

§16A-12-2. Criminal diversion of medical cannabis by practitioners

- (a) In addition to any other penalty provided by law, any employee, financial backer, operator or principal of any qualifying entities who intentionally and knowingly sells, dispenses, trades, delivers or otherwise provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis, is guilty of a felony.

§16A-12-2. Criminal diversion of medical cannabis

- (b) For purposes of this section, “qualifying entity” shall mean:
 - (1) A medical cannabis organization.
 - (2) A health care medical cannabis organization or university participating in a research study
 - (3) A clinical registrant or academic clinical research center under
 - (4) A laboratory utilized to test medical cannabis

§16A-12-3. Criminal retention of medical cannabis.

- In addition to any other penalty provided by law, any patient or caregiver who intentionally and knowingly possesses, stores or maintains an amount of medical cannabis in excess of the amount legally permitted is guilty of a Misdemeanor, and upon conviction thereof, shall be confined in jail for not more than six months.

§16A-12-4. Criminal diversion of medical cannabis by patient or caregiver.

- In addition to any other penalty provided by law, any patient or caregiver that intentionally and knowingly provides medical cannabis to a person who is not lawfully permitted to receive medical cannabis is guilty of a felony.

§16A-12-5. Falsification of identification cards.

- In addition to any other penalty provided by law, any person who commits one of the following, knowing he or she is not privileged to hold an identification card;
 - (1) possesses an identification card and either attempts to use the card to obtain medical cannabis or obtains medical cannabis;

§16A-12-5. Falsification of identification cards.

- (2) possesses an identification card which falsely identifies the person as being lawfully entitled to receive medical cannabis and either attempts to use the card to obtain medical cannabis or obtains medical cannabis; or

§16A-12-5. Falsification of identification cards.

- (3) possesses an identification card which contains any false information on the card and the person either attempts to use the card to obtain medical cannabis or obtains medical cannabis,
- Is guilty of a misdemeanor, and upon conviction thereof, shall be confined in jail for not more than twelve months.

§16A-12-6. Adulteration of medical cannabis

- In addition to any other penalty provided by law, any person who adulterates, fortifies, contaminates or changes the character or purity of medical cannabis from that set forth on the patient's or caregiver's identification card, is guilty of a felony.

§16A-12-9. Other restrictions

- This act does not permit any person to engage in and does not prevent the imposition of any civil, criminal or other penalty for the following:
 - (1) Undertaking any task under the influence of medical cannabis when doing so would constitute negligence, professional malpractice or professional misconduct.

§16A-12-9. Other restrictions

- (2) Possessing or using medical cannabis in a state correctional facility or Regional Jail Authority facility, including a facility owned or operated or under contract with the Bureau of Corrections or the Regional Jail Authority

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WEST VIRGINIA MUNICIPAL LEAGUE

Update of Law

Floyd M. Sayre, III, Esq.
2021

SB 536

SB 536

- Relating generally to controlled substance criminal offenses; increasing the penalty for manufacture, delivery, or possession with intent to manufacture or deliver fentanyl; creating the offenses of counterfeit fentanyl or adulterating another controlled substance with fentanyl; creating the offense of using minors to illegally manufacture, distribute, or possess with intent to distribute; and establishing criminal penalties.

SB 536

- Prohibited acts; penalties
- (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

SB 536

- Any person who violates this subsection with respect to:
 - (i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned:

SB 536

- Any person who violates this subsection with respect to:
 - Provided, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: Provided, That for offenses relating to any substance classified as Schedule V in §60A-10-1 et seq. of this code, the penalties established in said article apply.

SB 536

- Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

SB 536

- Any person who violates this subsection with respect to:
 - (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

SB 536

- Any person who violates this subsection with respect to:
 - (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: Provided, That for offenses relating to any substance classified as Schedule V in §60A-10-1 et seq. of this code, the penalties established in said article apply.

SB 536

- It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act.

SB 536

- Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and confined:

SB 536

- Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids (MPVD) and 3,4-methylenedioxypropylone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

SB 536

- It is unlawful for any person knowingly or intentionally:
 - (1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

SB 536

- It is unlawful for any person knowingly or intentionally:
 - (2) To create, possess, sell, or otherwise transfer any equipment with the intent that the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

SB 536

- Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

SB 616

SB 616

- Relating to the confidentiality of certain court files and law-enforcement records regarding victim identity in enumerated offenses; providing mechanisms for release of otherwise confidential information; permitting the examination or copying of certain files by court order; and obtaining certain files by the issuance of a subpoena duces tecum.

SB 616

- *Records confidential.*- All records and information maintained by the courts of this state or any law enforcement agency of this state or any of its political subdivisions, which contain identifying information of a victim in an arrest, investigation, or complaint for the offenses enumerated in [§61-8A-1](#) *et seq.*, [§61-8B-1](#) *et seq.*, [§61-8C-1](#) *et seq.*, or [§61-14-1](#) *et seq.* of this code, or for the offenses included in [§61-8D-3a](#), [§61-8D-5](#), and §61-8DB-6 of this code, shall be kept confidential and withheld from inspection,
- **EXCEPT:**
 - (1) When required by law;
 - (2) when necessary for law-enforcement purposes or preparation for court proceedings;
 - (3) pursuant to an order of a court issued in accordance with subsection (c) of this section.

SB 616

- Upon written motion filed in the circuit court of the county where the criminal action is pending or has been prosecuted, a circuit court, for good cause shown, may enter an order allowing a person who is precluded access to a court file or law-enforcement record pursuant to subsection (a) to examine and copy documents in a file.
- The order shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, specify the particular documents to be examined or copied, or both examined and copied and the circumstances under which such action or actions shall take place.

SB 616

- (c) *Obtaining confidential records.*- Absent a waiver of confidentiality by the subject of the confidential records, the records are only subject to subpoena pursuant to subsection (d) of this section.
- (d) *Subpoena Duces Tecum.*- Any court file or law-enforcement record in the offenses included in subsection (a) of this section may be supplied to any person presenting a valid subpoena duces tecum issued by a state or federal court in any criminal action. Any file or record obtained under this subsection shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

SB 616

- (e) *Victim request.*- Upon a written request of a victim, decisions of the West Virginia Intermediate Court of Appeals and the West Virginia Supreme Court of Appeals issued on or after July 1, 2022, involving the offenses enumerated in subsection (a) of this section shall not contain the first and last names of the victim.
- (f) *Supreme Court authorization.*- The Supreme Court of Appeals is requested to promulgate rules prior to July 1, 2022, to the extent necessary to comply with the provisions of this article that become effective on that date.

SB 736

SB 736

- Relating generally to pretrial diversion agreements and deferred prosecution agreements; listing offenses for which pretrial diversion prohibited; listing offenses where defendant is authorized under certain circumstances and with certain limitations; and setting out procedures for deferred prosecutions.

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**
 - A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice.
 - The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**
 - Any agreement may not exceed 24 months in duration.
 - The duration of the agreement must be specified in the agreement.
 - The agreement may require supervision by a probation officer of the circuit court, with the consent of the court.
 - Must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**
 - A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement.
 - unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**
 - No person charged with a violation of the provisions of [§17C-5-2](#) (DUI) of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with [§17C-5-2b](#) (DUI Defferal) of this code.

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**

- No person is eligible for pretrial diversion programs if charged with:

- A felony crime of violence against the person where the alleged victim is a family or household member as defined in [§48-27-203](#) of this code; (Domestic Violence)
- A violation of [§61-8-12](#) (Incest) of this code or a felony violation of the provisions of [§61-8B-1](#) (Sexual Assault) *et seq.*, [§61-8C-1](#) (Child Pornography) *et seq.*, and [§61-8D-1](#) *et seq.* (Child Abuse);

SB 736

- **Pretrial diversion agreements; conditions; drug court programs.**

- No person is eligible for pretrial diversion programs if charged with:

- A violation of [§61-2-9a](#) (Harassment);
- A violation of [§61-2-9d](#) (Strangulation; suffocation and asphyxiation);
- A violation of [§ 61-2-28](#) (Domestic violence); or
- A violation of [§61-2-9](#) (Malicious Wounding)

SB 736

- **Deferred adjudication.**
 - Upon the entry of a guilty plea before a circuit or magistrate court of this state, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication
 - And release the defendant upon such terms and conditions as the court deems just and necessary.

HB 3223

HB 3223

- Notwithstanding any provision of this code to the contrary, no municipalities or governing bodies of municipalities may cause or permit to be caused the dedication or naming of any municipal owned building or public structure for a public official who is holding office at the time of the proposed dedication or naming.

HB 4535

HB 4535

- Modifying requirements for a graduated driver's license;
- Granting Division of Motor Vehicles authority to restrict and revoke a driver's license for certain reasons;
- Allowing any person whose driver's license is suspended, restricted, or revoked after hearing with the Commissioner of the Division of Motor Vehicles to seek judicial review;

HB 4535

- Removing requirement to deny a license or instruction permit to any person under 18 who does not meet one of certain academic related requirements;
- Removing provisions pertaining to the provision of a driver's eligibility certificate; and replacing suspension of license with requiring restriction of license to driving for work or medical purposes or educational or religious pursuits whenever a student at least 15 but less than 17 years of age withdraws from school or fails to maintain satisfactory academic progress.

HB 4535

- Graduated driver's license.
 - A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.
 - Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code.

HB 4535

- Graduated driver's license.
 - Any person under the age of 17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code: Provided, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

HB 4535

- Level one instruction permit. - An applicant who is 15 years or older may be issued a level one instruction permit.
 - Eligibility. - The division may not issue a level one instruction permit unless the applicant:
 - Presents a completed application and executed by a parent or guardian entitled to custody of the applicant;
 - Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport

HB 4535

- Level one instruction permit. - An applicant who is 15 years or older may be issued a level one instruction permit.
 - Passes the vision and written knowledge examination and completes the driving under the influence awareness program,
 - Pays a fee of \$7.50, which permits the applicant one attempt at the written knowledge test.

HB 4535

- Terms and conditions of instruction permit. –
 - A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable: **Provided**, That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18.

HB 4535

- A level one instruction permit
- A permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit

HB 4535

- The division shall immediately revoke the permit upon receipt of a **second conviction** for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required

HB 4535

- Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days.
- However, after the expiration of 90 days, the person may retest if otherwise eligible.

HB 4535

- A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1

HB 4535

- The holder of a level one instruction permit may only operate a motor vehicle under the following conditions:
 - Under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

HB 4535

- The holder of a level one instruction permit may only operate a motor vehicle under the following conditions:
 - The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;
 - All occupants use safety belts in accordance with;
 - The permit holder is operating the vehicle without any measurable blood alcohol content.

HB 4535

- The holder of a level one instruction permit may only operate a motor vehicle under the following conditions:
 - The permit holder maintains current school enrollment and is making satisfactory academic progress or
 - otherwise shows eligible for a restricted license or instruction permit pursuant to code.

HB 4535

- The holder of a Level two intermediate driver's license.
 - Eligibility. - The division may not issue a level two intermediate driver's license unless the applicant:
 - Has held the level one instruction permit conviction-free for the 180 days;
 - Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian

HB 4535

- The holder of a Level two intermediate driver's license.
 - Passes the road skills examination as prescribed by §17B-2-7 of this code; and
 - Pays a fee of \$7.50 for one attempt.

HB 4535

- The holder of a Level two intermediate driver's license.
 - Expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first.
 - A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system.

HB 4535

- The holder of a Level two intermediate driver's license.
 - The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;
 - The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except when the licensee is going to or returning from:

HB 4535

- The holder of a Level two intermediate driver's license.
 - Lawful employment;
 - A school-sanctioned activity;
 - A religious event; or
 - An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

HB 4535

- The holder of a Level two intermediate driver's license.
 - All occupants of the vehicle use safety belts
 - For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee;

HB 4535

- The holder of a Level two intermediate driver's license.
 - for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than 20 years old, unless these passengers are family members of the licensee;
 - The licensee operates a vehicle without any measurable blood alcohol content

HB 4535

- The holder of a Level two intermediate driver's license.
 - The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise eligible for a restricted license or instruction permit pursuant to §18-8-11.

HB 4535

- The holder of a Level two intermediate driver's license.
 - Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

HB 4535

- The holder of a Level two intermediate driver's license.
 - At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction; and

HB 4535

- The holder of a Level two intermediate driver's license.
 - Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer,

HB 4535

- The holder of a Level two intermediate driver's license.
 - Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's license

HB 4535

- Level three, full Class E license. –
 - The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday.
 - A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system.

HB 4535

- Level three, full Class E license. –
 - Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

HB 4535

- Level three, full Class E license. –
 - A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

HB 4535

- Level three, full Class E license. –
 - Has reached the age of 17 years;
 - Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;
 - Has completed any driver improvement program required
 - Pays a fee of \$2.50 for each year the license is valid.

HB 4535

- Level three, full Class E license. –
 - A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

HB 4535

- Authority of division to suspend, restrict, or revoke license.
 - The division is hereby authorized to suspend, without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

HB 4535

- Authority of division to suspend, restrict, or revoke license
 - Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;
 - Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

HB 4535

- Authority of division to suspend, restrict, or revoke license
 - Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;
 - Is an habitually reckless or negligent driver of a motor vehicle;

HB 4535

- Authority of division to suspend, restrict, or revoke license
 - Is incompetent to drive a motor vehicle;
 - Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;
 - Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as required by §50-3-2a of this code or §8-10-2a of this code;

HB 4535

- Authority of division to suspend, restrict, or revoke license
 - Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article;
 - Is under the age of 17 and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, or

HB 4535

- Authority of division to suspend, restrict, or revoke license
 - Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license

HB 4535

- The driver's license of any person having his or her license suspended shall be reinstated if:
 - The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been made;
 - The license was suspended under the provisions of subdivision (8), subsection (a) of this section and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

HB 4535

- The driver's license of any person having his or her license suspended shall be reinstated if:
 - The license was suspended under the provisions of subdivision (10), subsection (a) of this section and the division has received a court order restoring the license

HB 4535

- Any reinstatement of a license shall be subject to a reinstatement fee designated in section nine of this article.

HB 4535

- Upon suspending, or restricting the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his or her request shall afford him or her an opportunity for a hearing as early as practical within not to exceed 20 days.

HB 4535

■ School Attendance

- Student at least 15 but less than 17 years of age withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from the date of the withdrawal.
- The student's instruction permit or license to operate a motor vehicle will be restricted to driving for work or medical purposes or educational or religious pursuits

HB 4535

■ School Attendance

- Unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time.
- The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee.

HB 4535

■ School Attendance

- Concerning whether the student's withdrawal from school was due to a circumstance or circumstances beyond the control of the student.
- If restricted, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains 17 years of age.

HB 4535

■ School Attendance

- Whenever a student at least 15 but less than 17 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall notify the Division of Motor Vehicles.

HB 4535

- **School Attendance**

- The DMV shall send notice to the student that the student's instruction permit or license will be restricted to driving for work or medical purposes or educational or religious.

HB 4535

■ School Attendance

- The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student.

HB 4535

- **School Attendance**

- Once the restriction is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains 17 years of age.

HB 4535

■ School Attendance

- Upon written request of a student, within 10 days of receipt of a notice of restriction as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing.
- The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

HB 4535

■ School Attendance

- “Withdrawal” is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension
- “Satisfactory academic progress” means the attaining and maintaining of grades sufficient to allow for graduation and course work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

HB 4535

■ School Attendance

- “Circumstances outside the control of the student” shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another.
- Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

HB 4535

■ School Attendance

- Whenever the withdrawal from school of the student, the student's failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student's failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student
- or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian

HB 4535

■ School Attendance

- No notice shall be sent to the Division of Motor Vehicles to restrict the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section.

HB 4535

■ School Attendance

- The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for restriction of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

HB 4712

HB 4712

- Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court for:

HB 4712

- Motor vehicle violation as defined in §17B-3-3a of this code, a
- Criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances,
- So long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed

HB 4712

- A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;
- Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties;

HB 4712

- If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after release.

HB 4712

- The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

HB 4712

- The payment plan shall specify:
 - The number of payments to be made;
 - the dates on which such payments are due;
 - the amount due for each payment;
 - all acceptable payment methods; and
 - the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment; and

HB 4712

- The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court,
- **and shall be two percent** of the person's annual net income
- **divided by 12, or \$10**, whichever is greater:

HB 4712

- Provided, That if this calculation results in a payment plan lasting more than **three** years, the monthly payments shall be set by dividing the total amount owed by **36**.

HB 4712

- The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

HB 4712

- The clerk may assess a \$10 late fee **each** month if a person fails to comply with the terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:
 - Is not incarcerated;
 - Has not brought the account current;
 - Has not made alternative payment arrangements with the court; or
 - Has not entered into a revised payment plan with the clerk before the due date.

HB 4712

- If after 90 days, a payment has not been received, the clerk may do one or both of the following:
 - Record a judgment lien as described in subsection
 - consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible

HB 4712

- Provided, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees:
- Provided, however, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

HB 4712

- If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

HB 4712

- That he or she is 90 days past due That he or she has failed to enroll in a payment plan;
- Whether a \$10 late fee has been assessed;
- That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

HB 4712

- If after 30 days from the issuance of a notice
 - Record a judgment lien; or
 - Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies.

HB 4712

- **To record a judgment lien,**
- the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment.
- The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property.

HB 4712

- **To record a judgment lien,**
- The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant:

HB 4712

- **To record a judgment lien,**
- Provided, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment

HB 4712

- **To record a judgment lien,**
- Provided, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment
- Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission

HB 4712

- **license suspension**
- A suspension entered to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void.

HB 4712

- **license suspension**
- A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:
 - Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or
 - Upon establishing a payment plan and the payment of a \$25 administrative fee.

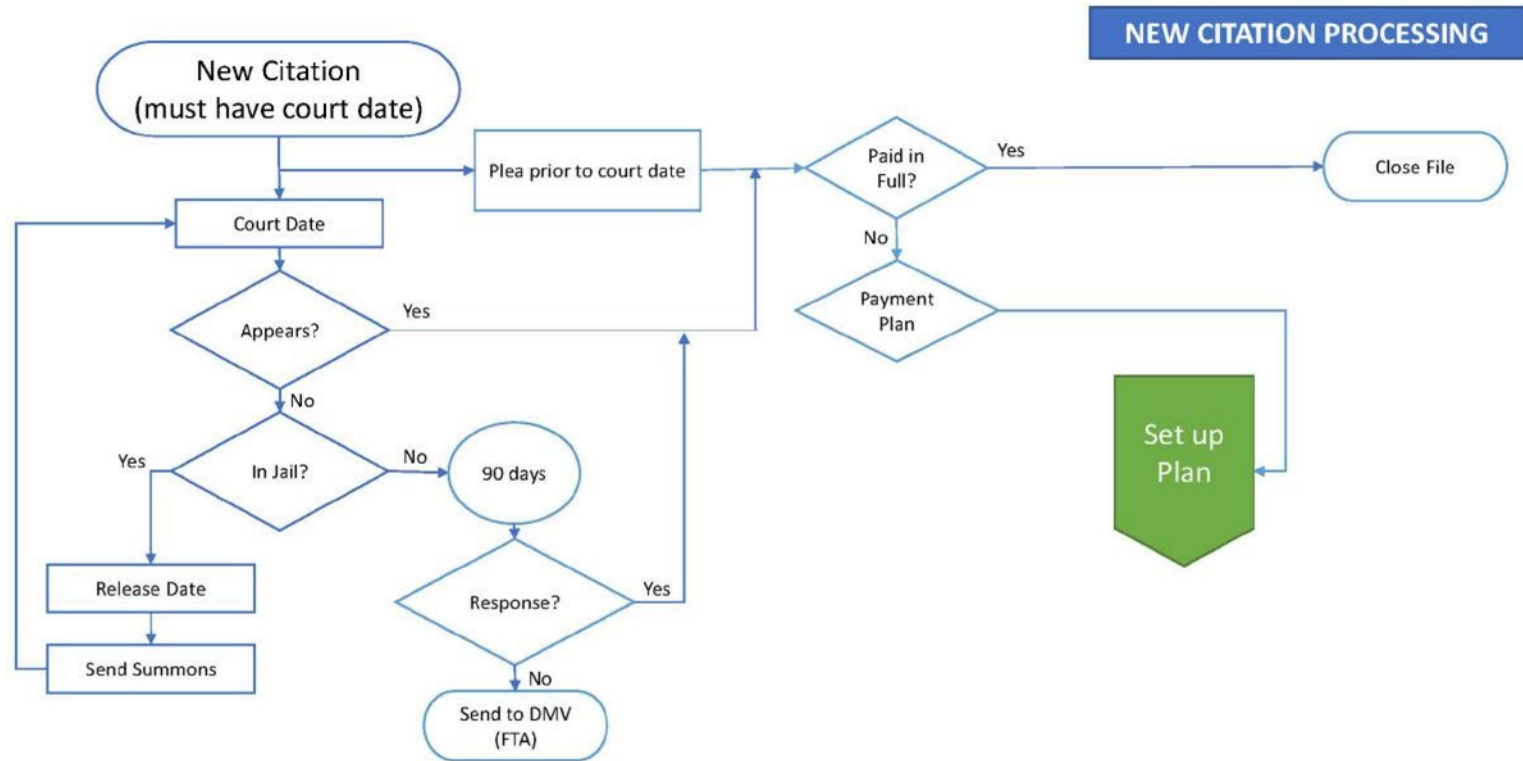
HB 4712

- **Failure to Appear**
- If a person charged with a motor vehicle violation fails to appear or otherwise respond in court,
- The municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear:

HB 4712

- **Failure to Appear**
- Provided, The municipal court clerk shall wait at least **90** days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof.
- Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

HB 4712



Bowles Rice

Municipal Ordinances and Municipal Court

8-10-2

Municipal Court For Municipalities

- Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury.
- If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals,
- except that the jury in municipal court shall consist of twelve members.

8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- Prescribe reasonable penalties for violation of its ordinances, orders, bylaws, acts, resolutions, rules and regulations, in the form of fines, forfeitures and confinement in the county or regional jail or the place of confinement in the municipality, if there is one, for a term not exceeding thirty days.
- The fines, forfeitures and confinement shall be recovered, imposed or enforced under the judgment of the mayor of the municipality or the individual lawfully exercising the mayor's functions, or the police court judge or municipal court judge of a city, if there is one, and may be suspended upon reasonable conditions as may be imposed by the mayor, other authorized individual or judge.

8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- A certified transcript of a judgment for a fine rendered by a municipal court may be filed in the office of the clerk of a circuit court and docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as the filing and docketing of a certified transcript of judgment rendered by a magistrate court as provided for in section two, article six, chapter fifty of this code. The judgment shall include costs assessed against the defendant.
- In addition to any other costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than forty-two dollars for a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, and for any other offense for which the ordinance prescribing the offense provides for a period of incarceration.

8-11-1.

Ordinances To Make Municipal Powers Effective; Penalties Imposed Under Judgment Of Mayor Or Police Court Or Municipal Judge; Right To Injunctive Relief; Right To Maintain Action To Collect Fines; Additional Assessment Of Costs

- Of the forty-two dollars imposed as an additional cost, two dollars are administrative costs to be retained by the municipality, and forty dollars shall be paid into the regional jail and correctional facility development fund in the state treasury in accordance with section one-a of this article.
- Execution shall be by fieri facias issued by the clerk of the circuit court in the same manner as writs are issued on judgments for a fine rendered by circuit courts or other courts of record under the provisions of section eleven, article four, chapter sixty-two of this code.

8-11-1b.

Additional Costs In Certain Criminal Proceedings

- In each criminal case before a mayor or in the municipal court of a municipality in which the defendant is convicted, whether by plea or at trial, under the provisions of a municipal ordinance which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code or section eighteen-b, article seven, chapter twenty of this code,
- there shall be imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of fifty-five dollars.
- The clerk of each municipal court, or other person designated to receive fines and costs, shall, for purposes of further defraying the cost to the municipality of enforcing the provisions of the ordinance or ordinances described in this section and related provisions, deposit these moneys in the general revenue fund of the municipality.

17A-2A-4.

Prohibition On Disclosure And Use Of Personal Information From Motor Vehicles Records

- Notwithstanding any other provision of law to the contrary, and except as provided in sections five through eight, both inclusive, of this article, the division, and any officer, employee, agent or contractor thereof may not disclose any personal information obtained by the division in connection with a motor vehicle record.

17A-2A-4.

Prohibition On Disclosure And Use Of Personal Information From Motor Vehicles Records

- Notwithstanding the provisions of this article or any other provision of law to the contrary, finger images obtained and stored by the division of motor vehicles as part of the driver's licensing process may not be disclosed to any person or used for any purpose other than the processing and issuance of driver's licenses and associated legal action unless the disclosure or other use is expressly authorized by this code.
- Notwithstanding the provisions of this article or any other provision of law to the contrary, an individual's photograph or image, social security number, and medical or disability information shall not be disclosed pursuant to West Virginia Code §17A-2A-7(2),(3), (5), (7), (8), (10) and (11), without the express written consent of the person to whom such information applies

17C-5-11.

Municipal Ordinances To Contain Same Elements As Offenses Under This Article; Penalties In Municipal Ordinances Required To Conform To State Penalties

- Notwithstanding the provisions of section five, article twelve, chapter eight of this code, on and after the first day of September, one thousand nine hundred eighty-three, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall be null and void and of no effect unless such ordinance defines such an offense in substantially similar terms as an offense defined under the provisions of this article and such offense contains the same elements as an offense defined herein.

17C-5-11.

Municipal Ordinances To Contain Same Elements As Offenses Under This Article; Penalties In Municipal Ordinances Required To Conform To State Penalties

- Notwithstanding the provisions of section one, article eleven, chapter eight of this code, on and after the first day of August, one thousand nine hundred eighty-three, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall prescribe the same penalty for such offense as is prescribed for an offense under this article containing the same elements.

17C-18-1.

Violations Of Chapter; Penalties For Misdemeanor

- It is a misdemeanor for any person to violate any of the provisions of this chapter unless such violation is by this chapter or other law of this state declared to be a felony.
- Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall:
 - first conviction thereof be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ten days;
 - second such conviction within one year thereafter such person shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than twenty days or by both such fine and imprisonment;
 - third or subsequent conviction such person shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months or both such fine and imprisonment.

17C-19-6.

Form For And Records Of Books Of Traffic Citations

- **Every traffic-enforcement agency in this state shall provide in appropriate form approved by the commissioner, the superintendent of the division of public safety and the commissioner of the division of highways, traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this article.**
- **The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.**

30-29-4.

Special Revenue Account -- Collections; Disbursements; Administrative Expenses

- A two dollar fee shall be added to the usual court costs of all criminal court proceedings involving violation of any criminal law of the state or any county or municipality thereof, excluding violations of municipal parking ordinances.
- A two dollar fee shall be added to the amount of any cash or property bond posted for violation of any criminal law of the state or any county or municipality thereof, excluding bonds posted solely for violation of municipal parking ordinances.
- Upon forfeiture of such bond, the two dollar fee shall be deposited as provided in subsection (c) of this section.

49-5-2.

Juvenile Jurisdiction Of Circuit Courts, Magistrate Courts And Municipal Courts; Constitutional Guarantees; Hearings; Evidence And Transcripts

Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws

52-1-17.

Reimbursement Of Jurors

- A juror shall be paid mileage, at the rate set by the Secretary of the Department of Administration, for travel expenses to and from the juror's residence to the courthouse or other place where the court is convened;
- and shall be reimbursed for other expenses incurred as a result of his or her required attendance at sessions of the court at a rate of not less than fifteen dollars nor more than forty dollars,
- set at the discretion of the circuit court or the chief judge of the circuit court, for each day of required attendance.

52-1-17.

Reimbursement Of Jurors

- Any time a panel of prospective jurors has been required to report to court for the selection of a petit jury in any scheduled matter, the court shall, by specific provision in a court order, assess a jury cost. In both magistrate and circuit court cases the jury cost shall be the actual cost of the jurors' service:
- *Provided*, That the actual cost of a magistrate jury can only be assessed where the jury request or demand occurs on or after the first day of July, two thousand seven. For any magistrate court case in which the jury request or demand occurred prior to the first day of July, two thousand seven, the jury cost assessed shall be two hundred dollars.

52-1-17.

Reimbursement Of Jurors

- The jury costs shall be assessed against the parties as follows:
 - In every criminal case, against the defendant upon conviction, whether by plea, by bench trial or by jury verdict;
 - In every civil case, against either party or prorated against both parties, at the court's discretion, if the parties settle the case or elect for a bench trial; and
 - .

52-1-17.

Reimbursement Of Jurors

- In the discretion of the court, and only when fairness and justice so require, a circuit court or magistrate court may forego assessment of the jury fee, but shall set out the reasons for waiving the fee in a written order:

62-1C-1a.

Release Upon Own Recognizance Authorized

Any other provision of this article to the contrary notwithstanding, when from all the circumstances, the court or magistrate is of the opinion that the defendant or person arrested will appear as may be required of him, either before or after conviction, such defendant or person arrested may be released upon his own recognizance.

62-1C-2.

Bail Defined; Form; Receipts

- Bail is security for the appearance of a defendant to answer to a specific criminal charge before any court or magistrate at a specific time or at any time to which the case may be continued. It may take any of the following forms:
- The deposit by the defendant or by some other person for him of cash.
- The written undertaking by one or more persons to forfeit a sum of money equal to the amount of the bail if the defendant is in default for appearance, which shall be known as a recognizance.
- Such other form as the judge of the court that will have jurisdiction to try the offense may determine.
- All bail shall be received by the clerk of the court, or by the magistrate and, except in case of recognizance, receipts shall be given therefore by him.

62-1C-3.

Fixing Of Amount; Bail May Cover Two Or More Charges

- The amount of bail shall be fixed by the court or justice with consideration given to the seriousness of the offense charged, the previous criminal record of the defendant, his financial ability, and the probability of his appearance.
- When two or more charges are filed or are pending against the same person at or about the same time, the bail given may be made to include all offenses charged against the defendant.

62-1C-4.

Recognizance; Signing; Requirements For Signers Or Surety Company; Release Upon Own Recognizance; Indigent Persons

- The recognizance shall be signed by the defendant. It shall also be signed by one or more adult persons owning real property in the state.
- The court or justice may require that justification of surety be furnished.
 - The assessed value of the real property as shown on the county land books over and above all liens and encumbrances shall not be less than one half the amount of the bail.
 - Or, the recognizance may be signed by the defendant and a surety company authorized to do business in this state.
- If the offense is a misdemeanor, either the court or justice may release the defendant on his own recognizance.
- An indigent person who the court is satisfied will appear as required shall not be denied bail because of his inability to furnish recognizance.

§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- A municipal court may accept credit cards in payment of all costs, fines, forfeitures or penalties.
- A municipal court may collect a substantial portion of all costs, fines, forfeitures or penalties at the time such amount is imposed by the court so long as the court requires the balance to be paid within one hundred eighty days from the date of judgment in accordance with a payment plan:

§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- *Provided*
 - That all costs, fines, forfeitures or penalties imposed by the municipal court upon a nonresident of this state by judgment entered upon a conviction for a motor vehicle violation defined in section three-a, article three, chapter seventeen-b of this code must be paid within eighty days from the date of judgment.
- The payment plan shall specify
 - (1) The number of additional payments to be made;
 - (2) the dates on which such payments and amounts shall be made; and
 - (3) amounts due on such dates.

§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle violations of this code are not paid within the time limits imposed pursuant to subsection (a) of this section, or
- If a person fails to appear or otherwise respond in court when charged with a motor vehicle violation

§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- The municipal court must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear:

§8-10-2a.

Payment of fines by credit cards or payment plan; suspension of driver's license for failure to pay motor vehicle violation fines or to appear in court.

- *Provided,*
 - That notwithstanding any other provision of this code to the contrary, the municipal court shall wait at least **ninety days from the date that all costs, fines, forfeitures or penalties are due in full** or, for failure to appear or otherwise respond, **ninety days from the date of such failure before notifying the Division of Motor Vehicles thereof.**

DMV- Hearings

Refusal Review Hearing

- For the purposes of this section, the term “refusal review hearing” refers to a hearing to review a person’s alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement

Refusal Review Hearing

- The court shall enter an order finding that a person did refuse to submit to a secondary chemical test:

Refusal Review Hearing

- At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period unless the person requests a refusal review hearing within the 30 days following the first appearance.

Refusal Review Hearing

- If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that a person charged did refuse to submit to a secondary chemical test; and
- If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order

Refusal Review Hearing

- Refusal review hearing.
 - The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer, requests the hearing within 30 days following his or her first appearance before the court.

Refusal Review Hearing

- Refusal review hearing.
 - The refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

Refusal Review Hearing

- Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test, if the court determines, by a preponderance of the evidence, that:
 - The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation;

Refusal Review Hearing

- The law-enforcement officer requested the arrested person to submit to the chemical test or tests;
- At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings; and
- The arrested person refused to submit to the chemical test or tests requested by the law-enforcement officer.

Refusal Review Hearing

- If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed above did not occur.
- The court shall enter an order finding that the person did not refuse to submit to the secondary chemical test.
- If the court enters such an order, the Commissioner may not revoke the person's license.

Refusal Review Hearing

- The clerk of the court in which the charges are pending shall immediately transmit any order entered to the Commissioner of the Division of Motor Vehicles.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:
 - The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense which requires a minimum period of revocation or suspension.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The person has a term of conditional probation (deferral);
- A court enters an order, finding that the person did refuse to submit to a secondary chemical test; or
- The person is convicted of an offense, appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed.

Bowles Rice

WEST VIRGINIA MUNICIPAL LEAGUE

Review of Criminal Law

Floyd M. Sayre, III, Esq.
2022

Bowles Rice

Review of Criminal Law

Shoplifting

§61-3A-1. Shoplifting defined.

- (a) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:
 - (1) Conceals the merchandise upon his or her person or in another manner; or
 - (2) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or

§61-3A-1. Shoplifting defined.

- (3) Alters, transfers or removes any price marking affixed to the merchandise; or
- (4) Transfers the merchandise from one container to another; or
- (5) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or
- (6) Removes a shopping cart from the premises of the mercantile establishment; or

§61-3A-1. Shoplifting defined.

- (7) Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.

§61-3A-1. Shoplifting defined.

- (b) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.

§61-3A-4. Shoplifting constitutes breach of peace; detention.

- An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law-enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes,

§61-3A-4. Shoplifting constitutes breach of peace; detention.

- For the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

§61-3A-2. Evidence.

- (a) Evidence of stated price or ownership of merchandise may include, but is not limited to:
 - (1) The actual merchandise alleged to have been shoplifted; or
 - (2) The unaltered content of the price tag or marking from such merchandise; or
 - (3) Properly identified photographs of such merchandise.

§61-3A-2. Evidence.

- (b) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

Bowles Rice

Review of Criminal Law

Open Container

Open Container

- **"Alcoholic beverage"** means:
 - Alcoholic liquor as defined in section five, article one, chapter sixty of this code; and
 - Nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code.

Open Container

- **"Motor vehicle"** means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

Open Container

- **"Open alcoholic beverage container"** means any bottle, can or other receptacle that:
 - Contains any amount of alcoholic beverage; and
 - Is open or has a broken seal; or
 - Has had its contents partially removed.

Open Container

- **"Passenger area of a motor vehicle"** means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions.

Open Container

- For purposes of this article, the passenger area of a motor vehicle does not include:
 - A locked glove compartment; or
 - A fixed center console or other similar fixed compartment that is locked;
 - a motor vehicle that is not equipped with a trunk;
 - The area behind the last upright seat; or
 - An area not normally occupied by the driver or a passenger; or

Open Container

- For purposes of this article, the passenger area of a motor vehicle does not include:
 - In a pickup truck that has no trunk, camper top or separate enclosed area other than the cab of the truck, in the area behind the front seat of the truck in a locked case or container located so as to not be readily accessible to the driver or passengers while in their seating positions.

Open Container

- **"Public highway or right-of-way of a public highway"** means the entire width between and immediately adjacent to the boundary lines of every way that is publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

Open Container

- It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest.

Open Container

- It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest.
- Possession by a person of one or more open containers in a single criminal occurrence is a single offense.

Open Container

- The provisions of this section are not applicable to a passenger:
 - In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or
 - In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

Open Container

- A person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

Open Container

- If a person is arrested for an offense under the provisions of this article, the person arrested be taken immediately the Court for an offense described in that section,
- regarding the issuance of a traffic citation containing a notice to appear applies.

Bowles Rice

Review of Criminal Law

Public Intoxication

Public Intoxication

- **A person may not:**
- (1) Appear in a public place in an intoxicated condition;
- (2) Drink alcoholic liquor in a public place;
- (3) Tender a drink of alcoholic liquor to another person in a public place;

Public Intoxication

- Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, appear in a public place in an intoxicated condition:

Public Intoxication

- If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him or her to the custody of the individual accepting responsibility:

Public Intoxication

- The issuance of a citation shall be used whenever feasible;
- If it does not impose an undue burden on the officer, he or she may, after issuance of a citation, transport the individual to the individual's present residence, or arrange for the transportation;

Public Intoxication

- The officer shall transport or arrange for transportation to the appropriate judicial officer; or if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room.

Public Intoxication

- The officer shall accompany the individual until he or she is discharged from the emergency room or admitted to the hospital.
- If the individual is released from the emergency room, the officer may proceed as described above
- If the individual is admitted to the hospital, the officer shall issue a citation

Public Intoxication

- Upon presentment before the proper judicial officer, the law-enforcement officer serves as the chief complaining witness.
- The judicial officer shall determine if there is probative evidence that the individual may be guilty of the charge of public intoxication.
- If such evidence is not presented, the charge shall be dismissed and the individual released.

Public Intoxication

- If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual.

Public Intoxication

- Once a warrant or summons has been issued, the following actions may be taken:
 - If the individual is no longer incapacitated, he or she may be released;
 - If the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him or her, he or she may be released to the responsible person; or

Public Intoxication

- Once a warrant or summons has been issued, the following actions may be taken:
 - If the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under §27-5-1 et seq. and §27-6A-1 et seq. of this code.

Public Intoxication

- Any person who violates this section is guilty of a misdemeanor:
 - Upon first offense, a fine of not less than \$5 nor more than \$100.
 - If the individual, prior to conviction, agrees to voluntarily attend an alcohol education program of not more than six hours" duration at the nearest community mental health center, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges;

Public Intoxication

- Any person who violates this section is guilty of a misdemeanor;
 - Upon conviction for a second offense, a fine of not less than \$5 nor more than \$100 and not more than 60 days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health center;

Public Intoxication

- Any person who violates this section is guilty of a misdemeanor;
 - Upon third and subsequent convictions, a fine of not less than \$5 nor more than \$100 and not less than five nor more than 60 days in jail or a fine of not less than \$5 nor more than \$100 and completion of not less than five hours of alcoholism counseling at the nearest community mental health center:

Public Intoxication

- Any person who violates this section is guilty of a misdemeanor;
 - Provided, That three convictions for public intoxication within the preceding six months is considered evidence of alcoholism.

Public Intoxication

- Any person who violates this section is guilty of a misdemeanor;
 - For the educational counseling programs described in this subsection the community mental health — center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

Public Intoxication

- A person charged with a violation of subdivision is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to §27-5-1 et seq. and §27-6A-1 et seq. of this code.

Bowles Rice

Review of Criminal Law

Obstructing

Obstructing

- A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer,
- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

Obstructing

- A person who intentionally disarms or attempts to disarm a law-enforcement officer
- Guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

Obstructing

- A person who, with intent to impede or obstruct a law-enforcement officer in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement
- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$200, or confined in jail for five days, or both fined and confined.

Obstructing

- The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation.
- Statements made by the person under investigation may not be used as the basis for prosecution under this subsection.

Obstructing

- A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, attempting to make a lawful arrest
- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer,
- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000 and shall be confined in jail not more than one year.

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer after the officer has given a clear visual or audible signal directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others
- Guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$2,000 and shall be imprisoned not less than one nor more than five years.

Obstructing

- Person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, after the officer has given a clear visual or audible signal directing the person to stop and causes damage to the real or personal property
- Guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000 and shall be confined in jail for not less than six months nor more than

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person
- Guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, after the officer has given a clear visual or audible signal directing the person to stop, and who causes death
- Guilty of a felony and, upon conviction not less than five nor more than 15 years.

Obstructing

- A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol,
- Guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

Obstructing

- “**vehicle**” includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle, or snowmobile whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

Obstructing

- **“flee”**, **“fleeing”**, and **“flight”** do not include a person’s reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer’s direction to stop.

Obstructing

- No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical services personnel.

Obstructing

- For the purpose of this subsection, the term “interfere with or prevent” includes, but is not limited to, seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

Obstructing

- For the purpose of this subsection, the term “emergency communication” means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

Obstructing

- A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than \$250 nor more than \$2,000, or both fined and confined.

Obstructing

- A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than \$500 nor more than \$3,000, or both fined and confined.

Obstructing

- A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than \$500 nor more than \$4,000, or both fined and confined.

Bowles Rice

Review of Criminal Law

Possession of Controlled Substance

Possession of Controlled Substance

- It is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Possession of Controlled Substance

- Any person who violates this subsection with respect to:
 - A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned:

Possession of Controlled Substance

- Any person who violates this subsection with respect to:
 - Provided, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

Possession of Controlled Substance

- Any person who violates this subsection with respect to:
 - Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

Possession of Controlled Substance

- Any person who violates this subsection with respect to:
 - A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

Possession of Controlled Substance

- Any person who violates this subsection with respect to:
 - A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined:

Possession of Controlled Substance

- It is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Possession of Controlled Substance

- It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice,

Conditional Discharge

- Whenever any person who has not previously been convicted of any offense relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs,
- Pleads guilty to or is found guilty of possession of a controlled substance the court,

Conditional Discharge

- Without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions.

Conditional Discharge

- Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.
- Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her.

Conditional Discharge

- Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions

Conditional Discharge

- The effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial.

Conditional Discharge

- No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose.
- There may be only one discharge and dismissal under this section with respect to any person.

Conditional Discharge

- After a period of not less than six months which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this chapter, the person may apply to the court for an order to expunge from all official records all recordations of his or her arrest, trial, and conviction, pursuant to this section.

Conditional Discharge

- If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this section has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

Conditional Discharge

- Any person prosecuted pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of this section shall be liable for any court costs assessable
- Payment of such costs may be made a condition of probation.

Conditional Discharge

- The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs

Conditional Discharge

- When a person pleads guilty or is found guilty of a violation a municipal ordinance containing the same elements the court may, as an additional condition require the defendant to be:

Conditional Discharge

- Evaluated for admission into a drug court program; or
- Participate in a drug treatment program.
- If a defendant is determined to be an appropriate candidate for admission to drug court or a drug treatment program, the court may make successful completion of a drug court or a drug treatment program a requirement for obtaining a final order of discharge and dismissal.

Conditional Discharge

- Any person convicted of a second or subsequent offense under this act may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

DMV- Hearings

Refusal Review Hearing

- For the purposes of this section, the term “refusal review hearing” refers to a hearing to review a person’s alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement

Refusal Review Hearing

- The court shall enter an order finding that a person did refuse to submit to a secondary chemical test:

Refusal Review Hearing

- At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period unless the person requests a refusal review hearing within the 30 days following the first appearance.

Refusal Review Hearing

- If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that a person charged did refuse to submit to a secondary chemical test; and
- If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order

Refusal Review Hearing

- Refusal review hearing.
 - The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer, requests the hearing within 30 days following his or her first appearance before the court.

Refusal Review Hearing

- Refusal review hearing.
 - The refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

Refusal Review Hearing

- Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test, if the court determines, by a preponderance of the evidence, that:
 - The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation;

Refusal Review Hearing

- The law-enforcement officer requested the arrested person to submit to the chemical test or tests;
- At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings; and
- The arrested person refused to submit to the chemical test or tests requested by the law-enforcement officer.

Refusal Review Hearing

- If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed above did not occur.
- The court shall enter an order finding that the person did not refuse to submit to the secondary chemical test.
- If the court enters such an order, the Commissioner may not revoke the person's license.

Refusal Review Hearing

- The clerk of the court in which the charges are pending shall immediately transmit any order entered to the Commissioner of the Division of Motor Vehicles.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:
 - The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense which requires a minimum period of revocation or suspension.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The person has a term of conditional probation (deferral);
- A court enters an order, finding that the person did refuse to submit to a secondary chemical test; or
- The person is convicted of an offense, appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed.

Bowles Rice

Ethics in Action: The Rules Matter

The Proof is in Your Actions

**Action indeed is the sole medium of
expression for ethics.**

Jane Addams

What are the Rules [for today] ?

- **Governmental Ethics Act.** It covers all state, county, and local officials & employees.

Einstein on Ethics

A man's ethical behavior should be based effectually on sympathy, education, and social ties; no religious basis is necessary. Man would indeed be in a poor way if he had to be restrained by fear of punishment and hope of reward after death.

Albert Einstein

Unsolicited Advice

Despite Einstein...

Let the fear of punishment restrain you [if nothing else does].

Bowles Rice

WV Attorney General

“No showing of bad faith, corruption or evil intent is required under this section, for the conduct proscribed by this statute is unlawful precisely because it is forbidden by statute, not because it is inherently evil, corrupt or immoral.”

Bowles Rice

The Governmental Ethics Act

(West Virginia Code as §§ 6B-1-1 *et seq*)



Use of Public Office for Private Gain

- A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office:
 - For his or her own private gain, or
 - The private gain of another person.
- This rule is not violated by performing the usual and customary duties of the position, or constituent services, without compensation

Soliciting Charitable Contributions

- A public official or employee may not solicit any gift except for a charitable purpose with no direct pecuniary benefit to the official or employee or his or her immediate family.
- Nor may an official or employee solicit even a charitable gift from any person who is also an official or employee, and whose position is subordinate to the soliciting official or employee.



Gifts

- No official or employee may knowingly accept any gift, directly or indirectly, from any person whom he or she has reason to know.
 - Is doing or seeking to do business of any kind with the public body, or
 - Is engaged in activities that are regulated by the public body, or
 - Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non-performance of the official's or employee's official duties.

Gifts

- **Exceptions.** A public official or employee may accept the gifts listed on the next slide **IF** the gifts do not impair the official's or employee's impartiality and independent judgment and the official or employee did not have reason to think that they were offered for those purposes.

Exceptions



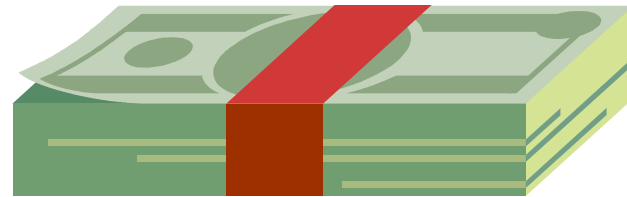
- Meals and beverages
- Ceremonial gifts and awards of insignificant monetary value
- Unsolicited gifts of nominal value or trivial items of informational value
- Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which he or she participates in a panel or speaking engagement

Exceptions

- Gifts of tickets or free admission extended to an official or employee to attend charitable, cultural or political events, if the purpose of the gift is a courtesy or ceremony customarily extended to the office
- Gifts that are purely private and personal in nature, and
- Gifts from relatives by blood or marriage, or a member of the same household.

What Amount is Nominal?

In this day and age,
what amount is
nominal, trivial or
insignificant?



Honoraria

- A public official or elected official may accept a reasonable honorarium within guidelines adopted by the Ethics Commission.
- However, an elected public official may accept an honorarium only when:
 - It is not related to the member's public position or duties; and
 - It is for services provided by the member that are related to his or her regular, nonpublic trade, profession, occupation, hobby or avocation; and
 - It is not provided in exchange for any promise or action on the part of the public official.

Political Contributions

The rules against using public office for private gain, soliciting charitable contributions, accepting certain gifts and honoraria, and having a financial interest in public body transactions do not themselves prohibit the giving of a lawful political contribution in accordance with other laws



Confidential Information

- No present or former public official or employee may:
 - Knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties, nor
 - Use such information to further his or her personal interests or the interests of another person.

Soliciting Private Business

No public official or employee may solicit private Business from a subordinate public official or employee whom he or she has the authority to direct, supervise, or control, except that he or she may solicit private business when:

Soliciting Private Business

- The solicitation is a general one directed to the public at large through a mailing or other distribution of a letter, pamphlet, handbill, circular or other printed media, or
- Is limited to the posting of a notice in a communal work area, or
- Is for the sale of property of a kind that the person is not regularly engaged in selling, or
- Is made at the location of a private business owned or operated by the person to which the subordinate public official or employee has come on his or her own initiative.

Interests in Public Contracts

The provisions of the Governmental Ethics Act concerning financial conflicts of interest are not as strict as the Pecuniary Interest Statute.

You must follow the stricter standard of the Pecuniary Interest Statute in such instances!

Interests in Public Contracts

- A public body may enter into certain transactions in which a board or council member or a member of his or her family may have a financial interest, but which are not prohibited by the Pecuniary Interest Statute or the Ethics Act.
- Example: The decision to hire a board member's spouse as a teacher.
- In such cases, the Act requires that the board member in question be "recused" from the matter, meaning that the member must:
 - Not participate in deciding or evaluating the proposition,
 - Not vote on the matter, and
 - Fully disclose the extent of his or her interest in the contract.

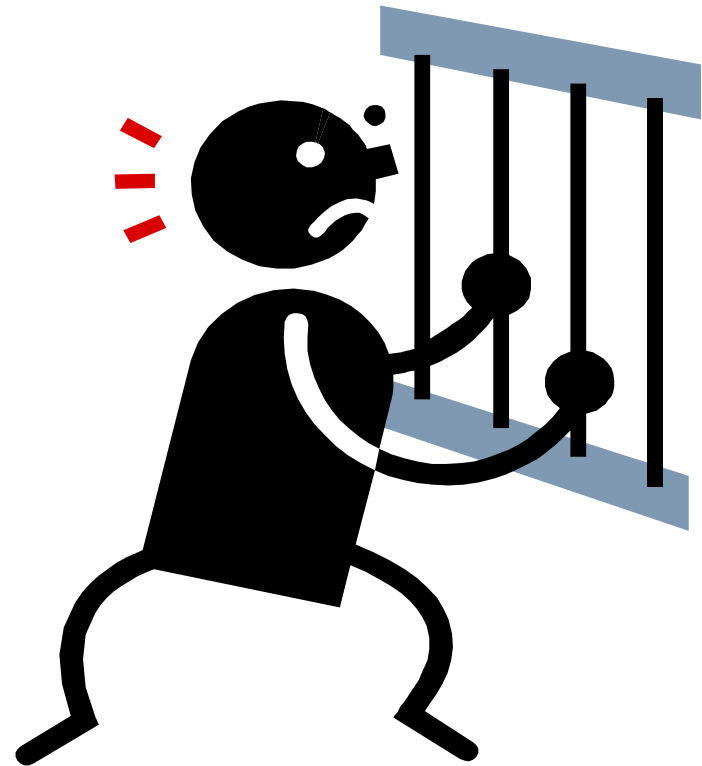
Possible Consequences for Violations

- Public reprimand
- Cease and desist order
- Order of restitution for money, things of value, or services taken or received
- Fine not to exceed \$1,000 per violation
- Removal from office
- Criminal conviction under any applicable criminal statutes, such as West Virginia's laws covering bribery in official matters, unlawful rewarding for past behavior, accepting unlawful gifts, and trading in public office

Remember...

**Let the fear of
punishment
restrain you.**

[if nothing else does]



EXCUSAL & RECUSAL

EXCUSAL

- A party has no right, statutory or otherwise, to excuse a municipal judge. This means that no party has the automatic right to disqualify the judge from hearing a case to which that judge has been assigned. If a party asks the judge to excuse him or herself, the judge should inform the party that excusal is not allowed in municipal court. However, when judges feel that they should not hear a case, recusal is the method by which they remove themselves.

RECUSAL

- **Grounds for Disqualification and Recusal**
 - The Code of Judicial Conduct states that a judge is disqualified and must recuse him or herself in any proceeding in which the “judge's impartiality might reasonably be questioned.”

RECUSAL

- Some of the circumstances described in the Code for when a judge must recuse him or herself are listed in the following slides. However, under the Code, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, even if the judge's situation does not fall within any of the listed circumstances.

RECUSAL

- A judge must recuse him or herself from a case when any of the following circumstances apply:
 - The judge has a personal bias or prejudice concerning a party or a party's lawyer.

RECUSAL

- The judge has personal knowledge of disputed evidentiary facts concerning the case.
- The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to either (a) an issue in the proceeding; or (b) the controversy in the proceeding.

RECUSAL

- The judge knows that the judge or the judge's spouse, parent or child, or any other family member residing in the judge's household, has one of the following:
 - A financial interest in the subject matter in controversy.
 - A financial interest in a party to the case.
 - Any other significant interest that could be substantially affected by the outcome of the case.

RECUSAL

- The judge or the judge’s spouse, or any person related to them within the third degree, or the spouse of any of those related people, meets one of the following:
 - Is a party to the case, or is an officer, director or trustee of a party.
 - Is acting as a lawyer in the case.
 - Is known by the judge to have a significant interest that could be substantially affected by the outcome of the case.
 - Is to the judge's knowledge likely to be a material witness in the case.

RECUSAL

- Judges are required to use reasonable efforts to keep informed about their own personal and fiduciary financial interests and the personal financial interests of their spouse and minor children residing in the household.

RECUSAL

- A judge who is disqualified for any reason other than personal bias or prejudice concerning a party can disclose this fact on the record and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification.

RECUSAL

- The judge will be permitted to hear the case only if all the parties and their lawyers, without participation by the judge, agree in writing that the judge should not be disqualified. The agreement must be incorporated in the record of the proceeding. Without unanimous written agreement by all the parties and their lawyers, the judge remains disqualified and must recuse him or herself from the case.

Dilapidated Buildings On the Spot Citation Power Registration

Immediately Issue Citations For External Sanitation Violations and Common Nuisances

- The City will enact an ordinance providing its code enforcement officers the authority to issue “on the spot” citations for certain violations.

Immediately Issue Citations For External Sanitation Violations and Common Nuisances

- This citation power will extend to sanitation, drainage, sidewalks in disrepair, high weeds, grass, or both, graffiti, exterior garbage accumulation, open storage in residential districts, and nonresident recreational vehicles.

Immediately Issue Citations For External Sanitation Violations and Common Nuisances

- These citations may be issued to the owner, lessee, sublessee, tenant, occupant, or agent or manager thereof, presently having control over the property in question.

Liens for Actions Taken in Regard to Eyesores and Dilapidated Buildings

- The City will enact an ordinance permitting it to, after due notice, repair, alter, or demolish property, mow overgrown grass, and collect unlawful accumulations of garbage and rubbish and, without court approval, place a lien on the property for the amount expended by the City in taking such action.

Committee Substitute for SB 631

Committee Substitute for SB 631

- Relating generally to municipal ordinances and procedures;
- Creating a procedure for misdemeanor prosecutions of violations of municipal ordinances;
- Providing for the designation of enforcement agencies;

Committee Substitute for SB 631

- Providing a procedure for code enforcement agency officials to enter premises for investigation or inspection of a structure, dwelling or building;
- Granting plenary power to the governing body of every municipality to adopt an ordinance providing for the vacating, closing, removal or demolition of specific dwellings, structures or buildings by a municipality in the absence of owner agreement or court order

Committee Substitute for SB 631

- Providing for notice to the owner of the right to apply to the circuit court for a temporary injunction or other similar relief;
- Requiring a hearing to be held within twenty days if the owner makes such application to the circuit court;
- Requiring an owner to pay a bond into court if the owner seeks a continuance of the hearing seeking a temporary injunction or other similar relief

Committee Substitute for SB 631

- Allowing for the disbursement of moneys paid into court by an owner if a court finds that the property is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare;
- Permitting a governing body of a municipality to file a lien against the real property for an amount that reflects all costs incurred by a municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building;

Committee Substitute for SB 631

- Permitting a municipality to institute a civil action in circuit court against a landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare
- Permitting a municipality to recover all reasonable costs and expenses incurred by the municipality

Committee Substitute for SB 631

- Providing for service of notices of violations;
- Providing for a procedure to prosecute ordinances adopted under the section pertaining to regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwelling or buildings that are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

§8-12-13. Building regulation; general and special codes; state building code.

- (a) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:
 - (1) Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

§8-12-13. Building regulation; general and special codes; state building code.

- (2) Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair thereof; and
- (3) Regulate plumbing by prescribing the minimum specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.
- (b).....If the municipality votes to adopt a building code, it must be the state building code

§8-12-13. Building regulation; general and special codes; state building code.

- (d) Any misdemeanor prosecution of a violation of an ordinance adopted under this section before a municipal judge or other municipal official lawfully authorized to hear and determine violations of municipal code shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code

§8-12-13. Building regulation; general and special codes; state building code.

- The presentation and oath or affirmation shall be made by a code enforcement department official or municipal attorney showing reason to have reliable information and belief.
- If the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

§8-12-13. Building regulation; general and special codes; state building code.

- A complaint shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement department official.

§8-12-13. Building regulation; general and special codes; state building code.

- If service is made by certified mail and delivery of the summons and complaint is refused, the code enforcement department official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint.

§8-12-13. Building regulation; general and special codes; state building code.

- If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated.
- Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (1) “Code enforcement agency” means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of this section.
 - (2) “Code enforcement agency official” means any lawful agent of a code enforcement agency. officio members of the enforcement agency.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (3) “Owner” or “landowner” means a person who individually or jointly with others:
 - (A) Has legal title to the property, with or without actual possession of the property;
 - (B) Has charge, care or control of the property as owner or agent of the owner;
 - (C) Is an executor, administrator, trustee or guardian of the estate of the owner;
 - (D) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or
 - (E) May control or direct the management or disposition of the property.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (A) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code related to the requirements for existing buildings;
 - (B) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (C) Any portion of a dwelling, building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;
 - (D) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (E) The dwelling, building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;
 - (F) The dwelling, building or structure, or any portion, is clearly unsafe for its use;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (G) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the dwelling, building or structure for committing a nuisance or an unlawful act;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (H) Any dwelling, building or structure constructed, exists or maintained in violation of any specific requirement or prohibition applicable to any dwelling, building or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (I) A dwelling, building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease;

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (J) Any dwelling, building or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health; or
 - (K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (a) (b) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances.
 - (b) (c) The governing body in formally adopting the ordinances any ordinance shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex officio members.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - Any municipality that has not adopted the state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief who shall serve as ex officio members of the enforcement agency.

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (c) (d) Any ordinance adopted pursuant to under the provisions of this section must provide fair and equitable rules of procedure
 - Provided, That any entrance upon premises for the purpose of making examinations is made in a manner as to cause the least possible inconvenience to the persons in possession. corrective action taken by the code enforcement agency.

§8-12-16. Ordinances

- (e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:
 - (1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property.

§8-12-16. Ordinances

- (e) (2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling or building is located.

§8-12-16. Ordinances

- (e) (2) ..Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling or building that supports the requested entry.

§8-12-16. Ordinances

- (e) (3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling or building.

§8-12-16. Ordinances

- (e)(4) Entry is for the sole purpose of inspection of the structure, dwelling or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling or building.

§8-12-16. Ordinances

- (f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order:
- Provided, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

§8-12-16. Ordinances

- (1) Any ordinance adopted under this subsection applies only to dwellings, structures or buildings which meet the definition of unsafe, unsanitary, dangerous or detrimental to the public safety or
- Provided, That the dwelling, building or structure is vacant, abandoned or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation or corrective action exceeds the fair market value of the dwelling, building or structure.

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s), the corrective measures required, the allotted time to correct the substandard condition(s) and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling or building falls within one of the categories set forth above
 - memorializes the code enforcement agency official's efforts to contact or get permission for entry and corrective action from the owner;

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (C) the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and the date of the proposed action, as a Class II legal advertisement, the first of which shall run at least thirty days before the date of the proposed action by the enforcement agency, and the last being no later than twenty days before the date of the proposed action by the enforcement agency.

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality shall have the authority to proceed in correction or demolition of the subject dwelling, building or structure.

§8-12-16. Ordinances

- (3) It shall be an absolute defense to any civil action by an owner, landowner or tenant for damages resulting from the closure, demolition or other corrective action taken by a municipality under this section: Provided, That the municipality acted in good faith, can demonstrate that the structure, dwelling or building falls within one of the categories set forth above and the municipality followed the procedures set forth in this subsection and the municipality had adopted the state building code at the time of the closure, demolition or other corrective action occurred.

§8-12-16. Ordinances

- (4) Any ordinance adopted under this subsection must also provide for notice to the owner of the right of the owner to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within twenty days of the application, or as soon as reasonably possible.

§8-12-16. Ordinances

- (4) (A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.
- (4)(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

§8-12-16. Ordinances

- (g) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner or owners of any dwelling or building under determination of the State Fire Marshal, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building and may file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building.

§8-12-16. Ordinances

- (h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to get an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

§8-12-16. Ordinances

- (h) (1) No fewer than ten days before instituting a civil action as provided in this subsection, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

§8-12-16. Ordinances

- (h) (2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body municipality shall resend the notice(s) by first class mail, postage prepaid, cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and shall also post notice on the front door or other conspicuous location on the subject property.

§8-12-16. Ordinances

- (i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code.

§8-12-16. Ordinances

- (i) ...All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official

§8-12-16. Ordinances

- (i) ...and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

§8-12-16. Ordinances

- (j) Any violation of an ordinance adopted under this section, may be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred.

§8-12-16. Ordinances

- (j) ...Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

§8-12-16. Ordinances

- (j) ...A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official.

§8-12-16. Ordinances

- (j) ...A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil

§8-12-16. Ordinances

- (j) ...Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

Thank You!

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