



# West Virginia Municipal League Municipal Court Clerk Manual 2020



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## *DISCLAIMER*

The West Virginia Municipal League, Inc. is a West Virginia chartered non-profit organization with over 200 member-municipalities formed pursuant to W.Va. Code § 8-12-6 to disseminate information to and provide advocacy on behalf of West Virginia municipalities in matters of common concern.

This document is designed to provide accurate and authoritative information regarding the subject matter covered and has been updated to include acts passed during the 2020 Regular Session of the West Virginia Legislature. It is provided with the understanding that the West Virginia Municipal League, Inc. and its officers, members, employees and agents are not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

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## Overview of the Court Process

Generally, it is the duty of a Municipal Court Clerk to organize and manage the operation of the court in cooperation with the Municipal Judge to keep the court processes running smoothly and effectively. Administering a court requires balancing adherence to local, state, and federal laws, and the customs and preferences of the individual court and judge. Municipal Courts generally operate by the Rules of Criminal Procedure for Magistrate Courts. The Magistrate Rules for Criminal Procedure are in Appendix D, and available online at

<http://www.courtswv.gov/legal-community/court-rules/Magistrate/mag-criminal.html>

Although specific duties may vary from court to court, clerks have some common responsibilities throughout the court process. For the purposes of this manual, the court process has been divided into the following sections:

- Case Initiation
- Pre-trial processing
- Hearings and judgement
- Post-trial processing
- Case closing

Even though the Court Clerk is considered an administrative position, much of the job is working with the public providing information and answering questions. Court Clerks deal with a variety of people including defendants, attorneys, law enforcement officers, and other professionals who have business before the court. Court Clerks are on the front line with people appearing before the court and can have a great impact on whether defendants feel they have been treated fairly and with respect, and that their rights have been preserved. Of special consideration in criminal cases are the defendant's rights under the Sixth Amendment to the Constitution of the United States. The Sixth Amendment ensures the right to a speedy trial, to trial by jury, to be informed of the charge, to confront one's accuser, to subpoena witnesses in one's favor, and to have the assistance of a lawyer.

The recommendations in the following sections are not intended to provide comprehensive operational instructions for all court functions, but a guide to basic court operation. If further information or reference on any specific topic is needed, please contact the West Virginia Municipal League, or consult with competent legal counsel.

## Section 1 – Case Initiation

Charges may be filed in Municipal Court in several ways: WV Uniform Citation (paper or e-citation); criminal complaint filed by a law enforcement officer; citation from a humane officer; citation from a building or zoning enforcement officer; or a fire code citation. These are called Charging Documents.

### 1.1 Charging Document - West Virginia Uniform Citation

The West Virginia Uniform Citation must be used for all traffic citations. Citation books must be ordered from the West Virginia Division of Motor Vehicles at the following web page:

<https://transportation.wv.gov/dmv/safety/pages/uniform-traffic-citations.aspx>.

That web page also contains links to Uniform Traffic Citations guidelines.

In order to be an official charging document, at least one part of the “Charges” section must be completed. Each citation can charge a maximum of two violations. The specific municipal ordinance violated should be referenced for each charge.

<i>In the Above Listed County or City of West Virginia, Did Unlawfully Then and There Commit the Following Offense(s):</i>	
<p><b>Charge #1: (Select Only 1 Violation per Charge)</b></p> <p><input type="radio"/> Speeding _____ MPH in a _____ MPH Zone</p> <p><input type="radio"/> Other: _____</p> <p>In Violation of _____ <input type="radio"/> WV State Code  <input type="radio"/> Municipal Ordinance</p> <p><small>Code or Ordinance Ref #</small></p>	<p><b>Charge #2: (Select Only 1 Violation per Charge)</b></p> <p><input type="radio"/> _____</p> <p>In Violation of _____ <input type="radio"/> WV State Code  <input type="radio"/> Municipal Ordinance</p> <p><small>Code or Ordinance Ref #</small></p>

Citations contain a “Violator Responsibility” section. In this section, the issuing officer must include a date by which the violator must appear in court. This needs to be an actual date, not a range or ambiguous deadline such as “within 5 days”. If the violator does not appear on or before the date indicated on the citation, the court may, after waiting 90 days, notify the DMV of such failure and request that the violator’s driver’s license be suspended for failing to appear using the Universal Suspension/Compliance Form. A sample of the form is included in Appendix A.

<b>VIOLATOR RESPONSIBILITY</b>	
<i>I Understand that I Have to Appear, On or Before,</i> _____ <b>(Date)</b>	
_____	_____
<b>Court Name and Address</b>	<b>Court Phone</b>
<i>I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.</i>	
_____ <b>Violator Signature - Not an Admission of Guilt</b>	

If a defendant whose license is suspended for Failure to Appear contacts the court and obtains a new court date, the clerk should send a Verification of Satisfaction again using the Universal Suspension/Compliance Form.

If the citation is issued for a criminal violation other than a traffic violation, a criminal complaint may also need to be filed by the officer. The criminal complaint more fully defines the actions of the defendant that were in violation of the relevant ordinance. Clerks should consult with their judges, city attorney, or prosecutor for conditions under which both a citation and a criminal complaint are appropriate.

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*A detailed description of all the sections of the Uniform Citation is included in Appendix B.*

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## 1.2 Charging Document – Officer Criminal Complaint

Charges may also be filed in Municipal Court through a Criminal Complaint, completed and sworn to by the enforcement officer. The Criminal Complaint is a sworn statement from the charging officer of the charges being prosecuted against the defendant, including the section of code violated, the date of the event giving rise to the alleged violation, and the facts surrounding the alleged violation. A sample of a criminal complaint form is included in Appendix A.

## 1.3 Charging Document – Humane Officer Citation, Building or Zoning Citation, or Fire Code Citation

There are citations other than the West Virginia Uniform Citation that can be used as a charging document in Municipal Courts. The form of these citations may vary from city to city, but all should include the same basic information as the uniform citation including the violator name and address, the specific code that is alleged to have been violated, facts surrounding the alleged violation, court location information, and a court appearance date.

## **Section 2 - Pre-Trial Processing**

After the court receives the charging document, the clerk performs several pre-trial tasks to prepare each case for court.

### 2.1 Case indexing and filing

It is recommended that every charge, not citation, filed with the court be assigned a unique sequential case number, and that the cases be logged, either electronically or



on paper, to facilitate tracking the cases' dispositions. All case related papers should include this case number to aid in maintaining cohesive files and to create a common link between all the papers and records related to the case. The clerk may also want to date stamp all case-related documents that they receive.

## 2.2 Acceptance of pleas prior to appearance date

In some cases when the WV Uniform Citation is the charging document, the defendant will want to enter a plea prior to the appearance date on the citation. The WV Uniform Citation includes a "Violation Disposition" section which allows the defendant to enter a plea of guilty or no-contest, or enter a plea of not-guilty without having to appear before the judge.

When the defendant enters a guilty or no contest plea via the citation, there are acknowledgement statements that must be checked by the defendant.

**GUILTY OR NO CONTEST PLEA FOR TRAFFIC OFFENSES**

TO PLEAD GUILTY TO MOST TRAFFIC OFFENSES, YOU MUST EITHER (1) CONTACT THE COURT LISTED ON THE FRONT OF THE CITATION IN THE COUNTY WHERE THE OFFENSE OCCURRED OR (2) APPEAR PERSONALLY BEFORE THAT SAME COURT. IF PLEADING GUILTY OR NO CONTEST BY TELEPHONE, THIS COPY MUST BE SIGNED, DATED AND MAILED TO THE COURT LISTED ON THE FRONT OF THE CITATION.

IF CHARGED FOR VIOLATION OF A SUSPENDED OR REVOKED LICENSE (RECKLESS DRIVING) OR IF THE PERSON, A PLEA OF GUILTY OR NO CONTEST BEFORE THE COURT LISTED ON THE FRONT OF THE CITATION IS SUBJECT TO CRIMINAL RULE 7(b)(1))

All acknowledgements need to be checked by the defendant.

I CERTIFY THAT I HAVE BEEN INFORMED OF THE CHARGE(S) AGAINST ME AND THE PENALTIES THAT THE COURT MAY IMPOSE.

I UNDERSTAND THAT I HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY.

I UNDERSTAND THAT I HAVE THE RIGHT TO PLEAD NOT GUILTY TO THE CHARGES AGAINST ME AND TO DEMAND A TRIAL BY JURY.

I UNDERSTAND THAT BY PLEADING GUILTY OR NO CONTEST I WILL WAIVE ALL OF THESE RIGHTS.

I CERTIFY THAT MY GUILTY OR NO CONTEST PLEA IS VOLUNTARY.

I HAVE READ AND UNDERSTAND THE ABOVE LISTED RIGHTS AND:  
(Choose ONE Box Below.)

I HEREBY PLEAD GUILTY TO THE CHARGE(S) AGAINST ME.

I HEREBY PLEAD NO CONTEST TO THE CHARGE(S) AGAINST ME.

Defendant checks one, signs, and dates.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

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If the court accepts a plea of guilty or no-contest over the telephone, the defendant must mail their citation to the court with this Violation Disposition section completed and signed.

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The Violation Disposition may also be used by a defendant to plead not guilty to the charges on the citation.

<b><u>NOT GUILTY PLEA FOR TRAFFIC OFFENSES</u></b>	
<p>TO PLEAD NOT GUILTY TO MOST TRAFFIC OFFENSES, YOU MUST EITHER (1) APPEAR PERSONALLY BEFORE THE COURT LISTED ON THE FRONT OF THIS CITATION OR (2) CHECK THE BOX BELOW, SIGN, DATE, AND MAIL THIS COPY OF THE CITATION TO THE SAME COURT. YOU WILL BE NOTIFIED OF THE DATE AND TIME TO APPEAR IN PERSON.</p>	
<input type="checkbox"/> <b>I HEREBY PLEAD NOT GUILTY TO THE CHARGE(S) AGAINST ME.</b>	
<hr style="border: 0; border-top: 1px solid black;"/> <b>SIGNATURE</b>	<hr style="border: 0; border-top: 1px solid black;"/> <b>DATE</b>

If the court receives a citation with this section checked, signed, and dated, the clerk will enter a plea of "Not Guilty" into the court record and schedule a hearing or trial on the charges contained in the citation. Notice of the hearing or trial date will need to be given or sent to the defendant. The court should not rely on the appearance date indicated on the citation, but should issue a new notice of hearing or trial. An example of a notice of hearing or trial is included in Appendix A.

### 2.3 Docket preparation

It is recommended that the clerk produce a written docket of all cases to be heard on a court date. The docket may be arranged according to the preference of the Judge but should reflect if the case is coming before the court for an initial appearance or arraignment, a bench trial, a jury trial, or for any other reason, such as a hearing on a motion.

In general, to prepare for a hearing or trial date, the clerk will retrieve and assemble the files for all cases appearing on the docket for a given hearing date. The clerk should review the file to see that it contains all case-related paperwork the judge will need to be able to conduct the hearing or trial.

For an initial appearance or arraignment, the file should contain at a minimum the original charging document, any other pleadings or documentary evidence that have been filed with the court, and a statement of charges or initial appearance rights statement so the Judge can advise the defendant (preferably in writing) of the charges, their potential penalties, and the defendant's rights. A sample of an Initial Appearance Rights Statement is included in Appendix A. The clerk should also prepare any other documents that may be required at the completion of the hearing or trial, including guilty efare included in Appendix A.

The clerk should also review the file to see that all parties have received notice of the hearing and that any witnesses requested from both the prosecution and the defense have been subpoenaed. If a jury trial is being held, the clerk should make sure all special arrangements associated with seating a jury have been made.

In some cases, clerks will need to help defendants arrange for interpreters or other special communication accommodations for defendants. People who are unable to

read or write English or have a disability that impairs communication will need accommodation to make sure they understand the proceedings and that their rights are not violated due to their inability to effectively understand or communicate. Defendants may apply for an interpreter, and interpreters are appointed and paid through the West Virginia Supreme Court. The official application is a fillable form on the website of the WV Supreme Court: <http://www.courtswv.gov/court-administration/access-to-justice/language-access.html>. An example of the application is also included in Appendix A.

## 2.4 Continuances

Court cases may be continued to another date for a variety of reasons: scheduling problems in the court, failure of a party or their attorney to appear at trial, or at the request of one or both of the parties. It is recommended that the party seeking a different trial date file a motion for continuance with the court. A sample is included in Appendix A. The motion requires a reason the party is seeking the continuance. The judge may review and rule on motions for continuance based on their determination if good cause for the continuance is demonstrated. If the court processes continuances without a written motion, the clerk should document the case file of the decision to continue the trial/hearing.

With any continuance granted by the court, the clerk should make sure that all parties involved in the case receive a new notice of hearing or trial with a reasonable amount of time to allow the parties to prepare for and schedule the new date.

## 2.5 Subpoenas

Both defendants and prosecutors have the right to subpoena witnesses to appear before the court and testify. According to Magistrate Court rules, the clerk should upon request of a party, issue a subpoena commanding the person to whom it is directed to appear before the court. The court may provide a form to the parties to request subpoenas from the court. The parties may also request a subpoena that orders a person to appear before the court and bring relevant documents with them – a subpoena duces tecum. Examples of all forms referenced in this section are included in Appendix A.

Subpoenas requested by the defendant will be served by the defendant. The clerk should prepare the subpoenas and then give them to the defendant for service. It is recommended that a Return of Service be requested from the defendant as verification that the subpoena was served. Subpoenas requested by the City should be served by the City, either in person by a law enforcement officer, or by mail. For personal service, it is recommended that a Return of Service be requested from the law enforcement agency as verification that the subpoena was served.

## 2.6 Incarcerated Defendants

If a court has knowledge that a defendant is incarcerated in WV regional jail or WV DOC prison, the court may need to arrange for transport of the defendant to the municipal court on the day of the hearing. Generally, the court will send a Transport Order to the correctional facility advising the name of the defendant, the date that the defendant will need to be prepared for transport, and the reason for the request. While the correctional facility will prepare the defendant, actual transport of the defendant from the facility to court is performed by law enforcement officers from the municipality. A sample of a transport order is included in Appendix A.

## 2.7 Dismissals

In some cases, the court will dismiss a case prior to the hearing or trial. It is recommended that the party seeking dismissal file a motion of dismissal with the court. There are two types of dismissals – with prejudice and without prejudice.

Dismissal without prejudice means that the case is dismissed but can be re-filed. This type of dismissal may be used if charges filed with a Municipal Court would be better heard in a state court. For example, if a defendant is arrested on first offense shoplifting but further review of their record indicates it is a third offense. Third offense shoplifting is a felony and must be heard by a state court. The municipal court can dismiss the charge without prejudice and the case can be correctly filed in state court. It can also be used in situations where the defendant has not received proper service of the charges. Dismissal with prejudice means that the case is dismissed permanently and cannot be brought back to court.

Any party may request dismissal of a case. It is recommended that requests for dismissal be in the form of a motion from the requesting party, whether the request is from the defendant, the prosecutor, or the officer who wrote the citation or made the arrest. A sample is included in Appendix A. Consistent with Magistrate Court rules, a copy of the filed motion should be sent to the other party in case to allow them an opportunity to object to the motion. Upon ruling on the dismissal, the judge should sign and enter a notice of dismissal or indicate on the motion whether it is granted or denied by indicating their ruling and signing and dating their ruling on the motion. The notice of dismissal must be provided to all parties to the case.

Certain traffic violations, such as no proof of insurance, may also be dismissed prior to hearing or trial if the defendant presents the proper paperwork to the court. State statute requires that a no proof of insurance charge be dismissed if the defendant presents proof that insurance was in effect at the time of the citation within seven days of being cited. Some courts will similarly dismiss charges of expired registration or inspection if the defendant can produce satisfactory evidence that they have corrected the lapses and are current with legal requirements. No written motion is necessary in these cases, although the case file should be documented when the dismissal is granted.

## Section 3 - Hearings and Judgement

Duties of clerks during hearings and trials will vary from court to court. In some courts, the clerk is responsible for calling the cases on the docket to the bench. They may also be responsible for swearing in witnesses, accepting and numbering exhibits presented at trial, and the preparation or execution of motions or other paperwork that becomes necessary during the trial.

After the judge has heard the case, the judge decides the case based on the applicable law and the evidence presented. The decision will be either "guilty" or "not guilty" for most criminal and traffic cases. Under certain circumstances, the court may defer a finding dependent upon the defendant fulfilling certain conditions. Following a decision of "guilty", the judge determines the punishment that should be imposed including a fine, incarceration, restitution, probation, or other punishment or remedy. The decision of the court and punishment should be recorded on the case papers or in a separate order.

## Section 4 - Post-Trial Processing

After a case has been adjudicated, it is usually the job of the clerk to perform tasks necessary to execute the Judge's orders and provide further notice to the defendant of their rights and obligations. Additionally, there are state mandated reporting requirements for traffic citations, and collection duties that include remission of state mandated fees to the WV Treasurer's office.

### 4.1 Statement of Fines and Costs

If a defendant is found guilty by the judge, it is important to provide them with notice of what fines, fees, and costs have been assessed and what rights and duties apply to their collection. This has become especially important considering the changes to state law in July of 2020 relating to payment plans for defendants found guilty and assessed fines. An example of a Statement of Fines and Costs is included in Appendix A. Although the form of the statement may vary in individual courts, it is important that it includes the following:

- a) disclosure that a payment plan is available;
- b) disclosure that the defendant will have to complete a financial affidavit;
- c) notice that the defendant has 90 days to either pay or establish a payment plan; and
- d) notice of the consequences for failing to either pay or establish a payment plan.

It is also recommended that the defendant sign an acknowledgment that they understand and agree with the terms. This is especially important if the court will be using a collection agency to try to recover past due amounts owed to the court.

## 4.2 Driver's Deferral Program

Municipal Courts have been given the ability under WV State Code §8-11-5 to offer defendants convicted of traffic offenses (other than DUI) the opportunity to participate in a deferral that allows the defendant to take a safe driving course and have their ticket dismissed, avoiding the assessment of any points against their license by the DMV. The deferral is not available to drivers who hold a commercial driver's license and can only be used once by a defendant.

When a defendant agrees to participate in the deferral, they must pay any fine and all fees assessed consistent with a guilty plea. The defendant then has one hundred eighty days (180) to successfully complete the course. If satisfied with the defendant's participation in the course, the court shall, without entering a judgement of conviction, dismiss the case against the defendant.

The West Virginia Municipal League offers an online course to which municipal judges can refer defendants in order to participate in the deferral. This course is for the purposes of deferral only and cannot be used to reduce driver's license points that have previously been assessed. Courts must enroll with the Municipal League and receive a court number in order to refer defendants to the online course.

## 4.3 Notice of case disposition to the DMV

Whenever a defendant is convicted for the violation of any law governing or regulating the licensing or operation of any motor vehicle, except regulations governing standing or parking, state law requires that a certified abstract of the judgement on the conviction must be transmitted to the Division of Motor Vehicles within seventy-two (72) hours. Additionally, if the defendant holds a commercial driver's license (CDL), federal law requires that convictions on traffic violations be reported to the DMV within ten (10) days. The DMV requests that even though the deadline is 10 days, CDL convictions be emailed or faxed daily whenever possible since the state is rated by the federal government on its response time. A sample of the Abstract of Judgement form used for notifying the DMV is included in Appendix A.

## 4.4 Commitment to Jail

Some courts will impose a jail sentence on defendants who plead or are found guilty. The court will need to prepare a Jail Commitment form which will include the charges for which the defendant is being incarcerated, the time period that the defendant will be incarcerated, and the time and date that the incarceration will commence and end. Courts may also want to have a Jail Release form directing the correctional facility to release an inmate sentenced by the court in the event the original sentence evidenced on the commitment form is reduced. Examples of jail forms are included in Appendix A.

## 4.5 Municipal Appeals

Defendants convicted in Municipal Courts may appeal their convictions to the Circuit Court in the county where the municipality is located. If the municipality is in two counties, the appeal should be filed in the county that contains most of the territory of the municipality, regardless of where the offense took place. Appeals must be filed within 20 days of the conviction date. A defendant who has entered a guilty plea and was represented by counsel at the time of the plea may not appeal.

The defendant must file their appeal in the Municipal Court. A sample of a Petition for Appeal of a bench trial is included in Appendix A. The court may require the petitioner to post a bond which may not be more than the amount of the fine which could be imposed for the offense. Filing a Petition for Appeal stays any sentence imposed by the municipal judge in the case being appealed.

Upon receipt of a Petition for Appeal, the court must forward the petition, and the original court file (or certified copy), any evidence in the case, and the bond to the Circuit Court. If forwarding the original court file, it is advisable to keep a certified copy of the original case in a separate filing area in the Municipal Court.

If a defendant is petitioning for appeal of a municipal jury trial, additional rules apply.

## 4.6 Expungement

In West Virginia, defendants convicted of some types of misdemeanors may apply to have their records expunged. Petitions for expungement must be made to a circuit court, but misdemeanor charges in municipal courts may be part of the petition. A person is eligible for expungement one year after the conviction and completion of any sentence of incarceration and any period of supervision. Additionally, WV code provides for expedited expungement for people who have a medically documented history of substance abuse and successfully complete a recovery program, or graduate from a WV Department of Education approved job readiness training course.

Persons petitioning for expungement must serve the petition on all courts which disposed of criminal charges which includes municipal courts. When the court receives a petition of expungement, the court has thirty (30) days to file a notice of opposition with the court having jurisdiction to hear the expungement. Any notice of opposition must also be served on the defendant.

If the petition for expungement is granted by the circuit court, the municipal court will be served an order from the circuit court to expunge the records and certify to the circuit court within sixty (60) days that records have been sealed. Although sealed, the records should not be physically destroyed before 10 years. Generally, upon expungement, the records in the matter are considered never to have occurred. The court shall reply to any inquiry that no record exists on the matter, however there are some circumstances in which sealed records can be inspected.

## 4.7 Collection of Fines and Fees

Municipal court clerks may also be responsible for collecting fines and fees, and for establishing and monitoring payment plans for defendants. A detailed description of court fines and state mandated fees, and information on remitting fees to the state is included in Section 6 of this manual. Details about payment plans are available in a separate guide to implementation of payment plans.

## Section 5 – Case Closing

After a case has been adjudicated, the period for appeal has expired and all fines, fees, restitution, and costs have been remitted to the court from the defendant, the court may close a case file. Cases that have been dismissed with prejudice may be closed as of the effective date of the dismissal order. Cases that are dismissed without prejudice and not refiled may be closed after one year past the date of the dismissal order.

Retention of the physical closed file is recommended for ten (10) years and until completion of an audit by the State Auditor's office and exceptions cleared. The closed files may then be destroyed at the discretion of the court.

## Section 6 - Fines, Fees, and Court Costs

Municipal Courts may impose fines for violations of municipal ordinances. Additionally, the State imposes several fees applicable to certain classes of violations. Municipal Courts may accept payment of fines, fees, and court costs in several forms including the acceptance of credit and debit cards. If a court is charged a fee by a credit card processor, the fee may be passed on to the defendant.

All Municipal Courts must collect court costs per WV State Code and all collected court costs must be forwarded to the WV State Treasurer's Office by the 10<sup>th</sup> of the following month. The Treasurer's Office has implemented online reporting, with user guides and additional materials on their website: <https://wvtreasury.com/Banking-Services/Court-Fee-Remittance>.

Fine only violations such as seatbelt, child restraint violations, use of electronic device while driving and parking ordinance violations are not assessed any court costs per State Code.

### 6.1 Description of fines, fees, and court costs.

*Municipal Fines:* The fine amount for violations of any specific ordinance is established by the municipal ordinance. The fine must be reasonable and cannot be greater than fine established in state code for the same or similar offenses. Fines collected are retained by the municipality. (Authority under WV Code §8-11-1)



*Crime Victims Compensation Fund Fee:* A fee of \$8.00 is assessed on all misdemeanors except for violations of municipal parking ordinances or non-moving violations (defined by Attorney General's Opinion 1987 as parking offenses, invalid automobile registration, expired inspection stickers, invalid driver's licenses, and defective equipment)\*. If a defendant is convicted of DUI under 17C-5-2, add an amount equal to 20% of the assessed fine for additional Crime Victims Compensation Fund Fee. The entire fee amount is remitted to the WV State Treasurer. (Imposed under WV Code §14-2A-4)

*Law Enforcement Training Fund Fee:* A fee of \$12.00 is assessed on all cases except violations of municipal parking ordinances. The entire amount of this fee is remitted to the WV State Treasurer. If a defendant posts a bond for any violation, a fee of an additional \$12.00 is added to the bond amount. If the defendant forfeits the bond, the entire \$12.00 is remitted to the WV State Treasurer. (Imposed under WV Code §30-29-4)

*Regional Jail & Correctional Facility Development Fund:* A fee of \$42.00 is assessed on all traffic moving violations, and all other violations that carry a penalty of potential jail time. The municipality keeps \$2.00 of the fee. The remaining \$40.00 is remitted to the WV State Treasurer. (Imposed under WV Code §8-11-1 and 8-11-1a)

*West Virginia Community Corrections Fund:* A fee of \$10.00 is assessed on each criminal conviction. The entire fee is remitted to the WV State Treasurer. An additional fee of \$35 per month is assessed when a defendant is placed on probation. An additional fee of \$2.50 per day is assessed when a defendant is placed on home confinement. (Imposed under WV Code §62-11C-4)

*DUI Fee:* A fee of \$55.00 is assessed on DUI convictions. This fee does not apply to Operators Revoked/Suspended for DUI convictions. The entire fee is retained by the municipality. (Imposed under WV Code §8-11-b)

*West Virginia Litter Control Fund:* Persons who are convicted of littering under WV Code §22-15A-4 are assessed a civil penalty of \$2,000 as costs for clean-up, investigation, and prosecution of the case. This penalty is in addition to any other court fines or costs. Fifty percent of all funds collected under this provision is remitted to the WV State Treasurer. The remaining fifty percent of all funds collected under this provision is remitted to the county or regional solid waste authority in the county where the littering violation occurred. (Imposed under WV Code §22-15A-4)

*Municipal Payment Plan Administrative Fee:* An administrative fee of \$25.00 is assessed whenever a defendant enters into a payment plan with the court or requests an amendment to a payment plan administered by the court. The entire fee is retained by the court.

---

\* There may be additional non-moving violations defined by West Virginia courts. You should consult with your city attorney with any questions you have about classification of violations as "moving" or "non-moving".

## 6.2 Payment Plans.

Municipal courts in West Virginia are required by state statute to offer payment plans to any person owing costs, fines, forfeitures, or penalties imposed by the court. The payment plan is determined by a formula that calculates the amount and number of payments based on the defendant's reported monthly net income. In order to implement a payment plan, the defendant must complete a financial affidavit. Using the information provided on the affidavit, the court can calculate the payment amounts and the duration of the plan. Details about implementing municipal court payment plans are available in the Municipal League's Guide to Implementing Municipal Payment Plans which can be found on the League's website or through the WVML office.

## Appendix A – Sample Forms

The following are meant to be a sampling of Municipal Court forms supplied to us from various Municipal and State Courts.

We make no promise that these samples are all-inclusive. There may be other forms required for operation of a Municipal Court which are not included here. Additional samples are also available on the WVML website.

We recommend checking with your City Attorney regarding any concerns you may have regarding the customization of these forms or any additional forms or paperwork that may be necessary for the operation of your Municipal Court.

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**IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA**

[CITY]

v.

Case No.: \_\_\_\_\_

\_\_\_\_\_  
Defendant

Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Birth: \_\_\_\_\_ Driver's license #: \_\_\_\_\_

---

**CRIMINAL COMPLAINT**

---

I, the undersigned complainant upon my oath and affirmation, state the following is true and correct to the best of my knowledge and belief. On or about *[date]* in *[City/Town]*, *[county]* County, West Virginia, in violation of City Code *[cite specific section, subsection, and/or subdivision if applicable]* the defendant did *[statutory language of the offense]*.

I further state that this complaint is based on the following facts: *[details of incident]*

Continued on attached sheet?  yes  no

Complainant (who appears before Municipal Judge):

Name:

Address:

Telephone:

Office or Title:

\_\_\_\_\_  
Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by the complainant in my presence, the item(s) checked below apply:

- Probable cause found
- Summons issued
- Warrant issued
- Warrantless arrest
- No probable cause found

\_\_\_\_\_  
Municipal Judge Signature

\_\_\_\_\_  
Date

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

MUNICIPALITY OF \_\_\_\_\_

Case Number:

vs

Complaint Date:

\_\_\_\_\_  
Defendant

**INITIAL APPEARANCE RIGHTS STATEMENT**

1. The Municipal Judge has informed me that I am charged with the offense(s) of:

\_\_\_\_\_

and that if I am later found guilty, the possible penalties are:

\_\_\_\_\_

(State Mandatory minimum penalty, if any, and maximum penalty)

2. The Municipal Judge has informed me that, if the Municipal Ordinance provides for a possible jail penalty, I have the right to be represented by an attorney at every further proceedings, and that if I qualify as being unable to afford to hire an attorney, one will be appointed to represent me. I understand that if I decide to represent myself, I cannot later claim that I was denied my right to be represented by an attorney.

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES IF A JAIL PENALTY IS POSSIBLE:

\_\_\_\_\_ (a) I give up the right to have an attorney represent me.

\_\_\_\_\_ (b) I want to have an attorney represent me,

\_\_\_\_\_ (c) I want an attorney appointed to represent me.

I understand that if I am found guilty, I might be required to reimburse the State/Municipality for attorney fees even if a court-appointed attorney or public defender is approved to represent me.

3. The Municipal Judge has informed me that I have the right to plead not guilty; that I have the right to be tried by a jury or by the municipal judge without a jury, and that if I plead guilty or no contest, I give up my right to a trial.
4. The Municipal Judge has informed me that I may be released from custody while I am waiting for further proceedings in this case if I am able to make bail generally as follows:  
\_\_\_\_\_
5. The Municipal Judge has informed me that I do not have to make any statement to anyone other than the statements in this document and that any statement I do make may be used against me.
6. The Municipal Judge has given me reasonable time and opportunity to talk with an attorney or with a relative or other person for the purpose of obtaining or arranging bail.
7. The Municipal Judge has informed me that I have the right to demand a jury trial and that if I want a jury trial, I must let the municipal court know in writing no later than 20 days from the date of this initial appearance or if I receive court appointed counsel. 20 days from the date that an attorney is appointed. I have also been informed that if I do not request a jury trial within the 20 day period, I give up my right to a jury trial and the Municipal Judge will try my case without a jury.

I have informed the defendant personally of the matters set out above. I find that any waiver of rights herein is made knowingly and voluntarily by the defendant. (Initial ) I certify that the defendant refused to initial and/or sign this document at the appropriate places.

Date

Municipal Judge's Signature: \_\_\_\_\_

**IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA**

**MUNICIPALITY OF \_\_\_\_\_**

**vs**

**Case Number:**

\_\_\_\_\_  
**DEFENDANT**

**GUILTY OR NO CONTEST PLEA**

1. The Municipal Judge has informed me that I am charged with the offense(s) of:

\_\_\_\_\_

And the possible penalties are: **[fill in possible penalties]**

**(State mandatory minimum penalty, if any, and maximum penalty)**

I understand the charge(s) and the penalties that the court may impose.

2. The Municipal Judge has informed me that I have the right to be represented by an attorney at every state of the proceeding and that, if I cannot afford to hire an attorney and I qualify, one will be appointed to represent me. I understand this right and further understand that, if I decide to represent myself, I cannot later claim that I was deprived of my right to be represented by an attorney.

**DEFENDANT MUST INITIAL THE APPROPRIATE LINE:**

\_\_\_\_\_ (a) I give up my right to have an attorney represent me.

\_\_\_\_\_ (b) I have an attorney, who is present and is representing me.

\_\_\_\_\_ (c) I want to hire an attorney to represent me.

\_\_\_\_\_ (d) I want an attorney to represent me.

NOTE: If I have initialed (c) or (d), I request that this plea proceeding be postponed so that I can talk with an attorney and have an attorney representing me for the rest of this proceeding.

3. The Municipal Judge has informed me that I have the right to plead not guilty (or to maintain a plea of not guilty if it has already been made). I understand this right.

4. The Municipal Judge has informed me that I have the right to be tried by a jury or by the Municipal Judge without a jury, and at the trial I have the right to be represented by an attorney, the right to confront and cross-examine witnesses against me, the right not to be forced to incriminate myself, and the right to call witnesses on my own behalf, and the right to testify on my own behalf or to be

silent, I understand these rights.

5. The Municipal Judge has informed me, and I understand that if I plead Guilty or No Contest, I give up my right to a trial.
6. The Municipal Judge has informed me, and I understand, that if I plead Guilty or No Contest, the court may ask me questions while under oath about the offense(s) to which I plead. I further understand that if I answer these questions falsely under oath, my answers may later be used against me in a prosecution for false swearing.
7. I am entering this plea voluntarily and not as a result of force or threats or of promises apart from a plea agreement. I have informed the Municipal Judge of any prior discussions between the prosecuting attorney and me or my attorney that led to my willingness to plead Guilty or No Contest.
8. I plead as follows (initial one)      \_\_\_\_\_ **GUILTY**      \_\_\_\_\_ **NO CONTEST**
9. I understand this charge can be used for enhancement purposes.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Counselor's Signature (if applicable)

\_\_\_\_\_  
I have addressed the defendant personally in open court and have informed the defendant of the matters set out above, and find that the defendant understands. I find further that the foregoing waiver of rights and plea are made knowingly and voluntarily by the defendant, and I accept the defendant's plea.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Municipal Judge

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

Municipal Court Case No. \_\_\_\_\_

[city name]:

v.

Name, Address & Phone Number of Defendant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

**PETITION FOR APPEAL OF BENCH TRIAL**

---

The Appellant, \_\_\_\_\_, pursuant to West Virginia Code § 8-34-1, hereby files this petition for appeal and trial de novo with the Circuit Court. This appeal is from an order entered by Judge \_\_\_\_\_, of \_\_\_\_\_, on \_\_\_\_\_20\_\_.

I understand that the exhibits, together with all papers and requests filed in the proceeding constitute the exclusive record.

\_\_\_\_\_  
Attorney for Appellant

\_\_\_\_\_  
Appellant

---

**CERTIFICATE OF SERVICE**

---

I, \_\_\_\_\_, hereby certify that I have served a copy of the above petition for appeal on the attorneys for all parties, or, if such parties are not represented by attorneys, to the parties themselves on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  by hand  by first class mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



ABSTRACT OF JUDGEMENT

STATE OF WEST VIRGINIA  
V.

CASE/CITATION NO. \_\_\_\_\_

Name: Last First Middle (not initial)

Address: Street/Route City/Town State Zip Code

Driver License Type:  Driving License  GDL Level 1  GDL Level 3  CDL Instruction Permit  Motorcycle Instr Permit  
 Instruction Permit  GDL Level 2  CDL  Motorcycle Only  Other \_\_\_\_\_

Gender:  Male  Female  
Driver License No. Class State Social Security Number

Date of Birth Weight Height Eye Color

**Complete Only for Commercial Motor Vehicles:**  Coal Resource Transportation Sys.  
CMV Type (Check 1)  Veh Designed to Carry 16+ Passengers  Haz Mat  Other CMV Permit #: \_\_\_\_\_

Offense(s) charged: \_\_\_\_\_ Date(s) committed: \_\_\_\_\_

West Va. Code Violation: Chapter \_\_\_\_\_ Article \_\_\_\_\_ Section \_\_\_\_\_

Municipal Ordinance Violated: \_\_\_\_\_

Offenses(s) for which convicted: \_\_\_\_\_

Was there a plea?  Yes  No If yes, what kind of plea?  Guilty  No Contest

If convicted of speeding, the defendant was driving \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH zone.

Bail forfeited?  Yes  No Conviction Date: \_\_\_\_\_

Officer's Name: \_\_\_\_\_ Agency: \_\_\_\_\_

Violation  did  did not contribute to an accident

Appropriate box checked if accident resulted in  fatality,  personal injury,  property damage

Owner/Lessee Name:  Same as Violator \_\_\_\_\_

Address: \_\_\_\_\_

License Plate Number: \_\_\_\_\_ State: \_\_\_\_\_ VIN#

Make: \_\_\_\_\_ Year: \_\_\_\_\_ Model: \_\_\_\_\_ Body Style: \_\_\_\_\_ GVWR (Gross vehicle weight ratio)

I hereby certify that the above is a true copy of the record of this court in the above-referenced case.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Court Name: \_\_\_\_\_

Address: \_\_\_\_\_ Date: \_\_\_\_\_

File No:  
Hearing Date:

Court Code:

Conviction:

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_

v.

Case No. \_\_\_\_\_

\_\_\_\_\_

Defendant

\_\_\_\_\_  
**REQUEST FOR INTERPRETER SERVICE**  
\_\_\_\_\_

On behalf of or as a  Party /  Witness /  Juror in the above styled case, which is scheduled for hearing on \_\_\_\_\_, at \_\_\_\_\_  
(date) (time)

I request the appointment of a qualified interpreter to assist

- preparation with counsel and/or
- during in-court proceedings.

My need is for:  a sign interpreter OR  an oral interpreter (one who interprets language through facial and lip movements) OR  an interpreter who understands and speaks both the English language and the \_\_\_\_\_ language.

I hereby certify that I am or am acting on behalf of a person who is  deaf or has a serious hearing impairment OR  a primary speaker of a language other than English with limited or no English proficiency.

\_\_\_\_\_  
Signature of Requester

Americans with Disabilities Act Title II:  
W.Va. Code §§ 5-14A-3 et seq. 57-5-7 SCA-  
M1030NP/6-96

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_

**MOTION FOR CONTINUANCE**

The  Defendant  
 City of

in the above-styled case hereby moves or requests that this court continue the case from the currently scheduled date of \_\_\_\_\_.

This motion is based upon the following grounds: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of party filing motion/attorney for the party/prosecutor

\_\_\_\_\_  
Date

NOTICE TO PARTY FILING MOTION: One copy of this motion must be filed with the court and one copy must be mailed or delivered by hand to the attorneys for all other parties or to the parties themselves if they are not represented by attorneys.

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that I have served a copy of the above motion on the attorneys for all parties or, if such parties are not represented by attorneys, to the parties themselves on the \_\_\_ day of \_\_\_\_\_,  by hand  by first-class mail to:

Name and address of attorneys or parties served: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

MUNICIPAL COURT OF , WEST VIRGINIA

MUNICIPALITY OF

v.

CASE NO. \_\_\_\_\_

\_\_\_\_\_  
Defendant

**NOTICE OF HEARING OR TRIAL**

The above case is scheduled for the following hearing:

	<b>Date</b>
	<b>Time</b>
	<b>Location</b>

For  Arraignment  Trial  Motion  Other \_\_\_\_\_

Municipal Court Clerk \_\_\_\_\_

Date of Notice \_\_\_\_\_

**ADDITIONAL NOTICE TO ALL PARTIES:** If any party wishes to request: (1) a trial by jury, (2) a continuance, or (3) any other motion which, if granted, would require rescheduling of the hearing or trial, the party or party’s attorney must do so in writing not less than 7 days before the first date scheduled for such hearing or trial, unless good cause or excusable neglect is shown as to why such request was not made within that time. A form for such motions or requests will be provided by the municipal court.

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_

**MOTION FOR DISMISSAL**

The  Defendant  City of

hereby moves or requests that this court dismiss the above-referenced case

with prejudice  without prejudice.

This motion is based upon the following grounds: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of party filing motion/attorney for the party/prosecutor

\_\_\_\_\_  
Date

NOTICE TO PARTY FILING MOTION: One copy of this motion must be filed with the court and one copy must be mailed or delivered by hand to the attorneys for all other parties or to the parties themselves if they are not represented by attorneys.

**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_, hereby certify that I have served a copy of the above motion on the attorneys for all parties or, if such parties are not represented by attorneys, to the parties themselves on the \_\_\_\_ day of \_\_,  by hand  by first-class mail to:

Name and address of attorneys or parties served: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FOR COURT USE ONLY**

**IT IS ORDERED** this case is dismissed  with  without prejudice.

\_\_\_\_\_  
Judge's Signature

\_\_\_\_\_  
Date

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_

---

**SUBPOENA TO TESTIFY AT A HEARING OR TRIAL**

---

**TO:**

**YOU ARE COMMANDED** to appear in the Municipal Court of \_\_\_\_\_, West Virginia, at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance:	Date and Time:
----------------------	----------------

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
The name, address, e-mail, and telephone number of the party requesting this subpoena is:

---

**PROOF OF SERVICE**

On (*date*) \_\_\_\_\_ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Server's Signature

\_\_\_\_\_  
Date

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_

**SUBPOENA DUCES TECUM**

**TO:**

**YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing or sampling of the material:

Place of Appearance:	Date and Time:
----------------------	----------------

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

\_\_\_\_\_  
Date

\_\_\_\_\_  
The name, address, e-mail, and telephone number of the party requesting this subpoena is:

**PROOF OF SERVICE**

On *(date)* \_\_\_\_\_ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Server's Signature

\_\_\_\_\_  
Date

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

v.

Case No. \_\_\_\_\_

**REQUEST FOR WITNESS SUBPOENA**

Request on behalf of  Defendant  Municipality

Requested by:

Printed Name

Signature

Telephone Number

Please prepare subpoenas to the witnesses below to appear before the Court in the above-referenced matter.

1. \_\_\_\_\_  
Name (First, Middle, Last)

2. \_\_\_\_\_  
Name (First, Middle, Last)

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

3. \_\_\_\_\_  
Name (First, Middle, Last)

4. \_\_\_\_\_  
Name (First, Middle, Last)

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

**FOR COURT USE ONLY**

Date Received: \_\_\_\_\_

Date Issued: \_\_\_\_\_



# Universal Suspension/Compliance Form

## 1. Court Information

Driver's License Notice of  Suspension  Compliance/Satisfaction  
 \_\_\_\_\_ Court of \_\_\_\_\_, West Virginia  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP code \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_

Resident Violator

Non-Resident Violator

The action requested above is due to the defendant's failure to:

Respond to Citation

Appear in Court

\_\_\_\_\_

## 2. Driver Information

Driver's License # \_\_\_\_\_ State \_\_\_\_\_ License Class  GDL  CDL  
 Name \_\_\_\_\_ Date of Birth \_\_\_\_/\_\_\_\_/\_\_\_\_ SS# \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

## 3. Citation Information

Citation/Case # \_\_\_\_\_ Violation Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Section Violated \_\_\_\_\_

Violation Description/Location \_\_\_\_\_

For Speeding Violations: Actual Speed \_\_\_\_\_ Posted Limit \_\_\_\_\_

Vehicle Plate # \_\_\_\_\_ State \_\_\_\_\_ CMV?  Yes  No  
 Make/Model \_\_\_\_\_ Body Type \_\_\_\_\_ Model Year \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date of Notice \_\_\_\_/\_\_\_\_/\_\_\_\_

## 4. Compliance/Satisfaction Information (To Be Completed AFTER Citation/Case is Resolved)

Paid in Full Date \_\_\_\_/\_\_\_\_/\_\_\_\_ Receipt # \_\_\_\_\_

Dismissed Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Other (Explain below) Date \_\_\_\_/\_\_\_\_/\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date \_\_\_\_/\_\_\_\_/\_\_\_\_

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

Case No. \_\_\_\_\_

**WEST VIRGINIA REGIONAL JAIL COMMITMENT FORM**

I, \_\_\_\_\_, Municipal Court Judge/Municipal Court Clerk for the Municipal Court of \_\_\_\_\_, in \_\_\_\_\_ County, West Virginia, do hereby certify that the Defendant in the above-referenced matter was on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, was convicted of the charge(s) set forth below and is to be committed to the custody of the \_\_\_\_\_ Regional Jail for a period of \_\_\_\_\_ hours. Hours commencing at \_\_\_\_\_ (time) on the \_\_\_\_\_ (day), of \_\_\_\_\_ 20\_\_\_\_, and ending on the \_\_\_\_\_ (day) of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ (time).

**CHARGES:**

1. \_\_\_\_\_
2. \_\_\_\_\_

**Given under my hand, in the Municipality of \_\_\_\_\_, this \_\_\_\_\_ Day of \_\_\_\_\_, 202\_\_.**

\_\_\_\_\_  
Municipal Judge/Clerk

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

---

**WEST VIRGINIA REGIONAL JAIL RELEASE FORM**

---

You are hereby directed to release from custody \_\_\_\_\_  
who is currently incarcerated in the \_\_\_\_\_ Regional Jail through  
commitment by this Court.

Date of Release: \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, at \_\_\_\_\_ (time).

Reason for Release: \_\_\_\_\_  
\_\_\_\_\_

**Given under my hand, in the Municipality of \_\_\_\_\_, this \_\_\_\_\_  
Day of \_\_\_\_\_, 202\_\_\_\_.**

\_\_\_\_\_  
Municipal Judge/Clerk

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

---

**WEST VIRGINIA REGIONAL JAIL TRANSPORT REQUEST**

---

You are hereby directed to prepare for transport the following prisoner:

\_\_\_\_\_

who is currently incarcerated in the \_\_\_\_\_ Regional Jail.

Transport Date: \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_, at \_\_\_\_\_ (time).

Reason for Transport: \_\_\_\_\_

\_\_\_\_\_

**Given under my hand, in the Municipality of \_\_\_\_\_, this \_\_\_\_\_  
Day of \_\_\_\_\_, 202\_\_\_\_.**

\_\_\_\_\_  
Municipal Judge/Clerk

IN THE MUNICIPAL COURT OF \_\_\_\_\_, WEST VIRGINIA

\_\_\_\_\_  
v.  
\_\_\_\_\_

STATEMENT OF FINES AND FEES

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Defendant, (having plead guilty/plead no contest/ been found guilty by the court) is assessed the following fines and court costs and agrees to pay the fines and costs pursuant to the provisions of the West Virginia Code. The Defendant is ORDERED to pay the amount due on or before the date set forth in the Statement below.

Witness my signature this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Municipal Court Judge/Municipal Court Clerk

Citation/Case #      Amount      Offense

**Total Amount Due:**                      **must be paid to this court within 90 days of receipt of this Statement of Fines and Costs.**

**All Fines and Costs defined above are due on or before \_\_\_\_\_.**

Notice to the Defendant: Pursuant to West Virginia Code Sections 8-10-2b the Defendant has 90 days in which to pay the above defined costs in full or to enter into a payment plan arrangement with the Court upon request. Failure to either pay in full or enter into a payment plan within 90 days of receipt of this Statement of Fines and Costs may result in the addition of late fees to the amount due, and the court may record a judgment lien against the Defendant, consign the amount to debt collection (which may add up to 25% of the amount as an administrative fee) or both. The Court shall charge an administrative fee of \$25 to file a payment plan and shall require the defendant to disclose his or her net annual income and expenses, including alimony and child support, in order to calculate the amount owed to the Court monthly. If the Defendant fails to pay any required payment within 30 days of the date due, the Court shall assess a late fee of \$10, for each month such payment remains unpaid. **If the Defendant becomes incarcerated at any time while owing money in this Court, he or she must notify the Court.**

The signature below certifies that the Defendant has been furnished a copy of this payment schedule.

**I hereby acknowledge by my signature that I fully understand all the provisions of this order. I understand that my non-payment of these fines and costs may result in collection enforcement as provided by law which may include referral to a collection agency authorized to add a collection fee of up to 25%, and/or a judgement lien against me for any outstanding balance.**

\_\_\_\_\_  
Defendant's Signature

\_\_\_\_\_  
Date

# Appendix B – West Virginia Uniform Citation Detailed Description

## Page 1 – Complaint Affidavit -Blue Copy

- First page of a citation
- Color Coded light blue
- Given to the court of Jurisdiction

State of West Virginia Uniform Citation NO: **100-**

The undersigned, being duly sworn, upon his oath deposes and says:

On \_\_\_\_\_ The \_\_\_\_\_ Day Of \_\_\_\_\_ At \_\_\_\_\_ Hours \_\_\_\_\_

Weekday Date Month Year Time

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Driver License Type:  
 Driving License  GDL Level 1  GDL Level 2  CDL Instruction Permit  Motorcycle Instr Permit  
 Instruction Permit  GDL Level 2  CDL  Motorcycle Only  Other: \_\_\_\_\_

Driver License Number \_\_\_\_\_ State \_\_\_\_\_ Social Security Number \_\_\_\_\_ Date of Birth \_\_\_\_\_  
 Gender:  M  F Weight \_\_\_\_\_ Ft \_\_\_\_\_ In \_\_\_\_\_ Eye Color \_\_\_\_\_ Hair \_\_\_\_\_ Restrictions \_\_\_\_\_ Endorsements \_\_\_\_\_

License Plate Number \_\_\_\_\_ State \_\_\_\_\_ Plate Class \_\_\_\_\_ Vehicle Identification Number (VIN) \_\_\_\_\_  
 Make \_\_\_\_\_ Year \_\_\_\_\_ Body Style \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_

Owner / Lessee Name:  Same as Violator  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fatality **Complete Only for Commercial Motor Vehicles:**  
 CMV Type (Check 1):  Veh Designed to Carry 16+ Passengers  Haz Mat  Other CMV  
 DOT / Carrier # \_\_\_\_\_ Bill of Lading \_\_\_\_\_ Shipper ID # \_\_\_\_\_  Coal Resource Transportation Sys. Permit #: \_\_\_\_\_

In or Near: \_\_\_\_\_  
 County \_\_\_\_\_ Municipality \_\_\_\_\_  
 Highway Type:  Interstate  County  City Street  Other \_\_\_\_\_  
 Route Number \_\_\_\_\_ Milepost \_\_\_\_\_ Direction of Travel \_\_\_\_\_  
 GPS Coordinates: Lat \_\_\_\_\_ Long \_\_\_\_\_  
 Street Name \_\_\_\_\_

Specific Reference / Landmark:  
 In the Above Listed County or City of West Virginia, I did Unlawfully Place and There Committed the Following Offense(s):

Charge #1: (Select Only 1 Violation per Charge)  
 Speeding \_\_\_\_\_ MPH in a \_\_\_\_\_ MPH Zone  
 Other \_\_\_\_\_  
 In Violation of \_\_\_\_\_  WV State Code  Municipal Ordinance

Charge #2: (Select Only 1 Violation per Charge)  
 \_\_\_\_\_  
 In Violation of \_\_\_\_\_  WV State Code  Municipal Ordinance

Agency, Detachment, or Unit Name \_\_\_\_\_ ORI # \_\_\_\_\_ Badge or ID # \_\_\_\_\_

Officer's Name (Please Print) \_\_\_\_\_ Officer's Signature \_\_\_\_\_

**VIOLATOR RESPONSIBILITY**  
 I Understand that I Have to Appear, On or Before, \_\_\_\_\_ (Date)  
 Court Name and Address \_\_\_\_\_ Court Phone \_\_\_\_\_  
 I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.  
 Violator Signature - Not an Admission of Guilt \_\_\_\_\_

**FOR COURT USE ONLY**

Charge #1 Disposition:	Case #1	Charge #2 Disposition:	Case #2
<input type="checkbox"/> 01 Not Guilty	<input type="checkbox"/> 06 No Contest	<input type="checkbox"/> 01 Not Guilty	<input type="checkbox"/> 06 No Contest
<input type="checkbox"/> 02 Forfeited Bail	<input type="checkbox"/> 07 Guilty	<input type="checkbox"/> 02 Forfeited Bail	<input type="checkbox"/> 07 Guilty
<input type="checkbox"/> 03 Trial in Absence	<input type="checkbox"/> 08 Pretrial Hearing	<input type="checkbox"/> 03 Trial in Absence	<input type="checkbox"/> 08 Pretrial Hearing
<input type="checkbox"/> 04 No/In Process	<input type="checkbox"/> 09 Change of Venue	<input type="checkbox"/> 04 No/In Process	<input type="checkbox"/> 09 Change of Venue
<input type="checkbox"/> 05 Appealed to Higher Court	<input type="checkbox"/> 10 Dismissed	<input type="checkbox"/> 05 Appealed to Higher Court	<input type="checkbox"/> 10 Dismissed

This Affidavit is Certified Correct: \_\_\_\_\_  
 Signature / Title / Date \_\_\_\_\_

**FOR DMV USE ONLY** Court Code \_\_\_\_\_ Conviction Code 1 \_\_\_\_\_ Conviction Code 2 \_\_\_\_\_

**COMPLAINT - AFFIDAVIT**

### §17C-19-7. Disposition and records of traffic citations.

(a) Every traffic-enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

(b) Upon the deposit of the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge of said court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to said traffic violations bureau by the person to whom such traffic citation has been issued by the traffic-enforcement officer.

(c) It shall be unlawful and official misconduct for any traffic-enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) The chief administrative officer of every traffic-enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.



## Driver License Type

Driver License Type: _____					
<input type="radio"/> Driving License	<input type="radio"/> GDL Level 1	<input type="radio"/> GDL Level 3	<input type="radio"/> CDL Instruction Permit	<input type="radio"/> Motorcycle Instr Permit	
<input type="radio"/> Instruction Permit	<input type="radio"/> GDL Level 2	<input type="radio"/> CDL	<input type="radio"/> Motorcycle Only	<input type="radio"/> Other: _____	

- The officer must check the driver license type. If there is no applicable indication on the license, the officer may check “Other”.

## Additional Driver Characteristics

Driver License Number		State	Social Security Number		Date of Birth	
Gender:	<input type="radio"/> M <input type="radio"/> F	Ft.	In.	Weight	Height	Eye Color
				Class	Restrictions	Endorsements

- This section contains additional driver information including the driver’s license number and state of issuance, physical characteristics that are included on the driver’s license, any license restrictions or endorsements, date of birth, and social security number.<sup>2</sup>

## Vehicle Identification Section

License Plate Number	State	Plate Class	Vehicle Identification Number (VIN)		
Make	Year	Body Style	Model	Color	

- This section contains physical information about the vehicle and is collected by the officer from the registration card and/or the insurance card.

Owner / Lessee Name:	<input type="radio"/> Same as Violator	_____
Address:	_____	
City:	State:	Zip Code:

- The officer will also collect the vehicle’s owner’s name and address if it is different from the name and address on the driver’s license.

<sup>2</sup> Social Security numbers are considered protected personal information. They are exempt from Freedom of Information Act requests, and you should take reasonable steps to limit their exposure to the general public when processing or filing citations.



## Commercial Vehicle Section

<input type="checkbox"/> Fatality				<b>Complete Only for Commercial Motor Vehicles</b>			
CMV Type (Check 1):		<input type="checkbox"/> Veh Designed to Carry 16+ Passengers		<input type="checkbox"/> Haz Mat		<input type="checkbox"/> Other CMV	
<input type="text"/>		<input type="text"/>		<input type="text"/>		<input type="checkbox"/> Coal Resource Transportation Sys.	
DOT / Carrier #		Bill of Lading		Shipper ID #		Permit #: <input type="text"/>	

- This section will only be completed if the officer stops a commercial vehicle. The officer will record the CMV type, DOT/Carrier number, and will indicate if the vehicle was involved in a fatal accident. If the citation is issued on a Coal Resource Transportation System (CRTS) road, the officer will also record the bill of lading, shipper ID, and permit number.

## Violation Location Section

<i>In or Near:</i> _____		County _____		Municipality _____	
Highway Type:		Route Number: _____		Milepost: _____	
<input type="radio"/> Interstate		<input type="radio"/> County		Direction of Travel: _____	
<input type="radio"/> US		<input type="radio"/> City Street		GPS Coordinate:	
<input type="radio"/> WV		<input type="radio"/> Other		Lat: _____	
Street Name: _____		Long: _____		_____	
Specific Reference / Landmark: _____					

- This section is used to identify the exact location of the violation.

## Charges Section

<i>In the Above Listed County or City of West Virginia, Did Unlawfully Then and There Commit the Following Offense(s):</i>			
<b>Charge #1: (Select Only 1 Violation per Charge)</b>		<b>Charge #2: (Select Only 1 Violation per Charge)</b>	
<input type="radio"/> Speeding _____ MPH in a _____ MPH Zone		<input type="radio"/> _____	
<input type="radio"/> Other: _____		<input type="radio"/> _____	
In Violation of _____		In Violation of _____	
<input type="radio"/> WV State Code		<input type="radio"/> WV State Code	
<input type="radio"/> Municipal Ordinance		<input type="radio"/> Municipal Ordinance	
Code or Ordinance Ref # _____		Code or Ordinance Ref # _____	

- In order to be an official charging document, at least one part of this section must be completed. Each citation can charge a maximum of two violations. The specific WV State Code or Municipal Ordinance should be referenced for each charge.

### ***Agency/Officer Information Section***

_____	_____	_____
Agency, Detachment, or Unit Name	ORI #	Badge or ID #
_____	_____	
Officer's Name (Please Print)	Officer's Signature	

- In this section, the issuing officer will include the agency for which they work, Their ORI and badge numbers. The officer will also print their name and sign the citation.

### ***Violator Responsibility Section***

<b>VIOLATOR RESPONSIBILITY</b>	
<i>I Understand that I Have to Appear, On or Before,</i> _____ <i>(Date)</i>	
_____	_____
Court Name and Address	Court Phone
<i>I Promise to Contact the Above Listed Court within the Time Specified. Failure to Appear Will Result in the Suspension of Driver's License.</i>	
_____	
Violator Signature - Not an Admission of Guilt	

- This section contains information for the person receiving the citation including which court they are to appear before, and the date by which they must contact the court. This section is legal notice to the violator. This section must contain the date that the person receiving the citation must appear in court. Without this date as notice to the person receiving the citation, the court cannot suspend their driver's license if they fail to appear for their court date.
- When you receive citations, you will need to make sure that your court name, address, and phone number appear in this section, and that the court date entered is valid. If any of this information is missing or incorrect, you will need to inform the issuing officer.
- Any incorrect information in this section may result in the dismissal of the charges.
- Although there is a signature line for the violator, the citation is valid without a violator's signature.

## Violation Disposition Section

FOR COURT USE ONLY			
Reduced Charge #1	Code	Reduced Charge #2	Code
<b>Charge 1 Disposition:</b> <input type="checkbox"/> 01 Not Guilty <input type="checkbox"/> 02 Forfeited Bail <input type="checkbox"/> 03 Tried in Absence <input type="checkbox"/> 04 Nolle Prosecui <input type="checkbox"/> 05 Appealed to Higher Court	<b>Case #:</b> <input type="text"/> <input type="checkbox"/> 06 Nolo Contendre <input type="checkbox"/> 07 Guilty <input type="checkbox"/> 08 Prelim. Hearing <input type="checkbox"/> 09 Change of Venue <input type="checkbox"/> 10 Dismissed	<b>Charge 2 Disposition:</b> <input type="checkbox"/> 01 Not Guilty <input type="checkbox"/> 02 Forfeited Bail <input type="checkbox"/> 03 Tried in Absence <input type="checkbox"/> 04 Nolle Prosecui <input type="checkbox"/> 05 Appealed to Higher Court	<b>Case #:</b> <input type="text"/> <input type="checkbox"/> 06 Nolo Contendre <input type="checkbox"/> 07 Guilty <input type="checkbox"/> 08 Prelim. Hearing <input type="checkbox"/> 09 Change of Venue <input type="checkbox"/> 10 Dismissed
This Abstract is Certified Correct: <input style="width: 80%;" type="text"/>			
Signature / Title / Date			
<b>FOR DMV USE ONLY</b> Court Code <input style="width: 50px;" type="text"/> Conviction Code 1 <input style="width: 50px;" type="text"/> Conviction Code 2 <input style="width: 50px;" type="text"/>			
COMPLAINT - AFFIDAVIT			

- This section is for court use only to notify the DMV of the final disposition of the charges. Officers should not enter any information in this section. This section is completed by the court **within three (3) days** of a final disposition and forwarded to the DMV.

### Page 2 – Plea (Backside of Summons)

The backside of the summons that is given to the violator contains information about their rights, and additionally provides them the opportunity to enter a plea on the violation(s).

**WEST VIRGINIA RESIDENTS**

THE COURT MAY ISSUE A WARRANT FOR THE ARREST OF ANY DEFENDANT WHO IS A RESIDENT OF THIS STATE AND HAS FAILED TO ANSWER OR APPEAR AFTER RECEIVING A TRAFFIC CITATION DULY SERVED UPON HIM AND UPON WHICH A COMPLAINT HAS BEEN FILED. FAILURE TO APPEAR/ANSWER THIS CITATION WILL RESULT IN THE SUSPENSION OF YOUR LICENSE.

**NON-RESIDENT VIOLATORS COMPACT**

NON-RESIDENTS OF THE STATE OF WEST VIRGINIA SHOULD BE AWARE OF THE NON-RESIDENT VIOLATORS COMPACT. THE COMPACT IS AN AGREEMENT FORMED BETWEEN A MAJORITY OF STATES AND FAILURE TO RESPOND TO THE TERMS OF THIS CITATION WILL RESULT IN THE SUSPENSION OF YOUR LICENSE BY YOUR HOME STATE.

- These two sections provide notice to the violator of the potential penalties for failing to appear or otherwise respond to the citation. One is for WV license holders, the other is for non-resident license holders.
- The Non-resident Violators Compact is an agreement between states to honor the suspension of a violators license for violations that occurred in a different state. This program is authorized by WV State Code §17B-1C-1.

## Violation Disposition Section

<p><b><u>GUILTY OR NO CONTEST PLEA FOR TRAFFIC OFFENSES</u></b></p> <p>TO PLEAD GUILTY TO MOST TRAFFIC OFFENSES, YOU MUST EITHER (1) CONTACT THE COURT LISTED ON THE FRONT OF THE CITATION IN THE COUNTY WHERE THE OFFENSE OCCURRED OR (2) APPEAR PERSONALLY BEFORE THAT SAME COURT. IF PLEADING GUILTY OR NO CONTEST BY TELEPHONE, THIS COPY MUST BE SIGNED, DATED AND MAILED TO THE COURT LISTED ON THE FRONT OF THE CITATION.</p> <p><b>IF CHARGED FOR VIOLATING WV CODE 17B-4-3 (DRIVING WHILE LICENSE SUSPENDED OR REVOKED), 17C-5-1 (NEGLIGENT HOMICIDE), 17C-5-2 (DUI), 17C-5-3 (RECKLESS DRIVING) OR WV CODE CHAPTER 20 OFFENSES INVOLVING INJURY TO THE PERSON, A PLEA OF GUILTY OR NO CONTEST SHALL BE MADE IN PERSON BEFORE THE COURT LISTED ON THE FRONT OF THIS CITATION. (MAGISTRATE CRIMINAL RULE 7(b)(1))</b></p> <p><input type="checkbox"/> I CERTIFY THAT I HAVE BEEN INFORMED OF THE CHARGE(S) AGAINST ME AND THE PENALTIES THAT THE COURT MAY IMPOSE.</p> <p><input type="checkbox"/> I UNDERSTAND THAT I HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY.</p> <p><input type="checkbox"/> I UNDERSTAND THAT I HAVE THE RIGHT TO PLEAD NOT GUILTY TO THE CHARGES AGAINST ME AND TO DEMAND A TRIAL BY JURY.</p> <p><input type="checkbox"/> I UNDERSTAND THAT BY PLEADING GUILTY OR NO CONTEST I WILL WAIVE ALL OF THESE RIGHTS.</p> <p><input type="checkbox"/> I CERTIFY THAT MY GUILTY OR NO CONTEST PLEA IS VOLUNTARY.</p> <p>I HAVE READ AND UNDERSTAND THE ABOVE LISTED RIGHTS AND: (Choose ONE Box Below.)</p> <p><input type="checkbox"/> I HEREBY PLEAD GUILTY TO THE CHARGE(S) AGAINST ME.</p> <p><input type="checkbox"/> I HEREBY PLEAD NO CONTEST TO THE CHARGE(S) AGAINST ME.</p> <p>_____ SIGNATURE</p> <p>_____ DATE</p>	
--	--

- This section allows the violator to enter a plea of guilty or no contest without having to personally appear in court. Violators may enter a plead guilty or no contest over the telephone, but they must mail their citation to the court with this section completed and signed.

<p><b><u>NOT GUILTY PLEA FOR TRAFFIC OFFENSES</u></b></p> <p>TO PLEAD NOT GUILTY TO MOST TRAFFIC OFFENSES, YOU MUST EITHER (1) APPEAR PERSONALLY BEFORE THE COURT LISTED ON THE FRONT OF THIS CITATION OR (2) CHECK THE BOX BELOW, SIGN, DATE, AND MAIL THIS COPY OF THE CITATION TO THE SAME COURT. YOU WILL BE NOTIFIED OF THE DATE AND TIME TO APPEAR IN PERSON.</p> <p><input type="checkbox"/> I HEREBY PLEAD NOT GUILTY TO THE CHARGE(S) AGAINST ME.</p> <p>_____ SIGNATURE</p> <p>_____ DATE</p>	
---	--

- This section allows the violator to enter a plea of not guilty without having to personally appear for arraignment in court. If you receive a citation with this section signed and dated, you will need to enter a plea of “Not Guilty” into the court record and schedule a hearing or trial on the charges contained in the citation. You will need to notify all parties (the defendant or defendant’s attorney, the issuing officer, and the prosecuting attorney) of the hearing date. The issuing officer may need to file an additional complaint for trials.

## **Appendix C – State Code references related to operations of Municipal Courts**

WV Code Chapter 8. Municipal Corporations.

§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Additionally, any city may provide by charter provision and any municipality may provide by ordinance, that in the absence of or in the case of the inability of the municipal court judge to perform his or her duties, the municipal court clerk or other official designated by charter or ordinance may act as municipal court judge: Provided, That the municipal court clerk or other official designated by charter or ordinance to act as municipal court judge shall comply with the requirements set forth in subsections (b) and (c) of this section, as well as any other requirements that the city by charter provision or the municipality by ordinance may require.

(b) Any person who makes application for appointment to, or who files to become a candidate in any election for municipal judge, shall first submit to a criminal background check, to be conducted by the State Police. The cost of the criminal background check shall be paid by the applicant or candidate. The result of each background check conducted in accordance with this section shall be forwarded to the municipal court clerk or recorder whose duty it is to review the results and confirm the eligibility of the applicant or candidate to serve as a municipal judge. No person convicted of a felony or any misdemeanor crime set forth in articles eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one, of this code is eligible to become a municipal judge.

(c) Any person who assumes the duties of municipal court judge who has not been admitted to practice law in this state shall attend and complete the next available course of instruction in rudimentary principles of law and procedure. The course shall be conducted by the municipal league or a like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge shall, additionally, be required to attend a course, on an annual basis for the purpose of continuing education: Provided, That the forgoing additional education requirement does not apply to municipal judges who are attorneys admitted to practice in this state. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) 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.

§8-10-2a. Payment of fines by electronic payments, credit cards, cash, money orders, or certified checks.

A municipal court may accept electronic payments, credit cards, cash, money order, or certified checks for all costs, fines, forfeitures, or penalties electronically, by mail, or in person. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, fee, or penalty.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) 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, or penalties imposed by the court for a 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, or penalties imposed:

(1) 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 5 equal monthly payments;

(2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar days after the date the court enters the order assessing the costs, fines, forfeitures, or penalties; and

(3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar days after release.

(b) 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 West Virginia Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) The dates on which such payments are due; (C) The amount due for each payment; (D) all acceptable payment methods; and (E) 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;

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, 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;

(3) 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, 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.

(d) (1) 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:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may do one or both of the following (A) Record a judgment lien as described in subsection (f) of this section, or (B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *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.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) 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, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *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.

(f) 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. 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: *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, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) A person whose driver's license was suspended prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.



(h) If a person charged with a motor vehicle violation as defined in § 17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, 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.

#### §8-10-4. Powers and duties of recorder or clerk relating to warrants, oaths, sureties and bonds.

Any municipality may provide by charter provision and ordinance, or notwithstanding a charter provision to the contrary, a municipality may provide by ordinance, that the governing body may vest in the recorder, assistant recorder, municipal clerk or deputy municipal clerk, the authority to issue warrants for arrest, to administer oaths, and to accept and approve sureties and bonds, and any such ordinance shall provide for the appointment of such person by confirmation of the governing body and for the removal of such authority by action of the governing body: *Provided*, That such person may only issue warrants, administer oaths, or accept and approve sureties and bonds, in the absence of the mayor, or if there be a police court or municipal judge, in the absence of such police court or municipal 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) To carry into effect the powers and authority conferred upon any municipality or its governing body by the provisions of this chapter, or any past or future act of the Legislature of this state, the governing body has plenary power and authority to:

(1) Make and pass all needful ordinances, orders, bylaws, acts, resolutions, rules and regulations not contrary to the Constitution and laws of this state; and

(2) 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.

(b) 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.

(c) Any municipality may also maintain a civil action in the name of the municipality in the circuit court of the county in which the municipality or the major portion of the territory of the municipality is located to obtain an injunction to compel compliance with, or to enjoin a violation or threatened violation of, any ordinance of the municipality, and the circuit court has jurisdiction to grant the relief sought. 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.

(d) In addition to any other costs which may be lawfully imposed, an additional cost shall be imposed in an amount of not less than \$42 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. Of the \$42 imposed as an additional cost, \$2 are administrative costs to be retained by the municipality, and \$40 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.

(e) 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.

#### §8-11-1a. Disposition of criminal costs into State Treasury account for Regional Jail and Correctional Facility Authority fund.

The clerk of each municipal court, or other person designated to receive fines and costs, shall at the end of each month pay into the Regional Jail and Correctional Facility Authority fund in the State Treasury an amount equal to \$40 of the costs collected in each proceeding involving a traffic offense constituting a moving violation, regardless of whether the penalty for the violation provides for a period of incarceration, or any other offense for which the ordinance prescribing the offense provides for a period of incarceration: Provided, That in a case where a defendant has failed to pay all costs assessed against him or her, no payment may be made to the Regional Jail and Correctional Facility Authority fund until the defendant has paid all costs which, when paid, are available for the use and benefit of the municipality.

#### §8-11-1b. Additional costs in certain criminal proceedings. (DUI)

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 \$55. 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. The provisions of this section shall be effective after June 30, 2004.

#### §8-11-2. Validity of ordinances delegating discretion.

The fact that an ordinance vests in the governing body or some other body or officer a discretion to do, or refuse to do, a given thing, shall not invalidate such ordinance when it would be impracticable to lay down by ordinance for all cases a uniform guide for exercising such discretion. This section shall not be construed to mean that a delegation of discretion in any other case shall necessarily invalidate an ordinance. However, if, in any case, a delegated discretion is exercised in an arbitrary or discriminatory manner, such ordinance, as so applied, shall be unlawful and void.

#### §8-11-3. Cases requiring enactment of ordinance.

In the following enumerated cases, the action of a governing body shall, except where otherwise provided in this code, be by ordinance:

- (1) Levying taxes or providing for the collection of fees of any kind;
- (2) Requiring a license to do business;
- (3) Relating to offenses and penalties;
- (4) Authorizing the issuance of bonds or other forms of indebtedness;
- (5) Providing for a public improvement;
- (6) Providing for the purchase of private property by the municipality or for the sale of property belonging to the municipality;
- (7) Laying out or vacating a public street, avenue, road, alley or way;
- (8) Relating to planning and zoning;
- (9) Granting franchises to public utilities;
- (10) Providing for a contractual or other agreement with another jurisdiction; and
- (11) Relating to such other matters as the charter may require.

The action of a governing body shall also be by ordinance in any other case in which an ordinance is required by the provisions of this code.

#### §8-11-4. Ordinance procedures.

(a) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, it shall not be necessary, except where otherwise provided in this code, for the governing body of any municipality to publish in a newspaper any proposed ordinance prior to the adoption thereof or any enacted ordinance subsequent to the adoption thereof, and any and all ordinances of every municipality shall be adopted in accordance with the following requirements, except where different or additional requirements are specified in other provisions of this code, in which event such other different or additional requirements shall be applicable:

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of said proposed ordinance to be published as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The notice shall state the subject matter and general title or titles of such proposed ordinance, the date, time and place of the proposed final vote on adoption, and the place or places within the municipality where such proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. Said notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance shall not be materially amended at the same meeting at which finally adopted.

(b) Notwithstanding any charter provision to the contrary, which charter provision was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection (b). Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of such code shall be made available for public inspection. The ordinance adopting such code shall not set out said code in full, but shall merely identify the same. The vote on adoption of said ordinance shall be the same as on any other ordinance. After adoption of the ordinance, such code or codes shall be certified by the mayor and shall be filed as a permanent record in the office of the recorder, who shall not be required to transcribe and record the same in the ordinance book as other ordinances are transcribed and recorded. Consistent with the provisions of subsection (a) of this section, it shall not be necessary that any such ordinance, either as proposed or after adoption, be published in any newspaper, and it shall not be necessary that the code itself be so published, but before final adoption of any such proposed ordinance, notice of the proposed adoption of such ordinance and code shall be given by publication as herein provided for ordinances the principal object of which is the raising of revenue for the municipality, which notice shall also state where, within the municipality, the code or codes will be available for public inspection.

(c) By a charter framed and adopted, revision of a charter as a whole, or a charter amendment or amendments, as the case may be, subsequent to the effective date of this section, a city may require any or all ordinances to be published in a newspaper prior

to the adoption thereof, may expressly adopt the provisions of this section, may specify other additional requirements for the enactment of ordinances, or may prescribe a procedure for the enactment of ordinances in greater detail than prescribed in this section, but a city shall not, except in an emergency as specified in subsection (d) of this section or except as otherwise provided in this code, have the power and authority to lessen or reduce the requirements of this section.

(d) The governing body of a municipality may enact an ordinance without complying with the rules prescribed in this section only (1) in the case of a pressing public emergency making procedure in accordance with the provisions of this section dangerous to the public health, safety or morals, and by affirmative vote of two thirds of the members elected to the governing body, or (2) when otherwise provided in this code. The nature of any such emergency shall be set out in full in the ordinance.

#### §8-11-5. Prejudgment alternative disposition of certain traffic offenses.

(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense, the municipal court may, with the person's consent, withhold for a reasonable time not to exceed one hundred eighty days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person who:

(1) Holds a commercial driver's license issued by this state in accordance with chapter seventeen-e of this code, or who holds a commercial driver's license issued by any other state or jurisdiction;

(2) Is arrested while operating a commercial motor vehicle as defined in chapter seventeen-e of this code; or

(3) Is arrested for driving under the influence of alcohol or drugs or any other offense for which a mandatory period of confinement in jail is required.

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

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

(b) For purposes of appeal, when a jury trial is had before a mayor or in municipal court, that court shall be a court of limited record. Trials before a mayor or municipal court when a jury is empaneled shall be recorded electronically. A magnetic tape or other electronic recording medium on which a trial is recorded shall be indexed and securely preserved by the court. When requested by the municipal prosecutor or by the defendant, or by any interested person, that court shall provide a duplicate copy of the tape or other electronic recording medium of each trial held. For evidentiary purposes, a duplicate of such electronic recording prepared by the court shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. Unless the requesting party is a defendant proceeding as an indigent, the party shall pay to the court an amount equal to the actual cost of the tape or other medium or the sum of \$5, whichever is greater.

(c) If the defendant in such a proceeding waives the right to trial by jury or if no jury trial is required by law, the matter shall be tried by the mayor or municipal court judge sitting without a jury. For purposes of appeal, when a nonjury trial is had before a mayor or municipal court judge that court shall not be a court of limited record and the proceedings shall not be electronically recorded.

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

(e) In the case of an appeal of such a proceeding tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal

of such a proceeding tried before the mayor or municipal court judge without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

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

(1) To prepare the record for appeal, the defendant shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The municipal prosecutor may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the portions of the recording designated by the defendant, and the payment of the cost thereof shall be the responsibility of the defendant: Provided, That such costs may be waived due to the defendant's indigence. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording orally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal, and shall be made available to the defendant and the municipal prosecutor.

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

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

(B) Contrary to Constitutional right, power, privilege or immunity;

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

(D) Without observance of procedure required by law;

(E) Unsupported by the evidence; or

(F) Unwarranted by the facts.

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

(A) Dismiss the appeal;

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

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

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

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

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the circuit court finds that the proceedings below were subject to error to the extent that the defendant was effectively denied a jury trial, the circuit court may, upon motion of the defendant, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

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

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

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

(i) The designation in this section of a mayor, acting as municipal court judge, or of municipal courts as "courts of limited record" shall not be construed to give standing or eligibility to mayors or municipal court judges to participate or be included in the retirement system for judges of courts of record established under the provisions of article nine, chapter fifty-one of this code.

## WV Code Chapter 14. Claims Due and Against the State.

### §14-2A-4. Creation of crime victims compensation fund.

(a) Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any magistrate court



or circuit court, shall pay the sum of \$10 as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. Every person within the state who is convicted of or pleads guilty to a misdemeanor offense, other than a traffic offense that is not a moving violation, in any municipal court, shall pay the sum of \$8 as costs in the case, in addition to any other court costs that the court is required by law to impose upon the convicted person. In addition to any other costs previously specified, every person within the state who is convicted of or pleads guilty to a violation of section two, article five, chapter seventeen-c of this code, shall pay a fee in the amount of twenty percent of any fine imposed under that section. This is in addition to any other court costs required by this section or which may be required by law.

(b) The clerk of the circuit court, magistrate court or municipal court where the additional costs are imposed under the provisions of subsection (a) of this section shall, on or before the last day of each month, transmit all costs received under this article to the state Treasurer for deposit in the state Treasury to the credit of a special revenue fund to be known as the "Crime Victims Compensation Fund". All moneys collected and received under this article and paid into the state Treasury and credited to the Crime Victims Compensation Fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and may not be treated by the Auditor and treasurer as part of the general revenue of the state.

(c) Expenditure of moneys in the Crime Victims Compensation Fund is authorized from collections.

(d) Moneys in the Crime Victims Compensation Fund may be expended for:

(1) The payment of the costs of administration of this article;

(2) The payment of economic loss awards approved by the court; and

(3) The payment of attorney and witness fees, allowed pursuant to section nineteen of this article.

(e) The services of the office of the Attorney General, as may be required or authorized by any of the provisions of this article, shall be rendered without charge to the fund.

(f) Any moneys in the Crime Victims Compensation Fund may be invested as provided in article six, chapter twelve of this code, with the interest income credited to the Crime Victims Compensation Fund.

(g) All funds in the special economic loss claim payment fund created under the provisions of section twenty of this article prior to the amendments made in that section enacted in the year 1999 shall be transferred to the Crime Victims Compensation Fund within a reasonable time from the effective date of the amendments.

(h) All gifts that are received to be used for the purposes of this article shall be deposited into the Crime Victims Compensation Fund.

## WV Code Chapter 17B. Motor Vehicle Driver's Licenses.

### §17B-1C-1. Authorization for entry into nonresident violator compact.

The Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of West Virginia with any state of the United States legally joining therein in form substantially as follows:

#### ARTICLE I. FINDINGS, DECLARATION OF POLICY AND PURPOSE.

A. The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:

(a) Must post collateral or bond to secure appearance for trial at a later date; or

(b) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(c) Is taken directly to court for his trial to be held.

(2) In some instances, the motorist's driver's license is deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver's license as a bail bond, as described in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law-enforcement time.

B. It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions, each as to the other, for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law-enforcement personnel and assist court systems in the efficient disposition of traffic violations.

C. The purpose of this compact is to:

(1) Provide a means through which jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph B above, in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdiction in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

## ARTICLE II. DEFINITIONS.

In the nonresident violator compact, the following words have the meaning indicated, unless the context requires otherwise.

(1) "Citation" means any summons, ticket or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Court" means a court of law or traffic tribunal.

(4) "Driver's license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(5) "Home jurisdiction" means the jurisdiction that issued the driver's license of the traffic violator.

(6) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(7) "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(8) "Motorist" means a driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(9) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(10) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(11) "Terms of the citation" means those options expressly stated upon the citation.

### ARTICLE III. PROCEDURE FOR ISSUING JURISDICTION.

A. When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver's license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph B of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's signed personal recognizance that he will comply with the terms of the citation.

B. Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it must take place immediately following issuance of the citation.

C. Upon failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the recipient jurisdiction.

D. Upon receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the compact manual.

E. The licensing authority of the issuing jurisdiction may not suspend the privilege of a motorist for whom a report has been transmitted.

F. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

G. The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

#### ARTICLE IV. PROCEDURE FOR HOME JURISDICTION.

A. Upon receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action, in accordance with the home jurisdiction's procedures, to suspend the motorist's driver's license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be afforded.

B. The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

#### ARTICLE V. APPLICABILITY OF OTHER LAWS.

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to licenses to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party jurisdiction and a nonparty jurisdiction.

#### ARTICLE VI. COMPACT ADMINISTRATOR PROCEDURES.

A. For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is created. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

B. Compact administrators shall be entitled to one vote each on the board of directors. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

C. The board shall elect annually, from its membership, a chairman and a vice chairman.

D. The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

E. The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any jurisdiction, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

F. The board may contract with, or accept services or personnel from, any government or intergovernmental agency, person, firm or corporation, or any private nonprofit organization or institution.

G. The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

#### ARTICLE VII. ENTRY INTO COMPACT AND WITHDRAWAL.

A. This compact shall become effective when it has been adopted by at least two jurisdictions.

B. (1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(a) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(b) Agreement to comply with the terms and provisions of the compact.

(c) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

C. A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

#### ARTICLE VIII. EXCEPTIONS.

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations and violations of law governing the transportation of hazardous materials.

#### ARTICLE IX. AMENDMENTS TO THE COMPACT.

A. This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

B. Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

C. Failure of a party jurisdiction to respond to the compact chairman within one hundred and twenty days after receipt of the proposed amendment shall constitute endorsement.

#### ARTICLE X. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party jurisdiction or of the United States or the applicability thereof to any government, agency, person or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the Constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

#### ARTICLE XI.

This compact shall be known as the "Nonresident Violator Compact."

#### § 17B-2-3a. Graduated driver's license.

(a) 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.

(b) 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. Any person under the age of 18, 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.

(c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* — The division may not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by §17B-2-6 of this code, which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;

(B) 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 issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code; and

(E) Pays a fee of \$7.50, which permits the applicant one attempt at the written knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *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. However, any 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 under §17B-2-6 of this code. 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 by this section or any other provision of this code. 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. 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 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:



(A) The permit holder is 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;

(B) The permit holder is operating the vehicle between the hours of 5:00 a.m. and 10:00 p.m.;

(C) All occupants use safety belts in accordance with §17C-15-49 of this code;

(D) The permit holder is operating the vehicle without any measurable blood alcohol content, in accordance with §17C-5-2(h) of this code; and

(E) The permit holder maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code.

(d) *Level two intermediate driver's license.* — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.

(1) *Eligibility.* — The division may not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in §17B-2-6 of this code;

(B) Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;

(C) 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 or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph may be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code;

(E) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

(F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section 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. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) The licensee operates a vehicle unsupervised between the hours of 5:00 a.m. and 10:00 p.m.;

(B) The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10:00 p.m. and 5:00 a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants of the vehicle use safety belts in accordance with §17C-15-49 of this code;

(D) 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; 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;

(E) The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;

(F) The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code;

(G) 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

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 under § 17B-2-3a(d)(2)(H) of this code; and

(H) 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, unless a greater penalty is required by this section or any other provision of this code. 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 in accordance with § 17B-2-5, § 17B-2-6 and § 17B-2-7 of this code.

(e) *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. 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.

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:

(1) Has reached the age of 17 years; and

(A) Presents a completed application as prescribed by § 17B-2-6 of this code;

(B) Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under § 17B-2-3a(d)(2)(G) of this code; and

(D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in § 3-2-12 of this code;

(E) Presents a driver's eligibility certificate or otherwise shows compliance with § 18-8-11 of this code; or

(2) Reaches the age of 18 years; and

(A) Presents a completed application as prescribed by § 17B-2-6 of this code; and

(B) Pays a fee of \$5 for each year the license is valid. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in § 3-2-12 of this code.

(f) 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.

§ 17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

Whenever a conviction is had in any court of record, or in a justice's court, or in the police court or mayor's court of any incorporated municipality, for the violation of any law of this state governing or regulating the licensing or operation of any motor vehicle, or for the violation of any provision of a charter, or bylaw, or ordinance of such incorporated municipality governing or regulating the operation of motor vehicles, except regulations governing standing or parking, the clerk of every such court, or the justice, or the clerk or recorder of such municipality, as the case may be, shall in each case transmit to the division within seventy-two hours after such conviction is had a certified abstract of the judgment on such conviction.

For the purposes of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

Wilful failure, refusal or neglect to comply with the provisions of this section shall subject the person who is guilty thereof to a fine of not less than \$10 nor more than \$50 and may be the grounds for removal from office.

WV Code Chapter 17C. Traffic Regulations and Laws of the Road.

§ 17C-19-6. Form for and records of books of traffic citations.

(a) 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.

(b) 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.

#### §17C-19-7. Disposition and records of traffic citations.

(a) Every traffic-enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

(b) Upon the deposit of the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge of said court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to said traffic violations bureau by the person to whom such traffic citation has been issued by the traffic-enforcement officer.

(c) It shall be unlawful and official misconduct for any traffic-enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) The chief administrative officer of every traffic-enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

#### WV Code Chapter 17D. Motor Vehicle Safety Responsibility Law.

##### §17D-2A-4. Certificate of insurance.

(a) All insurance carriers transacting insurance in this state shall supply a certificate to the insured or to any person subject to the registration provisions of article three, chapter seventeen-a of this code certifying that there is in effect a motor vehicle liability policy upon such motor vehicle in accordance with the provisions of article three, chapter seventeen-a of this code. The certificate shall give its effective date and the effective date of the policy and, unless the policy is issued to a person who is not the owner of a motor vehicle, must designate by explicit description, in such detail as the Commissioner of the Division of Motor Vehicles shall by rule require, all motor vehicles covered and all

replacement vehicles of similar classification: Provided, That on and after July 1, 1984, insurance companies shall supply a certificate of insurance in duplicate for each policy term and for each vehicle included in a policy, except for those listed in a fleet policy. Each such certificate of insurance shall list the name of the policyholder and the name of the vehicle owner if different from the policyholder.

The certificate must specify for each vehicle listed therein that there is a minimum liability insurance coverage not less than the requirements of section two, article four, chapter seventeen-d of this code.

(b) The certificate provided pursuant to the provisions of this section or other proof of insurance shall be carried by the insured in the appropriate vehicle for use as proof of security, and must be presented at the time of vehicle inspection as required by article sixteen, chapter seventeen-c of this code. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000; and upon a second or subsequent conviction, shall be fined not less than \$200 nor more than \$5,000, or confined in the county or regional jail for not less than fifteen days nor more than one year, or both: Provided, That an insured shall not be guilty of a violation of this subsection (b) if he or she furnishes proof that such insurance was in effect within seven days of being cited for not carrying such certificate or other proof in such vehicle.

(c) As used in this section, proof of insurance means a certificate of insurance, an insurance policy, a mechanically reproduced copy of an insurance policy, a certificate of self-insurance, an image displayed on a wireless communication device, as defined in section one, article one, chapter seventeen-b of this code, that includes the information required by this section as provided by a liability insurer or a copy of the current registration issued to a motor carrier by the Public Service Commission: (1) Through the single state registration system established pursuant to section fourteen, article six-a, chapter twenty-four-a of this code; or (2) pursuant to the provisions of section four, article six, chapter twenty-four-a of this code.xs

## WV Code Chapter 22. Environmental Resources.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; Litter Control Fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter as defined in §22-15A-2 of this code, in or upon any public or private highway, road, street, or alley; any private property; any public property; or the waters of the state or within 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter from a motor vehicle or other conveyance or perform any

act which constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown, or caused to be placed, deposited, dumped, or thrown from a motor vehicle, boat, airplane, or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane, or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or her private property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions of this section.

(5) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$100 nor more than \$2,500, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$500 nor more than \$3,000, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 120 hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size, but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than \$2,500 nor more than \$5,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property, or waters of the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$5,500, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 220 hours, or both.

(7) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon

conviction, the person shall be fined not less than \$2,500 nor more than \$25,000 or confinement in jail for not more than one year, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than \$3,000 nor more than \$11,000, or confinement in jail for not more than one year, or both. In addition, he or she may be guilty of creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the enforcement provisions of §22-15-15 of this code.

(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(9) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(11) All law-enforcement agencies, officers, and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(12) A magistrate or municipal court judge may not dismiss an action brought under the provisions of this section without notification to the prosecuting attorney of that county of his or her intention to do so and affording the prosecuting attorney an opportunity to be heard.

(13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his or her own private property or rented or leased property or prohibits the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1 *et seq.* of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits any of these materials or substances to be placed, deposited, dumped, or thrown in a location that high water or normal drainage conditions will cause these materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or otherwise, reports any placing, depositing, dumping, or throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the materials or substances.

(b) Any indication of ownership found in litter is prima facie evidence that the person identified violated the provisions of this section: *Provided*, That no inference may be



drawn solely from the presence of any logo, trademark, trade name, or other similar mass reproduced things of identifying character appearing on the found litter.

(c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty of not less than \$200 nor more than \$2,000 as costs for clean up, investigation, and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

(2) The clerk of the circuit court, magistrate court, or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit 50 percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund known as the Litter Control Fund which was transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining 50 percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to §22C-4-8 of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and §17C-14-14 of this code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates, or otherwise controls any public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this code shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the secretary shall be fined \$30 per day of the violation.

## WV Code Chapter 30. Professions and Occupations

### §30-29-4. Special revenue account—collections; disbursements; administrative expenses. [Law enforcement training]

(a) A \$12 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 of the state, excluding violations of municipal parking ordinances, unless the fee is later modified pursuant to a legislative rule.

(b) A \$12 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 of the state, excluding bonds posted solely for violation of municipal parking ordinances, unless the fee is later modified pursuant to a legislative rule. Upon forfeiture of the bond, the \$12 fee shall be deposited as provided in §30-29-4(c) of this code.

(c) All fees collected pursuant to §30-29-4(a) and §30-29-4(b) of this code shall be deposited in a separate account by the collecting agency. Within 10 calendar days following the beginning of each calendar month, the collecting agency shall forward the amount deposited to the State Treasurer. The Treasurer shall deposit all fees received into a special revenue account. The subcommittee shall disburse funds in the account for the funding of law-enforcement entry level training programs, professional development programs, the certification of law-enforcement officers, and to pay expenses of the Governor's Committee on Crime, Delinquency, and Correction, or the subcommittee in administering the provisions of this article. The expenses may not in any fiscal year exceed 15 percent of the funds deposited to the special revenue account during that fiscal year.

(d) The fees established by this section may be modified by legislative rule as provided in §30-29-3 of this code.

## WV Code Chapter 62. Criminal Procedure

### §62-11C-4. Special revenue account. [Community Corrections Fee]

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Community Corrections Fund. Expenditures from the fund are for the purposes set forth in subsection (e) of this section and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code. The West Virginia Community Corrections Fund may receive any gifts, grants, contributions or other money from any source which is specifically designated for deposit in the fund.

(b) In addition to the fee required in section nine, article twelve of this chapter, a fee not to exceed \$35 per month, unless modified by legislative rule as provided in section three

of this article, is also to be collected from those persons on probation. This fee is to be based upon the person's ability to pay. The magistrate or circuit judge shall conduct a hearing prior to imposition of probation and make a determination on the record that the offender is able to pay the fee without undue hardship. The magistrate clerk, deputy magistrate clerk, magistrate assistant, circuit clerk or deputy circuit clerk shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the magistrate clerk or circuit clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(c) In addition to the fee required in section five, article eleven-b of this chapter, a fee of \$2.50 per day, unless modified by legislative rule as provided in section three of this article, is to be collected from those persons on home incarceration. The circuit judge, magistrate or municipal court judge shall consider the person's ability to pay in determining the imposition of the fee. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate clerk or municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(d) In addition to the usual court costs in any criminal case taxed against any defendant convicted in a municipal, magistrate or circuit court, excluding municipal parking ordinances, a \$10 fee shall be added, unless the fee is modified by legislative rule as provided in section three of this article. The circuit clerk, magistrate clerk, municipal court clerk or his or her designee shall collect all fees imposed pursuant to this subsection and deposit them in a separate account. Within ten calendar days following the beginning of the calendar month, the circuit clerk, magistrate court clerk and the municipal court clerk shall forward the amount deposited to the State Treasurer to be credited to the West Virginia Community Corrections Fund.

(e) The moneys of the West Virginia Community Corrections Fund are to be disbursed by the subcommittee for the funding of community corrections programs and to pay expenses of the subcommittee in administering the provisions of this article, which expenses may not in any fiscal year exceed fifteen percent of the funds deposited to the special revenue account during that fiscal year.

(f) Any disbursements from the West Virginia Community Corrections Fund allocated for community corrections programs by the subcommittee may be made contingent upon local appropriations or gifts in money or in kind for the support of the programs. Any county commission of any county or the governing body of a municipality may appropriate and expend money for establishing and maintaining community corrections programs.

WV Code Chapter 60. State Control of Alcoholic Liquors.

§60-6-26. Conditional discharge for first offense of certain offenses related to nonintoxicating beer or alcoholic liquor.

(a) When a person pleads guilty to or is found guilty of a violation of subdivision (1), subsection (a), section nineteen, article sixteen, chapter eleven of this code; subsection (b), section nineteen, article sixteen, chapter eleven of this code; subsection (a), section twenty-two-a, article three of this chapter; subdivision (1), subsection (a), section twenty-four, article three-a of this chapter; subsection (b), section twenty-four, article three-a of this chapter; subsection (a) or (b), section twelve-a, article seven of this chapter; or subsection (a) or (b), section twenty-a, article eight of this chapter, the court, 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 it considers appropriate, if the person has not previously been convicted of:

(1) Any of the offenses contained in the code provisions referenced in this subsection; or

(2) Any statute of the United States or of any state relating to underage purchase, consumption, sale, service or possession of nonintoxicating beer or alcoholic liquor.

(b) If the person violates a term or condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

(c) Upon fulfillment of the terms and conditions of the probation, the court shall discharge the person and dismiss the proceedings against him or her.

(1) Discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or the section of the original charge, or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

(2) The effect of the discharge and dismissal is to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial.

(3) A person to whom a discharge and dismissal have been effected under this section may not be found 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 relating to a charge discharged and dismissed by this section in response to any inquiry made of him or her for any purpose.

(d) There may be only one discharge and dismissal under this section with respect to any one person.

(e) After a period of not less than six months after the expiration of a term of probation imposed upon a person under the provisions of this section, 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 discharge pursuant to this section. If the court determines after a hearing that the person during the period of his or her probation and during the period prior to his or her application to the court under this subsection has not been guilty of any serious or

repeated violation of the conditions of his or her probation, it shall order the expungement.

(f) Notwithstanding any provision of this code to the contrary, any person prosecuted for an alleged violation of an offense listed in subsection (a) of this section, whose case is disposed of pursuant to the provisions of this section, is liable for all court costs assessable against a person convicted of a violation of the section under which the person was prosecuted. Payment of the costs may be made a condition of probation. The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty of this code; section four, article two-a, chapter fourteen of this code; section four, article twenty-nine, chapter thirty of this code; and sections two, seven and ten, article five, chapter sixty-two of this code.

## WV Code Chapter 60A. Uniform Controlled Substances Act.

### §60A-4-407. Conditional discharge for first offense of possession.

(a) Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under section 401(c), the court, 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. 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. 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 under section 408. 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. 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.

(b) 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. 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.

(c) Notwithstanding any provision of this code to the contrary, 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 against a person convicted of a violation of section 401 (c) of this article. Payment of such costs may be made a condition of probation.

The costs assessed pursuant to this section, whether as a term of probation or not, shall be distributed as other court costs in accordance with section two, article three, chapter fifty, section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and sections two, seven and ten, article five, chapter sixty-two of this code.

# Appendix D – Rules of Criminal Procedure for Magistrate Courts

**Municipal Judges must follow these rules for trial per 8-10-2(d)**

## **Rule 1. Scope**

These rules govern the procedure in all criminal proceedings in the magistrate courts of the State of West Virginia. These rules supplement, and in designated instances supersede, the statutory procedures set forth in Chapter 50 and Chapter 62 of the West Virginia Code.

## **Rule 2. Purpose and Construction**

These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

## **Rule 3. Complaint**

The complaint shall be presented to and sworn or affirmed before a magistrate in the county where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a prosecuting attorney or a law enforcement officer showing reason to have reliable information and belief. If from the facts stated in the complaint the magistrate finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

## **Rule 4. Arrest warrant or summons upon complaint**

a) **Issuance.** — If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. The magistrate may restrict the execution of the warrant to times during which a magistrate is available to conduct the initial appearance. Within the discretion of the magistrate a summons instead of a warrant may issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

b) **Probable Cause.** — The finding of probable cause may be based upon hearsay evidence in whole or in part.

c) **Form.** —

(1) *Warrant.* — The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate of the

county in which the warrant is executed.

(2) *Summons.* — The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

d) **Execution or Service; and Return.** —

(1) *By Whom.* — The warrant shall be executed by any officer authorized by law to arrest persons charged with offenses against the state. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* — The warrant may be executed or the summons may be served at any place within the state.

(3) *Manner.* — The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant at the time of the arrest, but upon request the officer shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to the defendant personally, or by leaving it at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) *Return.* — The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the state any unexecuted warrant shall be returned to and canceled by the magistrate by whom it was issued. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the state, made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to an authorized person for execution or service.

**Rule 5. Initial appearance before the magistrate; bail**

(a) **In General.** — An officer making an arrest under a *capias* or a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before a magistrate within the county where the arrest is made. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forth with which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested with or without a warrant or given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivision of this rule.

(b) **Initial Appearances and Arraignments by Video Conferencing.** — If any person is arrested upon a warrant issued upon a complaint or *capias*, or arrested without a warrant, and if any such person is detained in a regional jail before an initial appearance, or if any person is detained in a regional jail and then served with a criminal complaint or other charging document charging such person with additional charges, the initial



appearance on all such charges shall be conducted by video conferencing by a magistrate of the county of the charging jurisdiction. If such initial appearance cannot occur by video conferencing before a magistrate in the county of the charging jurisdiction, such initial appearance shall be conducted by video conferencing by either a magistrate of the county of arrest, if different from the county of the charging jurisdiction, or a magistrate of the county in which the regional jail is located. Provided, arraignments may be conducted by video conferencing only if the plea to be entered is a not guilty plea.

(c) **Misdemeanor Offense Triable Before a Magistrate.** — If the charge against the defendant is an offense triable by a magistrate, unless the defendant waives the right to a trial on the merits, the magistrate shall proceed in accordance with rules of procedure set forth herein. The magistrate shall inform the defendant of the complaint and any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, of the right to demand a jury trial, and of the general circumstances under which the defendant may secure pretrial release. The magistrate shall inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel or with at least one relative or other person for the purpose of obtaining counsel or arranging bail as provided by statute or in these rules.

(d) **Demand for Jury Trial.** — When a magistrate informs a defendant of the right to demand a jury trial, the defendant shall also be informed that the demand must be made to the court in writing either within 20 days after the initial appearance or 20 days after an attorney is appointed by the circuit court, whichever applies, or the right will be waived and the trial will be before the magistrate without a jury. The magistrate shall further inform the defendant that if a jury trial is demanded, the demand may not be withdrawn if the prosecuting attorney objects to the withdrawal.

(e) **Offenses not Triable by the Magistrate.** — If the charge against the defendant is to be presented for indictment, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint and any affidavit filed therewith, of the right to retain counsel, of the right to request the assignment of counsel, of the right to request the assignment of counsel if the defendant is unable to obtain counsel, and of the general circumstances under which the defendant may secure pretrial release. The magistrate shall inform the defendant that he or she is not required to make a statement and that any statement made by the defendant may be used against him or her. The magistrate shall also inform the defendant of the right to a preliminary examination. The magistrate shall allow the defendant reasonable time and opportunity to consult with counsel or with at least one relative or other person for the purpose of obtaining counsel or arranging bail as provided by statute or in these rules and shall admit the defendant to bail as provided by statute or in these rules.

If the offense is to be presented for indictment, a defendant is entitled to a preliminary examination unless waived. If the defendant waives preliminary examination, the magistrate clerk shall transmit forthwith to the clerk of the circuit court all papers in the

proceeding. The magistrate court clerk shall also transmit to the prosecuting attorney a copy of the criminal case history sheet. Thereafter, the proceeding shall remain within the jurisdiction of the circuit court and shall not be remanded to the magistrate. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody; provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in circuit court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the circuit court only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(f) **Bail.** —

(1) The magistrate who originally sets bail retains jurisdiction with respect to bail only until the case is assigned. The assigned magistrate shall then have jurisdiction until the preliminary examination is held or waived, until the trial is held, or until the case is otherwise disposed of, subject to the provision of Rule 2(a) of the Administrative Rules for the Magistrate Courts.

(2) A third party may secure pretrial release in the absence of a defendant who is in custody when the record contains a written acknowledgment of the terms and conditions of pretrial release signed by a magistrate and the defendant. Any magistrate may accept bail in the absence of the defendant provided that the third party reviews and agrees to the same terms and conditions of pretrial release by executing a separate written acknowledgment before the magistrate. No change may be made in the terms and conditions of pretrial release between the acknowledgment executed by the defendant and magistrate and the acknowledgment executed by the third party.

(3) Except as provided by Rule 5.2(c) of these rules, a magistrate may grant or deny a motion for change of bail or bond only after due notice to both the defendant and the attorney for the state and upon a hearing, which shall be held within 5 days of the date the motion is filed.

(4) When setting the conditions of bail bond in any case involving allegations of domestic violence, including, but not limited to, those cases in which West Virginia § 621C-17c applies, the magistrate setting the bail or bond shall include a condition that the defendant appear with counsel periodically for a hearing to determine whether the defendant has been fully compliant with the conditions of bond. Such hearings shall be scheduled at the time the defendant is released on bail or bond and shall occur no less frequently than every sixty days, although the magistrate may schedule such hearings as frequently as the nature of the case may warrant.

**Rule 5.1. Preliminary Examination**

(a) **Probable Cause Finding.** — If from the evidence it appears that there is probable

cause to believe that an offense has been committed and that the defendant committed it, the magistrate shall forthwith hold the defendant to answer in circuit court. The state shall be represented by the prosecuting attorney at the preliminary examination. Witnesses shall be examined and evidence introduced for the state under the rules of evidence prevailing in criminal trials generally except that hearsay evidence may be received, if there is a substantial basis for believing:

- (1) That the source of the hearsay is credible;
- (2) That there is a factual basis for the information furnished; and
- (3) That it would impose an unreasonable burden on one of the parties or on a witness to require that the primary source of the evidence be produced at the hearing.

The defendant may cross-examine adverse witnesses and may introduce evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12 of the Rules of Criminal Procedure applicable to circuit courts. On motion of either the state or the defendant, witnesses shall be separated and not permitted in the hearing room except when called to testify.

(b) **Discharge of Defendant.** — If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the state from instituting a subsequent prosecution for the same offense.

(c) **Records.** —

(1) A magistrate shall record electronically every preliminary examination conducted. If by reason of unavoidable cause it is impossible to record all or part of a preliminary examination electronically, a magistrate may proceed with the hearing but shall make a written record of the failure to do so and of the cause thereof.

A magnetic tape or other electronic recording medium on which a preliminary examination is recorded shall be indexed and securely preserved by the magistrate court clerk or, as assigned by the clerk, by the magistrate assistant.

For evidentiary purposes, a duplicate of such electronic recording prepared by the clerk of the magistrate or of the circuit court shall be a "writing" or "recording" as those terms are defined in Rule 1001 of the West Virginia Rules of Evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule.

When requested by the state, the defendant, or any interested person, the clerk of the magistrate or of the circuit court shall provide a duplicate copy of the tape or other electronic recording medium of any preliminary examination held. Any defendant requesting the copy who has not been permitted to proceed with appointed counsel, any prosecutor who does not supply a blank tape, and any other

person shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.

Preparation of a transcript of the record or any designated portions thereof shall be the responsibility of the party desiring such transcript.

(d) If probable cause is found at the conclusion of a preliminary examination in magistrate court: (i) the magistrate clerk shall transmit to the prosecuting attorney a copy of the criminal case history sheet; (ii) when the proceeding is recorded electronically, the magistrate clerk shall transmit forthwith to the clerk of the circuit court all papers and electronic records of the proceeding; if for unavoidable cause the proceeding or part thereof has not been recorded electronically, the magistrate shall promptly make or cause to be made a summary written record of the proceeding, and the magistrate clerk shall transmit forthwith to the clerk of the circuit court such record and all other papers of the proceeding. Once the records of the proceeding are transmitted to the clerk of the circuit court, the felony charge shall remain within the sole jurisdiction of the circuit court and shall not be remanded to the magistrate for any purpose.

#### **Rule 5.2. Offense arising in another county**

(a) **Appearance Before Magistrate.** — If a person is arrested and brought before a magistrate on a warrant or capias issued upon a complaint, information or indictment, for an offense alleged to have been committed in a county other than the county of arrest, such magistrate in the county of arrest shall conduct an initial appearance and the defendant given an opportunity to post bond if applicable. If the defendant is unable to provide bail in the county of arrest, he or she shall be temporarily committed to the regional jail serving the county of arrest. Such temporary commitment shall be on behalf of the charging county. The magistrate court of the county of arrest shall immediately transmit, via facsimile and the original via United States mail, all papers to the magistrate court of the charging county wherein the examination or trial is to be held, there to be dealt with as provided by these rules.

(b) **Initial Appearances and Arraignments by Video Conferencing.** — If a person is arrested on a warrant or capias issued upon a complaint, information or indictment for an offense alleged to have been committed in a county other than the county of arrest, and if such person is detained in a regional jail before an initial appearance, or if any person is detained in a regional jail and then served with a criminal complaint or other charging document charging such person with additional charges, the initial appearance on all such charges shall be conducted by video conferencing by a magistrate of the county of the charging jurisdiction. Provided that, prior to any such initial appearance being conducted by video conferencing by the county of the charging jurisdiction, the magistrate of the county of arrest shall immediately transmit, via facsimile and the original via United States mail, all papers to the magistrate court of the charging jurisdiction. If such initial appearance cannot occur by video conferencing before a magistrate of the county of the charging jurisdiction, such initial appearance shall be conducted by video conferencing by either a magistrate of the county of arrest, if different from the county of the charging jurisdiction, or a magistrate of the county in which the regional jail is located.

Provided, arraignments may be conducted by video conferencing only if the plea to be entered is a not guilty plea.

(c) **Bail.** — If bail was previously fixed in another county where a warrant, information or indictment issued, the magistrate shall take into account the amount of bail previously fixed and the reasons set forth therefor, if any, but will not be bound by the amount of bail previously fixed. If the magistrate fixes bail different from that previously fixed, he or she shall set forth the reasons for such action in writing.

### ***Rule 5.3. Failure to appear upon a summons***

The magistrate court clerk shall notify the prosecuting attorney on a regular basis when a defendant fails to answer or appear in response to a summons. The magistrate court clerk shall notify the Division of Motor Vehicles of such failure to answer or appear in cases involving violations of any provision of Chapter 17, 17A, 17B, 17C or 17D of the West Virginia Code, and for any criminal violation charged on or after July 9, 1993, with the exception of parking violations or other unattended vehicle violations. Notification shall be in the same form as that provided by Rule 22 and Rule 7(e) of these Rules and shall be sent within 15 days from the scheduled date to appear unless the defendant answers or appears within that time.

Upon a motion by the prosecuting attorney, the magistrate may issue a warrant for arrest of a defendant who without providing good cause has failed to answer or appear at any stage of a proceeding in response to a summons.

### ***Rule 6. Amendment of complaint, warrant, and summons; harmless error***

(a) **Amendment.** — Upon motion, the magistrate shall permit the complaint, warrant, summons or any other document to be amended at any time before verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(b) **Harmless Error.** — Error in the citation of the statute or rule or regulation which the defendant is alleged to have violated, or the omission of the citation shall not be ground for dismissal or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.

### ***Rule 7. Citation for traffic and natural resources offenses***

(a) **Citation.** — In lieu of the procedures set forth in Rules 3 and 4 of these rules, a law enforcement officer may prepare and serve a citation as the instrument charging a misdemeanor violation of Chapter 17, 17A, 17B, or 17C, except as provided by West Virginia Code § 17C-19-3, 17D, or 20 of the West Virginia Code. The citation must state the offense charged and notify the defendant of the requirement to answer or appear in response to the charge, by a date certain, in the magistrate court of the county where the offense occurred.

(b) **Pleas of Guilty or No Contest.** — The citation shall be a sufficient document to which the defendant may plead guilty or no contest. Before accepting a plea of guilty or no contest, the magistrate shall inform the defendant of the charge and the penalties the court may impose. The magistrate shall also advise that the defendant has the right to be represented by an attorney, that the defendant may plead not guilty to the charge and demand a trial by jury in accordance with the time limits set forth in Rule 5(c) of these rules, and that by pleading guilty the defendant waives all of these rights.

(1) For violations of West Virginia Code § 17B-4-3 (driving while license suspended or revoked), except 17B-4-3(a) first offense or second offense, West Virginia Code § 17C-5-1 (negligent homicide), West Virginia Code § 17C-5-2 (DUI), West Virginia Code § 17C-5-3 (reckless driving) and West Virginia Code Chapter 20 offenses involving injury to the person, a plea of guilty or no contest shall be made in person before a magistrate in the county where the offense occurred.

(2) For all other citations such pleas of guilty or no contest may also be made by telephone to a magistrate in the county where the offense occurred. In such instances the magistrate, upon advising the defendant, accepting the plea, and imposing the fine and costs, shall direct the defendant to complete the guilty plea form on the citation and to deliver by mail to the magistrate court the citation and all fines and costs assessed.

(c) **Plea of Not Guilty.** — A plea of not guilty to a traffic or natural resources citation may be made in person before a magistrate in the county in which the offense was charged, or by mail to the magistrate court of such county. In such instances, a complaint must be filed at or prior to trial which complies with the probable cause requirements of Rule 4 and an initial appearance conducted pursuant to the procedures set forth in Rule 5 of these rules. Upon motion of the defendant, a continuance may be granted if necessary to provide time to meet any new information set forth in the complaint and if the refusal to grant such continuance would substantially prejudice the rights of the defendant.

(d) **Motion to Dismiss.** — A defendant may seek dismissal of a traffic or natural resources citation prior to trial by filing, on a form provided by the magistrate court, a motion to dismiss. Such motion shall state with particularity the grounds upon which dismissal is sought. Upon receipt of such motion, the magistrate court shall promptly forward a copy of such motion to the prosecuting attorney. If upon 10 days from the date of delivery of such motion to the prosecuting attorney no objection is made, the magistrate may dismiss the citation. If within 10 days from the date of delivery the prosecuting attorney objects to such motion, the case shall proceed to hearing or trial.

(e) **Failure to Appear.** — The magistrate court clerk on a regular basis shall notify the prosecuting attorney of citations for which the defendant failed to answer or appear. The magistrate court clerk shall notify the Division of Motor Vehicles of all such instances involving a failure to answer or appear in response to a citation charging a violation of any provision of Chapter 17, 17A, 17B, 17C, or 17D of the West Virginia Code, and for any criminal violation charged on or after July 9, 1993, with the exception of parking violations and other violations for which a citation may be issued to an unattended vehicle. Such notification shall be provided in the same form as that provided by Rule 5.3 and Rule 22

of these Rules and shall be sent within 15 days from the scheduled date to answer or appear unless the defendant answers or appears within that time.

Upon motion by the prosecuting attorney, the magistrate may issue a warrant for the arrest of a defendant who without showing good cause has failed to answer or appear at any stage of a proceeding in response to a citation.

### **Rule 8. Citation for other offenses**

In lieu of the procedures set forth in Rules 3 and 4 of these Rules, a law enforcement officer may issue a citation for any offense for which a citation in lieu of an arrest is authorized by W.Va. Code § 62-1-5a. For such citations, the procedures set forth in Rules 7(a), 7(b)(1), 7(c), and 7(e) shall apply.

### **Rule 9. Plea proceedings**

Except as otherwise provided by Rule 7(b), the plea proceeding shall be conducted in open court or by video conferencing and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The reading of the complaint may be waived by the defendant in open court or by video conferencing. The defendant shall be given a copy of the complaint before being called upon to plead.

### **Rule 10. Pleas**

(a) **Alternatives.** — A defendant may plead not guilty, guilty, or, with the consent of the magistrate, no contest.

(b) **Advice to Defendant.** — Before accepting a plea of guilty or no contest, the magistrate must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) If the defendant is not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent the defendant; and

(3) That the defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that the defendant has the right to be tried by a jury and at that trial the right to the assistance of counsel, the right to confront and cross-examine adverse witnesses, the right against compelled self-incrimination, and the right to call witnesses; and

(4) That if a plea of guilty or no contest is accepted by the magistrate there will not be a further trial of any kind, so that by pleading guilty or no contest the defendant waives the right to a trial; and

(5) That upon a plea of guilty or no contest, the magistrate may question the defendant under oath, on the record, about the offense to which he or she has

pleaded, and that the defendant's answers may later be used against him or her in a prosecution for false swearing.

(c) **Ensuring That the Plea Is Voluntary.** — The magistrate shall not accept a plea of guilty or no contest without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The magistrate shall also inquire as to whether the defendant's willingness to plead guilty or no contest results from prior discussions between the attorney for the state and the defendant or the defendant's attorney.

(d) **Record of Proceedings.** — Before accepting a plea of guilty or no contest, the magistrate shall receive from the defendant, on a form provided by the magistrate, a statement signed by the defendant acknowledging that the magistrate has addressed the matters set forth in sections (b) and (c) of this rule.

(e) **Withdrawal of Plea of Guilty or No Contest.** — A magistrate may neither entertain nor grant a motion to withdraw a plea of guilty or no contest.

#### **Rule 11. Notice of trial**

When a defendant enters a plea of not guilty to a misdemeanor complaint or notifies the court of the intent to plead not guilty or otherwise to contest a misdemeanor citation, the court shall promptly schedule a date and time for trial.

If the defendant is not in custody, all parties shall be notified by the court by first-class mail not less than six weeks before such date of trial. If the defendant is in custody, trial shall be scheduled for the earliest practical date and all parties promptly notified. All such notices shall contain:

- (a) The date, place and time of trial;
- (b) The name of the magistrate scheduled to hear the case;
- (c) A statement of the time periods in which pretrial motions must be filed, in accordance with Rule 12;
- (d) A statement of the manner in which pretrial motions may be filed;
- (e) A statement of the restrictions upon continuances as set forth in Rule 12; and
- (f) A statement of the manner by which motions for disqualification may be filed as set forth in Rule 1B of the Administrative Rules for Magistrate Courts.

#### **Rule 12. Pretrial motions**

(a) **Time Periods.** — Unless good cause is shown as to why such requirements should be excused, the following motions, if made, shall be made in writing and shall be filed with



the court and served upon all parties not less than 10 days before the first date scheduled for trial:

- (1) Motion and affidavit for transfer to another magistrate;
- (2) Motion for continuance; and
- (3) Any other motion which, if granted, would require rescheduling of the hearing or trial.

The clerk, deputy clerk, or magistrate assistant shall provide appropriate forms on which such pretrial motions may be made.

All other pretrial motions may be made at any time in writing prior to trial, or may be made orally or in writing at time of trial.

- (b) **Continuance.** — A motion for a continuance may be granted only upon:
- (1) Compliance with the requirements set forth in section (a) of this rule;
  - (2) A showing of good cause; and
  - (3) A reasonable effort by the magistrate to notify all parties and provide them with an opportunity to respond to the motion.

### **Rule 13. Service and filing of papers**

(a) **Service.** — Written motions, notices, and similar papers shall be served upon each of the parties in the same manner as provided for service of such papers in civil actions in magistrate court.

(b) **Filing.** — Papers required to be served shall be filed with the court in the same manner as provided for filing of papers in civil actions in magistrate court.

### **Rule 14. Discovery and inspection; bill of particulars**

**[Reserved]**

### **Rule 15. Subpoena**

Subpoenas for attendance of witnesses and subpoenas for production of documentary evidence and of objects shall be issued by the magistrate clerk, deputy clerk, magistrate or magistrate assistant in the same manner as is provided by Rule 17 of the Rules of Criminal Procedure for Circuit Courts.

### **Rule 16. Dismissal**

(a) By Attorney for State. — The attorney for the state may move to dismiss a complaint, and if the magistrate grants the motion the prosecution shall thereupon terminate. Such a dismissal shall not be granted during the trial without the consent of the defendant.

(b) By Magistrate. — The magistrate may dismiss the complaint, with or without a motion, if there is unnecessary delay in bringing a defendant to trial or if the attorney for the state

fails to appear at trial. If the magistrate grants a motion to dismiss a complaint based on a defect in the institution of the prosecution or in the complaint, the magistrate may also stay entry of the order for a specified time pending the filing of a new complaint.

**Rule 16A. Joinder and relief from prejudicial joinder**

(a) Two or more offenses may be charged in the same complaint, and tried together, but only if (1) the offenses are of the same or similar character, or (2) the offenses are based on the same act or transaction, or on acts or transactions connected together or constituting parts of a common scheme or plan. A magistrate may also, in his or her discretion, order two or more complaints to be tried together if the offenses could have been joined in one complaint.

(b) If it appears that a defendant or the state is prejudiced by joinder of offenses, the court may on motion order separate trials for the offenses.

(c) No more than one defendant may be charged in one complaint or tried in one proceeding.

**Rule 17. Trial**

**(a) Conduct of Trial.** — Trial shall be conducted by the examination and cross-examination of witnesses under oath or affirmation, in an orderly manner, and in accordance with the West Virginia Rules of Evidence.

**(b) Production of Statement of Witnesses.** — Statements of witnesses shall be produced in accordance with the provisions of Rule 26.2 of the West Virginia Rules of Criminal Procedure.

**(c) Trial by Jury.** — In cases of trial by jury, a sufficient number of persons shall be notified, in accordance with the Administrative Rules for Magistrate Courts, so that, after dismissals for cause, a panel of 10 persons may be assembled who are legally qualified and free from prejudice. The magistrate may conduct the examination of potential members of the panel or may permit all or part of such examination to be conducted by the parties or their attorneys. Upon selection of the panel of 10 persons legally qualified and free from prejudice, each side shall exercise 2 peremptory challenges to reduce the number of jurors to 6.

**(d) Record of Jury Trial.**— Every jury trial shall be recorded electronically by a magistrate. If by reason of unavoidable cause it is impossible to record all or part of a jury trial electronically, a magistrate may proceed with the hearing but shall make a written record of the failure to do so and of the cause thereof.

A magnetic tape or other electronic recording medium on which a jury trial is recorded shall be indexed and securely preserved by the magistrate court clerk or, as assigned by the clerk, by the magistrate assistant.

For evidentiary purposes, a duplicate of such electronic recording prepared by the clerk of the magistrate court shall be a "writing" or "recording" as those terms are defined in Rule 1001 of the West Virginia Rules of Evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule.

When requested by the state, the defendant, or any interested person, the clerk of the magistrate court shall provide a duplicate copy of the tape or other electronic recording medium of any jury trial held. Unless a defendant requesting the copy has been permitted to proceed with appointed counsel, the defendant shall pay to the magistrate court an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater.

Preparation and costs of a transcript of the record or any designated portions thereof shall be the responsibility of the party desiring such transcript unless the circuit court orders payment to be made by the Administrative Director of the Supreme Court of Appeals.

**(e) Jury Instructions.** — In cases of trial by jury, at the close of the evidence, before arguments to the jury are begun, the magistrate shall instruct the jury regarding the law that is applicable to the case. Any party or counsel for any party may provide to the magistrate written requests that the magistrate instruct the jury on the law as set forth in the requests. The magistrate shall provide all parties or their counsel the opportunity, out of the presence of the jury, to argue for or against the giving or refusal to give any instruction.

**(f) Parties Not Represented by Counsel.** — When a party appears at trial without counsel, the magistrate may inform the party, in the presence of all other parties, of the proper procedures regarding the conduct of trial and examination of witnesses. Such information shall not include counsel or advice regarding choice of tactics or strategy.

### **Rule 18. Verdict**

**(a) Return.** — The verdict shall be unanimous. It shall be returned by the jury to the magistrate in open court.

**(b) Several Defendants and Offenses.** — If there is more than one defendant or offense being tried, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or an offense as to which it has agreed; if the jury cannot agree with respect to all, the defendant or offense as to which it does not agree may be tried again. In all cases involving multiple defendants or offenses, the court shall require the jury to make a separate finding as to each defendant and offense.

**(c) Conviction of Lesser Offense.** — The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

**(d) Poll of Jury.** — When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

### **Rule 19. Sentence**

- (a)** Sentence shall be imposed in open court within 60 days of the finding of guilt.
- (b)** Except as to pleas of guilty or no contest pursuant to Rule 7(b), before imposing sentence the magistrate shall:
- (1)** Afford counsel an opportunity to speak on behalf of the defendant; and
  - (2)** Address the defendant personally to ask if the defendant wishes to make a statement in the defendant's own behalf and to present any information in mitigation of punishment.
- (c)** The prosecuting attorney shall have an equivalent opportunity to speak to the court.

### **Rule 20. New trial**

- (a)** Within 20 days after a verdict or a finding of guilty, the defendant may file a motion requesting that the judgment be set aside and a new trial held.
- (b)** The clerk, deputy clerk or magistrate assistant shall notify all parties of the time, place and date set for hearing on the motion.
- (c)** If good cause is shown that a new trial is required in the interest of justice, the magistrate who entered the judgment or such magistrate's successor may set aside the judgment and order a new trial.
- (d)** If trial was by the magistrate without a jury, in lieu of a new trial, the magistrate may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment.

### **Rule 20.1. Appeal to circuit court**

- (a)** Except for persons represented by counsel at the time a guilty plea is entered, any person convicted of a misdemeanor in a magistrate court may appeal such conviction to the circuit court as a matter of right. Notice of appeal shall be filed in magistrate court:
- (1)** Within 20 days after the sentencing for such conviction; or
  - (2)** Within 20 days after the magistrate has denied a motion for a new trial.
- (b)** The magistrate may require that bond be posted with good security conditioned upon the appearance of the defendant as required in circuit court. Such bond may not exceed the maximum amount of any fine which could be imposed for the offense.

**(c)** If no appeal is perfected within the appropriate 20-day period, the circuit court may, not later than 90 days after the date of sentencing, grant an appeal upon a showing of good cause why such appeal was not filed within the 20-day period.

**(d)** An appeal of a magistrate court criminal proceeding tried before a jury shall be heard on the record in circuit court. An appeal of a criminal proceeding tried before a magistrate without a jury shall be by trial de novo in circuit court without a jury.

### **Rule 21. Stay of execution**

**(a)** The timely filing or granting of an appeal automatically stays the sentence of the magistrate.

**(b)** Upon request by the defendant, the execution of a criminal judgment shall be stayed to allow for the filing of a motion for a new trial or a petition for modification of sentence. Upon timely filing of such motion or petition, the execution of a criminal judgment shall be stayed until the same has been decided. In addition to granting the request of the defendant, the magistrate shall require the defendant to post or continue a sufficient bond to assure any required further appearance.

### **Rule 22. Enforcement of judgments**

**(a)** Register of Unsatisfied Judgments. — The clerk shall maintain a register of all cases in which a period of confinement, fine, costs, forfeiture, and/or restitution have been ordered but which, upon 3 months from judgment and the expiration of any stay of execution, have not been satisfied, or, in the case of a period of confinement, is not currently being satisfied. Such register shall include the case number; name of the defendant; address of defendant, if known; nature of the offense; date of sentencing; period of confinement; fine, penalty and costs imposed; forfeiture or restitution ordered; and period of time unserved or amount of fine, penalty, costs, forfeiture and restitution remaining unsatisfied.

**(b)** Notice of Unsatisfied Judgment. On a regular basis of at least once every month, the clerk shall:

**(1)** Provide the prosecuting attorney a copy of the register of unsatisfied judgments with abstracts of judgment for entries involving any criminal violation occurring after July 9, 1993 for which court-imposed assessments have not been paid in full;

**(2)** Provide the Division of Motor Vehicles a notice of all entries that have been added to the register since the previous notification regarding court-imposed assessments not paid in full for violations of Chapters 17, 17A, 17B, 17C and 17D of the West Virginia Code or such entries for any criminal violation occurring on or after July 9, 1993, with the exception of parking violations and other violations for which a citation may be issued to an unattended vehicle; and

**(3)** Provide to the Division of Natural Resources a notice of all hunting or fishing violation entries that have been added to the register since the previous notification for which court-imposed assessments have not been paid in full.

### **Rule 23. Forfeiture of bond**

**(a) Declaration.** — If there is a breach of condition of a bond, the magistrate shall declare a forfeiture of the bail.

**(b) Setting Aside.** — The magistrate may direct that a forfeiture be set aside or reduced, upon such conditions as the magistrate may impose, if it appears that justice does not require the enforcement of the forfeiture.

**(c) Enforcement.** — When a forfeiture has not been set aside, the magistrate shall, upon motion and hearing, enter a judgment of default, and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction and venue of the magistrate and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice of the motion, and the hearing thereon, shall comply with West Virginia Code § 62-1C-9.

### **Rule 24. Search and seizure**

All matters regarding search and seizure shall be governed by the procedures set forth in Rule 41 of the Rules of Criminal Procedure for Circuit Courts.

### **Rule 25. Peace bonds**

Applications for peace bonds shall be by complaint and shall be conducted in accordance with the procedures for criminal prosecutions as set forth in these rules.

### **Rule 26. Time**

**(a) Computation.** — In computing any time limit set in accordance with these rules, set by the magistrate, or set by statute:

- (1)** The day of the act, event or default from which the designated period of time begins to run shall not be included.
- (2)** The last day of the time period shall be included, unless it is a Saturday, Sunday, or legal holiday.
- (3)** When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in computation.

**(b) Extension.** — Except as provided in section (c), below, any time limit which has been set by these rules, by the magistrate, or by statute, may be extended in the following circumstances:

- (1)** If all parties to the case agree in writing to the extension;
- (2)** If the existing period has not expired, upon a showing of good cause;
- (3)** If the time period has expired, upon a showing of unavoidable cause.

Prior to ruling upon a request for an extension, the magistrate shall make a reasonable effort to notify all other parties and provide them with an opportunity to respond to the request.

**(c) Extension Prohibited.** — Time periods for filing a motion to set aside judgment shall not be extended. Time periods for the payment of fines and costs, as authorized by W.Va. Code § 50-3-2a, shall not be extended.

**(d) Additional Time After Service by Mail.** — When a party has received a notice or some other paper by mail and in response must take some action within a specified period from the date of mailing, 3 days shall be added to such period.

**Rule 27. Harmless error; correction of sentence; clerical mistakes**

**(a) Harmless Error.** — Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

**(b) Correction of Sentence.** — The magistrate who entered judgment, or such magistrate's successor, may correct an illegal sentence at any time.

**(c) Clerical Mistakes.** — Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the magistrate at any time and after such notice, if any, as the magistrate orders.

**Rule 28. Revocation or modification of probation or alternative sentence**

**(a) Preliminary Hearing.** - Whenever a person is held in custody on the ground that he or she has violated a condition of probation or an alternative sentence, the person shall be afforded a prompt hearing before a magistrate who has been authorized by law to conduct preliminary hearings, in order to determine whether there is probable cause to hold the person for a revocation hearing. The person may waive the preliminary hearing. The person shall be given:

- (1) Notice of the preliminary hearing and its purpose and of the alleged violation;
- (2) An opportunity to appear at the hearing and present evidence in his or her own behalf;
- (3) Upon request, the opportunity to question adverse witnesses unless, for good cause, the magistrate decides that justice does not require the appearance of the witness; and
- (4) Notice of his or her right to be represented by counsel.

**(b) Post Conviction Bond.** — If probable cause is found to exist, the person shall be held for a revocation hearing. The person may be released pursuant to Chapter 62-1C-1 et. seq., pending the revocation hearing. If probable cause is not found to exist, at the preliminary hearing the proceedings shall be dismissed.

**(c) Revocation Hearing.** — The revocation hearing, unless waived by the person shall be held within a reasonable time, and pursuant to the procedure prescribed in Chapter 62, Article 12, Section 10, of the West Virginia Code of 1931, as amended. The person shall be given:

- (1) Written notice of the alleged violation;
- (2) Disclosure of the evidence against him or her;

- (3) An opportunity to appear and to present evidence in his or her own behalf;
- (4) The opportunity to question adverse witnesses; and
- (5) Notice of his or her right to be represented by counsel, and, in the event he or she is indigent, of his or her right to appointed counsel.

**Rule 29. Discovery in misdemeanor actions**

(a) The state and the defendant shall make every reasonable effort to informally exchange reciprocal discovery prior to trial. In the event that the parties are unable to reach an agreement on discovery, the following provisions shall apply:

**(b) Disclosure of evidence by the state.**

(1) The following must be disclosed by the state, if the state intends to use such evidence during any stage of the court proceedings:

- (A) Statement of defendant
- (B) Defendant's prior criminal record
- (C) Documents and tangible objects
- (D) Reports of examination and tests
- (E) Expert witnesses: names, addresses and summary of expected testimony
- (F) State witnesses: names and addresses

**(c) Disclosure of evidence by the defendant.**

(1) The following must be disclosed by the defendant, if the defendant intends to use such evidence during any stage of the court proceedings:

- (A) Documents and tangible objects
- (B) Reports of examinations and tests
- (C) Expert witnesses: names, addresses and summary of expected testimony
- (D) Defense witnesses: names and addresses

**(d) Timing of discovery from the state.** If discovery is requested by the defendant, the relevant discovery material shall be provided at least 21 days in advance of the date of trial, provided that the request has been made at least 14 days in advance of the date the response is due.

**(e) Timing of discovery from the defendant.** If reciprocal discovery is requested by the state, the relevant discovery material shall be provided at least 14 days before the date of trial, provided that the request is made at least 7 days in advance of the date the response is due.

**(f) Continuance.** If discovery that has been timely requested is not, for good reason shown, available to be produced in a timely manner, either the state or the defense may request, and be granted, a continuance to facilitate production of the requested material.

**(g) Failure to comply with discovery request.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to promptly provide the discovery or to



promptly arrange for inspection of the discovery. In addition, the court may grant a continuance or prohibit the offending party from introducing any evidence that was not disclosed.

**Rule 30. Discovery form.**

A request for discovery pursuant to Rule 29 of the Rules of Criminal Procedure for Magistrate Courts shall be made by using the following form:

IN THE MAGISTRATE COURT OF THE \_\_\_\_\_ COUNTY, WEST VIRGINIA

IN THE MATTER OF:

State of West Virginia

v. Case No. \_\_\_\_\_

Defendant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

REQUEST FOR DISCOVERY

You are hereby notified that the undersigned is requesting \_\_\_\_\_ discovery / \_\_\_\_\_ reciprocal discovery pursuant to Rule 29 of the Rules of Criminal Procedure for Magistrate Courts.

\_\_\_\_\_  
Date State / Defendant

Notice: Pursuant to Rule 29(d) of the Rules of Criminal Procedure for Magistrate Courts, if discovery is requested by the defendant, the relevant discovery material must be provided at least 21 days in advance of the date of trial, provided that the request has been made at least 14 days in advance of the date the response is due.

Notice: If reciprocal discovery is requested by the state, the relevant discovery material must be provided at least 14 days before the date of the trial, provided that the request is made at least 7 days in advance of the date the response is due.