

H. B. 2416

(By Delegates P. Smith and Lynch)

[Introduced January 27, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §27-6A-3 of the Code of West Virginia, 1931, as amended, relating to competency and criminal responsibility of persons charged or convicted of a crime; and the evaluation standard used in releasing forensic admissions from mental health facilities to a less restrictive environment.

Be it enacted by the Legislature of West Virginia:

That §27-6A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS
CHARGED OR CONVICTED OF A CRIME.**

§27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.

(a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the issue of competency to stand trial, the court of record shall make a preliminary finding on the

1 issue of whether the defendant is competent to stand trial and if not competent whether there is a
2 substantial likelihood that the defendant will attain competency within the next three months. If the
3 court of record orders, or if the state or defendant or defendant's counsel within twenty days of
4 receipt of the preliminary findings requests a hearing, then a hearing shall be held by the court of
5 record within fifteen days of the date of the preliminary finding, absent good cause being shown for
6 a continuance. If a hearing order or request is not filed within twenty days, the preliminary findings
7 of the court become the final order.

8 (b) At a hearing to determine a defendant's competency to stand trial the defendant has the
9 right to be present and he or she has the right to be represented by counsel and introduce evidence
10 and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the
11 issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally
12 afforded a defendant in criminal proceedings shall be afforded to a defendant in the competency
13 proceedings, except trial by jury.

14 (c) The court of record pursuant to a preliminary finding or hearing on the issue of a
15 defendant's competency to stand trial and with due consideration of any forensic evaluation
16 conducted pursuant to sections two and three of this article shall make a finding of fact upon a
17 preponderance of the evidence as to the defendant's competency to stand trial based on whether or
18 not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable
19 degree of rational understanding and whether he or she has a rational as well as a factual
20 understanding of the proceedings against him or her.

21 (d) If at any point in the proceedings the defendant is found competent to stand trial, the court
22 of record shall forthwith proceed with the criminal proceedings.

1 (e) If at any point in the proceedings the defendant is found not competent to stand trial, the
2 court of record shall at the same hearing, upon the evidence, make further findings as to whether or
3 not there is a substantial likelihood that the defendant will attain competency within the next ensuing
4 three months.

5 (f) If at any point in the proceedings the defendant is found not competent to stand trial and
6 is found substantially likely to attain competency, the court of record shall in the same order, upon
7 the evidence, make further findings as to whether the defendant requires, in order to attain
8 competency, inpatient management in a mental health facility. If inpatient management is required,
9 the court shall order the defendant be committed to an inpatient mental health facility designated by
10 the department to attain competency to stand trial and for a competency evaluation. The term of this
11 commitment may not exceed three months from the time of entry into the facility. However, upon
12 request by the chief medical officer of the mental health facility and based on the requirement for
13 additional management to attain competency to stand trial, the court of record may, prior to the
14 termination of the three-month period, extend the period up to nine months from entry into the
15 facility. A forensic evaluation of competency to stand trial shall be conducted by a qualified forensic
16 evaluator and a report rendered to the court, in like manner as subsections (a) and (c), section two
17 of this article, every three months until the court determines the defendant is not competent to stand
18 trial and is not substantially likely to attain competency.

19 (g) If at any point in the proceedings the defendant is found not competent to stand trial and
20 is found not substantially likely to attain competency and if the defendant has been indicted or
21 charged with a misdemeanor or felony which does not involve an act of violence against a person,
22 the criminal charges shall be dismissed. The dismissal order may, however, be stayed for twenty

1 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five
2 of this chapter. The defendant shall be immediately released from any inpatient facility unless civilly
3 committed.

4 (h) If at any point in the proceedings the defendant is found not competent to stand trial and
5 is found not substantially likely to attain competency, and if the defendant has been indicted or
6 charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of
7 violence against a person, then the court shall determine on the record the offense or offenses of
8 which the person otherwise would have been convicted, and the maximum sentence he or she could
9 have received. A defendant shall remain under the court's jurisdiction until the expiration of the
10 maximum sentence unless the defendant attains competency to stand trial and the criminal charges
11 reach resolution or the court dismisses the indictment or charge. The court shall order the defendant
12 be committed to a mental health facility designated by the department that is the least restrictive
13 environment to manage the defendant and that will allow for the protection of the public. Notice of
14 the maximum sentence period with an end date shall be provided to the mental health facility. The
15 court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include
16 dangerousness risk factors to be completed within thirty days of admission to the mental health
17 facility and a report rendered to the court within ten business days of the completion of the
18 evaluation. The medical director of the mental health facility shall provide the court a written
19 clinical summary report of the defendant's condition at least annually during the time of the court's
20 jurisdiction. The court's jurisdiction shall continue an additional ten days beyond any expiration to
21 allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five of this
22 chapter. The defendant shall then be immediately released from the facility unless civilly committed.

1 (i) If the defendant has been ordered to a mental health facility pursuant to subsection (h) of
2 this section and the court receives notice from the medical director or other responsible official of
3 the mental health facility that the medical director or other responsible official of the mental health
4 facility believes the defendant ~~no longer constitutes a significant danger to self or others~~ is not
5 mentally ill or does not have significant dangerous risk factors associated with mental illness, the
6 court shall conduct a hearing within thirty days to consider evidence, with due consideration of the
7 qualified forensic evaluator's dangerousness report or clinical summary report to determine if the
8 defendant shall be released to a less restrictive environment. The court may order the release of the
9 defendant only when the court finds that the defendant is ~~no longer a significant danger to self or~~
10 ~~others~~ not mentally ill or does not have significant dangerous risk factors associated with mental
11 illness. When a defendant's dangerousness risk factors associated with mental illness are reduced
12 or eliminated as a result of any treatment, the court, in its discretion, may make the continuance of
13 appropriate treatment, including medications, a condition of the defendant's release from inpatient
14 hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said
15 subsection. Upon notice that a defendant ordered to a mental health facility pursuant to said
16 subsection who is released on the condition that he or she continues treatment does not continue his
17 or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the
18 defendant's release. Upon a showing that defendant is in violation of the conditions of his or her
19 release, the court shall reorder the defendant to a mental health facility under the authority of the
20 department which is the least restrictive setting that will allow for the protection of the public.

21 (j) The prosecuting attorney may, by motion, and in due consideration of any chief medical
22 officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject

1 to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to subsection
2 (i) of this section to be determined by the court of record while the defendant remains under the
3 jurisdiction of the court, and in which case the court may order a forensic evaluation of competency
4 to stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like
5 manner as subsections (a) and (c), section two of this article.

6 (k) Any defendant found not competent to stand trial may at any time petition the court of
7 record for a hearing on his or her competency.

8 (l) Notice of court findings of a defendant's competency to stand trial, of commitment for
9 inpatient management to attain competency, of dismissal of charges, of order for inpatient
10 management to protect the public, of release or conditional release, or any hearings to be conducted
11 pursuant to this section shall be sent to the prosecuting attorney, the defendant and his or her counsel,
12 and the mental health facility. Notice of court release hearing or order for release or conditional
13 release pursuant to subsection (i) of this section shall be made available to the victim or next of kin
14 of the victim of the offense for which the defendant was charged. The burden is on the victim or
15 next of kin of the victim to keep the court apprised of that person's current mailing address.

16 (m) A mental health facility not operated by the state is not obligated to admit or treat a
17 defendant under this section.

NOTE: The purpose of this bill is to update the language to comport with the evaluation standard used in releasing forensic admissions from mental health facilities to a less restrictive environment as related to competency and criminal responsibility of persons charged or convicted of a crime and the issue of competency to stand trial.

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