

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 359

FISCAL
NOTE

BY SENATORS TRUMP, UNGER, AND WELD

[Introduced January 24, 2018; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating
 2 to authorizing the Supreme Court to establish curricula for mental hygiene commissioners
 3 and those magistrates designated by the chief judge of a judicial circuit to hold probable
 4 cause and emergency detention hearings involving involuntary hospitalization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of Mental Hygiene Commissioner; duties of Mental Hygiene Commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

1 (a) *Appointment of Mental Hygiene Commissioners.* -- The chief judge in each judicial
 2 circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional
 3 attorneys to serve as Mental Hygiene Commissioners to preside over involuntary hospitalization
 4 hearings. Mental Hygiene Commissioners shall be persons of good moral character and of
 5 standing in their profession and they shall, before assuming the duties of such commissioner,
 6 take the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code.

7 All persons newly appointed to serve as Mental Hygiene Commissioners shall attend and
 8 complete an orientation course, within one year of their appointment, consisting of ~~at least three~~
 9 ~~days~~ of training provided annually by the Supreme Court of Appeals. In addition, existing Mental
 10 Hygiene Commissioners and any magistrates designated by the chief judge of a judicial circuit to
 11 hold probable cause and emergency detention hearings involving involuntary hospitalization shall
 12 attend and complete a course provided by the Supreme Court of Appeals. ~~which course shall~~
 13 ~~include, but not be limited to, instruction on the manifestations of mental illness and addiction~~
 14 Persons attending such courses outside the county of their residence shall be reimbursed out of
 15 the budget of the Supreme Court -- General Judicial for reasonable expenses incurred. The
 16 Supreme Court shall establish curricula and rules for such courses, including rules providing for
 17 the reimbursement of reasonable expenses as authorized herein.

18 (b) *Duties of Mental Hygiene Commissioners.* --

19 (1) Mental Hygiene Commissioners may sign and issue summonses for the attendance,
20 at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed;
21 may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any
22 witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding
23 factual issues raised in the petition; and may make findings of fact on evidence and may make
24 conclusions of law, but such findings and conclusions shall not be binding on the circuit court. All
25 Mental Hygiene Commissioners shall be reasonably compensated at a uniform rate determined
26 by the Supreme Court of Appeals. Mental Hygiene Commissioners shall submit all requests for
27 compensation to the administrative director of the courts for payment. Mental Hygiene
28 Commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge
29 of the judicial circuit in which he or she is appointed and may be removed at any time by such
30 chief judge. It shall be the duty of a Mental Hygiene Commissioner to conduct orderly inquiries
31 into the mental health of the individual sought to be committed concerning the advisability of
32 committing the individual to a mental health facility. The Mental Hygiene Commissioner shall
33 safeguard, at all times, the rights and interests of the individual as well as the interests of the
34 state. The Mental Hygiene Commissioner shall make a written report of his or her findings to the
35 circuit court. In any proceedings before any court of record as set forth in this article, the court of
36 record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks
37 a foreign language and who may be subject to involuntary commitment to a mental health facility.

38 (2) A Mental Hygiene Commissioner appointed by the circuit court of one county or
39 multiple county circuit may serve in such capacity in a jurisdiction other than that of his or her
40 original appointment if such be agreed upon by the terms of a cooperative agreement between
41 the circuit courts and county commissions of two or more counties entered into to provide prompt
42 resolution of mental hygiene matters during noncourt hours or on nonjudicial days.

43 (c) *Duties of prosecuting attorney.* -- It shall be the duty of the prosecuting attorney or one

44 of his or her assistants to represent the applicants in all final commitment proceedings filed
45 pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding
46 held pursuant to the provisions of this article if he or she deems it to be in the public interest.

47 (d) *Duties of sheriff.* -- Upon written order of the circuit court, Mental Hygiene
48 Commissioner, or magistrate in the county where the individual formally accused of being
49 mentally ill or addicted is a resident or is found, the sheriff of that county shall take said individual
50 into custody and transport him or her to and from the place of hearing and the mental health
51 facility. The sheriff shall also maintain custody and control of the accused individual during the
52 period of time in which the individual is waiting for the involuntary commitment hearing to be
53 convened and while such hearing is being conducted: *Provided*, That an individual who is a
54 resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred
55 to his or her state of residence for treatment pursuant to §27-5-4(p) of this code: *Provided*,
56 *however*, That where an individual is a resident of West Virginia but not a resident of the county
57 in which he or she is found and there is a finding of probable cause, the county in which the
58 hearing is held may seek reimbursement from the county of residence for reasonable costs
59 incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision
60 of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one
61 or more other counties, with the concurrence of their respective circuit courts and county
62 commissions, whereby transportation and security responsibilities for hearings held pursuant to
63 the provisions of this article during noncourt hours or on nonjudicial days may be shared in order
64 to facilitate prompt hearings and to effectuate transportation of persons found in need of
65 treatment.

66 (e) *Duty of sheriff upon presentment to mental health care facility.* -- Where a person is
67 brought to a mental health care facility for purposes of evaluation for commitment under this
68 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody
69 of the person in the facility until the evaluation is completed or the county commission shall

70 reimburse the mental health care facility at a reasonable rate for security services provided by the
71 mental health care facility for the period of time the person is at the hospital prior to the
72 determination of mental competence or incompetence.

73 (f) *Duties of Supreme Court of Appeals.* -- The Supreme Court of Appeals shall provide
74 uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization
75 proceedings brought in this state.

NOTE: The purpose of this bill is authorize the Supreme Court to establish curricula for Mental Hygiene Commissioners and those magistrates designated by the chief judge of a judicial circuit to hold probable cause and emergency detention hearings involving involuntary hospitalization.

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