

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 359

BY SENATORS TRUMP, UNGER, AND WELD

[Originating in the Committee on the Judiciary;

Reported on February 15, 2018]

1 A BILL to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating
2 generally to mental hygiene proceedings; eliminating requirement that new mental
3 hygiene commissioners undergo a minimum of three days training in mental hygiene
4 areas; removing requirement that training program include training in manifestations of
5 mental illness and addiction; and authorizing the Supreme Court to establish curricula for
6 mental hygiene commissioners and those magistrates designated by the chief judge of a
7 judicial circuit to hold probable cause and emergency detention hearings involving
8 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 of Appeals shall establish curricula and rules for such courses, including rules
17 providing for 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, at
20 any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may
21 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 into
31 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 multiple
39 county circuits may serve in such capacity in a jurisdiction other than that of his or her original

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

65 (e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is
66 brought to a mental health care facility for purposes of evaluation for commitment under this
67 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody
68 of the person in the facility until the evaluation is completed, or the county commission shall
69 reimburse the mental health care facility at a reasonable rate for security services provided by the
70 mental health care facility for the period of time the person is at the hospital prior to the
71 determination of mental competence or incompetence.

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