

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Engrossed

Senate Bill 278

BY SENATOR TRUMP

[Introduced January 10, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §27-6A-3 of the Code of West Virginia, 1931, as amended, relating
2 to a defendant's competency to stand trial; and actions of the circuit judge.

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 Prior to presiding over an involuntary hospitalization hearing, each ~~All persons~~ newly
8 appointed person to serve as a mental hygiene commissioner and all magistrates shall attend
9 and complete an orientation course that, within one year of their appointment, consisting consists
10 of training provided annually by the Supreme Court of Appeals and complete an orientation
11 program to be developed by the Secretary of the Department of Health and Human Resources.

12 In addition, existing mental hygiene commissioners and ~~any~~ all magistrates ~~designated by the~~
13 ~~chief judge of a judicial circuit~~ trained to hold probable cause and emergency detention hearings
14 involving involuntary hospitalization shall attend and complete a course provided by the Supreme
15 Court of Appeals and complete an orientation program to be developed by the Secretary of the
16 Department of Health and Human Resources. Persons attending such courses outside the county
17 of their residence shall be reimbursed out of the budget of the Supreme Court—General Judicial
18 for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and

19 rules for such courses, including rules providing for the reimbursement of reasonable expenses
20 as authorized herein. The Secretary of the Department of Health and Human Resources shall
21 consult with the Supreme Court of Appeals regarding the development of the orientation program.

22 (b) *Duties of mental hygiene commissioners.* —

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

42 (2) A mental hygiene commissioner appointed by the circuit court of one county or multiple
43 county circuits may serve in such capacity in a jurisdiction other than that of his or her original
44 appointment if such be agreed upon by the terms of a cooperative agreement between the circuit

45 courts and county commissions of two or more counties entered into to provide prompt resolution
46 of mental hygiene matters during ~~noncourt~~ hours when the courthouse is closed or on nonjudicial
47 days.

48 (c) *Duties of prosecuting attorney.* — It shall be the duty of the prosecuting attorney or one
49 of his or her assistants to represent the applicants in all final commitment proceedings filed
50 pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding
51 held pursuant to the provisions of this article if he or she deems it to be in the public interest.

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

71 hospital as defined by §27-1-6 of this code, the sheriff shall contact the state hospital in advance
72 of such transportation to determine if the state hospital has available suitable bed capacity to
73 place the individual.

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

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

84 (g) Duties of the Department of Health and Human Resources. — The Secretary shall
85 develop an orientation program as provided in subsection (a) of this section. The orientation
86 program shall include, but not be limited to, instruction regarding the nature and treatment of
87 mental illness and substance use disorder; the goal and purpose of commitment; community-
88 based treatment options; and less restrictive alternatives to inpatient commitment.

**§27-5-2. Institution of proceedings for involuntary custody for examination; custody;
probable cause hearing; examination of individual.**

1 (a) Any adult person may make an application for involuntary hospitalization for
2 examination of an individual when the person making the application has reason to believe that
3 the individual to be examined ~~is addicted,~~ has a substance use disorder as defined in ~~§ 27-1-11~~
4 ~~of this code,~~ by the most recent edition of the American Psychiatric Association in the Diagnostic
5 and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally
6 ill and, because of his or her ~~addiction~~ substance use disorder or mental illness, the individual is

7 likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while
8 awaiting an examination and certification by a physician, ~~or psychologist,~~ licensed professional
9 counselor, licensed independent social worker, an advanced nurse practitioner, or physician's
10 assistant as provided in subsection (e) of this section: *Provided, That a diagnosis of dementia*
11 alone may not serve as a basis for involuntary commitment.

12 Notwithstanding any language in this subsection to the contrary, if the individual to be
13 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional
14 facility, then only the chief administrative officer of the facility holding the individual may file the
15 application and the application must include the additional statement that the correctional facility
16 itself cannot reasonably provide treatment and other services for the individual's mental illness or
17 ~~addiction~~ substance use disorder.

18 (b) The person making the application shall make the application under oath.

19 (c) Application for involuntary custody for examination may be made to the circuit court,
20 magistrate court, or a mental hygiene commissioner of the county in which the individual resides
21 or of the county in which he or she may be found. ~~When no circuit court judge or mental hygiene~~
22 ~~commissioner is available for immediate presentation of the application, the application may be~~
23 ~~made to a magistrate designated by the chief judge of the judicial circuit to accept applications~~
24 ~~and hold probable cause hearings. A designated magistrate before whom an application or matter~~
25 is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for
26 immediate presentation of an application or pending matter, transfer the pending matter or
27 application to the mental hygiene commissioner or circuit court judge for further proceedings
28 unless otherwise ordered by the chief judge of the judicial circuit.

29 (d) The person making the application shall give information and state facts in the
30 application as may be required by the form provided for this purpose by the Supreme Court of
31 Appeals.

32 (e) The circuit court, mental hygiene commissioner, or ~~designated~~ magistrate may enter
33 an order for the individual named in the application to be detained and taken into custody for the
34 purpose of holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose
35 of an examination of the individual by a physician, psychologist, a licensed professional counselor
36 practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social
37 worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner
38 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a
39 physician's assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician's
40 assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed
41 professional counselor, a licensed independent clinical social worker, a physician's assistant, or
42 an advanced nurse practitioner with psychiatric certification may only perform the examination if
43 he or she has previously been authorized by an order of the circuit court to do so, the order having
44 found that the licensed professional counselor, the licensed independent clinical social worker,
45 physician's assistant, or advanced nurse practitioner with psychiatric certification has
46 particularized expertise in the areas of mental health and mental hygiene or ~~addiction~~ substance
47 use disorder sufficient to make the determinations as are required by the provisions of this section.
48 The examination is to be provided or arranged by a community mental health center designated
49 by the Secretary of the Department of Health and Human Resources to serve the county in which
50 the action takes place. The order is to specify that the hearing be held forthwith and is to provide
51 for the appointment of counsel for the individual: *Provided, however*, That the order may allow the
52 hearing to be held up to 24 hours after the person to be examined is taken into custody rather
53 than forthwith if the circuit court of the county in which the person is found has previously entered
54 a standing order which establishes within that jurisdiction a program for placement of persons
55 awaiting a hearing which assures the safety and humane treatment of persons: *Provided further*,
56 That the time requirements set forth in this subsection only apply to persons who are not in need
57 of medical care for a physical condition or disease for which the need for treatment precludes the

58 ability to comply with the time requirements. During periods of holding and detention authorized
59 by this subsection, upon consent of the individual or in the event of a medical or psychiatric
60 emergency, the individual may receive treatment. The medical provider shall exercise due
61 diligence in determining the individual's existing medical needs and provide treatment the
62 individual requires, including previously prescribed medications. As used in this section,
63 "psychiatric emergency" means an incident during which an individual loses control and behaves
64 in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where
65 a physician, psychologist, licensed professional counselor, licensed independent clinical social
66 worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has
67 within the preceding 72 hours performed the examination required by the provisions of this
68 subsection, the community mental health center may waive the duty to perform or arrange another
69 examination upon approving the previously performed examination. Notwithstanding the
70 provisions of this subsection, §27-5-4(r) of this code applies regarding payment by the county
71 commission for examinations at hearings. If the examination reveals that the individual is not
72 mentally ill or ~~addicted~~ has no substance use disorder or is determined to be mentally ill or
73 ~~addicted~~ has a substance use disorder but not likely to cause harm to himself, herself, or others,
74 the individual shall be immediately released without the need for a probable cause hearing and
75 the examiner is not civilly liable for the rendering of the opinion absent a finding of professional
76 negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit
77 court, or designated magistrate before whom the matter is pending the results of the examination
78 on the form provided for this purpose by the Supreme Court of Appeals for entry of an order
79 reflecting the lack of probable cause.

80 (f) A probable cause hearing is to be held before a magistrate, ~~designated by the chief~~
81 ~~judge of the judicial circuit,~~ the mental hygiene commissioner, or circuit judge of the county of
82 which the individual is a resident or where he or she was found. If requested by the individual or
83 his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

84 The individual must be present at the hearing and has the right to present evidence,
85 confront all witnesses and other evidence against him or her, and to examine testimony offered,
86 including testimony by representatives of the community mental health center serving the area.
87 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
88 individual has the right to remain silent and to be proceeded against in accordance with the Rules
89 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the
90 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge
91 shall find and enter an order stating whether or not there is probable cause to believe that the
92 individual, as a result of mental illness or ~~addiction~~ substance use disorder, is likely to cause
93 serious harm to himself or herself or to others.

94 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
95 judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons
96 hospitalized for ~~addiction~~ substance use disorder to be involuntarily hospitalized only until
97 detoxification is accomplished; and specify other alternative or modified procedures that are
98 consistent with the purposes and provisions of this article. The alternative or modified procedures
99 shall fully and effectively guarantee to the person who is the subject of the involuntary commitment
100 proceeding and other interested parties due process of the law and access to the least restrictive
101 available treatment needed to prevent serious harm to self or others.

102 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
103 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing
104 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a result of
105 mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself,
106 herself, or others and because of mental illness or ~~addiction~~ a substance use disorder requires
107 treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider
108 evidence on the question of whether the individual's circumstances make him or her amenable to
109 outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment

110 agreement. The agreement is to be in writing and approved by the individual, his or her counsel,
111 and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental
112 hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is
113 available in a nonresidential or nonhospital setting, the individual may be released to outpatient
114 treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an
115 individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply
116 with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment
117 is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit
118 judge on the issue of whether or not the individual failed or refused to comply with the terms and
119 conditions of the voluntary treatment agreement and whether the individual as a result of mental
120 illness or ~~addiction~~ substance use disorder remains likely to cause serious harm to himself,
121 herself, or others, the entry of an order requiring admission under involuntary hospitalization
122 pursuant to the provisions of §27-5-3 of this code may be entered. ~~In the event a person released~~
123 ~~pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has~~
124 ~~no applicable insurance coverage, including, but not limited to, private insurance or Medicaid, the~~
125 ~~Secretary of the Department of Health and Human Resources may transfer funds for the purpose~~
126 ~~of reimbursing community providers for services provided on an outpatient basis for individuals~~
127 ~~for whom payment for treatment is the responsibility of the department: *Provided*, That the~~
128 ~~department may not authorize payment of outpatient services for an individual subject to a~~
129 ~~voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization~~
130 ~~of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment~~
131 ~~provided in lieu of involuntary hospitalization.~~ Nothing in the provisions of this article regarding
132 release pursuant to a voluntary treatment agreement or convalescent status may be construed
133 as creating a right to receive outpatient mental health services or treatment or as obligating any
134 person or agency to provide outpatient services or treatment. Time limitations set forth in this
135 article relating to periods of involuntary commitment to a mental health facility for hospitalization

136 do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That
137 release pursuant to a voluntary treatment agreement may not be for a period of more than six
138 months if the individual has not been found to be involuntarily committed during the previous two
139 years and for a period of no more than two years if the individual has been involuntarily committed
140 during the preceding two years. If in any proceeding held pursuant to this article the individual
141 objects to the issuance or conditions and terms of an order adopting a voluntary treatment
142 agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an
143 order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment
144 with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the
145 order may, upon request during the period the order is in effect, have a hearing before a mental
146 hygiene commissioner or circuit judge where the individual may seek to have the order canceled
147 or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual
148 subject to any commitment order.

149 Notwithstanding anything in this article to the contrary, the commitment of any person as
150 provided in this article shall be in the least restrictive setting and in an outpatient community-
151 based treatment program to the extent resources and programs are available, unless the clear
152 and convincing evidence of the certifying professional under subsection (e) of this section who is
153 acting in a manner consistent with the standard of care establishes that the commitment or
154 treatment of such person requires an inpatient hospital placement.

155 (i) If the certifying ~~physician or psychologist~~ professional determines that a person requires
156 involuntary hospitalization for a ~~an addiction to a substance~~ substance use disorder which, due
157 to the degree of ~~addiction~~ such disorder, creates a reasonable likelihood that withdrawal or
158 detoxification ~~from the substance of addiction~~ will cause significant medical complications, the
159 person certifying the individual shall recommend that the individual be closely monitored for
160 possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court

161 judge presiding orders involuntary hospitalization, he or she shall include a recommendation that
162 the individual be closely monitored in the order of commitment.

163 (j) The Supreme Court of Appeals and the Secretary of the Department of Health and
164 Human Resources shall specifically develop and propose a statewide system for evaluation and
165 adjudication of mental hygiene petitions which shall include payment schedules and
166 recommendations regarding funding sources. Additionally, the Secretary of the Department of
167 Health and Human Resources shall also immediately seek reciprocal agreements with officials in
168 contiguous states to develop interstate/intergovernmental agreements to provide efficient and
169 efficacious services to out-of-state residents found in West Virginia and who are in need of mental
170 hygiene services.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

1 (a) *Admission to a mental health facility for examination.* — Any individual may be admitted
2 to a mental health facility for examination and treatment upon entry of an order finding probable
3 cause as provided in §27-5-2 of this code ~~and~~ upon a finding by a licensed physician that the
4 individual is medically stable; and upon certification by a physician, psychologist, licensed
5 professional counselor, licensed independent clinical social worker practicing in compliance with
6 the provisions of §30-30-1 *et seq.* of this code, ~~or~~ an advanced nurse practitioner with psychiatric
7 certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant
8 practicing in compliance with §30-3E-1 et seq. of this code with advanced duties in psychiatric
9 medicine that he or she has examined the individual and is of the opinion that the individual is
10 mentally ill or ~~addicted~~ has a substance use disorder and, because of such mental illness or
11 ~~addiction~~ substance use disorder, is likely to cause serious harm to himself, herself, or to others
12 if not immediately restrained: *Provided*, That the opinions offered by an independent clinical social
13 worker, ~~or~~ an advanced nurse practitioner with psychiatric certification, or physician's assistant
14 with advanced duties in psychiatric medicine must be within their particular areas of expertise, as
15 recognized by the order of the authorizing court.

16 (b) *Three-day time limitation on examination.* — If the examination does not take place
17 within three days from the date the individual is taken into custody, the individual shall be released.
18 If the examination reveals that the individual is not mentally ill or ~~addicted~~ has a substance use
19 disorder, the individual shall be released.

20 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
21 this code shall be valid for three days. Any individual with respect to whom the certification has
22 been issued may not be admitted on the basis of the certification at any time after the expiration
23 of three days from the date of the examination.

24 (d) *Findings and conclusions required for certification.* — A certification under this section
25 must include findings and conclusions of the mental examination, the date, time, and place of the
26 examination, and the facts upon which the conclusion that involuntary commitment is necessary
27 is based.

28 (e) *Notice requirements.* — When an individual is admitted to a mental health facility or a
29 state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall
30 immediately give notice of the individual's admission to the individual's spouse, if any, and one of
31 the individual's parents or guardians or if there is no spouse and are no parents or guardians, to
32 one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be
33 given to the community mental health facility, if any, having jurisdiction in the county of the
34 individual's residence. The notices other than to the community mental health facility shall be in
35 writing and shall be transmitted to the person or persons at his, her, or their last known address
36 by certified mail, return receipt requested.

37 (f) *~~Five-day~~ Three-day time limitation for examination and certification at mental health*
38 *facility or state hospital.* — After the individual's admission to a mental health facility or state
39 hospital, he or she may not be detained more than ~~five~~ three days, excluding Sundays and
40 holidays, unless, within the period, the individual is examined by a staff physician and the
41 physician certifies that in his or her opinion the patient is mentally ill or ~~addicted~~ has a substance

42 use disorder and is likely to injure himself, herself, or others if allowed to be at liberty. In the event
43 the staff physician determines that the individual does not meet the criteria for continued
44 commitment, that the individual can be treated in an available outpatient community-based
45 treatment program and poses no present danger to self or others, or that the individual has an
46 underlying medical issue or issues that resulted in a determination that the individual should not
47 have been committed, the staff physician shall release and discharge the person as appropriate
48 as soon as practicable.

49 (g) ~~Fifteen-day~~ Ten-day *time limitation for institution of final commitment proceedings.* —
50 If, in the opinion of the examining physician, the patient is mentally ill or ~~addicted~~ has a substance
51 use disorder and because of the mental illness or ~~addiction~~ substance use disorder is likely to
52 injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within ~~15~~
53 10 days from the date of admission, institute final commitment proceedings as provided in §27-5-
54 4 of this code. If the proceedings are not instituted within such ~~15-day~~ 10-day period, the patient
55 shall be immediately released. After the request for hearing is filed, the hearing may not be
56 canceled on the basis that the individual has become a voluntary patient unless the mental
57 hygiene commissioner concurs in the motion for cancellation of the hearing.

58 (h) ~~Thirty-day~~ Twenty-day *time limitation for conclusion of all proceedings.* — If all
59 proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed
60 within ~~30~~ 20 days from the date of institution of the proceedings, the patient shall be immediately
61 released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* — Except as provided in §27-5-3 of this code, no individual
2 may be involuntarily committed to a mental health facility or state hospital except by order entered
3 of record at any time by the circuit court of the county in which the person resides or was found,
4 or if the individual is hospitalized in a mental health facility or state hospital located in a county
5 other than where he or she resides or was found, in the county of the mental health facility and

6 then only after a full hearing on issues relating to the necessity of committing an individual to a
7 mental health facility or state hospital. If the individual objects to the hearing being held in the
8 county where the mental health facility is located, the hearing shall be conducted in the county of
9 the individual's residence.

10 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings
11 for an individual may be commenced by the filing of a written application under oath by an adult
12 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with
13 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is
14 a resident or where he or she may be found or the county of a mental health facility if he or she
15 is hospitalized in a mental health facility or state hospital located in a county other than where he
16 or she resides or may be found.

17 (c) *Oath; contents of application; who may inspect application; when application cannot*
18 *be filed.* —

19 (1) The person making the application shall do so under oath.

20 (2) The application shall contain statements by the applicant that the individual is likely to
21 cause serious harm to self or others due to what the applicant believes are symptoms of mental
22 illness or ~~addiction~~ substance use disorder. The applicant shall state in detail the recent overt acts
23 upon which the belief is based.

24 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,
25 including any related documents, filed with a circuit court, mental hygiene commissioner or
26 designated magistrate for the involuntary hospitalization of an individual are not open to inspection
27 by any person other than the individual, unless authorized by the individual or his or her legal
28 representative or by order of the circuit court. The records may not be published unless authorized
29 by the individual or his or her legal representative. Disclosure of these records may, however, be
30 made by the clerk, circuit court, mental hygiene commissioner, or designated magistrate to
31 provide notice to the Federal National Instant Criminal Background Check System established

32 pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, and
33 the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code.
34 Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought
35 by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

36 (4) Applications may not be accepted for individuals who only have epilepsy, ~~a mental~~
37 ~~deficiency, senility, dementia,~~ or an intellectual or developmental disability.

38 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place*
39 *of certificate.* —

40 (1) The applicant shall file with his or her application the certificate of a physician or a
41 psychologist stating that in his or her opinion the individual is mentally ill or ~~addicted~~ has a
42 substance use disorder and that because of the mental illness or ~~addiction~~ substance use
43 disorder, the individual is likely to cause serious harm to self or others if allowed to remain at
44 liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt
45 acts on which the conclusion is based.

46 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts
47 and the individual has refused to submit to examination by a physician or a psychologist.

48 (e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the
49 mental hygiene commissioner or circuit court shall review the application and if it is determined
50 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a
51 date for and have the clerk of the circuit court give notice of the hearing:

52 (1) To the individual;

53 (2) To the applicant or applicants;

54 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does
55 not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the
56 next of kin is not the applicant;

57 (4) To the mental health authorities serving the area;

58 (5) To the circuit court in the county of the individual's residence if the hearing is to be held
59 in a county other than that of the individual's residence; and

60 (6) To the prosecuting attorney of the county in which the hearing is to be held.

61 (f) The notice shall be served on the individual by personal service of process not less
62 than eight days prior to the date of the hearing and shall specify:

63 (1) The nature of the charges against the individual;

64 (2) The facts underlying and supporting the application of involuntary commitment;

65 (3) The right to have counsel appointed;

66 (4) The right to consult with and be represented by counsel at every stage of the
67 proceedings; and

68 (5) The time and place of the hearing.

69 The notice to the individual's spouse, parents or parent or guardian, the individual's adult
70 next of kin or to the circuit court in the county of the individual's residence may be by personal
71 service of process or by certified or registered mail, return receipt requested, and shall state the
72 time and place of the hearing.

73 (g) *Examination of individual by court-appointed physician, ~~or~~ psychologist, advanced*
74 *nurse practitioner, or physician's assistant; custody for examination; dismissal of proceedings. —*

75 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after
76 notice of the commencement of final commitment proceedings is given, the circuit court or mental
77 hygiene commissioner shall appoint a physician, ~~or~~ psychologist, an advanced nurse practitioner
78 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric
79 medicine to examine the individual and report to the circuit court or mental hygiene commissioner
80 his or her findings as to the mental condition or ~~addiction~~ substance use disorder of the individual
81 and the likelihood of causing serious harm to self or others.

82 (2) If the designated physician, ~~or~~ psychologist, advanced nurse practitioner, or
83 physician's assistant reports to the circuit court or mental hygiene commissioner that the individual

84 has refused to submit to an examination, the circuit court or mental hygiene commissioner shall
85 order him or her to submit to the examination. The circuit court or mental hygiene commissioner
86 may direct that the individual be detained or taken into custody for the purpose of an immediate
87 examination by the designated physician, ~~or~~ psychologist, nurse practitioner, or physician's
88 assistant. All such orders shall be directed to the sheriff of the county or other appropriate law-
89 enforcement officer. After the examination has been completed, the individual shall be released
90 from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

91 (3) If the reports of the appointed physician, ~~or~~ psychologist, nurse practitioner, or
92 physician's assistant do not confirm that the individual is mentally ill or ~~addicted~~ has a substance
93 use disorder and might be harmful to self or others, then the proceedings for involuntary
94 hospitalization shall be dismissed.

95 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*
96 *required.* —

97 (1) The individual shall be present at the final commitment hearing and he or she, the
98 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify
99 and to present and cross-examine witnesses.

100 (2) In the event the individual has not retained counsel, the court or mental hygiene
101 commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall
102 inform the individual of the name, address, and telephone number of his or her appointed counsel.

103 (3) The individual has the right to have an examination by an independent expert of his or
104 her choice and to present testimony from the expert as a medical witness on his or her behalf.
105 The cost of the independent expert is paid by the individual unless he or she is indigent.

106 (4) The individual may not be compelled to be a witness against himself or herself.

107 (i) *Duties of counsel representing individual; payment of counsel representing indigent.* —

108 (1) Counsel representing an individual shall conduct a timely interview, make investigation
109 and secure appropriate witnesses, be present at the hearing, and protect the interests of the
110 individual.

111 (2) Counsel representing an individual is entitled to copies of all medical reports,
112 psychiatric or otherwise.

113 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to
114 exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et*
115 *seq.* of this code.

116 (j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

117 (1) The circuit court or mental hygiene commissioner shall hear evidence from all
118 interested parties in chamber including testimony from representatives of the community mental
119 health facility.

120 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material
121 evidence which may be offered.

122 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence
123 promulgated by the Supreme Court of Appeals except that statements made to ~~physicians or~~
124 ~~psychologists~~ health care professionals appointed under subsection (g) of this section by the
125 individual may be admitted into evidence by ~~physician's or psychologist's~~ such health care
126 professional testimony, notwithstanding failure to inform the individual that this statement may be
127 used against him or her. A ~~psychologist or physician~~ health care professional testifying shall bring
128 all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to
129 an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information
130 for purposes of a hearing pursuant to this section.

131 (4) All final commitment proceedings shall be reported or recorded, whether before the
132 circuit court or mental hygiene commissioner, and a transcript made available to the individual,
133 his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further

134 proceedings. In any case where an indigent person intends to pursue further proceedings, the
135 circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a
136 transcript of the hearings.

137 (k) *Requisite findings by the court.* —

138 (1) Upon completion of the final commitment hearing and the evidence presented in the
139 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

140 (A) Whether the individual is mentally ill or ~~addicted~~ has a substance use disorder;

141 (B) Whether, because of illness or ~~addiction~~ substance use disorder, the individual is likely
142 to cause serious harm to self or others if allowed to remain at liberty;

143 (C) Whether the individual is a resident of the county in which the hearing is held or
144 currently is a patient at a mental health facility in the county; and

145 (D) Whether there is a less restrictive alternative than commitment appropriate for the
146 individual. The burden of proof of the lack of a less restrictive alternative than commitment is on
147 the person or persons seeking the commitment of the individual: Provided, That for any
148 commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made
149 that the commitment of, or treatment for, the individual requires inpatient hospital placement and
150 that no suitable outpatient community-based treatment program exists in the individual's area.

151 (2) The findings of fact shall be incorporated into the order entered by the circuit court and
152 must be based upon clear, cogent, and convincing proof.

153 (l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*
154 *court; expiration of order.* —

155 (1) Upon the requisite findings, the circuit court may order the individual to a mental health
156 facility or state hospital ~~for an indeterminate period or for a temporary observatory period not~~
157 ~~exceeding six months.~~ a period not to exceed 90 days except as otherwise provided herein.
158 During such period and solely for individuals who are committed under §27-6A-1 et seq. of this
159 code , the chief medical officer of the mental health facility or state hospital shall conduct a clinical

160 assessment of the individual at least every 30 days to determine if the individual requires
161 continued placement at the mental health facility or state hospital and whether the individual is
162 suitable to receive any necessary treatment at an outpatient community-based treatment
163 program. If at any time the chief medical officer acting in good faith and in a manner consistent
164 with the standard of care determines that: (i) The individual is suitable for receiving outpatient
165 community-based treatment; (ii) necessary outpatient community-based treatment is available in
166 the individual's area; and (iii) the individual's clinical presentation no longer requires inpatient
167 commitment, the chief medical officer shall provide written notice to the court of record and
168 prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for
169 discharge. The chief medical officer may discharge the patient 30 days after such notice unless
170 the court of record stays the discharge of such patient. In the event the court stays the discharge
171 of the patient, the court shall conduct a hearing within 45 days of the stay and the patient shall be
172 thereafter discharged unless the court finds by clear and convincing evidence that such patient is
173 a significant and present danger to self or others and that continued placement at the mental
174 health facility or state hospital is required.

175 If the chief medical officer determines that the individual requires commitment at the
176 mental health facility or state hospital at any time for a period longer than 90 days then the
177 individual shall remain at the mental health facility or state hospital until such time as the chief
178 medical officer of the mental health facility or state hospital determines that the individual's clinical
179 presentation no longer requires further commitment. The chief medical officer shall provide notice
180 to the court and the prosecuting attorney that the individual requires commitment for a period in
181 excess of 90 days and, in such notice, the chief medical officer shall describe the reasons for
182 ongoing commitment. In its discretion, the court or prosecuting attorney may request such
183 information from the chief medical officer that the court or prosecuting attorney deems appropriate
184 to justify the need for the individual's ongoing commitment.

185 (2) Notice to the court of record and prosecuting attorney shall be provided by personal
186 service or certified mail, return receipt requested. The chief medical officer shall make the
187 following findings:

188 (A) Whether the individual has a mental illness or substance use disorder that does not
189 require inpatient treatment and the mental illness or serious emotional disturbance is in remission;

190 (B) Whether the individual's condition resulting from mental illness or substance use
191 disorder is likely to deteriorate to the point that the individual will pose a likelihood of serious harm
192 to self or others unless treatment is continued;

193 (C) Whether the individual is likely to participate in outpatient treatment with a legal
194 obligation to do so;

195 (D) Whether the individual is not likely to participate in outpatient treatment unless legally
196 obligated to do so;

197 (E) Whether the individual is not a danger to self or others; and

198 (F) Whether mandatory outpatient treatment is a suitable less restrictive alternative to
199 ongoing commitment.

200 ~~(2)~~ (3) The individual may not be detained in a mental health facility or state hospital for
201 a period in excess of 10 days after a final commitment hearing pursuant to this section unless an
202 order has been entered and received by the facility.

203 ~~(3) If the order pursuant to a final commitment hearing is for a temporary observation~~
204 ~~period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration~~
205 ~~of such period on the basis of a report by the chief medical officer of the mental health facility in~~
206 ~~which the patient is confined, hold another hearing pursuant to the terms of this section and in the~~
207 ~~same manner as the hearing was held as if it were an original petition for involuntary~~
208 ~~hospitalization to determine whether the original order for a temporary observation period should~~
209 ~~be modified or changed to an order of indeterminate hospitalization of the patient. At the~~

210 ~~conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient~~
211 ~~or dismissal of the proceedings.~~

212 ~~(4) An order for an indeterminate period expires of its own terms at the expiration of two~~
213 ~~years from the date of the last order of commitment unless prior to the expiration, the Department~~
214 ~~of Health and Human Resources, upon findings based on an examination of the patient by a~~
215 ~~physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or~~
216 ~~his or her counsel requests a hearing, a hearing shall be held by the mental hygiene commissioner~~
217 ~~or by the circuit court of the county as provided in subsection (a) of this section.~~

218 (4) An individual committed pursuant to §27-6A-3 of this code may be committed for the
219 period he or she is deemed by the court to remain an imminent danger to self or others.

220 (5) In the event the commitment of the individual as provided under subdivision (1) of this
221 subsection exceeds two years, the patient or his or her counsel may request a hearing and a
222 hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as
223 provided in subsection (a) of this section.

224 (m) *Dismissal of proceedings.* — In the event the individual is discharged as provided in
225 subsection (l), if the circuit court or mental hygiene commissioner shall find that the individual is
226 not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental
227 hygiene commissioner finds that the individual is mentally ill or addicted but is not, because of the
228 illness or addiction, likely to cause serious harm to self or others if allowed to remain at liberty,
229 the proceedings shall be dismissed. dismiss the proceedings.

230 (n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in
231 which an order directing hospitalization is entered, if not in the county of the individual's residence,
232 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the
233 circuit court of the county of which the individual is a resident.

234 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*
235 *hospitalization; execution of order.* —

236 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization
237 should be ordered but finds that the individual is not a resident of the county in which the hearing
238 is held and the individual is not currently a resident of a mental health facility, a transcript of the
239 evidence adduced at the final commitment hearing of the individual, certified by the clerk of the
240 circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which the
241 individual is a resident. The clerk shall immediately present the transcript to the circuit court or
242 mental hygiene commissioner of the county.

243 (2) If the circuit court or mental hygiene commissioner of the county of the residence of
244 the individual is satisfied from the evidence contained in the transcript that the individual should
245 be hospitalized as determined by the standard set forth above, the circuit court shall order the
246 appropriate hospitalization as though the individual had been brought before the circuit court or
247 its mental hygiene commissioner in the first instance.

248 (3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in
249 which the hearing was held who shall execute the order promptly.

250 (p) *Order of custody to responsible person.* — In lieu of ordering the patient to a mental
251 health facility or state hospital, the circuit court may order the individual delivered to some
252 responsible person who will agree to take care of the individual and the circuit court may take
253 from the responsible person a bond in an amount to be determined by the circuit court with
254 condition to restrain and take proper care of the individual until further order of the court.

255 (q) *Individual not a resident of this state.* — If the individual found to be mentally ill or
256 ~~addicted~~ having a substance use disorder by the circuit court or mental hygiene commissioner is
257 a resident of another state, this information shall be forthwith given to the Secretary of the
258 Department of Health and Human Resources, or to his or her designee, who shall make
259 appropriate arrangements for transfer of the individual to the state of his or her residence
260 conditioned on the agreement of the individual except as qualified by the interstate compact on
261 mental health.

262 (r) *Report to the Secretary of the Department of Health and Human Resources.* —

263 (1) The chief medical officer of a mental health facility or state hospital admitting a patient
264 pursuant to proceedings under this section shall forthwith make a report of the admission to the
265 Secretary of the Department of Health and Human Resources or to his or her designee.

266 (2) Whenever an individual is released from custody due to the failure of an employee of
267 a mental health facility to comply with the time requirements of this article, the chief medical officer
268 of the mental health or state hospital facility shall forthwith, after the release of the individual,
269 make a report to the Secretary of the Department of Health and Human Resources or to his or
270 her designee of the failure to comply.

271 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*
272 *paid by the county commission.* —

273 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid
274 and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within
275 the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

276 (2) The county commission shall pay out of the county treasury all other expenses incurred
277 in the hearings conducted under the provisions of this article whether or not hospitalization is
278 ordered, including any fee allowed by the circuit court by order entered of record for any physician,
279 psychologist and witness called by the indigent individual. The copying and mailing costs
280 associated with providing notice of the final commitment hearing and issuance of the final order
281 shall be paid by the county where the involuntary commitment petition was initially filed.

**§27-5-10. Transportation for the mentally ill or ~~substance abuser~~ persons with substance
use disorder.**

1 (a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et*
2 *seq.* of this code, it shall be the duty of the sheriff to provide immediate transportation to or from
3 the appropriate mental health facility or state hospital: *Provided, That,* where hospitalization

4 occurs pursuant to article four of this chapter, the sheriff may permit, upon the written request of
5 a person having proper interest in the individual's hospitalization, for the interested person to
6 arrange for the individual's transportation to the mental health facility or state hospital if the sheriff
7 determines that such means are suitable given the individual's condition.

8 (b) Upon written agreement between the county commission on behalf of the sheriff and
9 the directors of the local community mental health center and emergency medical services, an
10 alternative transportation program may be arranged. The agreement shall clearly define the
11 responsibilities of each of the parties, the requirements for program participation and the persons
12 bearing ultimate responsibility for the individual's safety and well-being.

13 (c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal
14 governments are hereby authorized to enter into written agreements whereby certified municipal
15 law-enforcement officers may perform the duties of the sheriff as described in this article. The
16 agreement shall determine jurisdiction, responsibility of costs and all other necessary
17 requirements, including training related to the performance of these duties, and shall be approved
18 by the county commission and circuit court of the county in which the agreement is made. For
19 purposes of this subsection, "certified municipal law-enforcement officer" means any duly
20 authorized member of a municipal law-enforcement agency who is empowered to maintain public
21 peace and order, make arrests, and enforce the laws of this state or any political subdivision
22 thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer
23 pursuant to §30-29-1 *et seq.* of this code.

24 (d) In the event an individual requires transportation to a state hospital as defined by §27-
25 1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state
26 hospital in advance of such transportation to determine if the state hospital has suitable bed
27 capacity to place the individual.

28 (e) (d) Nothing in this section is intended to alter security responsibilities for the patient by
29 the sheriff unless mutually agreed upon as provided in subsection (c) of this section.

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

§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and requesting report and proposed legislation; submission to legislature.

1 (a) The Secretary of the Department of Health and Human Resources is directed to, in
2 collaboration with designees of the Supreme Court of Appeals, the Prosecuting Attorney's
3 Institute, Public Defender Services, Disability Rights of West Virginia designees of the Board of
4 Medicine, Board of Osteopathy, and the Board Examiners of Psychologists with experience in
5 issues of competence and criminal responsibility, undertake an evaluation of the provisions of this
6 article in the context of current constitutional requirements related to competency and
7 responsibility issues, best medical practices, and pharmacological developments and promulgate
8 proposed legislation to update the provisions of this article.

9 (b) The legislation required by the provisions of subsection (a) of this section shall be
10 submitted to the President of the Senate and the Speaker of the House of Delegates on or before
11 July 31, 2020.