

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 702

BY SENATORS TRUMP AND ROMANO

[Introduced March 22, 2021; referred
to the Committee on the Judiciary]

1 A BILL to repeal §27-6A-12 of the Code of West Virginia, 1931, as amended; to amend and
 2 reenact §27-5-3, §27-5-4, and §27-5-10 of said code; to amend and reenact §27-6A-1,
 3 §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8, and §27-6A-10 of said
 4 code; and to amend said code by adding thereto a new section, designated §27-6A-13,
 5 all relating to involuntary hospitalization and competency and criminal responsibility of
 6 persons charged with or convicted of a crime; modifying the time for the completion of
 7 proceedings; requiring applicants to disclose contact information of persons to receive
 8 notice of involuntary commitment proceedings; providing transportation of individuals who
 9 are ordered for involuntary hospitalization to a diversion facility; updating outdated
 10 language in the code; creating criteria for competency restoration treatment; establishing
 11 maximum time periods for competency restoration treatment of persons charged with
 12 crimes involving nonviolent misdemeanors, nonviolent felonies, and violent
 13 misdemeanors and violent felonies; establishing standards for judicial oversight and
 14 management regarding the detention and conditional release of persons found not guilty
 15 by reason of a mental illness; repealing section requiring reporting; establishing the
 16 Dangerousness Assessment Review Board; establishing internal effective dates;
 17 authorizing the West Virginia Department of Health and Human Resources to propose
 18 legislative rules to implement the provisions of these articles; and making technical
 19 amendments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

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 upon a finding by a licensed physician that the individual

4 is medically stable, and upon certification by a physician, psychologist, licensed professional
5 counselor, licensed independent clinical social worker practicing in compliance with the provisions
6 of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification
7 practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in
8 compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that
9 he or she has examined the individual and is of the opinion that the individual is mentally ill or has
10 a substance use disorder and, because of the mental illness or substance use disorder, is likely
11 to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided,*
12 That the opinions offered by an independent clinical social worker, an advanced nurse practitioner
13 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric
14 medicine must be within his or her particular areas of expertise, as recognized by the order of the
15 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 has a substance use disorder,
19 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 is valid for three days. Any individual with respect to whom the certification has been
22 issued may not be admitted on the basis of the certification at any time after the expiration of three
23 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) *Three-day time limitation for examination and certification at mental health facility or*
38 *state hospital.* – After the individual's admission to a mental health facility or state hospital, he or
39 she may not be detained more than three days, excluding Sundays and holidays, unless, within
40 the period, the individual is examined by a staff physician and the physician certifies that in his or
41 her opinion the patient is mentally ill or has a substance use disorder and is likely to injure himself,
42 herself, or others if allowed to be at liberty. In the event the staff physician determines that the
43 individual does not meet the criteria for continued commitment, that the individual can be treated
44 in an available outpatient community-based treatment program and poses no present danger to
45 himself, herself, or others, or that the individual has an underlying medical issue or issues that
46 resulted in a determination that the individual should not have been committed, the staff physician
47 shall release and discharge the individual as appropriate as soon as practicable.

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

56 cancellation of the hearing.

57 (h) ~~Twenty-day~~ Thirty-day *time limitation for conclusion of all proceedings.* – If all
58 proceedings as provided in §27-6A-3 and §27-6A-4 of this code are not completed within ~~20~~ 30
59 days from the date of institution of the proceedings, the individual shall be immediately released.

60 (i) The Secretary of the Department of Health and Human Resources may propose rules
61 for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to
62 implement the provisions of this article. The secretary may promulgate emergency rules, if
63 justified, pursuant to §29A-3-15 of this code as may be required.

§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 substance use disorder. The applicant shall state in detail the recent overt acts upon
23 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 magistrate for the involuntary hospitalization of an individual are not open to inspection by any
27 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 magistrate to provide notice to
31 the Federal National Instant Criminal Background Check System established pursuant to section
32 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, and the central state
33 mental health registry, in accordance with §61-7A-1 *et seq.* of this code. Disclosure may also be
34 made to the prosecuting attorney and reviewing court in an action brought by the individual
35 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, dementia, or
37 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 has a substance use
42 disorder and that because of the mental illness or substance use disorder, the individual is likely
43 to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be

44 hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is
45 based. The applicant shall further file with his or her application the names and last known
46 addresses of the persons identified in §27-5-4(e)(3) of this code.

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

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

53 (1) To the individual;

54 (2) To the applicant or applicants;

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

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

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

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

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

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

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

66 (3) The right to have counsel appointed;

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

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

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

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

76 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after
77 notice of the commencement of final commitment proceedings is given, the circuit court or mental
78 hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner
79 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric
80 medicine to examine the individual and report to the circuit court or mental hygiene commissioner
81 his or her findings as to the mental condition or substance use disorder of the individual and the
82 likelihood of causing serious harm to self or others. Any such report shall further include the
83 names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

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

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

96 dismissed.

97 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*
98 *required.* –

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

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

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

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

109 (i) *Duties of counsel representing individual; payment of counsel representing indigent.* –

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

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

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

118 (j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* –

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

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

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

132 (4) All final commitment proceedings shall be reported or recorded, whether before the
133 circuit court or mental hygiene commissioner, and a transcript made available to the individual,
134 his or her counsel, or the prosecuting attorney within 30 days if requested for the purpose of
135 further proceedings. In any case where an indigent person intends to pursue further proceedings,
136 the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish
137 a transcript of the hearings.

138 (k) *Requisite findings by the court.* –

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

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

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

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

146 (D) Whether there is a less restrictive alternative than commitment appropriate for the
147 individual. The burden of proof of the lack of a less restrictive alternative than commitment is on

148 the person or persons seeking the commitment of the individual: *Provided*, That for any
149 commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made
150 that the commitment of, or treatment for, the individual requires inpatient hospital placement and
151 that no suitable outpatient community-based treatment program exists in the individual's area.

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

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

156 (1) Upon the requisite findings, the circuit court may order the individual to a mental health
157 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this
158 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*
159 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall
160 conduct a clinical assessment of the individual at least every 30 days to determine if the individual
161 requires continued placement at the mental health facility or state hospital and whether the
162 individual is suitable to receive any necessary treatment at an outpatient community-based
163 treatment program. If at any time the chief medical officer, acting in good faith and in a manner
164 consistent with the standard of care, determines that: (i) The individual is suitable for receiving
165 outpatient community-based treatment; (ii) necessary outpatient community-based treatment is
166 available in the individual's area as evidenced by a discharge and treatment plan jointly developed
167 by the department and the comprehensive community mental health center or licensed behavioral
168 health provider; and (iii) the individual's clinical presentation no longer requires inpatient
169 commitment, the chief medical officer shall provide written notice to the court of record and
170 prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for
171 discharge. The chief medical officer may discharge the patient 30 days after the notice unless the
172 court of record stays the discharge of the individual. In the event the court stays the discharge of
173 the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall

174 be thereafter discharged unless the court finds by clear and convincing evidence that the
175 individual is a significant and present danger to self or others, and that continued placement at
176 the mental health facility or state hospital is required.

177 If the chief medical officer determines that the individual requires commitment at the
178 mental health facility or state hospital at any time for a period longer than 90 days, then the
179 individual shall remain at the mental health facility or state hospital until the chief medical officer
180 of the mental health facility or state hospital determines that the individual's clinical presentation
181 no longer requires further commitment. The chief medical officer shall provide notice to the court,
182 ~~and the prosecuting attorney, that the individual,~~ and the individual's guardian and attorney, if
183 applicable, that the individual requires commitment for a period in excess of 90 days and, in the
184 notice, the chief medical officer shall describe ~~the reasons~~ how the individual continues to meet
185 commitment criteria and the need for ongoing commitment. In its discretion, the court, ~~or~~
186 prosecuting attorney, the individual, or the individual's guardian and attorney, if applicable, may
187 request any information from the chief medical officer that the court or prosecuting attorney
188 considers appropriate to justify the need for the individual's ongoing commitment. The court may
189 hold any hearing that it deems appropriate in the court's discretion.

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

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

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

199 (C) Whether the individual is likely to participate in outpatient treatment with a legal

200 obligation to do so;

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

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

204 (F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to
205 ongoing commitment.

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

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

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

215 (m) *Dismissal of proceedings.* – In the event the individual is discharged as provided in
216 subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the
217 proceedings.

218 (n) *Immediate notification of order of hospitalization.* – The clerk of the circuit court in which
219 an order directing hospitalization is entered, if not in the county of the individual's residence, shall
220 immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit
221 court of the county of which the individual is a resident.

222 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*
223 *hospitalization; execution of order.* –

224 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization
225 should be ordered but finds that the individual is not a resident of the county in which the hearing

226 is held and the individual is not currently a resident of a mental health facility or state hospital, a
227 transcript of the evidence adduced at the final commitment hearing of the individual, certified by
228 the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the
229 county of which the individual is a resident. The clerk shall immediately present the transcript to
230 the circuit court or mental hygiene commissioner of the county.

231 (2) If the circuit court or mental hygiene commissioner of the county of the residence of
232 the individual is satisfied from the evidence contained in the transcript that the individual should
233 be hospitalized as determined by the standard set forth in subdivision one of this subsection, the
234 circuit court shall order the appropriate hospitalization as though the individual had been brought
235 before the circuit court or its mental hygiene commissioner in the first instance.

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

238 (p) *Order of custody to responsible person.* – In lieu of ordering the individual to a mental
239 health facility or state hospital, the circuit court may order the individual delivered to some
240 responsible person who will agree to take care of the individual and the circuit court may take
241 from the responsible person a bond in an amount to be determined by the circuit court with
242 condition to restrain and take proper care of the individual until further order of the court.

243 (q) *Individual not a resident of this state.* – If the individual is found to be mentally ill or to
244 have a substance use disorder by the circuit court or mental hygiene commissioner is a resident
245 of another state, this information shall be immediately given to the Secretary of the Department
246 of Health and Human Resources, or to his or her designee, who shall make appropriate
247 arrangements for transfer of the individual to the state of his or her residence conditioned on the
248 agreement of the individual, except as qualified by the interstate compact on mental health.

249 (r) *Report to the Secretary of the Department of Health and Human Resources.* –

250 (1) The chief medical officer of a mental health facility or state hospital admitting a patient
251 pursuant to proceedings under this section shall immediately make a report of the admission to

252 the Secretary of the Department of Health and Human Resources or to his or her designee.

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

258 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*
 259 *paid by the county commission. –*

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

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

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

1 (a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et*
 2 *seq.* or §27-5-1 *et seq.* of this code, it shall be the duty of the sheriff to provide immediate
 3 transportation to or from the appropriate mental health facility or state hospital: *Provided, That,*
 4 where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon
 5 the written request of a person having proper interest in the individual's hospitalization, for the
 6 interested person to arrange for the individual's transportation to the mental health facility or state
 7 hospital if the sheriff 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. In the event the sheriff or municipal law-enforcement officer is
28 informed in writing by the state hospital that the state hospital lacks suitable bed capacity to place
29 such individual, the sheriff or certified municipal law-enforcement officer shall transport such
30 individual to the diversion facility as designated in writing by the chief medical officer of the state
31 hospital.

32 (e) Nothing in this section is intended to alter security responsibilities for the patient by the
33 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-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.**

1 (a) For purposes of this article:

2 (1) “Competency restoration” means the treatment or education process for attempting to
3 restore a charged person’s ability to consult with his or her attorney with a reasonable degree of
4 rational understanding, including a rational and factual understanding of the court proceedings
5 and charges against the person. Competency restoration services may be provided in a jail-
6 based, outpatient, or inpatient setting as may be ordered by the court.

7 (2) “Competency to stand trial” means the ability of a criminal defendant to consult with
8 counsel with a reasonable degree of rational understanding, including a rational and factual
9 understanding of the procedure and charges against him or her.

10 (3) “Court of record” means the circuit court with jurisdiction over the charge or charges
11 against the individual, defendant, or acquittee.

12 (4) “Department” means the Department of Health and Human Resources.

13 (5) A “qualified forensic evaluator” is either a qualified forensic psychiatrist or a qualified
14 forensic psychologist as defined in this section.

15 (6) A “qualified forensic psychiatrist” is:

16 (A) A psychiatrist licensed under the laws in this state to practice medicine who has
17 completed post-graduate education in psychiatry in a program accredited by the Accreditation
18 Council of Graduate Medical Education; and

19 (B) Board-eligible or board-certified in forensic psychiatry by the American Board of
20 Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program
21 accredited by the Accreditation Council of Graduate Medical Education to make the evaluator
22 eligible for board certification by the American Board of Psychiatry and Neurology in forensic
23 psychiatry or has two years of experience in completing court-ordered forensic criminal

24 evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

25 (7) ~~(2)~~ A “qualified forensic psychologist” is:

26 (A) A licensed psychologist licensed under the laws of this state to practice psychology;

27 and

28 (B) Board eligible or board certified in forensic psychology by the American Board of
 29 Professional Psychology or actively enrolled in good standing in a West Virginia training program
 30 approved by the American Board of Forensic Psychology to make the evaluator eligible for board
 31 certification in forensic psychology or has at least two years of experience in performing court-
 32 ordered forensic criminal evaluations, including having been qualified as an expert witness by a
 33 West Virginia circuit court.

34 ~~(3) A “qualified forensic evaluator” is either a qualified forensic psychiatrist or a qualified
 35 forensic psychologist as defined in this section.~~

36 ~~(4) “Department” means the Department of Health and Human Resources~~

37 (b) No qualified forensic evaluator may perform a forensic evaluation on an individual
 38 under §27-1-1 *et seq.* of this code if the qualified forensic evaluator has been the individual’s
 39 treating psychologist or psychiatrist within one year prior to any evaluation order.

**§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified
 forensic evaluator; written report; observation period; rules.**

1 (a) Whenever a court of record has reasonable cause to believe that a defendant in a
 2 criminal matter in which an indictment has been returned, or a warrant or summons issued, may
 3 be incompetent to stand trial it shall, *sua sponte*, or upon motion filed by the state or by or on
 4 behalf of the defendant, ~~at any stage of the proceedings~~ order a forensic evaluation of the
 5 defendant’s competency to stand trial to be conducted by a qualified forensic evaluator. ~~or one or~~
 6 ~~more a qualified forensic psychiatrists. or one or more qualified forensic psychologists.~~ If a court
 7 of record ~~or other judicial officer~~ orders both a competency evaluation and a criminal responsibility
 8 or diminished capacity evaluation, the competency evaluation shall be performed first, and if the

9 a-qualified forensic evaluator is of the opinion that a the defendant is not competent to stand trial,
10 no criminal responsibility or diminished capacity evaluation may be conducted ~~without~~ absent
11 further order of the court. The initial forensic evaluation may not be conducted at a state inpatient
12 mental health facility unless the defendant ~~resides~~ is a current patient there or the court of record
13 has found that the initial forensic evaluation cannot be performed at a community mental health
14 center consistent with §27-2A-1(b)(4) of this code, at an outpatient facility, or at the office of the
15 qualified forensic evaluator.

16 (b) The court shall require the party making the motion for the evaluation, and other parties
17 as the court considers appropriate, to provide to the qualified forensic evaluator appointed under
18 subsection (a) of this section any information relevant to the evaluations within 10 business days
19 of its evaluation order. The information shall include, but not be limited to:

20 (1) A copy of the warrant or indictment;

21 (2) Information pertaining to the alleged crime, including statements by the defendant
22 made to the police, investigative reports, and transcripts of preliminary hearings, if any;

23 (3) Any available psychiatric, psychological, medical, or social records that are considered
24 relevant;

25 (4) A copy of the defendant's criminal record; and

26 (5) If the evaluations are to include a diminished capacity assessment, the nature of any
27 lesser included criminal offenses.

28 (c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of
29 any court-ordered evaluation which may include record review and defendant interview and shall,
30 within 10 business days of the date of the completion of any evaluation, provide to the court of
31 record a written, signed report of his or her opinion on the issue of competency to stand trial. If it
32 is the qualified forensic evaluator's opinion that the defendant is not competent to stand trial, the
33 report shall state whether the defendant is substantially likely to attain competency within the next
34 ~~three months~~ 90 days and, as provided herein, ~~in order to attain competency to stand trial and,~~

35 whether the defendant may attain competency by receiving competency restoration services at
36 an outpatient mental health facility, outpatient mental health practice, or a jail-based competency
37 restoration program, if available. If the qualified forensic evaluator determines that a defendant is
38 likely to attain competency, but that competency restoration can only be attained by inpatient
39 management in a mental health facility or state hospital, the qualified forensic evaluator shall set
40 forth in his or her report the reasons why competency restoration is not viable in a less restrictive
41 environment or a jail-based competency restoration program.

42 (d) The report of a qualified forensic evaluator as to a defendant's competency shall be
43 performed with standards and requirements established by the department consistent with best
44 medical practices. The report shall address:

45 (1) The forensic evaluator's opinion on the defendant's competency to stand trial;

46 (2) A diagnosis, if any;

47 (3) A proposed plan for competency attainment if appropriate; and

48 (4) An opinion as to whether the individual is dangerous to himself, herself or others

49 (5) The court may extend the 10-day period for filing the report if a qualified forensic
50 evaluator shows good cause to extend the period, but in no event may the period exceed 30 days.
51 ~~If there are no objections by the state or defense counsel, the court may, by order, dismiss the~~
52 ~~requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made~~
53 ~~known to the court and interested parties~~

54 ~~(d)~~ (e) If the court determines that the defendant has been uncooperative during the
55 forensic evaluation ordered pursuant to subsection (a) of this section, or there have been one or
56 more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this
57 section and the court has reason to believe that an observation period is necessary in order to
58 determine if a person is competent to stand trial, the court may order the defendant be committed
59 to a mental health facility designated by the department for a period not to exceed 15 days and
60 an additional evaluation be conducted in accordance with subsection (a) of this section by ~~one or~~

61 ~~more a~~ qualified forensic psychiatrists, or a qualified forensic psychiatrist and a qualified forensic
 62 psychologist. The court shall order that at the conclusion of the 15-day observation period the
 63 sheriff of the county where the defendant was charged shall take immediate custody of the
 64 defendant for transportation and disposition as ordered by the court.

65 ~~(e)~~ (f) A mental health facility not operated by the state ~~is not obligated~~ has no obligation
 66 to admit and treat a defendant under this section if such facility has no outpatient competency
 67 restoration program established and recognized by the department, notwithstanding the
 68 provisions of §27-2A-1(b)(4) and §27-5-9 of this code: *Provided*, That medication administration
 69 and medication management for stabilization on an outpatient basis shall be provided by such
 70 mental health facility.

71 ~~(f)~~ (g) A mental health facility not operated by the state that constitutes a charitable or
 72 public service organization as defined by §29-12-5(b)(1)(B) of this code and provides competency
 73 restoration services pursuant to a court order may purchase liability coverage for injury or civil
 74 damages related to the provision of such services from the Board of Risk and Insurance
 75 Management.

76 ~~(g)~~ (h) In consultation with the Supreme Court of Appeals, the secretary may propose rules
 77 for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to
 78 implement the provisions of this article. The secretary may promulgate emergency rules, if
 79 justified, pursuant to §29A-3-15 of this code as may be required.

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

1 (a) Within five days of the receipt of the qualified forensic evaluator's report and opinion
 2 on the issue of competency to stand trial, the court of record shall make a preliminary ~~finding~~
 3 determination on the issue of whether the defendant is competent to stand trial. ~~and if~~ If the court
 4 of record finds that the defendant is not competent, the court shall make a further finding as to
 5 whether there is a substantial likelihood that the defendant can attain competency within ~~the next~~

6 ~~three months~~ 90 days, and whether competency can be attained by receiving competency
7 restoration services at an outpatient mental health facility, outpatient mental health practice, or a
8 jail-based competency restoration program. If the court of record orders, or if the state or
9 defendant or defendant's counsel within 20 days of receipt of the preliminary findings ~~requests~~
10 makes a motion for a hearing, ~~a hearing~~, then a hearing shall be held by the court of record within
11 15 days of the date of the motion for a hearing ~~preliminary finding~~, absent good cause being
12 shown for a continuance. If a hearing order or ~~request~~ motion is not filed within 20 days, the
13 ~~preliminary~~ findings of the court become the final order.

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

20 (c) The court of record pursuant to a preliminary finding or hearing on the issue of a
21 defendant's competency to stand trial and with due consideration of any forensic evaluation
22 conducted pursuant to §27-6A-2 and §27-6A-3 of this code shall make ~~a finding~~ findings of fact
23 upon a preponderance of the evidence as to the defendant's competency to stand trial based on
24 whether or not the defendant has sufficient present ability to consult with his or her lawyer with a
25 reasonable degree of rational understanding and whether he or she has a rational as well as a
26 factual understanding of the proceedings against him or her.

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

29 ~~(e) If at any point in the proceedings the defendant is found not competent to stand trial,~~
30 ~~the court of record shall at the same hearing, upon the evidence, make further findings as to~~
31 ~~whether or not there is a substantial likelihood that the defendant will attain competency within~~

32 ~~the next ensuing three months~~

33 (d) If at any point in the proceedings the defendant is found not competent to stand trial
34 and ~~is found~~ substantially likely to attain competency, the court of record shall in the same order,
35 upon the evidence, make further findings as to whether the defendant, ~~requires,~~ in order to attain
36 competency, may receive outpatient competency restoration services or if the attainment of
37 competency requires inpatient management in a mental health facility or state hospital. If inpatient
38 management is required, the court shall order the defendant be committed to an inpatient mental
39 health facility or state hospital designated by the department to attain competency to stand trial
40 and for a competency evaluation. The information and documents obtained as required by §27-
41 6A-2(b) of this code shall be provided to the chief medical officer of the mental health facility or
42 state hospital within two days of entry of such court order. The term of this commitment under this
43 subsection may not exceed ~~three months~~ 90 days from the time of entry into the facility except as
44 otherwise provided by subsection (g) of this section. ~~However, upon request by the chief medical~~
45 ~~officer of the mental health facility and based on the requirement for additional management to~~
46 ~~attain competency to stand trial, the court of record may, prior to the termination of the three~~
47 ~~month period, extend the period up to nine months from entry into the facility. A forensic evaluation~~
48 ~~of competency to stand trial shall be conducted by a qualified forensic evaluator and a report~~
49 ~~rendered to the court, in like manner as subsections (a) and (c), section two of this article, every~~
50 ~~three months until the court determines the defendant is not competent to stand trial and is not~~
51 ~~substantially likely to attain competency~~

52 ~~(g)~~ (e) If at any point in the proceedings the defendant who has been indicted or charged
53 with a misdemeanor or felony which does not involve an act of violence against a person is found
54 not competent to stand trial and is found not substantially likely to attain competency after having
55 received competency restoration services for the lesser of 180 days or the maximum sentence
56 he or she would serve, if convicted of the offense, the defendant shall be released upon such
57 conditions that the court deems appropriate and shall have the criminal charges dismissed without

58 ~~prejudice, and if the defendant has been indicted or charged with a misdemeanor or felony which~~
59 ~~does not involve an act of violence against a person, the criminal charges shall be dismissed~~ The
60 ~~dismissal~~ discharge order may, however, be stayed for 20 days to allow civil commitment
61 proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code. The
62 defendant shall be immediately released from any inpatient facility unless civilly committed.

63 ~~(h)~~ (f) If Subject to subsection (i) of this section, if at any point in the proceedings the a
64 defendant who has been indicted or charged with a misdemeanor or felony involving an act of
65 violence against a person is found not competent to stand trial and is found not substantially likely
66 to attain competency after having received competency restoration services for 180 days, and he
67 or she shall be released under the jurisdiction of the court upon such conditions as the court
68 deems appropriate and shall have the charges against him or her held in abeyance. Release of
69 the defendant may be stayed by the court for up to 30 days or longer for good cause shown, upon
70 the filing of a motion to challenge the individual's release to a less restrictive setting. The circuit
71 court may, sua sponte or upon motion, order that a dangerousness evaluation be performed by a
72 qualified forensic evaluator to aid in its consideration of the proposed placement and supervision
73 of the individual. Such dangerousness evaluation shall be paid for by the department and
74 completed within 30 days. The defendant shall be immediately released from any inpatient facility
75 unless civilly committed, and if the defendant has been indicted or charged with a misdemeanor
76 or felony in which the misdemeanor or felony does involve an act of violence against a person,
77 then the court shall determine on the record the offense or offenses of which the person otherwise
78 would have been convicted, and the maximum sentence he or she could have received. A
79 defendant shall remain under the court's jurisdiction until the expiration of the maximum sentence
80 unless the defendant attains competency to stand trial and the criminal charges reach resolution
81 or the court dismisses the indictment or charge. The court shall order the defendant be committed
82 to a mental health facility designated by the department that is the least restrictive environment
83 to manage the defendant and that will allow for the protection of the public. Notice of the maximum

84 ~~sentence period with an end date shall be provided to the mental health facility. The court shall~~
85 ~~order a qualified forensic evaluator to conduct a dangerousness evaluation to include~~
86 ~~dangerousness risk factors to be completed within thirty days of admission to the mental health~~
87 ~~facility and a report rendered to the court within ten business days of the completion of the~~
88 ~~evaluation. The medical director of the mental health facility shall provide the court a written~~
89 ~~clinical summary report of the defendant's condition at least annually during the time of the court's~~
90 ~~jurisdiction. The court's jurisdiction shall continue an additional ten days beyond any expiration to~~
91 ~~allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five of~~
92 ~~this chapter. The defendant shall then be immediately released from the facility unless civilly~~
93 ~~committed~~

94 (g)(1) If it is determined that a defendant indicted or charged as provided under subsection
95 (f) of this section has a substantial probability of regaining competency, then the defendant may
96 be ordered to remain in a mental health facility or state hospital for an additional reasonable time
97 until he or she attains competency, or the pending charges are disposed of according to law,
98 whichever is earlier in time: *Provided*, That no defendant may be held in the mental health facility
99 or state hospital for a period longer than 240 days for competency restoration treatment.

100 (2) If, at the end of the maximum period for inpatient competency restoration treatment as
101 provided in this subsection, the court finds that the defendant has not attained competency and
102 that there is no substantial likelihood that the defendant will attain competency in the foreseeable
103 future, the defendant shall be released upon such conditions as the court deems appropriate and
104 the charges against him or her held in abeyance for the maximum sentence he or she could have
105 received for the offense and the defendant released unless civil commitment proceedings have
106 been initiated pursuant to §27-5-1 *et seq.* of this code. Notwithstanding anything in this article to
107 the contrary, the court, in its discretion, may continue its oversight of the individual and the court's
108 jurisdiction over the individual: *Provided*, That notwithstanding anything in this article to the
109 contrary, no individual may be released as provided in this subsection until the court reviews and

110 approves a recent dangerousness risk assessment of the individual and the chief medical officer's
111 recommended release plan for the individual based on the needs of the individual and the public.
112 The court shall order the discharge of the individual if the court finds by a preponderance of the
113 evidence that the individual has recovered from his mental illness or substance use disorder and
114 that he or she no longer creates a substantial risk of bodily injury to another person.

115 (3) When a defendant is released upon such condition as the court deems appropriate
116 and the charges against him or her are held in abeyance, the circuit court shall, no less frequently
117 than every six months, review the defendant's circumstances to determine if his or her condition
118 has deteriorated to the extent that requires civil commitment. Upon notice from the treatment,
119 provider that a defendant who is released, on the condition that he or she continues treatment
120 does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court
121 to reconsider the defendant's release. Upon a showing that the defendant is in violation of the
122 conditions of his or her release, the court may reorder the defendant to a mental health facility
123 under the authority of the department which is the least restrictive setting that will allow for the
124 protection of the public.

125 ~~(i) If the defendant has been ordered to a mental health facility pursuant to subsection (h)~~
126 ~~of this section and the court receives notice from the medical director or other responsible official~~
127 ~~of the mental health facility that the defendant no longer constitutes a significant danger to self or~~
128 ~~others, the court shall conduct a hearing within thirty days to consider evidence, with due~~
129 ~~consideration of the qualified forensic evaluator's dangerousness report or clinical summary~~
130 ~~report to determine if the defendant shall be released to a less restrictive environment. The court~~
131 ~~may order the release of the defendant only when the court finds that the defendant is no longer~~
132 ~~a significant danger to self or others. When a defendant's dangerousness risk factors associated~~
133 ~~with mental illness are reduced or eliminated as a result of any treatment, the court, in its~~
134 ~~discretion, may make the continuance of appropriate treatment, including medications, a condition~~
135 ~~of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of~~

136 ~~the defendant in accordance with said subsection. Upon notice that a defendant ordered to a~~
137 ~~mental health facility pursuant to said subsection who is released on the condition that he or she~~
138 ~~continues treatment does not continue his or her treatment, the prosecuting attorney shall, by~~
139 ~~motion, cause the court to reconsider the defendant's release. Upon a showing that defendant is~~
140 ~~in violation of the conditions of his or her release, the court shall reorder the defendant to a mental~~
141 ~~health facility under the authority of the department which is the least restrictive setting that will~~
142 ~~allow for the protection of the public~~

143 ~~(j)~~ (h) The prosecuting attorney may, by motion, and in due consideration of any chief
144 medical officer's or forensic evaluator's reports, cause the competency to stand trial of a
145 defendant subject to the court's jurisdiction pursuant to subsection ~~(h)~~ (f) of this section or
146 released pursuant to subsection ~~(i)~~ (g) of this section to be determined by the court of record while
147 the defendant remains under the jurisdiction of the court, and in which case the court may order
148 a forensic evaluation of competency to stand trial be conducted by a qualified forensic evaluator
149 and a report rendered to the court in like manner as ~~subsections (a) and (c), section two of this~~
150 ~~article~~ pursuant to §27-6A-2(a) and §27-6A-2(b) of this code.

151 ~~(k)~~ (i) Any defendant found not competent to stand trial may at any time petition the court
152 of record for a hearing on his or her competency but may do so not more than every six months.

153 ~~(l)~~ (j) Notice of court findings of a defendant's competency to stand trial, of commitment
154 for inpatient management to attain competency, of dismissal of charges, of order for inpatient
155 management to protect the public, of release or conditional release, or any hearings to be
156 conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant, and
157 his or her counsel, and the mental health facility and state hospital. Notice of court release hearing
158 or order for release or conditional release pursuant to subsection (g) of this section shall be made
159 available to the victim or next of kin of the victim of the offense for which the defendant was
160 charged. The burden is on the victim or next of kin of the victim to keep the court apprised of that
161 person's current mailing address.

162 ~~(m)~~ (k) A mental health facility not operated by the state is not obligated to admit or treat
 163 a defendant under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of
 164 this code.

165 (l) Notwithstanding anything in this article to the contrary, for each individual who is
 166 committed to a state hospital, or committed to a state hospital and diverted to a licensed hospital
 167 prior to the effective date of the amendments to this section enacted during the 2021 regular
 168 session of the Legislature, who has received or will receive the maximum amount of competency
 169 restoration treatment authorized under this section prior to January 1, 2022, and whom the
 170 medical director of such hospital and the court have determined is not restorable, the medical
 171 director shall inform the court and prosecutor of record for each such individual as soon as
 172 practicable but no later than March 31, 2022, and the medical director shall forthwith provide a
 173 recommendation to the court and prosecutor for the clinical disposition, placement, or treatment
 174 of each individual. The state hospital or prosecutor shall thereafter file a civil commitment
 175 proceeding, if warranted, as provided under §27-5-1 et seq. of this code for each individual or
 176 make other appropriate recommendations to the court of record. The court shall hold any hearing
 177 for each individual as soon as practicable but no later than June 30, 2022.

§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.

1 (a) If the court of record finds, upon hearing evidence or representations of counsel for the
 2 defendant, that there is probable cause to believe that the defendant's criminal responsibility or
 3 diminished capacity will be a significant factor in his or her defense, the court shall appoint ~~one or~~
 4 ~~more~~ a qualified forensic ~~psychiatrists~~ psychiatrist or qualified forensic ~~psychologists~~ psychologist
 5 to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense.
 6 However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to
 7 stand trial that no criminal responsibility or diminished capacity evaluation may be conducted. The
 8 forensic evaluation may not be conducted at a state inpatient mental health facility unless the

9 defendant has been ordered to a mental health facility or state hospital in accordance with §27-
10 6A-2(c) or §27-6A-3(f) or §27-6A-3(h) of this code. To the extent possible, qualified forensic
11 evaluators who have conducted evaluations of competency under §27-6A-2(a) of this code shall
12 be used to evaluate criminal responsibility or diminished capacity under this subsection and all
13 such evaluations shall be performed consistent with the department's program standards and
14 requirements for such reports.

15 (b) The court shall require the party making the motion for the evaluations, and other
16 parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed
17 under subsection (a) of this section any information relevant to the evaluation within 10 business
18 days of its evaluation order. The information shall include, but not be limited to:

19 (1) A copy of the warrant or indictment;

20 (2) Information pertaining to the alleged crime, including statements by the defendant
21 made to the police, investigative reports, and transcripts of preliminary hearings, if any;

22 (3) Any available psychiatric, psychological, medical, or social records that are considered
23 relevant;

24 (4) A copy of the defendant's criminal record; and

25 (5) If the evaluation is to include a diminished capacity assessment, the nature of any
26 lesser criminal offenses.

27 (c) A qualified forensic evaluator shall schedule and arrange within 15 days of the receipt
28 of appropriate documents the completion of any court-ordered evaluation which may include
29 record review and defendant interview and shall, within 10 business days of the date of the
30 completion of any evaluation, provide to the court of record a written, signed report of his or her
31 opinion on the issue of criminal responsibility, and if ordered, on diminished capacity. The court
32 may extend the 10-day period for filing the report if a qualified forensic evaluator shows good
33 cause to extend the period, but in no event may the period exceed 30 days. If there are no
34 objections by the state or defense counsel, the court may, by order, dismiss the requirement for

35 a written report if the qualified forensic evaluator's opinion may otherwise be made known to the
36 court and interested parties.

37 (d) If the court determines that the defendant has been uncooperative during a forensic
38 evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting
39 forensic evaluations performed pursuant to subsection (a) of this section, and the court has
40 reason to believe that an observation period and additional forensic evaluation or evaluations are
41 necessary in order to determine if a defendant was criminally responsible or with diminished
42 capacity, the court may order the defendant be admitted to a mental health facility or state hospital
43 designated by the department for a period not to exceed 15 days and an additional evaluation be
44 conducted and a report rendered in like manner as subsections (a) and (b) of this section by ~~one~~
45 ~~or more qualified forensic psychiatrists or one or more qualified forensic psychologists~~ a qualified
46 forensic psychiatrist or a qualified forensic psychologist. At the conclusion of the observation
47 period, the court shall enter a disposition order and the sheriff of the county where the defendant
48 was charged shall take immediate custody of the defendant for transportation and disposition as
49 ordered by the court.

50 (e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness,
51 the court shall determine on the record the offense or offenses of which the acquittee could have
52 otherwise been convicted, and the maximum sentence he or she could have received. The
53 acquittee shall remain under the court's jurisdiction until the expiration of the maximum sentence
54 or until discharged by the court. ~~The court shall commit the acquittee to a mental health facility~~
55 ~~designated by the department that is the least restrictive environment to manage the acquittee~~
56 ~~and that will allow for the protection of the public. Notice of the maximum sentence period with~~
57 ~~end date shall be provided to the mental health facility.~~ The court shall order a qualified forensic
58 evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be
59 completed within 30 days of admission to the mental health facility and a report rendered to the
60 court within 10 business days of the completion of the evaluation. The dangerousness evaluation

61 shall be performed consistent with the department's program standards and requirements for
62 such evaluations. The medical director of the mental health facility shall provide the court a written
63 clinical summary report of the defendant's condition at least annually during the time of the court's
64 jurisdiction. The court's jurisdiction continues an additional 10 days beyond any expiration to allow
65 civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this
66 code. The defendant shall then be immediately released from the facility unless civilly committed.

67 (f) The court shall place persons so acquitted under subsection (e) of this section in the
68 temporary custody of the department for evaluation to determine if the acquittee may be released
69 with or without conditions or if the acquittee requires commitment. The court may authorize that
70 the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient
71 evaluation, the department shall determine, on the basis of all information available, whether the
72 evaluation shall be conducted on an outpatient basis or whether the acquittee shall be confined
73 in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee
74 shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an
75 outpatient basis fails to comply with such evaluation, the department shall petition the court for an
76 order to confine the acquittee in a hospital for the evaluation. A copy of the petition shall be sent
77 to the acquittee's attorney and the prosecutor of the acquittee's case. The evaluation shall be
78 conducted by a psychiatrist or a clinical psychologist skilled in the diagnosis of mental illness and
79 intellectual disability and qualified by training and experience to perform such evaluations. The
80 evaluator shall determine whether the acquittee currently has mental illness or intellectual
81 disability and shall assess the acquittee and report on his or her condition and need for
82 hospitalization with respect to the factors set forth in §27-6A-5(b) of this code. The evaluator shall
83 conduct an examination and report his or her findings separately within 30 days of the
84 department's assumption of custody of the acquittee. Copies of the report shall be sent to the
85 acquittee's attorney, the prosecuting attorney for the jurisdiction where the person was acquitted,
86 and the comprehensive community mental health center designated by the department. If the

87 evaluator recommends conditional release or release without conditions, the court shall extend
88 the evaluation period to permit the department and the comprehensive community mental health
89 center or licensed behavioral health provider to jointly prepare a conditional release or discharge
90 plan, as applicable, prior to the hearing.

91 (f) (g) In addition to any court-ordered evaluations completed pursuant to §27-6A-2, §27-
92 6A-3, and §27-6A-4 of this code the defendant or the state has the right to an evaluation or
93 evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

94 (g) (h) A mental health facility not operated by the state is not required to admit or treat a
95 defendant or acquittee under this section except as otherwise provided by §27-2A-1(b)(4) and
96 §27-5-9 of this code.

**§27-6A-5. Release of acquittee to less restrictive environment; discharge from jurisdiction
of the court; conditional release; and commitment.**

1 (a) ~~If, at any time prior to the expiration of the court's jurisdiction, the chief medical officer~~
2 ~~or responsible official of the mental health facility to which an acquittee has been ordered pursuant~~
3 ~~to subsection (e), section four of this article believes that the acquittee is not mentally ill or does~~
4 ~~not have significant dangerousness risk factors associated with mental illness, he or she shall file~~
5 ~~with the court of record notice of the belief and shall submit evidence in support of the belief to~~
6 ~~include a forensic evaluation dangerousness report conducted in like manner as said subsection~~
7 ~~and recommendations for treatment, including medications, that reduce or eliminate the~~
8 ~~dangerousness risk factors associated with mental illness. The court of record shall hold a hearing~~
9 ~~within thirty days of receipt of the notice to consider evidence as to whether the acquittee shall be~~
10 ~~released from the mental health facility to a less restrictive environment. Notice of the hearing~~
11 ~~shall be made available to the prosecuting attorney responsible for the charges brought against~~
12 ~~the acquittee at trial, the acquittee and his or her counsel and the mental health facility. If upon~~
13 ~~consideration of the evidence the court determines that an acquittee may be released from a~~
14 ~~mental health facility to a less restrictive setting, the court shall order, within fifteen days of the~~

15 ~~hearing, the acquittee be released upon terms and conditions, if any, the court considers~~
16 ~~appropriate for the safety of the community and the well-being of the acquittee. Any terms and~~
17 ~~conditions imposed by the court must be protective and therapeutic in nature, not punitive. When~~
18 ~~a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated~~
19 ~~as a result of any treatment, the court, in its discretion, may make the continuance of appropriate~~
20 ~~treatment, including medications, a condition of the defendant's release from inpatient~~
21 ~~hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said~~
22 ~~subsection. Upon notice that an acquittee released on the condition that he or she continues~~
23 ~~appropriate treatment does not continue his or her treatment, the prosecuting attorney responsible~~
24 ~~for the charges brought against the acquittee at trial shall, by motion, cause the court to reconsider~~
25 ~~the acquittee's release and upon a showing that the acquittee is in violation of the conditions of his~~
26 ~~or her release, the court may reorder the acquittee to a mental health facility designated by the~~
27 ~~department which is the least restrictive setting appropriate to manage the acquittee and protect~~
28 ~~the public.~~

29 ~~(b) No later than thirty days prior to the release from a mental health facility or other~~
30 ~~management setting of an acquittee because of the expiration of the court's jurisdiction as set in~~
31 ~~accordance with subsection (e), section four of this article, if the acquittee's physician,~~
32 ~~psychologist, chief medical officer or other responsible party is of the opinion that the acquittee's~~
33 ~~mental illness renders the acquittee to be likely to cause serious harm to self or others, the~~
34 ~~supervising physician, psychologist, chief medical officer or other responsible party shall notify~~
35 ~~the court of record who shall promptly notify the prosecuting attorney in the county of the court~~
36 ~~having jurisdiction of the opinion and the basis for the opinion. Following notification, the~~
37 ~~prosecuting attorney may file, within ten days, a civil commitment application against the acquittee~~
38 ~~pursuant to article five of this chapter~~

39 (a) Upon receipt of the evaluation report as provided in §27-6A-4(e) of this code and, if
40 applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing

41 to determine the appropriate disposition of the acquittee. The hearing shall be conducted within
42 30 days receipt of the evaluation report. The circuit court may, sua sponte or upon motion, order
43 that an independent dangerousness evaluation by an independent qualified forensic psychiatrist
44 or qualified forensic psychologist be performed to aid in its consideration of the proposed
45 placement and supervision of the acquittee. The dangerousness evaluation shall be paid for by
46 the department and shall be performed consistent with the department's program standards and
47 requirements for such evaluations. As an alternative to ordering an independent dangerousness
48 assessment in addition thereto, the court may avail itself of the services of the Dangerousness
49 Assessment Review Board established in §27-6A-12 of this code. Except as otherwise ordered
50 by the court, the attorney who represented the defendant at the criminal proceedings shall
51 represent the acquittee through the proceedings pursuant to this section. The matter may be
52 continued on motion of either party for good cause shown. The acquittee shall be provided with
53 adequate notice of the hearing, of the right to be present at the hearing, the right to assistance of
54 counsel in preparation for and during the hearing, and the right to introduce evidence and cross
55 examine witnesses at the hearing. The hearing is a civil proceeding.

56 (b) At the conclusion of the hearing, the court cannot commit the acquittee to a mental
57 health facility or state hospital unless it finds by clear and convincing evidence that the acquittee
58 has a mental illness or an intellectual disability, and that because of the nature or severity of
59 acquittee's condition, the acquittee cannot be treated on an outpatient basis and requires inpatient
60 management. The decision of the court shall be based upon consideration of the following factors:

61 (1) To what extent the acquittee has mental illness or an intellectual disability;

62 (2) The likelihood that the acquittee will engage in conduct presenting a substantial risk of
63 bodily harm to other persons or to himself in the foreseeable future;

64 (3) The likelihood that the acquittee can be adequately controlled with supervision and
65 treatment on an outpatient basis; and

66 (4) Such other factors as reflected in §27-5-4 of this code.

67 (c) If inpatient hospitalization is ordered by the court, the mental health facility or state
68 hospital shall periodically provide written clinical reports to the court regarding the continued need
69 for hospitalization as provided by this subsection. A report shall be sent to the court after the initial
70 six months of treatment and every two years after the initial report is made. The court shall provide
71 copies of the reports to the prosecutor and counsel for the acquittee. Within 30 days after receipt
72 of the report, the court shall hold a hearing to consider the issue of the continued commitment of
73 the acquittee. The acquittee may request a change in the conditions of confinement, and the trial
74 court shall conduct a hearing on that request if six months or more have elapsed since the most
75 recent hearing was conducted under this section.

76 (d) Notwithstanding anything in this section to the contrary, the court shall order the
77 acquittee released if the court finds that the acquittee meets the criteria for conditional release as
78 set forth in subsection (f) of this section. The court may order such other conditions that it deems
79 necessary in accordance with subsection (c) of this section. If the court finds that the acquittee
80 does not need inpatient hospitalization nor does the acquittee meet the criteria for conditional
81 release, the court shall release the acquittee without conditions, provided the court has approved
82 a discharge plan prepared by the appropriate comprehensive community mental health center or
83 licensed behavioral health provider in consultation with the department.

84 (e) The court shall order that any person acquitted by reason of mental illness and
85 committed pursuant to this section who is sentenced to a term of incarceration for any other
86 offense in the same proceeding or in any proceeding conducted prior to the proceeding in which
87 the person is acquitted by reason of mental illness, complete any sentence imposed for such
88 other offense prior to being placed in the custody of the department until released from
89 commitment pursuant to §27-1-1 et seq. The court shall order that any person acquitted by
90 reason of mental illness and committed pursuant to this section who is sentenced to a term of
91 incarceration in any proceeding conducted during the period of commitment be transferred to the
92 custody of the correctional facility where he or she is to serve his or her sentence, and, upon

93 completion of his or her sentence, such person shall be placed in the custody of the department
94 until released from commitment pursuant to §27-1-1 *et seq* of this code.

95 (f) At any time the court considers the acquittee's need for inpatient hospitalization
96 pursuant to this section, the court shall place the acquittee on conditional release if it finds that,

97 (1) Based on consideration of the factors which the court must consider in its commitment decision
98 as provided in subsection (b) of this section, the acquittee does not need inpatient hospitalization
99 but may require outpatient treatment or monitoring to prevent his or her condition from
100 deteriorating to a degree that he or she would become likely to cause serious harm to self or
101 others; (2) appropriate outpatient supervision and treatment are reasonably available; (3) the
102 acquittee is not mentally ill or does not have significant dangerousness risk factors associated
103 with mental illness; (4) there is significant reason to believe that the acquittee, if conditionally
104 released, would comply with the conditions specified; and (5) conditional release will not present
105 an undue risk to public safety. The court shall subject a conditionally released acquittee to such
106 orders and conditions it deems will best meet the acquittee's need for treatment and supervision
107 and best serve the interests of justice and society.

108 (g) The comprehensive community mental health center or licensed behavioral health
109 provider as designated by the department shall implement the court's conditional release orders
110 and shall submit written reports to the court on the acquittee's progress and adjustment in the
111 community no less frequently than every six months. An acquittee's conditional release shall not
112 be revoked solely because of his or her voluntary admission to a state hospital.

113 (h) If at any time the court that conditionally released an acquittee pursuant to subsection
114 (f) of this section finds reasonable cause exists to believe that an acquittee on conditional release
115 has violated the conditions of his or her release or is no longer a proper subject for conditional
116 release based on application of the criteria for conditional release and requires inpatient
117 hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist
118 qualified by training and experience to perform forensic evaluations. If the court, based on the

119 evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that
120 an acquittee on conditional release has violated the conditions of his or her release or is no longer
121 a proper subject for conditional release based on application of the criteria for conditional release
122 and has a mental illness or an intellectual disability and requires inpatient hospitalization, the court
123 may revoke the acquittee's conditional release and order him or her returned to the custody of
124 the department.

125 (i) At any hearing pursuant to this section, the acquittee shall be provided with adequate
126 notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel
127 in preparation for and during the hearing, and the right to introduce evidence and cross-examine
128 witnesses at the hearing. The hearing shall be scheduled on an expedited basis. Written notice
129 of the hearing shall be provided to the prosecuting attorney for the committing jurisdiction. The
130 hearing is a civil proceeding.

131 (j) If during the term of the acquittee's conditional release the court finds that the acquittee
132 has violated the conditions of his or her release but does not require inpatient hospitalization, the
133 court may hold the acquittee in contempt of court for violation of the conditional release order.

134 (k) The court may modify conditions of release or remove conditions placed on release
135 pursuant to subsection (f) of this section upon petition by the comprehensive community mental
136 health center or licensed behavioral health provider, the prosecuting attorney, the acquittee, or
137 upon its own motion based upon the report(s) of the comprehensive community mental health
138 center or behavioral health provider. *Provided*, That the acquittee may petition no more frequently
139 than annually and only six months after the conditional release order is entered. Upon petition,
140 the court shall require the comprehensive community mental health center or behavioral health
141 provider to provide a report on the acquittee's progress while on conditional release.

142 (l) As it deems appropriate and based on the report from the comprehensive community
143 mental health center or behavioral health provider and any other evidence provided to it, the court
144 may issue a proposed order for modification or removal of conditions. The court shall provide

145 notice of the order, and their right to object to it, within 10 days of its issuance, to the acquittee,
146 the comprehensive community mental health center or behavioral health provider, and the
147 prosecuting attorney for the committing jurisdiction and for the jurisdiction where the acquittee is
148 residing on conditional release. The proposed order shall become final if no objection is filed within
149 10 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the
150 acquittee, the prosecuting attorney, and the comprehensive community mental health center or
151 behavioral health provider have an opportunity to present evidence challenging the proposed
152 order. At the conclusion of the hearing, the court shall issue an order specifying conditions of
153 release or removing existing conditions of release, as the court deems appropriate.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

1 If a defendant who has been found to be not competent to stand trial believes that he or
2 she can establish a defense of not guilty to the charges pending against him or her, other than
3 the defense of not guilty by reason of mental illness, the defendant may request an opportunity to
4 offer a defense thereto on the merits before the court which has criminal jurisdiction. If the
5 defendant is unable to obtain legal counsel, the court of record shall appoint counsel for the
6 defendant to assist him or her in supporting the request by affidavit or other evidence. If the court
7 of record in its discretion grants such a request, the evidence of the defendant and of the state
8 shall be heard by the court of record sitting without a jury. If after hearing such petition the court
9 of record finds insufficient evidence to support a conviction, it shall dismiss the indictment and
10 order the release of the defendant from criminal custody. The release order, however, may be
11 stayed for 10 days to allow civil commitment proceedings to be instituted by the prosecutor
12 pursuant to article five of this chapter: *Provided*, That a defendant committed to a mental health
13 facility or state hospital pursuant to §27-6A-3(f)(d) or §27-6A-3(h)(f) shall be immediately released
14 from the facility unless civilly committed.

§27-6A-8. Credit for time; expenses.

1 (a) If a person is convicted of a crime, any time spent in involuntary confinement in a
 2 mental health facility or state hospital as a result of being charged with the crime shall be credited
 3 to the sentence.

4 (b) All inpatient care and treatment shall be paid by the department.

5 (c) All competency restoration services not covered by other government, third-party,
 6 funding sources, or other grant agreements shall be paid by the department.

§27-6A-10. Medications and management of court-ordered individuals.

1 (a) At any time pursuant to §27-6A-2, §27-6A-3, or §27-6A-4 of this code an individual is
 2 court ordered to a mental health facility or state hospital, the individual has the right to receive
 3 treatment under the standards of medical management.

4 (b) An individual with health care decision-making capacity may refuse medications or
 5 other management unless court-ordered to be treated, or unless a treating clinician determines
 6 that medication or other management is necessary in emergencies or to prevent danger to the
 7 individual or others: Provided, That medication management intended to treat an individual's
 8 condition that causes or contributes to incompetency shall constitute treatment.

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

1 [Repealed.]

§27-6A-13. Dangerousness Assessment Review Board.

1 (a) There is hereby created the Dangerousness Assessment Advisory Board. The board
 2 shall consist of the following persons:

3 (1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or his or
 4 her designee;

5 (2) The forensic coordinator of the state;

6 (3) A representative of the protection and advocacy system for the state as defined by 29

7 U.S.C. § 794e, 42 U.S.C. §15041 et seq.; and 42 U.S.C. § 10801 et seq.;

8 (4) An employee of the Division of Corrections and Rehabilitation designated by the
9 Commissioner with experience in inmate classification,

10 (5) An employee of the Division of Rehabilitation Services with experience in independent
11 living programs,

12 (6) Two Board-Certified Forensic Psychiatrists appointed by the Governor with the advice
13 and consent of the Senate; and

14 (7) Two Board-Certified Forensic Psychologists appointed by the Governor with the advice
15 and consent of the Senate.

16 (b) The purpose of the board is to provide opinion, guidance, and informed objective
17 expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure
18 that persons who have been judicially determined to be incompetent to stand trial or not guilty by
19 reason of mental illness are in the least restrictive environment available to protect the person,
20 other persons, and the public generally.

21 (c) A circuit court when reviewing a proposed less restrictive placement for a person found
22 incompetent to stand trial and not restorable or not guilty by reason of mental illness may request
23 the assistance of the board in considering the proposed placement plan. The circuit clerk may
24 request that the medical director convene the board to seek its opinion or opinions on the
25 appropriateness of the proposed placement. The secretary shall provide necessary suggestions,
26 space, and support staff to the board to conduct its activities.

27 (d) The provisions of §29B-1-1 et seq. and §6-9A-1 et seq. are inapplicable to the
28 operation of the board.

29 (e) In performing its duties under this section, the board shall have access to all court
30 records, medical, and mental health records available to the court and all documents of any type
31 used by the medical director in developing the proposed placement plan.

32 (f) Each member of the board whose regular salary is not paid by the State of West Virginia

33 shall be paid the same compensation and expense reimbursement as is paid to members of the
34 Legislature for their interim duties as recommended by the Citizens Legislative Compensation
35 Commission and authorized by law for each day or portion thereof engaged in the discharge of
36 official duties. No reimbursement for expenses shall be made except upon an itemized account,
37 properly certified by such members of the board. All reimbursement for expenses shall be paid
38 out of the State Treasury upon a requisition upon the State Auditor.

39 (g) The members of the board shall be immune from suit and liability, either personally or
40 in their official capacity, for any claim for damage to or loss of property or personal injury or other
41 civil liability caused or arising out of any actual or alleged act, error, or omission that occurred
42 within the scope of their board, duties, or responsibilities: *Provided*, That nothing in this paragraph
43 shall be construed to protect any such person from suit and/or liability for any damage, loss, injury,
44 or liability caused by the intentional or willful and wanton misconduct of any such person.

Note: The purpose of this bill relates to involuntary hospitalization and competency and criminal responsibility of persons charged with or convicted of a crime; to modify the time for the completion of proceedings; require applicants to disclose contact information of persons to receive notice of involuntary commitment proceedings; provide transportation of individuals who are ordered for involuntary hospitalization to a diversion facility; update outdated language in the code; create criteria for competency restoration treatment; establish maximum time periods for competency restoration treatment of persons charged with crimes involving non-violent misdemeanors, non-violent felonies, and violent misdemeanors and violent felonies; establish standards for judicial oversight and management regarding the detention and conditional release of persons found not guilty by reason of a mental illness; repeal section requiring reporting; establish the Dangerousness Assessment Review board; establish internal effective dates; authorize the West Virginia Department of Health and Human Resources to propose legislative rules to implement the provisions of these articles; and make technical amendments.

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