

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 595

BY SENATOR TRUMP

[Introduced February 08, 2022; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended, relating
 2 to the Dangerousness Assessment Review Board; barring the subpoenaing of board
 3 members to testify in proceedings about which the board issues advice, guidance, or
 4 opinion; requiring in lieu of testifying that the board provides copies of all documents and
 5 materials used in providing its advice, grievance, or opinion upon request of the circuit
 6 court; exempting board proceedings from the provisions of §6-9A-1, *et seq.* of this code;
 7 and clarifying that the board is not subject to the provisions of §29B-1-1 *et seq.* of this
 8 code

Be it enacted by the Legislature of West Virginia:

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

§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 a
 4 designee of the commissioner who was not involved in the decision under review;

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 psychologists who are West Virginia qualified forensic evaluators with at least five
15 years demonstrated experience in state and federal courts, appointed by the Governor with the
16 advice and consent of the Senate.

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

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

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

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

33 (f) Each member of the board whose regular salary is not paid by the State of West Virginia
34 shall be paid the same compensation and expense reimbursement that is paid to members of the
35 Legislature for their interim duties as recommended by the Citizens Legislative Compensation
36 Commission and authorized by law for each day or portion thereof engaged in the discharge of
37 official duties. Reimbursement for expenses shall not be made, except upon an itemized account,
38 properly certified by the members of the board. All reimbursement for expenses shall be paid out
39 of the State Treasury upon a requisition upon the State Auditor.

40 (g) A board member shall recuse himself or herself if the board member has previously
41 evaluated a person whose classification or placement is under review.

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

48 (i) No board member shall be subject to a subpoena to appear at a judicial hearing by
49 virtue of being a member of or fulfilling his or her duties under this section. Upon request of the
50 circuit court, the board shall make all documents, reports, and other materials used in making its
51 report available to the court or a party in the judicial proceeding regarding placement in redacted
52 form upon the circuit court's request.

53 (j) Meetings of the board are not subject to the provisions of §6-9A-1, et seq. of this code,
54 nor are the provisions of §29B-1-1, et seq. of this code applicable to the board.

NOTE: The purpose of this bill is to amend the Dangerousness Assessment Review Board. The bill bars the subpoenaing of board members to testify in proceedings about which the board issues advice, guidance, or opinion. The bill requires in lieu of testifying that the board provide copies of all documents and materials used in providing its advice, grievance, or opinion upon request of the circuit court. The bill exempts board proceedings from the provisions of §6-9A-1, *et seq.* Finally, the bill clarifies that the board is not subject to the provisions of §29B-1-1 *et seq.*

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