

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**Senate Bill 595**

BY SENATOR TRUMP

[Passed March 09, 2022; in effect from passage]



1 AN ACT to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended,  
2 relating to the Dangerousness Assessment Advisory Board; barring the subpoenaing of  
3 board members to testify in proceedings about which the board issues advice, guidance,  
4 or opinion; and requiring in lieu of testifying that the board provides copies of all documents  
5 and materials used in providing its advice, guidance, or opinion upon request of the circuit  
6 court.

*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 Advisory Board.**

1 (a) The Dangerousness Assessment Advisory Board is continued. The board shall consist  
2 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 are immune from suit and liability, either personally or in  
43 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) A board member is not subject to a subpoena to appear at a judicial hearing by virtue  
49 of being a member of the board, or fulfilling his or her duties under this section. Upon request of  
50 the circuit court, the board shall make all documents, reports, and other materials used in making  
51 its report available to the court or a party in the judicial proceeding regarding placement in  
52 redacted form upon the circuit court's request.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, Senate Committee*

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*Chairman, House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2022.

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*Governor*