

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 595

BY SENATOR TRUMP

[Originating in the Committee on the Judiciary;

reported on February 16, 2022]

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 Advisory Board; barring the subpoenaing of board
3 members to testify in proceedings about which the board issues advice, guidance, or
4 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 Review Advisory Board.

1 (a) ~~There is hereby created the~~ The Dangerousness Assessment Advisory Board is
2 continued. The board 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~~ are immune from suit and liability, either personally
43 or in their official capacity, for any claim for damage to, or loss of, property or personal injury or
44 other civil liability caused or arising out of any actual or alleged act, error, or omission that
45 occurred within the scope of their board duties or responsibilities: *Provided*, That nothing in this
46 subsection shall be construed to protect any person from suit and/or liability for any damage,
47 loss, injury, or 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.