

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 568

By Senators Trump, Deeds, Hunt, Rucker, Stover,

Stuart, Taylor, and Woelfel

[Introduced February 06, 2023; 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 generally to the Dangerousness Assessment Advisory Board; clarifying the board's
3 primary purpose; declaring that the Secretary of the Department of Health and Human
4 Services has no supervisory authority over the board; and authorizing the board, in its
5 discretion, to assist.

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 primary purpose of the board is to provide opinion, guidance, and informed
18 objective expertise to circuit courts as to the appropriate level of custody or supervision necessary
19 to ensure that persons who have been judicially determined to be incompetent to stand trial and
20 not restorable or not guilty by reason of mental illness are in the least restrictive environment
21 available to protect the person, other persons, and the public generally. The board may, from time
22 to time, in its discretion, offer its services to courts when the issue of dangerousness is before a
23 court which requests the board's services.

24 (c) A circuit court when reviewing a proposed less restrictive placement for a person found
25 incompetent to stand trial and not restorable or not guilty by reason of mental illness may request
26 the assistance of the board in considering the proposed placement plan. The circuit court may
27 request that the medical director convene the board to seek its opinion or opinions on the
28 appropriateness of the proposed placement. The secretary shall provide necessary suggestions,
29 space, and support staff to the board to conduct its activities, but neither the secretary nor the
30 medical director shall have supervisory authority over the board.

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

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

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

43 (g) A board member shall recuse himself or herself if ~~the board member~~ he or she has
44 previously evaluated a person whose classification or placement is under review.

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

51 (i) A board member is not subject to a subpoena to appear at a judicial hearing by virtue of
52 being a member of the board, or fulfilling his or her duties under this section. Upon request of the
53 circuit court, the board shall make all documents, reports, and other materials used in making its
54 report available to the court or a party in the judicial proceeding regarding placement in redacted
55 form upon the circuit court's request.

NOTE: The purpose of this bill is to clarify the board's primary purpose; declare that the Secretary of the Department of Health and Human Services has no supervisory authority over the board; and authorizes the board, in its discretion, to assist.

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