

# WEST VIRGINIA LEGISLATURE

## 2024 REGULAR SESSION

Introduced

### House Bill 4684

FISCAL  
NOTE

By Delegate Heckert

[Introduced January 12, 2024; Referred  
to the Committee on Health and Human Resources  
then Judiciary]

1 A BILL to amend and reenact §27-5-1, §27-5-1b, §27-5-2, §27-5-2a, §27-5-4, and §27-5-10 of the  
2 Code of West Virginia, 1931, as amended, relating to clarifying the duties and  
3 responsibilities of mental health professionals in West Virginia; providing for a physician,  
4 psychologist, licensed professional counselor, licensed independent social worker,  
5 advanced nurse practitioner, physician assistant, or law enforcement officer to make an  
6 application for involuntary hospitalization; and providing for the Department of Health and  
7 Human Resources to provide transportation for individuals who require involuntary  
8 hospitalization.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.**

1 (a) *Appointment of mental hygiene commissioners.* — The chief judge in each judicial  
2 circuit of this state shall appoint a competent attorney or mental health professional and may, if  
3 necessary, appoint additional attorneys or mental health professionals to serve as mental hygiene  
4 commissioners to preside over involuntary hospitalization hearings. Mental hygiene  
5 commissioners shall be persons of good moral character and of standing in their profession and  
6 they shall, before assuming the duties of a commissioner, take the oath required of other special  
7 commissioners as provided in §6-1-1 *et seq.* of this code.

8 Prior to presiding over an involuntary hospitalization hearing, each newly appointed person  
9 to serve as a mental hygiene commissioner and all magistrates shall attend and complete an  
10 orientation course that consists of training provided annually by the Supreme Court of Appeals and  
11 complete an orientation program to be developed by the Secretary of the Department of Health  
12 and Human Resources. In addition, existing mental hygiene commissioners and all magistrates

13 trained to hold probable cause and emergency detention hearings involving involuntary  
14 hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and  
15 complete an orientation program to be developed by the Secretary of the Department of Health  
16 and Human Resources. Persons attending the courses outside the county of their residence shall  
17 be reimbursed out of the budget of the Supreme Court—General Judicial for reasonable expenses  
18 incurred. The Supreme Court of Appeals shall establish curricula and rules for the courses,  
19 including rules providing for the reimbursement of reasonable expenses as authorized in this  
20 section. The Secretary of the Department of Health and Human Resources shall consult with the  
21 Supreme Court of Appeals regarding the development of the orientation program.

22 *(b) Duties of mental hygiene commissioners. —*

23 (1) Mental hygiene commissioners may sign and issue summonses for the attendance, at  
24 any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may  
25 sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any  
26 witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding  
27 factual issues raised in the petition; and may make findings of fact on evidence and may make  
28 conclusions of law, but the findings and conclusions are not binding on the circuit court. All mental  
29 hygiene commissioners shall be reasonably compensated at ~~a uniform~~ an annual fixed rate  
30 determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all  
31 requests for compensation to the administrative director of the courts for payment. Mental hygiene  
32 commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge  
33 of the judicial circuit in which he or she is appointed and may be removed at any time by the chief  
34 judge. A mental hygiene commissioner shall conduct orderly inquiries into the mental health of the  
35 individual sought to be committed concerning the advisability of committing the individual to a  
36 mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights  
37 and interests of the individual as well as the interests of the state. The mental hygiene  
38 commissioner shall make a written report of his or her findings to the circuit court. In any

39 proceedings before any court of record as set forth in this article, the court of record shall appoint  
40 an interpreter for any individual who is deaf or cannot speak, or who speaks a foreign language,  
41 and who may be subject to involuntary commitment to a mental health facility.

42 (2) A mental hygiene commissioner appointed by the circuit court of one county or multiple  
43 county circuits may serve in that capacity in a jurisdiction other than that of his or her original  
44 appointment if it is agreed upon by the terms of a cooperative agreement between the circuit  
45 courts and county commissions of two or more counties entered into to provide prompt resolution  
46 of mental hygiene matters during hours when the courthouse is closed or on nonjudicial days.

47 (c) *Duties of prosecuting attorney.* —The prosecuting attorney or one of his or her  
48 assistants shall represent the applicants in all final commitment proceedings filed pursuant to the  
49 provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to  
50 the provisions of this article if he or she determines it to be in the public interest.

51 (d) *Duties of sheriff.* — Upon written order of the circuit court, mental hygiene  
52 commissioner, or magistrate in the county where the individual formally accused of being mentally  
53 ill or having a substance use disorder is a resident or is found, the sheriff of that county or any other  
54 law enforcement officer within whose jurisdiction the person is found shall take the individual into  
55 custody and transport him or her to and from the place of hearing and the mental health facility.  
56 Once transported, the ~~The sheriff~~ mental health facility shall also maintain custody and control of  
57 the accused individual during the period of time in which the individual is waiting for the involuntary  
58 commitment hearing to be convened and while the hearing is being conducted: *Provided*, That an  
59 individual who is a resident of a state other than West Virginia shall, upon a finding of probable  
60 cause, be transferred to his or her state of residence for treatment pursuant to §27-5-4(p) of this  
61 code: *Provided, however*, That where an individual is a resident of West Virginia but not a resident  
62 of the county in which he or she is found and there is a finding of probable cause, the county in  
63 which the hearing is held ~~may seek~~ shall receive reimbursement from the county of residence for  
64 ~~reasonable~~ actual costs incurred by the county attendant to the mental hygiene proceeding .

65 Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative  
66 agreements with sheriffs of one or more other counties, or with a mental health facility or facilities,  
67 with the concurrence of their respective circuit courts and county commissions, by which  
68 transportation and security responsibilities for hearings held pursuant to the provisions of this  
69 article during hours when the courthouse is closed or on nonjudicial days may be shared in order  
70 to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment.  
71 In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this  
72 code, the sheriff shall contact the state hospital in advance of the transportation to determine if the  
73 state hospital has available suitable bed capacity to place the individual.

74 (e) *Duty of sheriff or other law enforcement agency upon presentment to mental health*  
75 *care facility.* — When a person is brought to a mental health care facility for purposes of evaluation  
76 for commitment under this article, if he or she is violent or combative, the sheriff or his or her  
77 designee shall may maintain custody of the person in the facility until the evaluation is completed,  
78 or the mental health facility may assume such custody. ~~or the county commission shall reimburse~~  
79 ~~the mental health care facility at a reasonable rate for security services provided by the mental~~  
80 ~~health care facility for the period of time the person is at the hospital prior to the determination of~~  
81 ~~mental competence or incompetence~~

82 (f) *Duties of Supreme Court of Appeals.* — The Supreme Court of Appeals shall provide  
83 uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization  
84 proceedings brought in this state.

85 (g) *Duties of the Department of Health and Human Resources.* — The secretary shall  
86 develop an orientation program as provided in subsection (a) of this section. The orientation  
87 program shall include, but not be limited to, instruction regarding the nature and treatment of  
88 mental illness and substance use disorder; the goal and purpose of commitment; community-  
89 based treatment options; and less restrictive alternatives to inpatient commitment.

**§27-5-1b. Pilot projects and other initiatives.**

1           (a) *Duties of the Department of Health and Human Resources.* — The Secretary shall, in  
2 collaboration with designees of the Supreme Court of Appeals, the Sheriff's Association, the  
3 Prosecuting Attorney's Association, the Public Defender Services, the Behavioral Health  
4 Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness  
5 Assessment Advisory Board, undertake an evaluation of the utilization of alternative transportation  
6 providers and the development of standards that define the role, scope, regulation, and training  
7 necessary for the safe and effective utilization of alternative transportation providers and shall  
8 further identify potential financial sources for the payment of alternative transportation providers.  
9 Recommendations regarding such evaluation shall be submitted to the President of the Senate  
10 and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature requests  
11 the Supreme Court of Appeals cooperate with the listed parties and undertake this evaluation.

12           (b) *Civil Involuntary Commitment Audits.* — The secretary shall establish a process to  
13 conduct retrospective quarterly audits of applications and licensed examiner forms prepared by  
14 certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this  
15 code. The process shall determine whether the licensed examiner forms prepared by certifiers are  
16 clinically justified and consistent with the requirements of this code and, if not, develop corrective  
17 actions to redress identified issues. The Legislature requests the Supreme Court of Appeals  
18 participate in this process with the secretary. The process and the findings thereof shall be  
19 confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and  
20 §29B-1-1 *et seq.* of this code.

21           (†) (c) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* —  
22 Each mental health center shall make available as necessary a qualified and competent licensed  
23 person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 *et*  
24 *seq.* of this code. Evaluations shall be conducted in person, unless an in-person evaluation would  
25 create a substantial delay to the resolution of the matter, and then the evaluation may be  
26 conducted by videoconference. Each mental health center that performs these evaluations shall

27 exercise reasonable diligence in performing the evaluations and communicating with the state  
28 hospital to provide all reasonable and necessary information to facilitate a prompt and orderly  
29 admission to the state hospital of any person who is or is likely to be involuntarily committed to  
30 such hospital. Each mental health center that performs these evaluations shall explain the  
31 involuntary commitment process to the applicant and the person proposed to be committed and  
32 further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and  
33 the likely risks and benefits of commitment. Mental health evaluators providing services under  
34 authority of this section shall be free from liability for their actions, if the actions are performed in  
35 good faith and within the scope of their professional duties and in a manner consistent with the  
36 standard of care.

37 ~~(k)~~ (d) Notwithstanding any provision of this code to the contrary, the Supreme Court of  
38 Appeals, mental health facilities, law enforcement, and the Department of Health and Human  
39 Resources may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement an  
40 involuntary commitment process. Further, notwithstanding any provision of this code to the  
41 contrary, no alternative transportation provider may be utilized until standards are developed and  
42 implemented that define the role, scope, regulation, and training necessary for an alternative  
43 transportation provider as provided in subsection (a) of this section.

44 (e) Private care facilities may have restricted bed treatment centers.

**§27-5-2. Institution of proceedings for involuntary custody for examination; custody;  
probable cause hearing; examination of individual.**

1 (a) Any ~~adult person~~ physician, psychologist, licensed professional counselor, licensed  
2 independent social worker, advanced nurse practitioner, physician assistant, or law enforcement  
3 officer may make an application for involuntary hospitalization for examination of an individual  
4 when the person making the application has reason to believe that the individual to be examined  
5 has a substance use disorder as defined by the most recent edition of the American Psychiatric  
6 Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance

7 use withdrawal, or is mentally ill and because of his or her substance use disorder or mental  
8 illness, the individual is likely to cause serious imminent harm to himself, herself, or to others if  
9 allowed to remain at liberty while awaiting an examination and certification by a physician,  
10 psychologist, licensed professional counselor, licensed independent social worker, an advanced  
11 nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*,  
12 That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be  
13 a basis for involuntary commitment to a state hospital.

14 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be  
15 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional  
16 facility, then only the chief administrative officer of the facility holding the individual may file the  
17 application, and the application must include the additional statement that the correctional facility  
18 itself cannot reasonably provide treatment and other services necessary to treat the individual's  
19 mental illness or substance use.

20 (c) Application for involuntary custody for examination may be made to the circuit court,  
21 magistrate court, or a mental hygiene commissioner of the county in which the individual resides,  
22 or of the county in which he or she may be found. A magistrate before whom an application or  
23 matter is pending may, upon the availability of a mental hygiene commissioner or circuit court  
24 judge for immediate presentation of an application or pending matter, transfer the pending matter  
25 or application to the mental hygiene commissioner or circuit court judge for further proceedings  
26 unless otherwise ordered by the chief judge of the judicial circuit.

27 (d) The person making the application shall give information and state facts in the  
28 application required by the form provided for this purpose by the Supreme Court of Appeals.

29 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for  
30 the individual named in the application to be detained and taken into custody as provided in §27-5-  
31 1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in  
32 §27-5-2 of this code. An examination of the individual to determine whether the individual meets



33 involuntary hospitalization criteria shall be conducted in person unless an in person examination  
34 would create a substantial delay in the resolution of the matter in which case the examination may  
35 be by video conference, and shall be performed by a physician, psychologist, a licensed  
36 professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed  
37 independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an  
38 advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et*  
39 *seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code,  
40 or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That  
41 a licensed professional counselor, a licensed independent clinical social worker, a physician  
42 assistant, or an advanced nurse practitioner with psychiatric certification may only perform the  
43 examination if he or she has previously been authorized by an order of the circuit court to do so,  
44 the order having found that the licensed professional counselor, the licensed independent clinical  
45 social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has  
46 particularized expertise in the areas of mental health and mental hygiene or substance use  
47 disorder sufficient to make the determinations required by the provisions of this section. The  
48 examination shall be provided or arranged by a community mental health center designated by the  
49 Secretary of the Department of Health and Human Resources to serve the county in which the  
50 action takes place. The order is to specify that the evaluation be held within a reasonable period of  
51 time not to exceed two hours and shall provide for the appointment of counsel for the individual:  
52 *Provided, however*, That the time requirements set forth in this subsection only apply to persons  
53 who are not in need of medical care for a physical condition or disease for which the need for  
54 treatment precludes the ability to comply with the time requirements. During periods of holding and  
55 detention authorized by this subsection, upon consent of the individual or if there is a medical or  
56 psychiatric emergency, the individual may receive treatment. The medical provider shall exercise  
57 due diligence in determining the individual's existing medical needs and provide treatment the  
58 individual requires, including previously prescribed medications. As used in this section,

59 "psychiatric emergency" means an incident during which an individual loses control and behaves  
60 in a manner that poses substantial imminent likelihood of physical harm to himself, herself, or  
61 others. Where a physician, psychologist, licensed professional counselor, licensed independent  
62 clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric  
63 certification has, within the preceding 72 hours, performed the examination required by this  
64 subsection the community mental health center may waive the duty to perform or arrange another  
65 examination upon approving the previously performed examination. Notwithstanding this  
66 subsection, §27-5-4(r) of this code applies regarding payment by the county commission for  
67 examinations at hearings. If the examination reveals that the individual is not mentally ill or has no  
68 substance use disorder, or is determined to be mentally ill or has a substance use disorder but not  
69 likely to cause harm to himself, herself, or others, the individual shall be immediately released  
70 without the need for a probable cause hearing and the examiner is not civilly liable for the  
71 rendering of the opinion absent a finding of professional negligence. The examiner shall  
72 immediately, but no later than 60 minutes after completion of the examination, provide the mental  
73 hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the  
74 state hospital to which the individual may be involuntarily hospitalized, the results of the  
75 examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an  
76 order reflecting the lack of probable cause.

77 (f) A probable cause hearing shall be held promptly before a magistrate, the mental  
78 hygiene commissioner, or circuit judge of the county of which the individual is a resident or where  
79 he or she was found. If requested by the individual or his or her counsel, the hearing may be  
80 postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing  
81 unless the individual or his or her attorney object for good cause or unless the magistrate, mental  
82 hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is  
83 requested to develop regional mental hygiene collaboratives where mental hygiene  
84 commissioners can share on-call responsibilities, thereby reducing the burden on individual

85 circuits and commissioners.

86           The individual shall be present at the hearing and has the right to present evidence,  
87 confront all witnesses and other evidence against him or her, and examine testimony offered,  
88 including testimony by representatives of the community mental health center serving the area.  
89 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The  
90 individual has the right to remain silent and to be proceeded against in accordance with the Rules  
91 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the  
92 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge  
93 shall find and enter an order stating whether or not it is likely that deterioration will occur without  
94 clinically necessary treatment, or there is probable cause to believe that the individual, as a result  
95 of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or  
96 to others. Any such order entered shall be provided to the state hospital to which the individual  
97 may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

98           (g) Probable cause hearings may occur in the county where a person is hospitalized shall  
99 occur in the county from which they reside ~~The~~ and the judicial hearing officer may: use  
100 videoconferencing and telephonic technology; permit persons hospitalized for substance use  
101 disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other  
102 alternative or modified procedures that are consistent with the purposes and provisions of this  
103 article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures  
104 shall fully and effectively guarantee to the person who is the subject of the involuntary commitment  
105 proceeding and other interested parties due process of the law and access to the least restrictive  
106 available treatment needed to prevent serious harm to self or others.

107           (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable  
108 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing  
109 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of  
110 mental illness or substance use disorder is likely to cause serious imminent harm to himself,

111 herself, or others and because of mental illness or a substance use disorder requires treatment,  
112 the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the  
113 question of whether the individual's circumstances make him or her amenable to outpatient  
114 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.  
115 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court  
116 judge shall find and enter an order stating whether or not it is likely that deterioration will occur  
117 without clinically necessary treatment, or there is probable cause to believe that the individual, as  
118 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or  
119 herself or others. The agreement is to be in writing and approved by the individual, his or her  
120 counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the  
121 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate  
122 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be  
123 released to outpatient treatment upon the terms and conditions of the voluntary treatment  
124 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary  
125 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes  
126 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental  
127 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or  
128 refused to comply with the terms and conditions of the voluntary treatment agreement and whether  
129 the individual as a result of mental illness or substance use disorder remains likely to cause  
130 serious harm to himself, herself, or others, the entry of an order requiring admission under  
131 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the  
132 provisions of this article regarding release pursuant to a voluntary treatment agreement or  
133 convalescent status may be construed as creating a right to receive outpatient mental health  
134 services or treatment, or as obligating any person or agency to provide outpatient services or  
135 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a  
136 mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary

137 treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may  
138 not be for a period of more than six months if the individual has not been found to be involuntarily  
139 committed during the previous two years and for a period of no more than two years if the  
140 individual has been involuntarily committed during the preceding two years. If in any proceeding  
141 held pursuant to this article the individual objects to the issuance or conditions and terms of an  
142 order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental  
143 hygiene commissioner may not enter an order directing treatment pursuant to a voluntary  
144 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment  
145 agreement is ordered, the individual subject to the order may, upon request during the period the  
146 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the  
147 individual may seek to have the order canceled or modified. Nothing in this section affects the  
148 appellate and habeas corpus rights of any individual subject to any commitment order.

149         The commitment of any individual as provided in this article shall be in the least restrictive  
150 setting and in an outpatient community-based treatment program to the extent resources and  
151 programs are available, unless the clear and convincing evidence of the certifying professional  
152 under subsection (e) of this section, who is acting in a manner consistent with the standard of care  
153 establishes that the commitment or treatment of that individual requires an inpatient hospital  
154 placement. Outpatient treatment will be based upon a plan jointly prepared by the department and  
155 the comprehensive community mental health center or licensed behavioral health provider.

156         (i) If the certifying professional determines that an individual requires involuntary  
157 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to  
158 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will  
159 cause significant medical complications, the person certifying the individual shall recommend that  
160 the individual be closely monitored for possible medical complications. If the magistrate, mental  
161 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she  
162 shall include a recommendation that the individual be closely monitored in the order of

163 commitment.

164 (j) The Supreme Court of Appeals and the Secretary of the Department of Health and  
165 Human Resources shall specifically develop and propose a statewide system for evaluation and  
166 adjudication of mental hygiene petitions which shall include payment schedules and  
167 recommendations regarding funding sources. Additionally, the Secretary of the Department of  
168 Health and Human Resources shall also immediately seek reciprocal agreements with officials in  
169 contiguous states to develop interstate/intergovernmental agreements to provide efficient and  
170 efficacious services to out-of-state residents found in West Virginia and who are in need of mental  
171 hygiene services.

**§27-5-2a. Process for involuntary hospitalization.**

1 (a) As used in this section:

2 (1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

3 (2) "Authorized staff physician" means a physician, authorized pursuant to the provisions  
4 of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, who is a bona fide member of the hospital's  
5 medical staff.

6 (3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 *et seq.* of this  
7 code, and any acute care facility operated by the state government that primarily provides  
8 inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals  
9 under the supervision of physicians.

10 (4) "Psychiatric emergency" means an incident during which an individual loses control  
11 and behaves in a manner that poses substantial imminent likelihood of physical harm to himself,  
12 herself, or others.

13 (b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or  
14 unable to be immediately contacted, an authorized staff physician may order the involuntary  
15 hospitalization of an individual who is present at, or presented at, a hospital emergency  
16 department in need of treatment, if the authorized staff physician believes, following an

17 examination of the individual, that the individual is addicted or is mentally ill and, because of his or  
18 her addiction or mental illness, is likely to cause serious imminent harm to himself, herself or to  
19 others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting  
20 to his or her decision that the patient presents a harm to himself, herself or others and needs to be  
21 held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to  
22 generate a form for the statement to be signed by the authorized staff physician or other person  
23 authorized by the hospital and provided to the individual.

24 (2) Immediately upon admission, or as soon as practicable thereafter, but in no event later  
25 than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff  
26 physician or designated employee shall file a mental hygiene petition in which the authorized staff  
27 physician certifies that the individual for whom the involuntary hospitalization is sought is addicted  
28 or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious  
29 harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff  
30 physician shall also certify the same in the individual's health records. Upon receipt of this filing,  
31 the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant  
32 to §27-5-2 of this code.

33 (3) An individual who is involuntarily hospitalized pursuant to this section shall be released  
34 from the hospital within 72 hours, unless further detained under the applicable provisions of this  
35 article.

36 (c) During a period of involuntary hospitalization authorized by this section, upon consent  
37 of the individual, or in the event of a medical or psychiatric emergency, the individual may receive  
38 treatment. The hospital or authorized staff physician shall exercise due diligence in determining  
39 the individual's existing medical needs and provide treatment the individual requires, including  
40 previously prescribed medications.

41 (d) Each hospital or authorized staff physician which provides services under this section  
42 shall be paid for the services at the same rate the hospital or authorized staff physician negotiates

43 with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may  
44 file a claim for payment with the West Virginia Legislative Claims Commission in accordance with  
45 §14-2-1 *et seq.* of this code.

46 (e) Authorized staff physicians, mental health professionals, and hospitals and their  
47 employees carrying out duties or rendering professional opinions as provided in this section shall  
48 be free from liability for their actions, if the actions are performed in good faith and within the scope  
49 of their professional duties and in a manner consistent with the standard of care.

50 (f) The West Virginia Supreme Court of Appeals is requested to provide each hospital with  
51 a list of names and contact information of the mental hygiene commissioners, magistrates, and  
52 circuit judges to address mental hygiene petitions in the county where the hospital is located. The  
53 West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall  
54 reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge  
55 does not respond to the request within 24 hours, a report shall be filed to the West Virginia  
56 Supreme Court of Appeals.

57 (g) An action taken against an individual pursuant to this section may not be construed to  
58 be an adjudication of the individual, nor shall any action taken pursuant to this section be  
59 construed to satisfy the requirements of §61-7-7(a)(4) of this code.

**§27-5-4. Institution of final commitment proceedings; hearing requirements; release.**

1 (a) *Involuntary commitment.* — Except as provided in §27-5-2 and §27-5-3 of this code, no  
2 individual may be involuntarily committed to a mental health facility or state hospital except by  
3 order entered of record at any time by the circuit court of the county in which the person resides or  
4 was found, or if the individual is hospitalized in a mental health facility or state hospital located in a  
5 county other than where he or she resides or was found, in the county of the mental health facility  
6 and 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. Notwithstanding the provisions of this code to the contrary, all hearings  
10 for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-  
11 1 *et al.* of this code shall be held by the circuit court of the county that has jurisdiction over the  
12 person for the criminal charges and such circuit court shall have jurisdiction over the involuntary  
13 final civil commitment of such person.

14 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings  
15 for an individual may be commenced by the filing of a written application under oath by an adult  
16 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with  
17 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a  
18 resident or where he or she may be found, or the county of a mental health facility if he or she is  
19 hospitalized in a mental health facility or state hospital located in a county other than where he or  
20 she resides or may be found. Notwithstanding anything any provision of this code to the contrary,  
21 all hearings for the involuntary final civil commitment of a person who is committed in accordance  
22 with §27-6A-1 *et seq.* of this code shall be commenced only upon the filing of a Certificate of the  
23 Licensed Certifier at the mental health facility where the person is currently committed.

24 (c) *Oath; contents of application; who may inspect application; when application cannot be*  
25 *filed.* —

26 (1) The person making the application shall do so under oath.

27 (2) The application shall contain statements by the applicant that the individual is likely to  
28 cause serious imminent harm to self or others due to what the applicant believes are symptoms of  
29 mental illness or substance use disorder. Except for persons sought to be committed as provided  
30 in §27-6A-1 *et seq.* of this code, the applicant shall state in detail the recent overt acts upon which  
31 the clinical opinion is based.

32 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,  
33 including any related documents filed with a circuit court, mental hygiene commissioner, or  
34 magistrate for the involuntary hospitalization of an individual are not open to inspection by any

35 person other than the individual, unless authorized by the individual or his or her legal  
36 representative or by order of the circuit court. The records may not be published unless authorized  
37 by the individual or his or her legal representative. Disclosure of these records may, however, be  
38 made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to  
39 the Federal National Instant Criminal Background Check System established pursuant to section  
40 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state  
41 mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county  
42 performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may  
43 also be made to the prosecuting attorney and reviewing court in an action brought by the individual  
44 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

45 (4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

46 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of*  
47 *certificate.* —

48 (1) The applicant shall file with his or her application the certificate of a physician or a  
49 psychologist stating that in his or her opinion the individual is mentally ill or has a substance use  
50 disorder and that because of the mental illness or substance use disorder, the individual is likely to  
51 cause serious harm to self or others and requires continued commitment and treatment, and  
52 should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.*  
53 of this code, the certificate shall state in detail the recent overt acts on which the conclusion is  
54 based, including facts that less restrictive interventions and placements were considered but are  
55 not appropriate and available. The applicant shall further file with his or her application the names  
56 and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

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

59 (e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the  
60 mental hygiene commissioner or circuit court shall review the application, and if it is determined

61 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a  
62 date for and have the clerk of the circuit court give notice of the hearing:

63 (1) To the individual;

64 (2) To the applicant or applicants;

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

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

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

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

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

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

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

76 (3) The right to have counsel appointed;

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

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

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

84 (g) *Examination of individual by court-appointed physician, psychologist, advanced nurse  
85 practitioner, or physician assistant; custody for examination; dismissal of proceedings. —*

86 (1) Except as provided in subdivision (3) of this subsection, and except when a Certificate

87 of the Licensed Examiner and an application for final civil commitment at the mental health facility  
88 where the person is currently committed has been completed and filed, within a reasonable time  
89 after notice of the commencement of final commitment proceedings is given, the circuit court or  
90 mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse  
91 practitioner with psychiatric certification, or a physician assistant with advanced duties in  
92 psychiatric medicine to examine the individual and report to the circuit court or mental hygiene  
93 commissioner his or her findings as to the mental condition or substance use disorder of the  
94 individual and the likelihood of causing serious harm to self or others. Any such report shall include  
95 the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

96 (2) If the designated physician, psychologist, advanced nurse practitioner, or physician  
97 assistant reports to the circuit court or mental hygiene commissioner that the individual has  
98 refused to submit to an examination, the circuit court or mental hygiene commissioner shall order  
99 him or her to submit to the examination. The circuit court or mental hygiene commissioner may  
100 direct that the individual be detained or taken into custody for the purpose of an immediate  
101 examination by the designated physician, psychologist, nurse practitioner, or physician assistant.  
102 All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer.  
103 After the examination has been completed, the individual shall be released from custody unless  
104 proceedings are instituted pursuant to §27-5-3 of this code.

105 (3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician  
106 assistant do not confirm that the individual is mentally ill or has a substance use disorder and might  
107 be harmful to self or others, then the proceedings for involuntary hospitalization shall be  
108 dismissed.

109 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*  
110 *required.* —

111 (1) The individual shall be present at the final commitment hearing, and he or she, the  
112 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify

113 and to present and cross-examine witnesses.

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

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

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

121 (i) Duties of counsel representing individual; payment of counsel representing indigent. —

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

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

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

130 (j) Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. —

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

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

136 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence  
137 promulgated by the Supreme Court of Appeals except that statements made to health care  
138 professionals appointed under subsection (g) of this section by the individual may be admitted into

139 evidence by the health care professional's testimony, notwithstanding failure to inform the  
140 individual that this statement may be used against him or her. A health care professional testifying  
141 shall bring all records pertaining to the individual to the hearing. The medical evidence obtained  
142 pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged  
143 information for purposes of a hearing pursuant to this section.

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

150 (k) *Requisite findings by the court.* —

151 (1) Upon completion of the final commitment hearing and the evidence presented in the  
152 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following  
153 based upon clear and convincing evidence:

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

155 (B) Whether, as a result of illness or substance use disorder, the individual is likely to cause  
156 serious harm to self or others if allowed to remain at liberty and requires continued commitment  
157 and treatment;

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

160 (D) Whether there is a less restrictive alternative than commitment appropriate for the  
161 individual that is appropriate and available. The burden of proof of the lack of a less restrictive  
162 alternative than commitment is on the person or persons seeking the commitment of the individual:  
163 *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific  
164 finding shall be made that the commitment of, or treatment for, the individual requires inpatient

165 hospital placement and that no suitable outpatient community-based treatment program exists  
166 that is appropriate and available in the individual's area.

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

169 (l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*  
170 *court; expiration of order.* —

171 (1) Upon the requisite findings, the circuit court may order the individual to a mental health  
172 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this  
173 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*  
174 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall  
175 conduct a clinical assessment of the individual at least every 30 days to determine if the individual  
176 requires continued placement and treatment at the mental health facility or state hospital and  
177 whether the individual is suitable to receive any necessary treatment at an outpatient community-  
178 based treatment program. If at any time the chief medical officer, acting in good faith and in a  
179 manner consistent with the standard of care, determines that:

180 (i) The individual is suitable for receiving outpatient community-based treatment;

181 (ii) necessary outpatient community-based treatment is available in the individual's area as  
182 evidenced by a discharge and treatment plan jointly developed by the department and the  
183 comprehensive community mental health center or licensed behavioral health provider; and

184 (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief  
185 medical officer shall provide written notice to the court of record and prosecuting attorney as  
186 provided in subdivision (2) of this section that the individual is suitable for discharge. The chief  
187 medical officer may discharge the patient 30 days after the notice unless the court of record stays  
188 the discharge of the individual. In the event the court stays the discharge of the individual, the court  
189 shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged  
190 unless the court finds by clear and convincing evidence that the individual is a significant and

191 present danger to self or others, and that continued placement at the mental health facility or state  
192 hospital is required.

193 If the chief medical officer determines that the individual requires commitment and  
194 treatment at the mental health facility or state hospital at any time for a period longer than 90 days,  
195 then the individual shall remain at the mental health facility or state hospital until the chief medical  
196 officer of the mental health facility or state hospital determines that the individual's clinical  
197 presentation no longer requires further commitment and treatment. The chief medical officer shall  
198 provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or  
199 attorney, or both, if applicable, that the individual requires commitment and treatment for a period  
200 in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual  
201 continues to meet commitment criteria and the need for ongoing commitment and treatment. The  
202 court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if  
203 applicable, may request any information from the chief medical officer that the court or prosecuting  
204 attorney considers appropriate to justify the need for the individual's ongoing commitment and  
205 treatment. The court may hold any hearing that it considers appropriate.

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

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

212 (B) Whether the individual has the independent ability to manage safely the risk factors  
213 resulting from his or her mental illness or substance use disorder and is not likely to deteriorate to  
214 the point that the individual will pose a likelihood of serious harm to self or others without continued  
215 commitment and treatment;

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



217 obligation to do so;

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

220 (E) Whether the individual is capable of surviving safely in freedom by himself or herself or  
221 with the help of willing and responsible family members, guardian, or friends; and

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

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

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

229 (5) If the commitment of the individual as provided under subdivision (1) of this subsection  
230 exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall  
231 be held by the mental hygiene commissioner or by the circuit court of the county as provided in  
232 subsection (a) of this section.

233 (m) *Dismissal of proceedings.* — If the individual is discharged as provided in subsection (l)  
234 of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

235 (n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in  
236 which an order directing hospitalization is entered, if not in the county of the individual's residence,  
237 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the  
238 circuit court of the county of which the individual is a resident.

239 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*  
240 *hospitalization; execution of order.* —

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

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

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

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

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

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

266 (r) *Report to the Secretary of the Department of Health and Human Resources.* —

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

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

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

275 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*  
276 *paid by the county commission.* —

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

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

286 (3) Effective July 1, 2022, the Department of Health and Human Resources shall  
287 reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement  
288 agency for the actual costs related to pick up, detention and transporting of a patient who has been  
289 involuntary committed upon issuance of a probable cause detention order or involuntary  
290 commitment.

**§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.* and §27-5-1 *et seq.* of this code, the sheriff Department of Health and Human Resources  
3 shall provide immediate transportation to or from the appropriate mental health facility or state

4 hospital as described in §27-5-19(d) of this code: *Provided*, That, where hospitalization occurs  
5 pursuant to §27-4-1 *et seq.* of this code, the ~~sheriff~~ Department of Health and Human Resources  
6 may permit, upon the written request of a person having proper interest in the individual's  
7 hospitalization, for the interested person to arrange for the individual's transportation to the mental  
8 health facility or state hospital if the ~~sheriff~~ Department of Health and Human Resources  
9 determines that those means are suitable given the individual's condition.

10 (b) Upon written agreement between the county commission on behalf of the ~~sheriff~~  
11 Department of Health and Human Resources and the directors of the local community mental  
12 health center and emergency medical services, an alternative transportation program may be  
13 arranged. The agreement shall clearly define the responsibilities of each of the parties, the  
14 requirements for program participation, and the persons bearing ultimate responsibility for the  
15 individual's safety and well-being.

16 (c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal  
17 governments may enter into written agreements by which certified municipal law-enforcement  
18 officers may perform the duties of the sheriff as described in this article. The agreement shall  
19 determine jurisdiction, responsibility of costs, and all other necessary requirements, including  
20 training related to the performance of these duties, and shall be approved by the county  
21 commission and circuit court of the county in which the agreement is made. For purposes of this  
22 subsection, "certified municipal law-enforcement officer" means any duly authorized member of a  
23 municipal law-enforcement agency who is empowered to maintain public peace and order, make  
24 arrests, and enforce the laws of this state or any political subdivision thereof, other than parking  
25 ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et*  
26 *seq.* of this code.

27 (d) In the event an individual requires transportation to a state hospital as defined by §27-1-  
28 6 of this code, the sheriff, or certified municipal law-enforcement officer shall contact the state  
29 hospital in advance of the transportation to determine if the state hospital has suitable bed

30 capacity to place the individual.

NOTE: The purpose of this bill is to clarify the duties and responsibilities of mental health professionals in West Virginia. The bill provides for a physician, psychologist, licensed professional counselor, licensed independent social worker, advanced nurse practitioner, physician assistant, or law enforcement officer to make an application for involuntary hospitalization. Finally, the bill provides for the Department of Health and Human Resources to provide transportation for individuals who require involuntary hospitalization.

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