

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5254

FISCAL
NOTE

By Delegates Summers and Tully

[Introduced January 26, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §27-5-1b and §27-5-2 of said code; to amend said code by adding thereto a
3 new section, designated §27-5-2a; to amend and reenact §27-5-4 of said code; to amend
4 said code by adding a new article, designated §27-5A-1, §27-5A-2; and §27-5A-3; all
5 relating generally to the creation of mental hygiene regions by the Supreme Court of
6 Appeals; clarifying that mental hygiene evaluations and proceedings may be conducted by
7 video technology; removing licensed professional counselors and licensed independent
8 social workers as approved examiners for mental hygiene evaluations; creating a
9 temporary observation release for mental hygiene respondents; clarifying that chief
10 medical officer releases requiring approval of circuit court only apply to forensic patients;
11 requiring hearings for any commitment period of longer than 90 days and prohibiting any
12 person from being civilly committed to longer than 120 days without a hearing to determine
13 whether the individual continues to meet commitment criteria; removing obsolete language
14 regarding transcripts of proceedings to circuit court of county of residence; restructuring
15 the mental hygiene commissioner system by authorizing new mental hygiene regions and
16 full-time mental hygiene commissioners employed by the Supreme Court of Appeals;
17 authorizing mental hygiene proceedings and evaluations by video and requiring facilities to
18 provide technology that meets Supreme Court of Appeals specifications; authorizing
19 statewide coverage for mental hygiene evaluations and permitting a mental hygiene
20 commissioner to exclude evaluator testimony based on the West Virginia Rules of
21 Evidence; and requiring each Certified Community Mental Health Center to ensure that at
22 least one examiner is available to provide uniform and continuous coverage in each
23 region, including afterhours, weekends, and holidays.

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 and may, if necessary, appoint additional~~
3 ~~attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization~~
4 ~~hearings~~ In a county outside a mental hygiene region created as provided in §27-5A-1 of this code,
5 the chief circuit judge of that judicial circuit shall appoint a competent attorney, and may, if
6 necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over
7 involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good
8 moral character and of standing in their profession and they shall, before assuming the duties of a
9 commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et*
10 *seq.* of this code.

11 Prior to presiding over an involuntary hospitalization hearing, each newly appointed person
12 to serve as a mental hygiene commissioner and all magistrates shall attend and complete an
13 orientation course that consists of training provided annually by the Supreme Court of Appeals and
14 complete an orientation program to be developed by the Secretary of the Department of Health
15 and Human Resources. In addition, existing mental hygiene commissioners and all magistrates
16 trained to hold probable cause and emergency detention hearings involving involuntary
17 hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and
18 complete an orientation program to be developed by the Secretary of the Department of Health
19 and Human Resources. Persons attending the courses outside the county of their residence shall
20 be reimbursed out of the budget of the Supreme Court—General Judicial for reasonable expenses
21 incurred. The Supreme Court of Appeals shall establish curricula and rules for the courses,
22 including rules providing for the reimbursement of reasonable expenses as authorized in this
23 section. The Secretary of the Department of Health and Human Resources shall consult with the

24 Supreme Court of Appeals regarding the development of the orientation program.

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

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

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

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

54 (d) *Duties of sheriff.* — Upon written order of the circuit court, mental hygiene
55 commissioner, or magistrate in the county where the individual formally accused of being mentally
56 ill or having a substance use disorder is a resident or is found, the sheriff of that county shall take
57 the individual into custody and transport him or her to and from the place of hearing and the mental
58 health facility. The sheriff shall also maintain custody and control of the accused individual during
59 the period of time in which the individual is waiting for the involuntary commitment hearing to be
60 convened and while the hearing is being conducted: *Provided*, That an individual who is a resident
61 of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or
62 her state of residence for treatment pursuant to §27-5-4(p) of this code: *Provided, however*, That
63 where an individual is a resident of West Virginia but not a resident of the county in which he or she
64 is found and there is a finding of probable cause, the county in which the hearing is held may seek
65 reimbursement from the county of residence for reasonable costs incurred by the county attendant
66 to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary,
67 sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with
68 the concurrence of their respective circuit courts and county commissions, by which transportation
69 and security responsibilities for hearings held pursuant to the provisions of this article during hours
70 when the courthouse is closed or on nonjudicial days may be shared in order to facilitate prompt
71 hearings and to effectuate transportation of persons found in need of treatment. In the event an
72 individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff
73 shall contact the state hospital in advance of the transportation to determine if the state hospital
74 has available suitable bed capacity to place the individual.

75 (e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is

76 brought to a mental health care facility for purposes of evaluation for commitment under this
77 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody
78 of the person in the facility until the evaluation is completed, or the county commission shall
79 reimburse the mental health care facility at a reasonable rate for security services provided by the
80 mental health care facility for the period of time the person is at the hospital prior to the
81 determination of 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 (i) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* — Each
22 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.

34 (k) Notwithstanding any provision of this code to the contrary, the Supreme Court of
35 Appeals, mental health facilities, law enforcement, and the Department of Health and Human
36 Resources may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement
37 an involuntary commitment process. Further, notwithstanding any provision of this code to the

38 contrary, no alternative transportation provider may be utilized until standards are developed and
39 implemented that define the role, scope, regulation, and training necessary for an alternative
40 transportation provider as provided in subsection (a) of this section.

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

1 (a) Any adult person may make an application for involuntary hospitalization for
2 examination of an individual when the person making the application has reason to believe that the
3 individual to be examined has a substance use disorder as defined by the most recent edition of
4 the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders,
5 inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use
6 disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to
7 others if allowed to remain at liberty while awaiting an examination and certification by a physician,
8 psychologist, ~~licensed professional counselor, licensed independent social worker~~ an advanced
9 nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided,*
10 That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be
11 a basis for involuntary commitment to a state hospital.

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

18 (c) Application for involuntary custody for examination may be made to the circuit court,
19 magistrate court, or a mental hygiene commissioner of the county in which the individual resides,
20 or of the county in which he or she may be found. A magistrate before whom an application or
21 matter is pending may, upon the availability of a mental hygiene commissioner or circuit court

22 judge for immediate presentation of an application or pending matter, transfer the pending matter
23 or application to the mental hygiene commissioner or circuit court judge for further proceedings
24 unless otherwise ordered by the chief judge of the judicial circuit.

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

27 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for
28 the individual named in the application to be detained and taken into custody as provided in §27-5-
29 1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in
30 §27-5-2 of this code. An examination of the individual to determine whether the individual meets
31 involuntary hospitalization criteria ~~shall be conducted in person unless an in person examination~~
32 ~~would create a substantial delay in the resolution of the matter in which case the examination may~~
33 be by video conference, and shall be performed by a physician, psychologist, a licensed
34 professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed
35 independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code an
36 advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et*
37 *seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code,
38 or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code. *Provided, That*
39 ~~a licensed professional counselor, a licensed independent clinical social worker, a physician~~
40 ~~assistant, or an advanced nurse practitioner with psychiatric certification may only perform the~~
41 ~~examination if he or she has previously been authorized by an order of the circuit court to do so,~~
42 ~~the order having found that the licensed professional counselor, the licensed independent clinical~~
43 ~~social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has~~
44 ~~particularized expertise in the areas of mental health and mental hygiene or substance use~~
45 ~~disorder sufficient to make the determinations required by the provisions of this section~~ The
46 examination shall be provided or arranged by a community mental health center designated by the
47 Secretary of the Department of Health and Human Resources to serve the county in which the

48 action takes place. The order is to specify that the evaluation be held within a reasonable period of
49 time not to exceed two hours and shall provide for the appointment of counsel for the individual:
50 *Provided, however,* That the time requirements set forth in this subsection only apply to persons
51 who are not in need of medical care for a physical condition or disease for which the need for
52 treatment precludes the ability to comply with the time requirements. During periods of holding and
53 detention authorized by this subsection, upon consent of the individual or if there is a medical or
54 psychiatric emergency, the individual may receive treatment. The medical provider shall exercise
55 due diligence in determining the individual's existing medical needs and provide treatment the
56 individual requires, including previously prescribed medications. As used in this section,
57 "psychiatric emergency" means an incident during which an individual loses control and behaves
58 in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where
59 a physician, psychologist, ~~licensed professional counselor, licensed independent clinical social~~
60 ~~worker,~~ physician assistant, or advanced nurse practitioner with psychiatric certification has, within
61 the preceding 72 hours, performed the examination required by this subsection the community
62 mental health center may waive the duty to perform or arrange another examination upon
63 approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of
64 this code applies regarding payment by the county commission for examinations at hearings. If the
65 examination reveals that the individual is not mentally ill or has no substance use disorder, or is
66 determined to be mentally ill or has a substance use disorder but not likely to cause harm to
67 himself, herself, or others, the individual shall be immediately released without the need for a
68 probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent
69 a finding of professional negligence. The examiner shall immediately, but no later than 60 minutes
70 after completion of the examination, provide the mental hygiene commissioner, circuit court, or
71 magistrate before whom the matter is pending, and the state hospital to which the individual may
72 be involuntarily hospitalized, the results of the examination on the form provided for this purpose
73 by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

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

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

95 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
96 judicial hearing officer may: use videoconferencing and telephonic technology; permit persons
97 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is
98 accomplished; and specify other alternative or modified procedures that are consistent with the
99 purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The

100 alternative or modified procedures shall fully and effectively guarantee to the person who is the
101 subject of the involuntary commitment proceeding and other interested parties due process of the
102 law and access to the least restrictive available treatment needed to prevent serious harm to self
103 or others.

104 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
105 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing
106 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of
107 mental illness or substance use disorder is likely to cause serious harm to himself, herself, or
108 others and because of mental illness or a substance use disorder requires treatment, the
109 magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the
110 question of whether the individual's circumstances make him or her amenable to outpatient
111 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.
112 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court
113 judge shall find and enter an order stating whether or not it is likely that deterioration will occur
114 without clinically necessary treatment, or there is probable cause to believe that the individual, as
115 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or
116 herself or others. The agreement is to be in writing and approved by the individual, his or her
117 counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the
118 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate
119 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be
120 released to outpatient treatment upon the terms and conditions of the voluntary treatment
121 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary
122 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes
123 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental
124 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or
125 refused to comply with the terms and conditions of the voluntary treatment agreement and whether

126 the individual as a result of mental illness or substance use disorder remains likely to cause
127 serious harm to himself, herself, or others, the entry of an order requiring admission under
128 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the
129 provisions of this article regarding release pursuant to a voluntary treatment agreement or
130 convalescent status may be construed as creating a right to receive outpatient mental health
131 services or treatment, or as obligating any person or agency to provide outpatient services or
132 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a
133 mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary
134 treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may
135 not be for a period of more than six months if the individual has not been found to be involuntarily
136 committed during the previous two years and for a period of no more than two years if the
137 individual has been involuntarily committed during the preceding two years. If in any proceeding
138 held pursuant to this article the individual objects to the issuance or conditions and terms of an
139 order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental
140 hygiene commissioner may not enter an order directing treatment pursuant to a voluntary
141 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment
142 agreement is ordered, the individual subject to the order may, upon request during the period the
143 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the
144 individual may seek to have the order canceled or modified. Nothing in this section affects the
145 appellate and habeas corpus rights of any individual subject to any commitment order.

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

152 the comprehensive community mental health center or licensed behavioral health provider.

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

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

§27-5-2a. Temporary observation release.

1 (a) If the chief medical officer determines that an individual committed under §27-5-3 or
2 §27-5-5 of this code no longer requires treatment at the mental health facility, or that less restrictive
3 treatment options are now available due to a change in the patient’s condition, the hospital may
4 release the individual on a temporary observation period of up to 120 days, conditioned on the
5 patient’s compliance with a treatment plan and monitoring by the Certified Community Mental
6 Health Center where the patient resides.

7 (b) A temporary observation release automatically stays all other timeframes under this
8 article. At the conclusion of the 120 day temporary observation release, if the individual is not

9 readmitted, then the proceedings shall be dismissed.

10 (c) If a Certified Community Mental Health Center believes a patient is not complying with
11 the terms of their treatment plan, or if the patient's condition has deteriorated so that a least
12 restrictive treatment option is no longer viable, then the Certified Community Mental Health Center
13 may request an assessment by the chief medical officer, or his or her designee to verify the factual
14 basis supporting the need to revoke the temporary release.

15 (d) If revocation of the temporary release is appropriate, the chief medical officer shall
16 prepare an order affirming that the patient is not in compliance with his or her treatment plan or that
17 the patient's condition has deteriorated so that a least restrictive treatment option is no longer
18 viable and the conditions requiring the original commitment have returned. The chief medical
19 officer shall also state that voluntary treatment options were presented and either declined or not
20 viable, and shall identify the mental health facility where the individual will be committed for
21 treatment. The order shall be submitted to the court for ratification, and if ratified, shall require the
22 sheriff to take the individual into custody and transport the individual directly to a mental health
23 facility identified by the chief medical officer in the order.

24 (e) The chief medical officer shall serve the order revoking temporary release on the
25 prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable.
26 The individual or the individual's attorney may request a hearing after readmittance to determine
27 whether revocation was appropriate.

28 (f) Once an individual is readmitted to a mental health facility, all timeframes originally
29 stayed by subsection (b) shall continue.

30 (g) Nothing in this section shall limit an adult person from filing a new application for
31 involuntary commitment against an individual under a temporary observation release, or otherwise
32 prohibit medical or law enforcement intervention in a life-threatening situation.

§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 harm to self or others due to what the applicant believes are symptoms of mental
29 illness or substance use disorder. Except for persons sought to be committed as provided in §27-
30 6A-1 *et seq.* of this code, the applicant shall state in detail the recent overt acts upon which the
31 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: (i) The individual is suitable for
180 receiving outpatient community-based treatment; (ii) necessary outpatient community-based
181 treatment is available in the individual's area as evidenced by a discharge and treatment plan
182 jointly developed by the department and the comprehensive community mental health center or
183 licensed behavioral health provider; and (iii) the individual's clinical presentation no longer

184 requires inpatient commitment, the chief medical officer shall provide written notice to the court of
185 record and prosecuting attorney as provided in subdivision (2) of this section that the individual is
186 suitable for discharge. ~~The~~ For an individual committed pursuant to §27-6A-3 of this code, the
187 chief medical officer may discharge the patient 30 days after the notice unless the court of record
188 stays the discharge of the individual. In the event the court stays the discharge of the individual,
189 the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter
190 discharged unless the court finds by clear and convincing evidence that the individual is a
191 significant and present danger to self or others, and that continued placement at the mental health
192 facility or state 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 If the chief medical officer determines that the individual requires commitment and
207 treatment at the mental health facility or state hospital at any time for a period longer than 90 days,
208 then the chief medical officer shall file a petition with the court and shall serve the petition on the
209 prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable.

210 The court shall hold a hearing on the petition within 10 days. If the court determines that extended
211 commitment and treatment is required, then the court shall enter an order authorizing up to an
212 additional 90 days of commitment and treatment. At the conclusion of the additional commitment
213 period, if the chief medical officer determines that the individual requires additional commitment
214 and treatment at the mental health facility or state hospital, then a new petition for additional
215 commitment and treatment is required. No individual may be civilly committed under this article for
216 more than 120 days without a hearing to determine whether the individual continues to meet
217 commitment criteria.

218 ~~(2) Notice to the court of record and prosecuting attorney shall be provided by personal~~
219 ~~service or certified mail, return receipt requested. The chief medical officer shall make the~~
220 ~~following findings: In the petition, the chief medical officer shall include the following findings:~~

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

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

228 (C) Whether the individual is likely to participate in outpatient treatment with a legal
229 obligation to do so;

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

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

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

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

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

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

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

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

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

253 ~~(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization~~
254 ~~should be ordered but finds that the individual is not a resident of the county in which the hearing is~~
255 ~~held and the individual is not currently a resident of a mental health facility or state hospital, a~~
256 ~~transcript of the evidence adduced at the final commitment hearing of the individual, certified by~~
257 ~~the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the~~
258 ~~county of which the individual is a resident. The clerk shall immediately present the transcript to~~
259 ~~the circuit court or mental hygiene commissioner of the county.~~

260 ~~(2) If the circuit court or mental hygiene commissioner of the county of the residence of the~~
261 ~~individual is satisfied from the evidence contained in the transcript that the individual should be~~

262 hospitalized as determined by the standard set forth in subdivision one of this subsection, the
263 circuit court shall order the appropriate hospitalization as though the individual had been brought
264 before the circuit court or its mental hygiene commissioner in the first instance.

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

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

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

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

279 (1) The chief medical officer of a mental health facility or state hospital admitting a patient
280 pursuant to proceedings under this section shall immediately make a report of the admission to the
281 Secretary of the Department of Health and Human Resources or to his or her designee.

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

287 (s) (r) *Payment of some expenses by the state; mental hygiene fund established;*

288 *expenses paid by the county commission. —*

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

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

298 (3) Effective July 1, 2022, the Department of Health and Human Resources shall
299 reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement
300 agency for the actual costs related to transporting a patient who has been involuntary committed.

ARTICLE 5A MENTAL HYGIENE REFORM ACT

§27-5A-1. Restructure of Mental Hygiene Commissioner System

1 (a) The Supreme Court of Appeals is authorized to employ full-time mental hygiene
2 commissioners with statewide jurisdiction who shall primarily serve in specified regions. Each full-
3 time commissioner shall be selected, appointed, compensated, and supervised by the Supreme
4 Court of Appeals, shall serve at the Court's pleasure, and shall serve in any region ordered by the
5 Court. Full-time mental hygiene commissioners shall be persons of good moral character and of
6 standing in their profession and they shall, before assuming the duties of a commissioner, take the
7 oath required of other special commissioners as provided in §6-1-1 et seq. of this code. The Court
8 may also employ administrative staff to support the regional mental hygiene system in its
9 discretion.

10 (b) The Supreme Court of Appeals may establish mental hygiene regions. Once a mental
11 health region is established and staffed by the Supreme Court, a chief circuit judge may no longer

12 appoint mental hygiene commissioners within a county included in that region, all existing
13 appointments of commissioners within that region shall expire, and magistrates may not preside
14 over mental hygiene proceedings within that region.

15 (c) A mental hygiene commissioner employed by the Supreme Court shall be a competent
16 attorney, and shall receive training from the Administrative Office of the Supreme Court prior to
17 presiding over proceedings. Training topics shall include acute psychiatric cases, geriatrics,
18 developmental disabilities, and substance abuse.

19 (d) Mental hygiene commissioners employed by the Supreme Court of Appeals shall work
20 a schedule that provides uniform and continuous coverage in each region, including afterhours,
21 weekends, and holidays.

22 (e) If the Supreme Court of Appeals implements mental hygiene regions statewide, the
23 provisions of §27-5-1 of this code regarding appointment and supervision of mental hygiene
24 commissioners by circuit judges, or compensation shall no longer apply.

§27-5A-2 Hearings by videoconference.

1 All evaluations and hearings in mental hygiene proceedings may be conducted by
2 videoconferencing technology unless a mental hygiene commissioner orders an in-person
3 evaluation or proceeding. Each Certified Community Mental Health Center, County Sheriff's
4 Department, and Regional Jail shall provide technology that complies with Supreme Court of
5 Appeals specifications to ensure meaningful interactions between a mental hygiene
6 commissioner, respondent, witnesses, and evaluators during evaluations and proceedings, so
7 that a respondent's due process rights are protected.

§27-5A-3. Statewide availability of mental health evaluators.

1 (a) Any physician, psychologist, advanced nurse practitioners with psychiatric certification
2 practicing in compliance with §30-7-1 et seq. of this code, physician assistants practicing in
3 compliance with §30-3-1 et seq. of this code, or physician assistants practicing in compliance with
4 §30-3E-1 et seq. of this code are authorized to examine the respondent in a mental hygiene

5 proceeding in any region, circuit, or county, and to make sufficient determinations as required by
6 this chapter based on their particular expertise in the areas of mental health, mental hygiene, or
7 substance abuse disorders. However, the presiding circuit court, magistrate court, or a mental
8 hygiene commissioner may exclude an examiner's testimony if it determines that the examiner's
9 knowledge, skill, experience, training, or education is insufficient to provide expert testimony
10 under standards consistent with the West Virginia Rules of Evidence.

11 (b) Each Certified Community Mental Health Center shall ensure that at least one
12 examiner is available to provide uniform and continuous coverage in each region, including
13 afterhours, weekends, and holidays.

NOTE: The purpose of this bill is to allow the Supreme Court of Appeals to employ full-time mental hygiene commissioners with statewide jurisdiction to conduct mental hygiene proceedings in designated regions. The bill also creates a new system of temporary observation releases to ensure continued compliance with treatment plans and to allow for more efficient follow-up commitment if criteria have returned. Finally, the bill allows evaluators to conduct evaluations statewide and requires Certified Community Mental Health Centers to ensure that at least one examiner is available to provide coverage in each region at all hours and limits who may perform these evaluations.

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