# West Virginia House of Delegates

## Standing Committee on Health and Human Resources

### Minutes for April 09, 2025, 12:00 AM

Pursuant to the call of the Chair, the Standing Committee on Health and Human Resources met on April 09, 2025, 12:00 AM, in the House East Wing Committee Room 215-E.

Members present: Delegates Amos, Anders, Burkhammer, Chiarelli, Clark, Dean, Drennan, Hall, Hamilton, Heckert, Hite, Jeffries, Lewis, Masters, Mazzocchi, Miller, Petitto, Pushkin, Pinson, Rohrbach, Smith, Stephens, Vance, Willis, Worrell.

Members absent: None.

A silent roll call being taken, the presence of a quorum was established.

On motion of Delegate Hite, the minutes of the previous meeting were approved.

Chair Worrell recognized counsel to explain SB 944 - Creating WV Child First Advisory Committee (2nd REF FIN). Counsel explained SB 944. Chair Worrell called for question of counsel. There were no questions of counsel. Chair Worrell called for amendments. Delegate Drennan moved to amend. Delegate Drennan explained her amendment. Drennan amendment adopted. Delegate Heckert moved to amend. Delegate Heckert explained his amendment, Heckert amendment adopted. SB944 H HHR AM #1 Drennan

Sargent 3380

Delegate Drennan moved to amend the bill on page 2, line 24, by striking the word, “and”

And,

On page 2, line 25, by replacing the period with a semicolon

And,

On page 2, below line 25, by inserting the subdivisions,

“(9) One member appointed by the West Virginia Behavioral Healthcare Providers Association, who has experience in the delivery of community-based behavioral health services for children and families; and

(10) One member appointed by the West Virginia Child Care Association, who has experience in direct provision or policy advocacy related to child welfare and foster care.”

SB944 H HHR AM #1 Heckert

Sargent 3380

Delegate Heckert moved to amend the bill on page 2, line 24, by striking the word, “and”

And,

On page, line 25, by replacing the period with a semicolon

And,

On page 2, below line 25, by inserting the subdivisions,

“(9) One representative of a licensed child residential provider in the state, appointed by the Secretary of the Department of Human Services;

(10) One representative of a licensed child placement agency in the state; appointed by the Secretary of the Department of Human Services;

(11) One representative of a provider of socially necessary services, appointed by the Secretary of the Department of Human Services;

(12) One representative of a Court Appointed Special Advocates program, appointed by the Secretary of the Department of Human Services;

(13) One representative of the West Virginia State Police, appointed by the Superintendent of State Police;

(14) One representative of the West Virginia Department of Education, appointed by the State Superintendent of Schools; and

(15) One representative of the Division of Corrections and Rehabilitation with expertise in juvenile services, appointed by the Commissioner of the Division of Corrections and Rehabilitation.” Vice Chair Hite moved SB 944 be report to the floor with the recommendation it do pass as amended, but first be referred to the committee on Finance. Motion carried.

Chair Worrell recognized counsel to explain SB 585 - Relating to Cohen Craddock Student Athlete Safety Act (2nd REF FIN). Counsel explained strike and insert for SB 585. Chair Worrell called for questions of counsel. No questions of counsel. Chair Worrell called for amendments. Delegate Willis moved to amend. Delegate Willis explains his amendment. Willis amendment adopted. SB585 H HHR AM #1 Willis

Sargent 3380

Delegate Willis moved to amend the bill on page 1, after the enacting clause by striking out the remainder of the bill and inserting, in lieu thereof, the following:

ARTICLE 36. COHEN CRADDOCK STUDENT ATHLETE SAFETY ACT.

§18-36-1. Short title; findings.

(a) This article shall be known, and may be cited as, the Cohen Craddock Student Athlete Safety Act.

(b) The Legislature hereby finds that:

(1) Student athletes face varying risks of injury, including concussions, heat-related illnesses, and cardiac events, which warrant the continual evaluation of safety protocols and equipment standards by the West Virginia Secondary School Activities Commission (WVSSAC);

(2) Repeated head collisions, even with protective helmets, can cause trauma and concussions that have long-term cognitive and neurological effects, making it essential that reasonable safety measures are used;

(3) The evolution and availability of sport-specific safety equipment is constantly evolving and should be consistently monitored by the WVSSAC;

(4) Professional sports leagues and collegiate sports teams have increasingly allowed the use of modern safety equipment to enhance the safety of their athletes;

(5) The National Football League recorded the fewest number of concussions during the 2024 season, which the National Football League's Chief Medical Officer attributed, in part, to the use of impact reducing soft-shell helmet covers during training camp and regular-season practices; and

(6) The WVSSAC should consult with medical experts and athletic leaders to help ensure that student athletes across West Virginia have knowledge of and access to modern and necessary safety equipment for athletic activities.

§18-36-2. Definitions.

As used in this article, the following terms have the meanings ascribed unless the context clearly indicates a different meaning:

"Department" means the West Virginia Department of Education;

"Fund" means the Cohen Craddock Memorial Grant Fund;

"Grant program" means the Cohen Craddock Memorial Grant Program;

"Student athletes" means all students participating in any interscholastic sport at a high school or middle school in West Virginia; and

"Superintendent" means the West Virginia Superintendent of Schools.

§18-36-3. Optional use of football helmet covers.

(a) Effective July 1, 2026, student athletes in West Virginia participating in a school organized football practice may use an impact reducing soft-shell helmet cover while wearing a football helmet. The impact reducing soft-shell helmet cover shall be attached to a student athlete's football helmet at all times when participating in any activity with a likelihood of collision or during any practice activity which the student athlete would regularly be expected to use a football helmet.

§18-36-4. Cohen Craddock Memorial Grant Program; fund established.

(a) The Cohen Craddock Memorial Grant Program is hereby established. The grant program shall be administered by the department. The department shall provide application forms and procedures to administer the grant.

(b) Schools or county boards of education may apply to the grant program for funding to cover all or some of the costs associated with procuring safety equipment covered by this article or recommended by the advisory committee.

(c) The department shall set the amount of grants based on the funds available, and grants shall be issued by the department on a first-come-first-serve basis.

(d) There shall be created in the State Treasury a special revenue fund designated the Cohen Craddock Memorial Grant Fund as follows:

(1) The fund shall be administered by the department, and expenditures from the fund shall be made for the sole purpose of providing grants authorized by this section;

(2) The fund shall consist of moneys received from the federal government, and moneys received from private donations, grants, bequests, and all other moneys received from all sources for the purposes stated herein. The department, political subdivisions, and any private entity may engage in fundraising efforts to solicit donations to the fund;

(3) Any moneys in the fund may be invested and the fund may retain any income from such investments;

(4) Any moneys remaining in the fund at the end of the fiscal year shall not revert to the general revenue but shall remain in the fund solely for the purposes stated in this article; and

(5) The moneys accrued in the fund, any earnings thereon, and any yields from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this subsection.

§18-36-5. Sunset date.

The provisions of this article shall terminate on July 1, 2030, unless there is action by the Legislature to extend the provisions beyond that date.

Vice Chair Hite moved SB 585 be reported to the floor with the recommendation that it do pass as amended, but first be referred to the committee on Finance. Motion carried.

Chair Worrell recognized counsel to explain ComSub for ComSub for SB 761 - Creating Joel Archer Substance Abuse Intervention Act (2nd REF FIN). Counsel explained Strike and Insert. Chair Worrell called for questions of counsel, Counsel answered questions of the committee. Chair Worrell called for amendments. Division was called and by a vote of 19-3 the amendment adopted. SB761 H HHR AM #1

CR 3338

The Committee on Health and Human Resources moved to amend the bill on page 1, by striking everything after the enacting clause and inserting in lieu thereof the following:

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.

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

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

(b) Duties of mental hygiene commissioners. —

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

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

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

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

(e) Duty of sheriff upon presentment to mental health care facility comprehensive community mental health center or the place the evaluation is being held — When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed. or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

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

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

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

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

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

(i) (b) Duties of the Mental Health Center Comprehensive Community Mental Health Center for Purposes of Evaluation for Commitment. — Each mental health comprehensive community mental health center shall make available as necessary a qualified and competent licensed person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 et seq. of this code. Evaluations shall be conducted in person, unless an in-person evaluation would create a substantial delay to the resolution of the matter, and then the evaluation may be conducted by videoconference. Each mental health center comprehensive community mental health center that performs these evaluations shall exercise reasonable diligence in performing the evaluations and communicating with the state hospital to provide all reasonable and necessary information to facilitate a prompt and orderly admission to the state hospital of any person who is or is likely to be involuntarily committed to such hospital. Each mental health center comprehensive community mental health center that performs these evaluations shall explain the involuntary commitment process to the applicant and the person proposed to be committed and further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and the likely risks and benefits of commitment.

(k) (c) Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, mental health facilities comprehensive community mental health center, law

enforcement, Department of Human Services and the Department of Health Facilities may participate in pilot projects in Cabell, Wood, Berkeley, and Ohio Counties to implement an involuntary commitment process. Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative 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.

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

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

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

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

(e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 et seq. of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 et seq. of this code, an advanced nurse practitioner, practice registered nurse, with psychiatric certification practicing in

compliance with §30-7-1 et seq. of this code, a physician assistant practicing in compliance with §30-3-1 et seq. of this code, or a physician assistant. practicing in compliance with §30-3E-1 et seq. of this code: Provided, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Human Services to serve the county in which the action takes place. The order is to specify that the evaluation be held within a reasonable period of time not to exceed two hours and shall provide for the appointment of counsel for the individual: Provided, however, That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or advanced nurse practitioner practice registered nurse with psychiatric certification has, within the preceding 72 hours, performed the examination required by this subsection the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing. and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A mental hygiene health service provider authorized under this subsection who performs an involuntary custody examination shall not be civilly liable to any party or non-party to the proceeding regardless of the examination results unless the mental health service provider acted with negligence demonstrated by clear and convincing evidence or in bad faith in performing the examination or rendering his or her opinion.

(f) (g) A probable cause hearing shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where

he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing unless the individual or his or her attorney object for good cause or unless the magistrate, mental hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is requested to develop regional mental hygiene collaboratives where mental hygiene commissioners can share on-call responsibilities, thereby reducing the burden on individual circuits and commissioners.

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

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

(h) (i) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit court judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate

outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit court judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: Provided, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit court judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit court judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

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

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

(j) (l) The Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities shall specifically develop and propose a statewide

system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretaries of the Department of Human Services and Department of Health Facilities shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

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

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

(b) A temporary observation release automatically stays all other timeframes under this article. At the conclusion of the 120-day temporary observation release, if the individual is not readmitted, then the proceedings shall be dismissed.

(c) If a comprehensive community mental health center believes a patient is not complying with the terms of his or her treatment plan, or if the patient's condition has deteriorated so that a least restrictive treatment option is no longer viable, then the comprehensive community mental health center may request an assessment by the chief medical officer, or his or her designee, to verify the factual basis supporting the need to revoke the temporary release.

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

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

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

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

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

(a) Involuntary commitment. — Except as provided in §27-5-2 and §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-1 et al. of this code shall be held by the circuit court of the county that has jurisdiction over the person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person. The Legislature requests the Supreme Court of Appeals promulgate rules governing final civil commitments of persons pursuant to §27-6A-1 et al., and to take into consideration any comments submitted by the Prosecuting Attorney's Association, the Public Defender Services, Disability Rights of West Virginia, the Statewide Forensic Coordinator, and the Statewide Clinical Forensic Director.

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

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

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

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

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section

103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state mental health registry, in accordance with §61-7A-1 et seq. of this code, and the sheriff of a county performing background investigations pursuant to §61-7-1 et seq. of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

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

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

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

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

(e) Notice requirements; eight days' notice required. — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

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

(4) To the mental health authorities comprehensive community mental health center serving the area;

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

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

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

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

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

(3) The right to have counsel appointed;

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

(5) The time and place of the hearing.

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

(g) Examination of individual by court-appointed physician, psychologist, licensed professional counselor, licensed independent clinical social worker, advanced nurse practitioner practice registered nurse, or physician assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, and except when a Certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, an advanced nurse practitioner with psychiatric certification practice registered nurse, or a physician assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

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

(3) If the reports of the appointed physician, psychologist, licensed professional counselor, licensed independent clinical social worker, advanced nurse practitioner practice registered nurse, or physician assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

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

(k) Requisite findings by the court. —

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

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

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

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

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual that is appropriate and available. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: Provided, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists that is appropriate and available in the individual's area.

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

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

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 et seq. of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. For an individual committed pursuant to §27-6A-3 of this code, the chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

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

For persons who are not committed pursuant to §27-6A-3 of the code, if the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the chief medical officer shall file a petition with the court and shall serve the petition on the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable. The court shall hold a hearing on the petition within 10 days. If the court determines that extended commitment and treatment is required, then the court shall enter an order authorizing up to an additional 90 days of commitment and treatment. At the conclusion of the additional commitment period, if the chief medical officer determines that the individual requires additional commitment and treatment at the mental health facility or state hospital, then a new petition for additional commitment and treatment is required. No individual may be civilly committed under this article for more than 120 days without a hearing to determine whether the individual continues to meet commitment criteria.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) (p) Individual not a resident of this state. — If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of

Health Facilities, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) (q) Report to the Secretary of the Department of Health Facilities. —

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

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

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

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

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

(3) Effective July 1, 2022, The Department of Health Facilities shall reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement 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.

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

(b) The Supreme Court of Appeals may establish mental hygiene regions. Once a mental health region is established and staffed by the Supreme Court, a chief circuit judge may no longer appoint mental hygiene commissioners within a county included in that region, all existing

appointments of commissioners within that region expire, and magistrates may not preside over mental hygiene proceedings within that region.

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

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

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

§27-5A-2 Hearings by videoconference.

All evaluations and hearings in mental hygiene proceedings may be conducted by videoconferencing technology unless a mental hygiene commissioner orders an in-person evaluation or proceeding. A comprehensive community mental health center, sheriff's department, and regional jail shall provide technology that complies with Supreme Court of Appeals specifications to ensure meaningful interactions between a mental hygiene commissioner, respondent, witnesses, and evaluators during evaluations and proceedings, so that a respondent’s due process rights are protected.

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

(a) A physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 et seq. of this code, a licensed independent clinical social worker practicing in compliance with §30-31-1 et seq. of this code, advanced practice registered nurse or physician assistant are authorized to examine the respondent in a mental hygiene proceeding in any region, circuit, or county, and to make sufficient determinations as required by this chapter based on their particular expertise in the areas of mental health, mental hygiene, or substance abuse disorders. However, the presiding circuit court, magistrate court, or a mental hygiene commissioner may exclude an examiner’s testimony if it determines that the examiner’s knowledge, skill, experience, training, or education is insufficient to provide expert testimony under standards consistent with the West Virginia Rules of Evidence.

(b) A comprehensive community mental health center shall ensure that at least one examiner is available to provide uniform and continuous coverage in its designated service area, including afterhours, weekends, and holidays.

Vice Chair Hite moved com sub for com sub for SB 761 be reported to the floor as amended, but first be referred to the committee on Finance. Motion carried.

Chair Worrell recognized counsel to Com Sub for explain SB 710 - Relating to the practice of teledentistry. Counsel explained Com Sub for SB 710. Counsel explained Com Sub for SB 710. No questions of counsel. Chair Worrell called for amendments. The committee moved to amend. Committee amendment adopted. SB710 H HHR AM #1

CR 3338

The Committee on Health and Human Resources moved to amend the bill on page 1, by striking section 8b in its entirety and inserting in lieu thereof a new section 8b to read as follows:

§30-4-8b. License or registration requirements to practice teledentistry; rules; and penalties.

(a) A person may not provide dental services through teledentistry to a patient who is located at an originating site in this state unless the person:

(1) Is licensed pursuant to this article or registered pursuant to §30-1-1 et seq. of this code to practice dentistry or dental hygiene in this state; and

(2) Possesses and maintains a policy of professional liability insurance which insures the provider against any liability arising from the provision of dental services.

(b) A provider who provides dental services through teledentistry including, without limitation, providing consultation and recommendations for treatment, issuing a prescription, diagnosing, or correcting the position of teeth and using orthodontic appliances shall provide such services in accordance with the same standards of care and professional conduct as when providing those services in person or by other means.

(1) A provider may not:

(A) Provide treatment for any condition based solely on the results of an online questionnaire;

(B) Engage in activity that is outside his or her scope of practice while providing services through teledentistry; or

(C) Delegate to a dental hygienist, dental assistant, dental auxiliary, or any other individual any act or duty through teledentistry that requires the in-person supervision of a licensed or registered dentist or that is otherwise outside such individuals permissible scope of practice.

(c) Except as otherwise provided for in §30-4-8b(d), a provider shall establish a bona fide relationship with a patient before providing services to a patient through teledentistry. A bona fide relationship between a patient and a provider shall exist if the provider has:

(1) Reviewed the patient’s relevant history, medical records, diagnostic records, and, if treatment is for the correction of a malposition of teeth, the patient’s current radiographic records;

(A) "Current radiographic records" means those radiographs or images taken contemporaneously; and

(B) Occurring with the in-person examination.

(2) Performed an appropriate, in-person, physical examination of the patient for the purpose of diagnosing, assessing, developing a treatment plan, or determining the patient’s current medical or dental condition; and

(3) A reasonable expectation that he or she provide in-person follow-up care and treatment to the patient on a regular basis.

(d) Notwithstanding the limitations provided in §30-4-8b(c), a provider may establish a relationship with a patient through teledentistry only:

(1) For the purpose of emergent care;

(2) In connection with a public health program; or

(3) To make an initial diagnosis of a malposition of teeth and a determination of the need for an orthodontic appliance. An initial diagnosis and determination must be confirmed through an in-person visit and review of the patient's current radiographic records before the patient begins using the orthodontic appliance.

(e) Prior to the provision of services to a patient through teledentistry, a provider shall:

(1) Confirm the identity of the patient;

(2) If the patient is a minor who is not authorized by law to consent to the services, confirm that the parent or legal guardian of the patient is present;

(3) Confirm that the patient is located in a jurisdiction where the provider is licensed or otherwise authorized to practice and document the location of the patient in the record of the patient;

(4) Obtain:

(A) Informed written consent that meets the requirements of §30-4-8b(g) from a patient who is an adult or a minor authorized by law to provide consent; or

(B) Informed written consent that meets the requirements of §30-4-8b(g) from the parent or guardian of a patient who is a minor and is not authorized by law to provide consent; and

(5) Document the informed consent provided pursuant this subsection in the record of the patient.

(f) Prior to providing services through teledentistry and upon the request of a patient to whom services are provided through teledentistry, a provider or any partnership, corporation, or other entity through which a provider provides services shall make available to the patient proof of the identity of the provider, the telephone number of the provider, the address at which the provider practices, the license or registration number of the provider, and any other relevant information concerning the qualifications of the provider, and any other provider who shall be involved in providing the services through teledentistry.

(g) Informed consent to the provision of services through teledentistry requires the patient or his or her parent or guardian to be informed of:

(1) The types of services that will be provided through teledentistry and any limitations on the provision of those services through teledentistry;

(2) The information prescribed by §30-4-8b(f) for each provider who shall provide services through teledentistry;

(3) Precautions to be taken in the event of a technological failure or an emergency; and

(4) Any other information prescribed by legislative rule of the board.

(h) Except in situations requiring emergency treatment, a dentist of record is required for all patients being treated through teledentistry. The dentist of record shall remain primarily

responsible for all dental treatment of the patient, regardless of whether treatment has been delegated to a teledentistry provider.

(i) No provider, partnership, corporation, or other entity which provides, or purports to provide teledentistry services or provides a platform, technology, or support services through which teledentistry is provided, may advertise their services unless they employ a provider licensed or registered in this state. Advertisements for teledentistry services must include the following disclaimer, in a conspicuous location, stating the limitations and safety concerns regarding teledentistry:

DISCLAIMER: Orthodontic treatment is a complex biological process that if not done correctly or performed without a thorough examination of the overall health of the teeth and gums could result in the permanent loss of teeth, which may result in additional costs or lifelong dental problems. Teledentistry services are intended to supplement traditional treatment methods and are not intended to replace in-person examinations. It is important to consult with a licensed or registered orthodontist or dentist prior to beginning any treatment.

(j) A provider who provides services through teledentistry shall:

(1) Use communications technology that complies with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

(2) Create a complete record of each encounter with a patient through teledentistry and maintain such records in accordance with applicable federal and state laws and regulations.

(k) (1) A provider who provides services through teledentistry must be adequately familiar with the nature and availability of dental care in the geographical area in which the patient is located to ensure that the patient receives appropriate care during the provision of the services.

(2) If a provider is not able to competently provide services through teledentistry, including, without limitation, because the provider is unable to receive adequate information about the patient, the provider must notify the patient of that fact and:

(A) Provide the services in person;

(B) Request any additional information necessary to competently provide the services through teledentistry; or

(C) Refer the patient to an appropriate licensee or registrant to receive the services in person.

(l) A dentist may only delegate tasks to auxiliaries including, but not limited to, dental hygienists and dental assistants, to the extent permitted by existing law.

(m) A provider who provides services through teledentistry shall refer a patient to the emergency department of a hospital or another provider of acute care in an emergency or any other situation where the provision of acute care is necessary to protect the health and safety of the patient.

(n) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code regulating dental services offered through teledentistry. Those rules shall include:

(1) The issuance of prescriptions through teledentistry, consistent with the limitations in §30-1-26(b)(5) of this code;

(2) The maintenance of records concerning patients to whom services are provided through teledentistry and the protection of the privacy of such patients;

(3) The development of evidence-based standards;

(4) The use of teledentistry for collaboration between:

(A) Providers and the office of a physician, physician assistant, or advanced practice nurse; and

(B) Providers who practice in different specialty areas; and

(5) Interaction between providers using teledentistry including, without limitation:

(A) The supervision of a dental hygienist by a dentist using teledentistry; and

(B) Interaction between different providers who are providing care to the same patient.

(6) Evidence-based standards of practice that shall be used when providing services through teledentistry to ensure the safety o patients, the quality of care, and positive outcomes.

(o) It shall be considered unprofessional conduct to:

(1) Fail to actively involve a patient in decisions concerning his or her treatment;

(2) Require a patient to enter into an agreement that restricts the ability of the patient to submit a complaint to the board, file a lawsuit, join a class action lawsuit, make reports to any governmental entity, to require the patient to submit to binding arbitration, or to otherwise limit or prohibit the patient from obtaining relief for deficiencies in the treatment or services they have received;

(3) Fail to perform an in-person examination of a patient or fail to review a patient's diagnostic and radiographic images taken concurrently with the in-person visit prior to initiating treatment, except for those situations enumerated in §30-4-8b(d) of this code;

(4) Fail to review diagnostic digital or conventional radiographs for orthodontia before:

(A) Taking any action to correct a malposition of teeth; or

(B) The initial use of an orthodontic appliance;

(5) Delegate to an auxiliary a task or service that is not indicated or permitted by existing law to be performed by that individual; or

(6) Failure to comply with the requirements of §30-4-8b(f) of this code.

(p) In addition to the grounds for disciplinary action authorized by this article, the board may also take disciplinary action against any provider who is found to be practicing teledentistry in violation of any section or has committed any of the acts specified in §30-4-8b(o) of this code.

(r) The process for instituting and conducting disciplinary proceedings against a teledentistry provider pursuant to this act shall be the same process as that contained in the Dental Practice Act for disciplinary actions.

Vice Chair Hite moved Com Sub for SB 710 be reported to the floor with the recommendation it do pass as amended. Motion carried.

Chair Worrell recognized counsel to explain HCR 100- Relating to hospital transparency. Counsel explained HCR 100. Chair Worrell called for questions of counsel. There were none. Vice Chair Hite moved HCR 100 to be reported to the floor with the recommendation that it do pass. Motion carried.

On Motion of Delegate Hite the committee adjourned.

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| Evan Worrell | Martha White |
| Committee Chair | Administrator/ Clerk |