

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 568

BY SENATORS TRUMP, DEEDS, HUNT, RUCKER, STOVER,

STUART, TAYLOR, AND WOELFEL

[Originating in the Committee on the Judiciary;

reported on February 15, 2023]

1 A BILL to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended, relating
2 generally to the Dangerousness Assessment Advisory Board; clarifying the board's
3 primary purpose; authorizing board to offer its services to the court when requested;
4 providing information and recommendations to the courts; and declaring that the Secretary
5 of the Department of Health and Human Services has no supervisory authority over the
6 board.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS
CHARGED OR CONVICTED OF A CRIME.**

§27-6A-13. Dangerousness Assessment Advisory Board.

1 (a) The Dangerousness Assessment Advisory Board is continued. The board shall consist
2 of the following persons:

3 (1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or a
4 designee of the commissioner who was not involved in the decision under review;

5 (2) The forensic coordinator of the state;

6 (3) A representative of the protection and advocacy system for the state as defined by 29
7 U.S.C. § 794e, 42 U.S.C. § 15041 *et seq.*, and 42 U.S.C. § 10801 *et seq.*;

8 (4) An employee of the Division of Corrections and Rehabilitation designated by the
9 commissioner with experience in inmate classification;

10 (5) An employee of the Division of Rehabilitation Services with experience in independent
11 living programs;

12 (6) Two board-certified forensic psychiatrists appointed by the Governor with the advice
13 and consent of the Senate; and

14 (7) Two psychologists who are West Virginia qualified forensic evaluators with at least five
15 years demonstrated experience in state and federal courts, appointed by the Governor with the
16 advice and consent of the Senate.

17 (b) The primary purpose of the board is to provide opinion, guidance, and informed
18 objective expertise to circuit courts as to the appropriate level of custody or supervision necessary
19 to ensure that persons who have been judicially determined to be incompetent to stand trial and
20 not restorable or not guilty by reason of mental illness are in the least restrictive environment
21 available to protect the person, other persons, and the public generally. The board may, offer its
22 services to a court when requested and may provide any information or recommendations to the
23 court that the board in its independent judgment considers appropriate to assist the court with
24 matters including, but not limited to, treatment, placement, discharge, release, community outings,
25 custody, supervision, and barriers or obstacles to treatment, placement, discharge, release,
26 community outings, custody, and supervision of forensic patients.

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

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

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

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

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

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

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