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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2007**

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**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 117**

(SENATORS OLIVERIO AND HUNTER, *original sponsors*)

---

[Passed March 10, 2007; in effect ninety days from passage.]

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AN ACT to amend and reenact §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §27-6A-10 and §27-6A-11, all relating to the determination of a person's competency to stand trial and of criminal responsibility generally; addressing court jurisdiction over persons found not guilty by reason of mental illness; defining terms; requiring release from jurisdiction of the

court under certain circumstances; requiring periodic review of person found incompetent to stand trial; establishing time limits for motions and hearings; adding provisions for forensic evaluations and evaluators; and addressing evaluations of diminished capacity and dangerousness; providing for responsibility of costs; and requiring the Department of Health and Human Services to establish policies and procedures related to rates and reimbursements for evaluations and related services.

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

That §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §27-6A-10 and §27-6A-11, all to read as follows:

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

**§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.**

1       (a) For purposes of this article:

2       (1) A “qualified forensic psychiatrist” is:

3       (A) A psychiatrist licensed under the laws in this state  
4       to practice medicine who has completed postgraduate  
5       education in psychiatry in a program accredited by the  
6       Accreditation Council of Graduate Medical Education;  
7       and

8       (B) Board eligible or board certified in forensic

9 psychiatry by the American Board of Psychiatry and  
10 Neurology or actively enrolled in good standing in a  
11 West Virginia training program accredited by the  
12 Accreditation Council of Graduate Medical Education  
13 to make the evaluator eligible for board certification by  
14 the American Board of Psychiatry and Neurology in  
15 forensic psychiatry or have two years of experience in  
16 completing court-ordered forensic criminal evaluations,  
17 including having been qualified as an expert witness by  
18 a West Virginia circuit court.

19 (2) A “qualified forensic psychologist” is:

20 (A) A licensed psychologist licensed under the laws of  
21 this state to practice psychology; and

22 (B) Board eligible or board certified in forensic  
23 psychology by the American Board of Professional  
24 Psychology or actively enrolled in good standing in a  
25 West Virginia training program approved by the  
26 American Board of Forensic Psychology to make the  
27 evaluator eligible for board certification in forensic  
28 psychology or has, at least two years of experience in  
29 performing court ordered forensic criminal evaluations,  
30 including having been qualified as an expert witness by  
31 a West Virginia circuit court.

32 (3) A “qualified forensic evaluator” is either a  
33 qualified forensic psychiatrist or a qualified forensic  
34 psychologist as defined in this section.

35 (4) “Department” means the Department of Health  
36 and Human Resources.

37 (b) No qualified forensic evaluator may perform a

38 forensic evaluation on an individual under this chapter  
39 if the qualified forensic evaluator has been the  
40 individual's treating psychologist or psychiatrist within  
41 one year prior to any evaluation order.

**§27-6A-2. Competency of defendant to stand trial; cause for  
appointment of qualified forensic evaluator;  
written report; observation period.**

1 (a) Whenever a court of record has reasonable cause to  
2 believe that a defendant in which an indictment has  
3 been returned, or a warrant or summons issued, may be  
4 incompetent to stand trial it shall, sua sponte or upon  
5 motion filed by the state or by or on behalf of the  
6 defendant, at any stage of the proceedings order a  
7 forensic evaluation of the defendant's competency to  
8 stand trial to be conducted by one or more qualified  
9 forensic psychiatrists, or one or more qualified forensic  
10 psychologists. If a court of record or other judicial  
11 officer orders both a competency evaluation and a  
12 criminal responsibility or diminished capacity  
13 evaluation, the competency evaluation shall be  
14 performed first, and if a qualified forensic evaluator is  
15 of the opinion that a defendant is not competent to  
16 stand trial, no criminal responsibility or diminished  
17 capacity evaluation may be conducted without further  
18 order of the court. The initial forensic evaluation may  
19 not be conducted at a state inpatient mental health  
20 facility unless the defendant resides there.

21 (b) The court shall require the party making the  
22 motion for the evaluation, and other parties as the court  
23 considers appropriate, to provide to the qualified  
24 forensic evaluator appointed under subsection (a) of this  
25 section any information relevant to the evaluations

26 within ten business days of its evaluation order. The  
27 information shall include, but not be limited to:

28 (1) A copy of the warrant or indictment;

29 (2) Information pertaining to the alleged crime,  
30 including statements by the defendant made to the  
31 police, investigative reports and transcripts of  
32 preliminary hearings, if any;

33 (3) Any available psychiatric, psychological, medical  
34 or social records that are considered relevant;

35 (4) A copy of the defendant's criminal record; and

36 (5) If the evaluations are to include a diminished  
37 capacity assessment, the nature of any lesser included  
38 criminal offenses.

39 (c) A qualified forensic evaluator shall schedule and  
40 arrange for the prompt completion of any court ordered  
41 evaluation which may include record review and  
42 defendant interview and shall, within ten business days  
43 of the date of the completion of any evaluation, provide  
44 to the court of record a written, signed report of his or  
45 her opinion on the issue of competency to stand trial. If  
46 it is the qualified forensic evaluator's opinion that the  
47 defendant is not competent to stand trial, the report  
48 shall state whether the defendant is substantially likely  
49 to attain competency within the next three months and,  
50 in order to attain competency to stand trial, whether the  
51 defendant requires inpatient management in a mental  
52 health facility. The court may extend the ten-day period  
53 for filing the report if a qualified forensic evaluator  
54 shows good cause to extend the period, but in no event

55 may the period exceed thirty days. If there are no  
56 objections by the state or defense counsel, the court  
57 may, by order, dismiss the requirement for a written  
58 report if the qualified forensic evaluator's opinion may  
59 otherwise be made known to the court and interested  
60 parties.

61 (d) If the court determines that the defendant has been  
62 uncooperative during the forensic evaluation ordered  
63 pursuant to subsection (a) of this section or there have  
64 been one or more inadequate or conflicting forensic  
65 evaluations performed pursuant to subsection (a) of this  
66 section and the court has reason to believe that an  
67 observation period is necessary in order to determine if  
68 a person is competent to stand trial, the court may order  
69 the defendant be committed to a mental health facility  
70 designated by the department for a period not to exceed  
71 fifteen days and an additional evaluation be conducted  
72 in accordance with subsection (a) of this section by one  
73 or more qualified forensic psychiatrists, or a qualified  
74 forensic psychiatrist and a qualified forensic  
75 psychologist. The court shall order that at the  
76 conclusion of the fifteen day observation period the  
77 sheriff of the county where the defendant was charged  
78 shall take immediate custody of the defendant for  
79 transportation and disposition as ordered by the court.

80 (e) A mental health facility not operated by the state  
81 is not obligated to admit and treat a defendant under  
82 this section.

**§27-6A-3. Competency of defendant to stand trial  
determination; preliminary finding; hearing;  
evidence; disposition.**

1 (a) Within five days of the receipt of the qualified  
2 forensic evaluator's report and opinion on the issue of  
3 competency to stand trial, the court of record shall  
4 make a preliminary finding on the issue of whether the  
5 defendant is competent to stand trial and if not  
6 competent whether there is a substantial likelihood that  
7 the defendant will attain competency within the next  
8 three months. If the court of record orders, or if the  
9 state or defendant or defendant's counsel within twenty  
10 days of receipt of the preliminary findings requests, a  
11 hearing, then a hearing shall be held by the court of  
12 record within fifteen days of the date of the preliminary  
13 finding, absent good cause being shown for a  
14 continuance. If a hearing order or request is not filed  
15 within twenty days, the preliminary findings of the  
16 court become the final order.

17 (b) At a hearing to determine a defendant's  
18 competency to stand trial the defendant has the right to  
19 be present and he or she has the right to be represented  
20 by counsel and introduce evidence and cross-examine  
21 witnesses. The defendant shall be afforded timely and  
22 adequate notice of the issues at the hearing and shall  
23 have access to all forensic evaluator's opinions. All  
24 rights generally afforded a defendant in criminal  
25 proceedings shall be afforded to a defendant in the  
26 competency proceedings, except trial by jury.

27 (c) The court of record pursuant to a preliminary  
28 finding or hearing on the issue of a defendant's  
29 competency to stand trial and with due consideration of  
30 any forensic evaluation conducted pursuant to sections  
31 two and three of this article shall make a finding of fact  
32 upon a preponderance of the evidence as to the  
33 defendant's competency to stand trial based on whether



34 or not the defendant has sufficient present ability to  
35 consult with his or her lawyer with a reasonable degree  
36 of rational understanding and whether he or she has a  
37 rational as well as a factual understanding of the  
38 proceedings against him or her.

39 (d) If at any point in the proceedings the defendant is  
40 found competent to stand trial, the court of record shall  
41 forthwith proceed with the criminal proceedings.

42 (e) If at any point in the proceedings the defendant is  
43 found not competent to stand trial, the court of record  
44 shall at the same hearing, upon the evidence, make  
45 further findings as to whether or not there is a  
46 substantial likelihood that the defendant will attain  
47 competency within the next ensuing three months.

48 (f) If at any point in the proceedings the defendant is  
49 found not competent to stand trial and is found  
50 substantially likely to attain competency, the court of  
51 record shall in the same order, upon the evidence, make  
52 further findings as to whether the defendant requires,  
53 in order to attain competency, inpatient management in  
54 a mental health facility. If inpatient management is  
55 required, the court shall order the defendant be  
56 committed to an inpatient mental health facility  
57 designated by the department to attain competency to  
58 stand trial and for a competency evaluation. The term  
59 of this commitment may not exceed three months from  
60 the time of entry into the facility. However, upon  
61 request by the chief medical officer of the mental health  
62 facility and based on the requirement for additional  
63 management to attain competency to stand trial, the  
64 court of record may, prior to the termination of the  
65 three-month period, extend the period up to nine

66 months from entry into the facility. A forensic  
67 evaluation of competency to stand trial shall be  
68 conducted by a qualified forensic evaluator and a report  
69 rendered to the court, in like manner as subsections (a)  
70 and (c), section two of this article, every three months  
71 until the court determines the defendant is not  
72 competent to stand trial and is not substantially likely  
73 to attain competency.

74 (g) If at any point in the proceedings the defendant is  
75 found not competent to stand trial and is found not  
76 substantially likely to attain competency and if the  
77 defendant has been indicted or charged with a  
78 misdemeanor or felony which does not involve an act of  
79 violence against a person, the criminal charges shall be  
80 dismissed. The dismissal order may, however, be stayed  
81 for twenty days to allow civil commitment proceedings  
82 to be instituted by the prosecutor pursuant to article  
83 five of this chapter. The defendant shall be immediately  
84 released from any inpatient facility unless civilly  
85 committed.

86 (h) If at any point in the proceedings the defendant is  
87 found not competent to stand trial and is found not  
88 substantially likely to attain competency, and if the  
89 defendant has been indicted or charged with a  
90 misdemeanor or felony in which the misdemeanor or  
91 felony does involve an act of violence against a person,  
92 then the court shall determine on the record the offense  
93 or offenses of which the person otherwise would have  
94 been convicted, and the maximum sentence he or she  
95 could have received. A defendant shall remain under the  
96 court's jurisdiction until the expiration of the maximum  
97 sentence unless the defendant attains competency to  
98 stand trial and the criminal charges reach resolution or

99 the court dismisses the indictment or charge. The court  
100 shall order the defendant be committed to a mental  
101 health facility designated by the department that is the  
102 least restrictive environment to manage the defendant  
103 and that will allow for the protection of the public.  
104 Notice of the maximum sentence period with an end  
105 date shall be provided to the mental health facility. The  
106 court shall order a qualified forensic evaluator to  
107 conduct a dangerousness evaluation to include  
108 dangerousness risk factors to be completed within thirty  
109 days of admission to the mental health facility and a  
110 report rendered to the court within ten business days of  
111 the completion of the evaluation. The medical director  
112 of the mental health facility shall provide the court a  
113 written clinical summary report of the defendant's  
114 condition at least annually during the time of the  
115 court's jurisdiction. The court's jurisdiction shall  
116 continue an additional ten days beyond any expiration  
117 to allow civil commitment proceedings to be instituted  
118 by the prosecutor pursuant to article five of this  
119 chapter. The defendant shall then be immediately  
120 released from the facility unless civilly committed.

121 (i) If the defendant has been ordered to a mental  
122 health facility pursuant to subsection (h) of this section  
123 and the court receives notice from the medical director  
124 or other responsible official of the mental health facility  
125 that the defendant no longer constitutes a significant  
126 danger to self or others, the court shall conduct a  
127 hearing within thirty days to consider evidence, with  
128 due consideration of the qualified forensic evaluator's  
129 dangerousness report or clinical summary report to  
130 determine if the defendant shall be released to a less  
131 restrictive environment. The court may order the release  
132 of the defendant only when the court finds that the

133 defendant is no longer a significant danger to self or  
134 others. When a defendant's dangerousness risk factors  
135 associated with mental illness are reduced or eliminated  
136 as a result of any treatment, the court, in its discretion,  
137 may make the continuance of appropriate treatment,  
138 including medications, a condition of the defendant's  
139 release from inpatient hospitalization. The court shall  
140 maintain jurisdiction of the defendant in accordance  
141 with said subsection. Upon notice that a defendant  
142 ordered to a mental health facility pursuant to said  
143 subsection who is released on the condition that he or  
144 she continues treatment does not continue his or her  
145 treatment, the prosecuting attorney shall, by motion,  
146 cause the court to reconsider the defendant's release.  
147 Upon a showing that defendant is in violation of the  
148 conditions of his or her release, the court shall reorder  
149 the defendant to a mental health facility under the  
150 authority of the department which is the least  
151 restrictive setting that will allow for the protection of  
152 the public.

153 (j) The prosecuting attorney may, by motion, and in  
154 due consideration of any chief medical officer's or  
155 forensic evaluator's reports, cause the competency to  
156 stand trial of a defendant subject to the court's  
157 jurisdiction pursuant to subsection (h) of this section or  
158 released pursuant to subsection (i) of this section to be  
159 determined by the court of record while the defendant  
160 remains under the jurisdiction of the court, and in  
161 which case the court may order a forensic evaluation of  
162 competency to stand trial be conducted by a qualified  
163 forensic evaluator and a report rendered to the court in  
164 like manner as subsections (a) and (c), section two of  
165 this article.

166 (k) Any defendant found not competent to stand trial  
167 may at any time petition the court of record for a  
168 hearing on his or her competency.

169 (l) Notice of court findings of a defendant's  
170 competency to stand trial, of commitment for inpatient  
171 management to attain competency, of dismissal of  
172 charges, of order for inpatient management to protect  
173 the public, of release or conditional release, or any  
174 hearings to be conducted pursuant to this section shall  
175 be sent to the prosecuting attorney, the defendant and  
176 his or her counsel, and the mental health facility. Notice  
177 of court release hearing or order for release or  
178 conditional release pursuant to subsection (i) of this  
179 section shall be made available to the victim or next of  
180 kin of the victim of the offense for which the defendant  
181 was charged. The burden is on the victim or next of kin  
182 of the victim to keep the court apprised of that person's  
183 current mailing address.

184 (m) A mental health facility not operated by the state  
185 is not obligated to admit or treat a defendant under this  
186 section.

**§27-6A-4. Criminal responsibility or diminished capacity  
evaluation; court jurisdiction over persons found  
not guilty by reason of mental illness.**

1 (a) If the court of record finds, upon hearing evidence  
2 or representations of counsel for the defendant, that  
3 there is probable cause to believe that the defendant's  
4 criminal responsibility or diminished capacity will be a  
5 significant factor in his or her defense, the court shall  
6 appoint one or more qualified forensic psychiatrists or  
7 qualified forensic psychologists to conduct a forensic

8 evaluation of the defendant's state of mind at the time  
9 of the alleged offense. However, if a qualified forensic  
10 evaluator is of the opinion that the defendant is not  
11 competent to stand trial that no criminal responsibility  
12 or diminished capacity evaluation may be conducted.  
13 The forensic evaluation may not be conducted at a state  
14 inpatient mental health facility unless the defendant  
15 has been ordered to a mental health facility in  
16 accordance with subsection (c), section two of this  
17 article or subsection (f) or (h), section three of this  
18 article. To the extent possible, qualified forensic  
19 evaluators who have conducted evaluations of  
20 competency under subsection (a), section two of this  
21 chapter shall be used to evaluate criminal responsibility  
22 or diminished capacity under this subsection.

23 (b) The court shall require the party making the  
24 motion for the evaluations, and other parties as the  
25 court considers appropriate, to provide to the qualified  
26 forensic evaluator appointed under subsection (a) of this  
27 section any information relevant to the evaluation  
28 within ten business days of its evaluation order. The  
29 information shall include, but not be limited to:

30 (1) A copy of the warrant or indictment;

31 (2) Information pertaining to the alleged crime,  
32 including statements by the defendant made to the  
33 police, investigative reports and transcripts of  
34 preliminary hearings, if any;

35 (3) Any available psychiatric, psychological, medical  
36 or social records that are considered relevant;

37 (4) A copy of the defendant's criminal record; and

38 (5) If the evaluation is to include a diminished  
39 capacity assessment, the nature of any lesser criminal  
40 offenses.

41 (c) A qualified forensic evaluator shall schedule and  
42 arrange within fifteen days of the receipt of appropriate  
43 documents the completion of any court ordered  
44 evaluation which may include record review and  
45 defendant interview and shall, within ten business days  
46 of the date of the completion of any evaluation, provide  
47 to the court of record a written, signed report of his or  
48 her opinion on the issue of criminal responsibility and  
49 if ordered, on diminished capacity. The court may  
50 extend the ten-day period for filing the report if a  
51 qualified forensic evaluator shows good cause to extend  
52 the period, but in no event may the period exceed thirty  
53 days. If there are no objections by the state or defense  
54 counsel<sup>1</sup>, the court may, by order, dismiss the  
55 requirement for a written report if the qualified forensic  
56 evaluator's opinion may otherwise be made known to  
57 the court and interested parties.

58 (d) If the court determines that the defendant has been  
59 uncooperative during a forensic evaluation ordered  
60 pursuant to subsection (a) of this section or there are  
61 inadequate or conflicting forensic evaluations  
62 performed pursuant to subsection (a) of this section, and  
63 the court has reason to believe that an observation  
64 period and additional forensic evaluation or evaluations  
65 are necessary in order to determine if a defendant was  
66 criminally responsible or with diminished capacity, the  
67 court may order the defendant be admitted to a mental  
68 health facility designated by the department for a  
69 period not to exceed fifteen days and an additional  
70 evaluation be conducted and a report rendered in like

71 manner as subsections (a) and (b) of this section by one  
72 or more qualified forensic psychiatrists or one or more  
73 qualified forensic psychologists. At the conclusion of  
74 the observation period, the court shall enter a  
75 disposition order and the sheriff of the county where the  
76 defendant was charged shall take immediate custody of  
77 the defendant for transportation and disposition as  
78 ordered by the court.

79 (e) If the verdict in a criminal trial is a judgment of  
80 not guilty by reason of mental illness, the court shall  
81 determine on the record the offense or offenses of which  
82 the acquitee could have otherwise been convicted, and  
83 the maximum sentence he or she could have received.  
84 The acquitee shall remain under the court's jurisdiction  
85 until the expiration of the maximum sentence or until  
86 discharged by the court. The court shall commit the  
87 acquitee to a mental health facility designated by the  
88 department that is the least restrictive environment to  
89 manage the acquitee and that will allow for the  
90 protection of the public. Notice of the maximum  
91 sentence period with end date shall be provided to the  
92 mental health facility. The court shall order a qualified  
93 forensic evaluator to conduct a dangerousness  
94 evaluation to include dangerousness risk factors to be  
95 completed within thirty days of admission to the mental  
96 health facility and a report rendered to the court within  
97 ten business days of the completion of the evaluation.  
98 The medical director of the mental health facility shall  
99 provide the court a written clinical summary report of  
100 the defendant's condition at least annually during the  
101 time of the court's jurisdiction. The court's jurisdiction  
102 continues an additional ten days beyond any expiration  
103 to allow civil commitment proceedings to be instituted  
104 by the prosecutor pursuant to article five of this



105 chapter. The defendant shall then be immediately  
106 released from the facility unless civilly committed.

107 (f) In addition to any court ordered evaluations  
108 completed pursuant to section two, three, or four of this  
109 article, the defendant or the state has the right to an  
110 evaluation or evaluations by a forensic evaluator or  
111 evaluators of his or her choice and at his or her expense.

112 (g) A mental health facility not operated by the state  
113 is not required to admit or treat a defendant or acquitee  
114 under this section.

**§27-6A-5. Release of acquitee to less restrictive environment;  
discharge from jurisdiction of the court.**

1 (a) If, at any time prior to the expiration of the court's  
2 jurisdiction, the chief medical officer or responsible  
3 official of the mental health facility to which an  
4 acquitee has been ordered pursuant to subsection (e),  
5 section four of this article believes that the acquitee is  
6 not mentally ill or does not have significant  
7 dangerousness risk factors associated with mental  
8 illness, he or she shall file with the court of record  
9 notice of the belief and shall submit evidence in support  
10 of the belief to include a forensic evaluation  
11 dangerousness report conducted in like manner as said  
12 subsection and recommendations for treatment,  
13 including medications, that reduce or eliminate the  
14 dangerousness risk factors associated with mental  
15 illness. The court of record shall hold a hearing within  
16 thirty days of receipt of the notice to consider evidence  
17 as to whether the acquitee shall be released from the  
18 mental health facility to a less restrictive environment.  
19 Notice of the hearing shall be made available to the

20 prosecuting attorney responsible for the charges  
21 brought against the acquitee at trial, the acquitee and  
22 his or her counsel and the mental health facility. If upon  
23 consideration of the evidence the court determines that  
24 an acquitee may be released from a mental health  
25 facility to a less restrictive setting, the court shall order,  
26 within fifteen days of the hearing, the acquitee be  
27 released upon terms and conditions, if any, the court  
28 considers appropriate for the safety of the community  
29 and the well-being of the acquitee. Any terms and  
30 conditions imposed by the court must be protective and  
31 therapeutic in nature, not punitive. When a defendant's  
32 dangerousness risk factors associated with mental  
33 illness are reduced or eliminated as a result of any  
34 treatment, the court, in its discretion, may make the  
35 continuance of appropriate treatment, including  
36 medications, a condition of the defendant's release from  
37 inpatient hospitalization. The court shall maintain  
38 jurisdiction of the defendant in accordance with said  
39 subsection. Upon notice that an acquitee released on the  
40 condition that he or she continues appropriate  
41 treatment does not continue his or her treatment, the  
42 prosecuting attorney responsible for the charges  
43 brought against the acquitee at trial shall, by motion,  
44 cause the court to reconsider the acquitee's release and  
45 upon a showing that the acquitee is in violation of the  
46 conditions of his or her release, the court may reorder  
47 the acquitee to a mental health facility designated by  
48 the department which is the least restrictive setting  
49 appropriate to manage the acquitee and protect the  
50 public.

51 (b) No later than thirty days prior to the release from  
52 a mental health facility or other management setting of  
53 an acquitee because of the expiration of the court's

54 jurisdiction as set in accordance with subsection (e),  
55 section four of this article, if the acquitee's physician,  
56 psychologist, chief medical officer or other responsible  
57 party is of the opinion that the acquitee's mental illness  
58 renders the acquitee to be likely to cause serious harm  
59 to self or others, the supervising physician, psychologist,  
60 chief medical officer or other responsible party shall  
61 notify the court of record who shall promptly notify the  
62 prosecuting attorney in the county of the court having  
63 jurisdiction of the opinion and the basis for the opinion.  
64 Following notification, the prosecuting attorney may  
65 file, within ten days, a civil commitment application  
66 against the acquitee pursuant to article five of this  
67 chapter.

**§27-6A-6. Judicial hearing of defendant's defense other than  
not guilty by reason of mental illness.**

1 If a defendant who has been found to be not  
2 competent to stand trial believes that he or she can  
3 establish a defense of not guilty to the charges pending  
4 against him or her, other than the defense of not guilty  
5 by reason of mental illness, the defendant may request  
6 an opportunity to offer a defense thereto on the merits  
7 before the court which has criminal jurisdiction. If the  
8 defendant is unable to obtain legal counsel, the court of  
9 record shall appoint counsel for the defendant to assist  
10 him or her in supporting the request by affidavit or  
11 other evidence. If the court of record in its discretion  
12 grants such a request, the evidence of the defendant and  
13 of the state shall be heard by the court of record sitting  
14 without a jury. If after hearing such petition the court  
15 of record finds insufficient evidence to support a  
16 conviction, it shall dismiss the indictment and order the  
17 release of the defendant from criminal custody. The

18 release order, however, may be stayed for ten days to  
19 allow civil commitment proceedings to be instituted by  
20 the prosecutor pursuant to article five of this chapter:  
21 *Provided*, That a defendant committed to a mental  
22 health facility pursuant to subsection (f) or (h), section  
23 three of this article shall be immediately released from  
24 the facility unless civilly committed.

**§27-6A-8. Credit for time; expenses.**

1 (a) If a person is convicted of a crime, any time spent  
2 in involuntary confinement in a mental health facility  
3 as a result of being charged with the crime shall be  
4 credited to the sentence.

5 (b) All inpatient care and treatment shall be paid by  
6 the department.

**§27-6A-9. Competency to be adjudicated in juvenile court.**

1 In a similar manner and in accordance with  
2 procedures set forth in subsection (a), section two of this  
3 article or subsection (a), section four of this article, a  
4 juvenile court may order a qualified forensic evaluator  
5 to conduct an evaluation of a juvenile to aid the court in  
6 its disposition under chapter forty-nine of this code. In  
7 a similar manner and in accordance with procedures set  
8 forth in subsection (d), section two of this article or  
9 subsection (d), section four of this article, a juvenile  
10 court may order a period of observation for an alleged  
11 delinquent or neglected juvenile at a mental health  
12 facility designated by the department to aid the court in  
13 its disposition. The period of observation may not  
14 exceed fifteen days.

**§27-6A-10. Medications and management of court ordered individuals.**

1 (a) At any time pursuant to section two, three or four  
2 of this article, an individual is court ordered to a mental  
3 health facility the individual has the right to receive  
4 treatment under the standards of medical management.

5 (b) An individual with health care decision making  
6 capacity may refuse medications or other management  
7 unless court ordered to be treated or unless a treating  
8 clinician determines that medication or other  
9 management is necessary in emergencies or to prevent  
10 danger to the individual or others.

**§27-6A-11. Payment to forensic evaluators.**

1 The department shall pay qualified forensic  
2 evaluators for all matters related to conducting a court  
3 ordered forensic evaluation. The department shall  
4 develop and implement a process for prompt payment  
5 to qualified forensic evaluators. The department shall  
6 establish policies and procedures for establishing a  
7 maximum rate schedule for each of the four evaluation  
8 types (competency to stand trial, criminal responsibility,  
9 diminished capacity, dangerousness) to include all  
10 efforts towards the completion of each evaluation such  
11 as scheduling and administrative tasks, record review,  
12 psychological and other testing, interviews, report  
13 writing, research, preparation and consultation. Such  
14 policies and procedures shall include input from  
15 provider representatives as necessary and appropriate.  
16 Any rate schedule shall be fair and reasonable. The  
17 department shall consider requests for payment in  
18 excess of established rates or other expenses for good  
19 cause shown.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *12th* Day of *April* ....., 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 03 2007

Time 1:30pm