

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 652

BY SENATORS BOSO AND CLINE

[Introduced March 18, 2017; Referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §27-5-1 of the Code of West Virginia, 1931, as amended, relating
2 to requiring that a mental hygiene commissioner be on call at all times.

Be it enacted by the Legislature of West Virginia:

1 That §27-5-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

**§27-5-1. Appointment of Mental Hygiene Commissioner; duties of Mental Hygiene
Commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme
Court of Appeals; use of certified municipal law-enforcement officers.**

1 (a) *Appointment of Mental Hygiene Commissioners.* -- The chief judge in each judicial
2 circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional
3 attorneys to serve as Mental Hygiene Commissioners to preside over involuntary hospitalization
4 hearings. Mental Hygiene Commissioners shall be persons of good moral character and of
5 standing in their profession and they shall, before assuming the duties of ~~such~~ commissioner,
6 take the oath required of other special commissioners as provided in article one, chapter six of
7 this code.

8 All persons newly appointed to serve as Mental Hygiene Commissioners shall attend and
9 complete an orientation course, within one year of their appointment, consisting of at least three
10 days of training provided annually by the Supreme Court of Appeals. In addition, existing Mental
11 Hygiene Commissioners and any magistrates designated by the chief judge of a judicial circuit to
12 hold probable cause and emergency detention hearings involving involuntary hospitalization shall
13 attend and complete a course provided by the Supreme Court of Appeals, which course shall
14 include, but not be limited to, instruction on the manifestations of mental illness and addiction.
15 Persons attending ~~such~~ these courses outside the county of their residence shall be reimbursed
16 out of the budget of the Supreme Court -- General Judicial for reasonable expenses incurred. The
17 Supreme Court shall establish rules for ~~such~~ these courses, including rules providing for the

18 reimbursement of reasonable expenses as authorized herein.

19 (b) *Duties of Mental Hygiene Commissioners.* --

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

40 (2) A Mental Hygiene Commissioner appointed by the circuit court of one county or
41 multiple county circuit may serve in ~~such~~ that capacity in a jurisdiction other than that of his or her
42 original appointment if ~~such~~ be agreed upon by the terms of a cooperative agreement between
43 the circuit courts and county commissions of two or more counties ~~entered into~~ to provide prompt

44 resolution of mental hygiene matters during noncourt hours or on nonjudicial days. At least one
45 Mental Hygiene Commissioner shall be on call at all times in each county or multiple county
46 circuits.

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

52 (d) *Duties of sheriff.* -- Upon written order of the circuit court, Mental Hygiene
53 Commissioner or magistrate in the county where the individual formally accused of being mentally
54 ill or addicted is a resident or is found, the sheriff of that county shall take ~~said~~ that individual into
55 custody and transport him or her to and from the place of hearing and the mental health facility.
56 The sheriff shall also maintain custody and control of the accused individual during the period of
57 time in which the individual is waiting for the involuntary commitment hearing to be convened and
58 while ~~such~~ the hearing is being conducted: *Provided*, That an individual who is a resident of a
59 state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her
60 state of residence for treatment pursuant to subsection (p), section four of this article: *Provided*,
61 *however*, That where an individual is a resident of West Virginia but not a resident of the county
62 in which he or she is found and there is a finding of probable cause, the county in which the
63 hearing is held may seek reimbursement from the county of residence for reasonable costs
64 incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision
65 of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one
66 or more other counties, with the concurrence of their respective circuit courts and county
67 commissions, whereby transportation and security responsibilities for hearings held pursuant to
68 the provisions of this article during noncourt hours or on nonjudicial days may be shared in order
69 to facilitate prompt hearings and to effectuate transportation of persons found in need of

70 treatment.

71 (e) *Duty of sheriff upon presentment to mental health care facility.* -- Where a person is
72 brought to a mental health care facility for purposes of evaluation for commitment under this
73 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody
74 of the person in the facility until the evaluation is completed or the county commission shall
75 reimburse the mental health care facility at a reasonable rate for security services provided by the
76 mental health care facility for the period of time the person is at the hospital prior to the
77 determination of mental competence or incompetence.

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

NOTE: The purpose of this bill is to require a Mental Hygiene Commissioner to be on call at all times.

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