

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4009

BY DELEGATES WESTFALL, HIGGINBOTHAM, MANDT,

ATKINSON, TONEY, PACK, LINVILLE AND ROHRBACH

[Passed March 7, 2020; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §27-1-11 of the Code of West Virginia, 1931, as amended; to
2 amend said code by adding thereto a new section, designated §27-5-2a; to amend and
3 reenact §27-5-1, §27-5-2, §27-5-3, §27-5-4, and §27-5-10 of said code; and to amend
4 said code by adding thereto a new section, designated §27-6A-12, all relating to
5 involuntary hospitalization and competency and criminal responsibility of persons charged
6 with or convicted of a crime; defining terms; updating outdated language in the code;
7 requiring the development of an orientation program for mental hygiene commissioners
8 and magistrates who preside over involuntary hospitalization hearings; establishing
9 criteria and time frames for the involuntary admission to and discharge of individuals from
10 a mental health facility or state hospital; addressing the transportation of persons to a state
11 hospital; relating to competency and criminal responsibility of persons charged with
12 criminal offenses generally; requiring persons be committed to least restrictive setting;
13 permitting an authorized staff physician, after examination, to order the involuntary
14 hospitalization of an individual whom the physician believes is addicted or mentally ill and
15 likely to cause serious harm to himself or herself or other individuals; setting forth a
16 procedure; providing for payment for services; limiting liability; requesting the Supreme
17 Court of Appeals to generate a statement for the attesting physician; providing the
18 attesting physician statement be provided to the patient; requesting the Supreme Court of
19 Appeals to produce information to hospitals regarding contact information for mental
20 hygiene commissioners, county magistrates, and circuit judges; and establishing that if a
21 mental hygiene commissioner, county magistrate, or circuit judge does not respond to the
22 request within 24 hours, a report shall be filed to the Supreme Court of Appeals; requiring
23 release when staff physicians determine after three days that individual does not meet
24 criteria for continued commitment; requiring specific finding that inpatient hospital
25 treatment is required; directing the Secretary of the Department of Health and Human
26 Resources in collaboration with representatives of the judiciary, representatives of the

27 prosecuting attorneys, the criminal defense bar, and advocates for the disability
28 community to develop legislation to update and modify statutory provisions related to
29 competence and criminal responsibility to ensure protection of constitutional rights and
30 public safety; and requiring that proposed legislation be submitted to the President of the
31 Senate and the Speaker of the House of Delegates on or before July 31, 2020.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

1 (a) As used in this chapter, “addiction” or substance use disorder means a maladaptive
2 pattern of substance use leading to clinically significant impairment or distress as manifested by
3 one or more of the following occurring within 30 days prior to the filing of the petition:

4 (1) Recurrent substance use resulting in a failure to fulfill major role obligations at work,
5 school, or home, including, but not limited to, repeated absences or poor work performance
6 related to substance use; substance-related absences, suspensions, or expulsions from school;
7 or neglect of children or household;

8 (2) Recurrent use in situations in which it is physically hazardous, including, but not limited
9 to, driving while intoxicated or operating a machine when impaired by substance use;

10 (3) Recurrent substance-related legal problems; or

11 (4) Continued use despite knowledge or having persistent or recurrent social or
12 interpersonal problems caused or exacerbated by the effects of the substance.

13 (b) As used in this section, “substance” means alcohol, controlled substances as defined
14 in sections §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code, or anything
15 consumed for its psychoactive effect whether or not designed for human consumption.

ARTICLE 5. INVOLUNTARY HOSITALIZATION.

§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 a commissioner, take
6 the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code.

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

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

22 (1) Mental hygiene commissioners may sign and issue summonses for the attendance, at
23 any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may

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

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

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

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

72 (e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is
73 brought to a mental health care facility for purposes of evaluation for commitment under this
74 article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody
75 of the person in the facility until the evaluation is completed, or the county commission shall

76 reimburse the mental health care facility at a reasonable rate for security services provided by the
77 mental health care facility for the period of time the person is at the hospital prior to the
78 determination of mental competence or incompetence.

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

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

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

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

12 Notwithstanding any language in this subsection to the contrary, if the individual to be
13 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional

14 facility, then only the chief administrative officer of the facility holding the individual may file the
15 application, and the application must include the additional statement that the correctional facility
16 itself cannot reasonably provide treatment and other services for the individual's mental illness or
17 substance use disorder.

18 (b) The person making the application shall make the application under oath.

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

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

28 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for
29 the individual named in the application to be detained and taken into custody for the purpose of
30 holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose of an
31 examination of the individual by a physician, psychologist, a licensed professional counselor
32 practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social
33 worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner
34 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a
35 physician's assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician's
36 assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed
37 professional counselor, a licensed independent clinical social worker, a physician's assistant, or
38 an advanced nurse practitioner with psychiatric certification may only perform the examination if
39 he or she has previously been authorized by an order of the circuit court to do so, the order having

40 found that the licensed professional counselor, the licensed independent clinical social worker,
41 physician's assistant, or advanced nurse practitioner with psychiatric certification has
42 particularized expertise in the areas of mental health and mental hygiene or substance use
43 disorder sufficient to make the determinations required by the provisions of this section. The
44 examination is to be provided or arranged by a community mental health center designated by
45 the Secretary of the Department of Health and Human Resources to serve the county in which
46 the action takes place. The order is to specify that the hearing be held immediately and is to
47 provide for the appointment of counsel for the individual: *Provided, however,* That the order may
48 allow the hearing to be held up to 24 hours after the person to be examined is taken into custody
49 rather than immediately if the circuit court of the county in which the person is found has previously
50 entered a standing order which establishes within that jurisdiction a program for placement of
51 persons awaiting a hearing which assures the safety and humane treatment of persons: *Provided*
52 *further,* That the time requirements set forth in this subsection only apply to persons who are not
53 in need of medical care for a physical condition or disease for which the need for treatment
54 precludes the ability to comply with the time requirements. During periods of holding and detention
55 authorized by this subsection, upon consent of the individual or in the event of a medical or
56 psychiatric emergency, the individual may receive treatment. The medical provider shall exercise
57 due diligence in determining the individual's existing medical needs and provide treatment the
58 individual requires, including previously prescribed medications. As used in this section,
59 "psychiatric emergency" means an incident during which an individual loses control and behaves
60 in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where
61 a physician, psychologist, licensed professional counselor, licensed independent clinical social
62 worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has,
63 within the preceding 72 hours, performed the examination required by the provisions of this
64 subsection, the community mental health center may waive the duty to perform or arrange another
65 examination upon approving the previously performed examination. Notwithstanding the

66 provisions of this subsection, §27-5-4(r) of this code applies regarding payment by the county
67 commission for examinations at hearings. If the examination reveals that the individual is not
68 mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance
69 use disorder but not likely to cause harm to himself, herself, or others, the individual shall be
70 immediately released without the need for a probable cause hearing and the examiner is not civilly
71 liable for the rendering of the opinion absent a finding of professional negligence. The examiner
72 shall immediately provide the mental hygiene commissioner, circuit court, or magistrate before
73 whom the matter is pending the results of the examination on the form provided for this purpose
74 by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

75 (f) A probable cause hearing is to be held before a magistrate, the mental hygiene
76 commissioner, or circuit judge of the county of which the individual is a resident or where he or
77 she was found. If requested by the individual or his or her counsel, the hearing may be postponed
78 for a period not to exceed 48 hours.

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

90 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
91 judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons

92 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is
93 accomplished; and specify other alternative or modified procedures that are consistent with the
94 purposes and provisions of this article. The alternative or modified procedures shall fully and
95 effectively guarantee to the person who is the subject of the involuntary commitment proceeding
96 and other interested parties due process of the law and access to the least restrictive available
97 treatment needed to prevent serious harm to self or others.

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

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

141 Notwithstanding anything in this article to the contrary, the commitment of any individual
142 as provided in this article shall be in the least restrictive setting and in an outpatient community-
143 based treatment program to the extent resources and programs are available, unless the clear

144 and convincing evidence of the certifying professional under subsection (e) of this section, who is
145 acting in a manner consistent with the standard of care, establishes that the commitment or
146 treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be
147 based upon a plan jointly prepared by the department and the comprehensive community mental
148 health center or licensed behavioral health provider.

149 (i) If the certifying professional determines that an individual requires involuntary
150 hospitalization for a substance use disorder which, due to the degree of the disorder, creates a
151 reasonable likelihood that withdrawal or detoxification will cause significant medical
152 complications, the person certifying the individual shall recommend that the individual be closely
153 monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or
154 circuit court judge presiding orders involuntary hospitalization, he or she shall include a
155 recommendation that the individual be closely monitored in the order of commitment.

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

§27-5-2a. Process for involuntary hospitalization.

1 (a) As used in this section:

2 (1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

3 (2) "Authorized staff physician" means a physician, authorized pursuant to the provisions
4 of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, who is a bona fide member of the hospital's
5 medical staff.

6 (3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 *et seq.* of
7 this code, and any acute care facility operated by the state government that primarily provides
8 inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals
9 under the supervision of physicians.

10 (4) "Psychiatric emergency" means an incident during which an individual loses control
11 and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or
12 others.

13 (b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or
14 unable to be immediately contacted, an authorized staff physician may order the involuntary
15 hospitalization of an individual who is present at, or presented at, a hospital emergency
16 department in need of treatment, if the authorized staff physician believes, following an
17 examination of the individual, that the individual is addicted or is mentally ill and, because of his
18 or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if
19 allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his
20 or her decision that the patient presents a harm to himself, herself or others and needs to be held
21 involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to
22 generate a form for the statement to be signed by the authorized staff physician or other person
23 authorized by the hospital and provided to the individual.

24 (2) Immediately upon admission, or as soon as practicable thereafter, but in no event later
25 than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff
26 physician or designated employee shall file a mental hygiene petition in which the authorized staff
27 physician certifies that the individual for whom the involuntary hospitalization is sought is addicted
28 or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious
29 harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff
30 physician shall also certify the same in the individual's health records. Upon receipt of this filing,

31 the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant
32 to §27-5-2 of this code.

33 (3) An individual who is involuntarily hospitalized pursuant to this section shall be released
34 from the hospital within 72 hours, unless further detained under the applicable provisions of this
35 article.

36 (c) During a period of involuntary hospitalization authorized by this section, upon consent
37 of the individual, or in the event of a medical or psychiatric emergency, the individual may receive
38 treatment. The hospital or authorized staff physician shall exercise due diligence in determining
39 the individual's existing medical needs and provide treatment the individual requires, including
40 previously prescribed medications.

41 (d) Each hospital or authorized staff physician which provides services under this section
42 shall be paid for the services at the same rate the hospital or authorized staff physician negotiates
43 with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may
44 file a claim for payment with the West Virginia Legislative Claims Commission in accordance with
45 §14-2-1 *et seq.* of this code.

46 (e) Authorized staff physicians and hospitals and their employees carrying out duties or
47 rendering professional opinions as provided in this section shall be free from liability for their
48 actions, if the actions are performed in good faith and within the scope of their professional duties
49 and in a manner consistent with the standard of care.

50 (f) The West Virginia Supreme Court of Appeals is requested, by no later than July 1,
51 2020, to provide each hospital with a list of names and contact information of the mental hygiene
52 commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county
53 where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update
54 this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner,
55 county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall
56 be filed to the West Virginia Supreme Court of Appeals.

57 (g) An action taken against an individual pursuant to this section may not be construed to
58 be an adjudication of the individual, nor shall any action taken pursuant to this section be
59 construed to satisfy the requirements of §61-7-7(a)(4) of this code.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

1 (a) *Admission to a mental health facility for examination.* — Any individual may be admitted
2 to a mental health facility for examination and treatment upon entry of an order finding probable
3 cause as provided in §27-5-2 of this code upon a finding by a licensed physician that the individual
4 is medically stable, and upon certification by a physician, psychologist, licensed professional
5 counselor, licensed independent clinical social worker practicing in compliance with the provisions
6 of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification
7 practicing in compliance with §30-7-1 *et seq.* of this code, or a physician’s assistant practicing in
8 compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that
9 he or she has examined the individual and is of the opinion that the individual is mentally ill or has
10 a substance use disorder and, because of the mental illness or substance use disorder, is likely
11 to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided,*
12 That the opinions offered by an independent clinical social worker, an advanced nurse practitioner
13 with psychiatric certification, or a physician’s assistant with advanced duties in psychiatric
14 medicine must be within his or her particular areas of expertise, as recognized by the order of the
15 authorizing court.

16 (b) *Three-day time limitation on examination.* — If the examination does not take place
17 within three days from the date the individual is taken into custody, the individual shall be released.
18 If the examination reveals that the individual is not mentally ill or has a substance use disorder,
19 the individual shall be released.

20 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
21 this code is valid for three days. Any individual with respect to whom the certification has been

22 issued may not be admitted on the basis of the certification at any time after the expiration of three
23 days from the date of the examination.

24 (d) *Findings and conclusions required for certification.* — A certification under this section
25 must include findings and conclusions of the mental examination, the date, time, and place of the
26 examination, and the facts upon which the conclusion that involuntary commitment is necessary
27 is based.

28 (e) *Notice requirements.* — When an individual is admitted to a mental health facility or a
29 state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall
30 immediately give notice of the individual's admission to the individual's spouse, if any, and one of
31 the individual's parents or guardians or if there is no spouse and are no parents or guardians, to
32 one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be
33 given to the community mental health facility, if any, having jurisdiction in the county of the
34 individual's residence. The notices other than to the community mental health facility shall be in
35 writing and shall be transmitted to the person or persons at his, her, or their last known address
36 by certified mail, return receipt requested.

37 (f) *Three-day time limitation for examination and certification at mental health facility or*
38 *state hospital.* — After the individual's admission to a mental health facility or state hospital, he or
39 she may not be detained more than three days, excluding Sundays and holidays, unless, within
40 the period, the individual is examined by a staff physician and the physician certifies that in his or
41 her opinion the patient is mentally ill or has a substance use disorder and is likely to injure himself,
42 herself, or others if allowed to be at liberty. In the event the staff physician determines that the
43 individual does not meet the criteria for continued commitment, that the individual can be treated
44 in an available outpatient community-based treatment program and poses no present danger to
45 himself, herself or others, or that the individual has an underlying medical issue or issues that
46 resulted in a determination that the individual should not have been committed, the staff physician
47 shall release and discharge the individual as appropriate as soon as practicable.

48 (g) *Ten-day time limitation for institution of final commitment proceedings.* — If, in the
49 opinion of the examining physician, the patient is mentally ill or has a substance use disorder and
50 because of the mental illness or substance use disorder is likely to injure himself, herself, or others
51 if allowed to be at liberty, the chief medical officer shall, within 10 days from the date of admission,
52 institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are
53 not instituted within the 10-day period, the individual shall be immediately released. After the
54 request for hearing is filed, the hearing may not be canceled on the basis that the individual has
55 become a voluntary patient unless the mental hygiene commissioner concurs in the motion for
56 cancellation of the hearing.

57 (h) *Twenty-day time limitation for conclusion of all proceedings.* — If all proceedings as
58 provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 20 days
59 from the date of institution of the proceedings, the individual shall be immediately released.

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

1 (a) *Involuntary commitment.* — Except as provided in §27-5-3 of this code, no individual
2 may be involuntarily committed to a mental health facility or state hospital except by order entered
3 of record at any time by the circuit court of the county in which the person resides or was found,
4 or if the individual is hospitalized in a mental health facility or state hospital located in a county
5 other than where he or she resides or was found, in the county of the mental health facility and
6 then only after a full hearing on issues relating to the necessity of committing an individual to a
7 mental health facility or state hospital. If the individual objects to the hearing being held in the
8 county where the mental health facility is located, the hearing shall be conducted in the county of
9 the individual's residence.

10 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings
11 for an individual may be commenced by the filing of a written application under oath by an adult
12 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with
13 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is

14 a resident or where he or she may be found, or the county of a mental health facility if he or she
15 is hospitalized in a mental health facility or state hospital located in a county other than where he
16 or she resides or may be found.

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

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

20 (2) The application shall contain statements by the applicant that the individual is likely to
21 cause serious harm to self or others due to what the applicant believes are symptoms of mental
22 illness or substance use disorder. The applicant shall state in detail the recent overt acts upon
23 which the belief is based.

24 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,
25 including any related documents, filed with a circuit court, mental hygiene commissioner, or
26 magistrate for the involuntary hospitalization of an individual are not open to inspection by any
27 person other than the individual, unless authorized by the individual or his or her legal
28 representative or by order of the circuit court. The records may not be published unless authorized
29 by the individual or his or her legal representative. Disclosure of these records may, however, be
30 made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to
31 the Federal National Instant Criminal Background Check System established pursuant to section
32 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state
33 mental health registry, in accordance with §61-7A-1 *et seq.* of this code. Disclosure may also be
34 made to the prosecuting attorney and reviewing court in an action brought by the individual
35 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

36 (4) Applications may not be accepted for individuals who only have epilepsy, dementia, or
37 an intellectual or developmental disability.

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

40 (1) The applicant shall file with his or her application the certificate of a physician or a
41 psychologist stating that in his or her opinion the individual is mentally ill or has a substance use
42 disorder and that because of the mental illness or substance use disorder, the individual is likely
43 to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be
44 hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is
45 based.

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

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

52 (1) To the individual;

53 (2) To the applicant or applicants;

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

57 (4) To the mental health authorities serving the area;

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

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

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

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

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

65 (3) The right to have counsel appointed;

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

68 (5) The time and place of the hearing.

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

73 (g) *Examination of individual by court-appointed physician, psychologist, advanced nurse*
74 *practitioner, or physician's assistant; custody for examination; dismissal of proceedings. —*

75 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after
76 notice of the commencement of final commitment proceedings is given, the circuit court or mental
77 hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner
78 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric
79 medicine to examine the individual and report to the circuit court or mental hygiene commissioner
80 his or her findings as to the mental condition or substance use disorder of the individual and the
81 likelihood of causing serious harm to self or others.

82 (2) If the designated physician, psychologist, advanced nurse practitioner, or physician
83 assistant reports to the circuit court or mental hygiene commissioner that the individual has
84 refused to submit to an examination, the circuit court or mental hygiene commissioner shall order
85 him or her to submit to the examination. The circuit court or mental hygiene commissioner may
86 direct that the individual be detained or taken into custody for the purpose of an immediate
87 examination by the designated physician, psychologist, nurse practitioner, or physician's
88 assistant. All orders shall be directed to the sheriff of the county or other appropriate law-
89 enforcement officer. After the examination has been completed, the individual shall be released
90 from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

91 (3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician's
92 assistant do not confirm that the individual is mentally ill or has a substance use disorder and
93 might be harmful to self or others, then the proceedings for involuntary hospitalization shall be
94 dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 (k) *Requisite findings by the court.* —

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

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

140 (B) Whether, because of illness or substance use disorder, the individual is likely to cause
141 serious harm to self or others if allowed to remain at liberty;

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

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

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

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

154 (1) Upon the requisite findings, the circuit court may order the individual to a mental health
155 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this
156 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*
157 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall
158 conduct a clinical assessment of the individual at least every 30 days to determine if the individual
159 requires continued placement at the mental health facility or state hospital and whether the
160 individual is suitable to receive any necessary treatment at an outpatient community-based
161 treatment program. If at any time the chief medical officer, acting in good faith and in a manner
162 consistent with the standard of care, determines that: (i) The individual is suitable for receiving
163 outpatient community-based treatment; (ii) necessary outpatient community-based treatment is
164 available in the individual's area as evidenced by a discharge and treatment plan jointly developed
165 by the department and the comprehensive community mental health center or licensed behavioral
166 health provider; and (iii) the individual's clinical presentation no longer requires inpatient
167 commitment, the chief medical officer shall provide written notice to the court of record and

168 prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for
169 discharge. The chief medical officer may discharge the patient 30 days after the notice unless the
170 court of record stays the discharge of the individual. In the event the court stays the discharge of
171 the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall
172 be thereafter discharged unless the court finds by clear and convincing evidence that the
173 individual is a significant and present danger to self or others, and that continued placement at
174 the mental health facility or state hospital is required.

175 If the chief medical officer determines that the individual requires commitment at the
176 mental health facility or state hospital at any time for a period longer than 90 days, then the
177 individual shall remain at the mental health facility or state hospital until the chief medical officer
178 of the mental health facility or state hospital determines that the individual's clinical presentation
179 no longer requires further commitment. The chief medical officer shall provide notice to the court
180 and the prosecuting attorney that the individual requires commitment for a period in excess of 90
181 days and, in the notice, the chief medical officer shall describe the reasons for ongoing
182 commitment. In its discretion, the court or prosecuting attorney may request any information from
183 the chief medical officer that the court or prosecuting attorney considers appropriate to justify the
184 need for the individual's ongoing commitment.

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

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

191 (B) Whether the individual's condition resulting from mental illness or substance use
192 disorder is likely to deteriorate to the point that the individual will pose a likelihood of serious harm
193 to self or others unless treatment is continued;

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

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

198 (E) Whether the individual is not a danger to self or others; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§27-5-10. Transportation for the mentally ill or persons with substance use disorder.

1 (a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et*
2 *seq.* and §27-5-1 *et seq.* of this code, the sheriff shall provide immediate transportation to or from
3 the appropriate mental health facility or state hospital: *Provided*, That, where hospitalization
4 occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request
5 of a person having proper interest in the individual's hospitalization, for the interested person to

6 arrange for the individual's transportation to the mental health facility or state hospital if the sheriff
7 determines that those means are suitable given the individual's condition.

8 (b) Upon written agreement between the county commission on behalf of the sheriff and
9 the directors of the local community mental health center and emergency medical services, an
10 alternative transportation program may be arranged. The agreement shall clearly define the
11 responsibilities of each of the parties, the requirements for program participation, and the persons
12 bearing ultimate responsibility for the individual's safety and well-being.

13 (c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal
14 governments may enter into written agreements by which certified municipal law-enforcement
15 officers may perform the duties of the sheriff as described in this article. The agreement shall
16 determine jurisdiction, responsibility of costs, and all other necessary requirements, including
17 training related to the performance of these duties, and shall be approved by the county
18 commission and circuit court of the county in which the agreement is made. For purposes of this
19 subsection, "certified municipal law-enforcement officer" means any duly authorized member of a
20 municipal law-enforcement agency who is empowered to maintain public peace and order, make
21 arrests, and enforce the laws of this state or any political subdivision thereof, other than parking
22 ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et*
23 *seq.* of this code.

24 (d) In the event an individual requires transportation to a state hospital as defined by §27-
25 1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state
26 hospital in advance of the transportation to determine if the state hospital has suitable bed
27 capacity to place the individual.

28 (e) Nothing in this section is intended to alter security responsibilities for the patient by the
29 sheriff unless mutually agreed upon as provided in subsection (c) of this section.

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

**§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and
requesting report and proposed legislation; submission to legislature.**

1 (a) The Secretary of the Department of Health and Human Resources shall, in
2 collaboration with designees of the Supreme Court of Appeals, the Prosecuting Attorney's
3 Institute, Prosecuting Attorney's Association, the Public Defender Services, Behavioral Health
4 Providers Association, Disability Rights of West Virginia, and designees of the Board of Medicine,
5 Board of Osteopathy, and the Board Examiners of Psychologists with experience in issues of
6 competence and criminal responsibility, undertake an evaluation of the provisions of this article in
7 the context of current constitutional requirements related to competency and responsibility issues,
8 best medical practices, and pharmacological developments and draft proposed legislation to
9 update the provisions of this article.

10 (b) The legislation required by the provisions of subsection (a) of this section shall be
11 submitted to the President of the Senate and the Speaker of the House of Delegates on or before
12 July 31, 2020.

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

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

The within this the.....
day of, 2020.

.....
Governor