

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 278

BY SENATOR TRUMP

[Introduced January 10, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §27-6A-3 of the Code of West Virginia, 1931, as amended, relating
2 to a defendant’s competency to stand trial; and actions of the circuit judge.

Be it enacted by the Legislature of West Virginia:

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

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

1 (a) Within five days of the receipt of the qualified forensic evaluator’s report and opinion
2 on the issue of competency to stand trial, the court of record shall make a preliminary finding on
3 the issue of whether the defendant is competent to stand trial and if not competent whether there
4 is a substantial likelihood that the defendant will attain competency within the next three months.
5 If the court of record orders, or if the state or defendant or defendant’s counsel within 20 days of
6 receipt of the preliminary findings requests, a hearing, then a hearing shall be held by the court
7 of record within 15 days of the date of the preliminary finding, absent good cause being shown
8 for a continuance. If a hearing order or request is not filed within 20 days, the preliminary findings
9 of the court become the final order.

10 (b) At a hearing to determine a defendant’s competency to stand trial the defendant has
11 the right to be present and he or she has the right to be represented by counsel and introduce
12 evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate
13 notice of the issues at the hearing and shall have access to all forensic evaluator’s opinions. All
14 rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in
15 the competency proceedings, except trial by jury.

16 (c) The court of record pursuant to a preliminary finding or hearing on the issue of a
17 defendant’s competency to stand trial and with due consideration of any forensic evaluation
18 conducted pursuant to sections two and three of this article shall make a finding of fact upon a

19 preponderance of the evidence as to the defendant's competency to stand trial based on whether
20 or not the defendant has sufficient present ability to consult with his or her lawyer with a
21 reasonable degree of rational understanding and whether he or she has a rational as well as a
22 factual understanding of the proceedings against him or her.

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

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

29 (f) If at any point in the proceedings the defendant is found not competent to stand trial
30 and is found substantially likely to attain competency, the court of record shall in the same order,
31 upon the evidence, make further findings as to whether the defendant requires, in order to attain
32 competency, inpatient management in a mental health facility. If inpatient management is
33 required, the court shall order the defendant be committed to an inpatient mental health facility
34 designated by the department to attain competency to stand trial and for a competency evaluation.
35 The term of this commitment may not exceed three months from the time of entry into the facility.
36 However, upon request by the chief medical officer of the mental health facility and based on the
37 requirement for additional management to attain competency to stand trial, the court of record
38 may, prior to the termination of the three-month period, extend the period up to nine months from
39 entry into the facility. A forensic evaluation of competency to stand trial shall be conducted by a
40 qualified forensic evaluator and a report rendered to the court, in like manner as subsections (a)
41 and (c), section two of this article, every three months until the court determines the defendant is
42 not competent to stand trial and is not substantially likely to attain competency.

43 (g) If at any point in the proceedings the defendant is found not competent to stand trial
44 and is found not substantially likely to attain competency and if the defendant has been indicted

45 or charged with a misdemeanor or felony which does not involve an act of violence against a
46 person, the criminal charges shall be dismissed. The dismissal order may, however, be stayed
47 for 20 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to
48 article five of this chapter. The defendant shall be immediately released from any inpatient facility
49 unless civilly committed.

50 ~~(h) If at any point in the proceedings the defendant is found not competent to stand trial~~
51 ~~and is found not substantially likely to attain competency, and if the defendant has been indicted~~
52 ~~or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act~~
53 ~~of violence against a person, then the court shall determine on the record the offense or offenses~~
54 ~~of which the person otherwise would have been convicted, and the maximum sentence he or she~~
55 ~~could have received. A defendant shall remain under the court's jurisdiction until the expiration of~~
56 ~~the maximum sentence unless the defendant attains competency to stand trial and the criminal~~
57 ~~charges reach resolution or the court dismisses the indictment or charge. The court shall order~~
58 ~~the defendant be committed to a mental health facility designated by the department that is the~~
59 ~~least restrictive environment to manage the defendant and that will allow for the protection of the~~
60 ~~public. Notice of the maximum sentence period with an end date shall be provided to the mental~~
61 ~~health facility. The court shall order a qualified forensic evaluator to conduct a dangerousness~~
62 ~~evaluation to include dangerousness risk factors to be completed within thirty days of admission~~
63 ~~to the mental health facility and a report rendered to the court within ten business days of the~~
64 ~~completion of the evaluation. The medical director of the mental health facility shall provide the~~
65 ~~court a written clinical summary report of the defendant's condition at least annually during the~~
66 ~~time of the court's jurisdiction. The court's jurisdiction shall continue an additional ten days beyond~~
67 ~~any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant~~
68 ~~to article five of this chapter. The defendant shall then be immediately released from the facility~~
69 ~~unless civilly committed~~

70 (h)(1) If at any time during the proceeding the court finds that there is reasonable chance

71 to believe that the defendant is presently suffering from a mental illness or intellectual disability
72 which renders him or her unable to understand the nature and consequences of the proceedings
73 and to assist properly in his or her defense, the court shall commit the defendant to a mental
74 health facility designated by the Secretary of the Department of Health and Human Resources.

75 (2) Commitment pursuant to subdivision (1) of this subsection shall be for a reasonable
76 time, not to exceed 120 days for a determination as to whether there is a substantial probability
77 that in the foreseeable future the defendant will obtain competence.

78 (3) If it is determined that there is a substantial probability that the defendant can regain
79 competence then the defendant may be ordered to remain in a mental health facility for an
80 additional reasonable time until he or she attains competence or the pending charges are
81 disposed of according to law, whichever is earlier in time: *Provided*, That the defendant may not
82 be held in the mental health facility for continued treatment in excess of 240 days.

83 (4) If at the end of the time period for continued treatment ordered under subdivision (3)
84 of this subsection the court finds that the defendant has not attained competence, and that he or
85 she is not making progress toward attaining competence and that there is no substantial
86 probability that the defendant will attain competence in the foreseeable future, the defendant shall
87 be released on bail and the charges against him or her held in abeyance for not more than 60
88 months, and the defendant released unless civil commitment proceedings have been initiated
89 pursuant to §27-5-1 *et seq.* of this code.

90 (5) When a defendant is released on bail and the charges against him or her are held in
91 abeyance, the circuit court shall, no less frequently than every six months, review the defendant's
92 circumstance to determine if he or she has attained competence or if his or her condition has
93 deteriorated to the extent that requires civil commitment.

94 (i) If the defendant has been ordered to a mental health facility pursuant to subdivision (3),
95 subsection (h) of this section and the court receives notice from the medical director or other
96 responsible official of the mental health facility that the defendant ~~no longer constitutes~~ does not

97 constitute a significant danger to self or others, the court shall conduct a hearing within 30 days
98 of receipt of such notice to consider evidence, with due consideration of the qualified forensic
99 evaluator's dangerousness report or clinical summary report to determine if the defendant shall
100 be released to a less restrictive environment. The court may order the release of the defendant
101 only when the court finds that the defendant is no longer a significant danger to self or others.
102 When a defendant's dangerousness risk factors associated with mental illness are reduced or
103 eliminated as a result of any treatment, the court, in its discretion, may make the continuance of
104 appropriate treatment, including medications, a condition of the defendant's release from inpatient
105 hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said
106 subsection. Upon notice that a defendant ordered to a mental health facility pursuant to said
107 subsection who is released on the condition that he or she continues treatment does not continue
108 his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the
109 defendant's release. Upon a showing that defendant is in violation of the conditions of his or her
110 release, the court shall reorder the defendant to a mental health facility under the authority of the
111 department which is the least restrictive setting that will allow for the protection of the public.

112 (j) The prosecuting attorney may, by motion, and in due consideration of any chief medical
113 officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject
114 to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to
115 subsection (i) of this section to be determined by the court of record while the defendant remains
116 under the jurisdiction of the court, and in which case the court may order a forensic evaluation of
117 competency to stand trial be conducted by a qualified forensic evaluator and a report rendered to
118 the court in like manner as subsections (a) and (c), section two of this article.

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

121 (l) Notice of court findings of a defendant's competency to stand trial, of commitment for
122 inpatient management to attain competency, of dismissal of charges, of order for inpatient

123 management to protect the public, of release or conditional release, or any hearings to be
124 conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant and
125 his or her counsel, and the mental health facility. Notice of court release hearing or order for
126 release or conditional release pursuant to subsection (i) of this section shall be made available to
127 the victim or next of kin of the victim of the offense for which the defendant was charged. The
128 burden is on the victim or next of kin of the victim to keep the court apprised of that person's
129 current mailing address.

130 (m) A mental health facility not operated by the state is not obligated to admit or treat a
131 defendant under this section

NOTE: The purpose of this bill is to provide various methods of dealing with a defendant who becomes incompetent during his or her trial.

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