

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4377**

BY DELEGATES ROHRBACH, D. JEFFRIES, PACK, REED,  
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PINSON

[Originating in the Committee on the Judiciary;  
reported on February 23, 2022]



1 A BILL to amend and reenact §27-5-1, §27-5-2, §27-5-3, §27-5-4, and §27-5-10 of the Code of  
2 West Virginia, 1931, as amended, all relating to involuntary hospitalization; modifying the  
3 time for the completion of proceedings; requiring applicants to disclose contact information  
4 of persons to receive notice of involuntary commitment proceedings; transportation of  
5 individuals who are ordered for involuntary hospitalization to a diversion facility; updating  
6 outdated language in the code; authorizing the West Virginia Department of Health and  
7 Human Resources to propose legislative rules to implement the provisions of these  
8 articles; authorizing the Supreme Court of Appeals and the West Virginia Department of  
9 Health and Human Resources to conduct retrospective reviews of involuntary commitment  
10 applications and orders; and making technical amendments.

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

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

### **§27-5-1. Appointment of mental hygiene officials.**

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. A mental hygiene  
41 commissioner shall be available when necessary to hold hearings reasonably promptly in  
42 accordance with §27-5-1 et seq. of this code, not to exceed 48 hours.

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

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

52 (d) *Duties of ~~sheriff~~, law-enforcement officer.* —

53 (1) Upon written order of the circuit court, mental hygiene commissioner, or magistrate in  
54 the county where the individual formally accused of being mentally ill or having a substance use  
55 disorder is a resident or is found, the circuit court, mental hygiene commissioner, or magistrate  
56 issuing an emergency custody order shall specify the primary law-enforcement agency and  
57 jurisdiction to execute the emergency custody order and provide transportation. However, the  
58 circuit court, mental hygiene commissioner, or magistrate shall consider any request to authorize  
59 transportation by an alternative transportation provider in accordance with this section, whenever  
60 an alternative transportation provider is identified to the mental hygiene commissioner or court,  
61 which may be a facility, agency, a representative of the community mental health services  
62 provider, or other transportation provider with personnel trained to provide transportation in a safe  
63 manner. To determine if an alternative transportation manner is appropriate the commissioner  
64 shall consider information provided by the petitioner; the community mental health services  
65 provider; the law-enforcement agency; the person's treating physician; or other persons who are

66 available and have knowledge of the person. If the mental hygiene commissioner or court deems  
67 appropriate, the proposed alternative transportation provider shall confirm availability to provide  
68 transportation in a safe manner.

69 (2) When transportation is ordered to be provided by an alternative transportation provider,  
70 the mental hygiene commissioner or court shall order the specified primary law-enforcement  
71 agency to execute the order, to take the person into custody, and to transfer custody of the person  
72 to the alternative transportation provider identified in the order. In such cases, a copy of the  
73 emergency custody order shall accompany the person being transported pursuant to this section  
74 at all times and shall be delivered by the alternative transportation provider to the community  
75 mental health services provider or its designee responsible for conducting the evaluation.

76 (3) The community mental health services provider or its designee conducting the  
77 evaluation shall return a copy of the emergency custody order as soon as is practicable. Delivery  
78 of an order to a law-enforcement officer or alternative transportation provider and return of an  
79 order to the court may be accomplished electronically. If a person is held in a regional jail, as  
80 authorized in §27-5-2, the Department of Corrections and Rehabilitation is responsible for  
81 execution of such orders and transport with the same duties as a primary law enforcement  
82 agency, without the ability to utilize alternative transport.

83 (4) If an alternative transportation provider is not used, the sheriff of that county, law-  
84 enforcement officer shall take the individual into custody and transport him or her to and from the  
85 place of hearing and the mental health facility. The sheriff, law-enforcement officer shall also  
86 maintain custody and control of the accused individual during the period of time in which the  
87 individual is waiting for the involuntary commitment hearing to be convened and while the hearing  
88 is being conducted. The law-enforcement officer has no duty to maintain custody and control of  
89 the individual as provided in §27-5-2(e) of this code.

90 (5) The circuit court, mental hygiene commissioner, or magistrate may change the  
91 transportation provider specified in a temporary detention order at any time prior to the initiation

92 of transportation of a person who is the subject of a temporary detention order pursuant to this  
93 section. If the designated transportation provider is changed by the circuit court, mental hygiene  
94 commissioner, or magistrate at any time after the temporary detention order has been executed  
95 but prior to the initiation of transportation, the transportation provider having custody of the person  
96 shall transfer custody of the person to the transportation provider subsequently specified to  
97 provide transportation. For the purposes of this subsection, "transportation provider" includes both  
98 a law-enforcement agency and an alternative transportation provider.

99 (6) That An individual who is a resident of a state other than West Virginia shall, upon a  
100 finding of probable cause, be transferred to his or her state of residence for treatment pursuant to  
101 §27-5-4(p) of this code: ~~Provided, however, That where an individual is a resident of West Virginia~~  
102 ~~but not a resident of the county in which he or she is found and there is a finding of probable~~  
103 ~~cause, the county in which the hearing is held may seek reimbursement from the county of~~  
104 ~~residence for reasonable costs incurred by the county attendant to the mental hygiene~~  
105 ~~proceeding.~~

106 (7) Notwithstanding any provision of this code to the contrary, sheriffs law-enforcement  
107 agencies may enter into cooperative agreements with sheriffs law-enforcement agencies of one  
108 or more other counties, with the concurrence of their respective circuit courts and county  
109 commissions, by which transportation and security responsibilities for hearings held pursuant to  
110 ~~the provisions of this article~~ during hours when the courthouse is closed or on nonjudicial days  
111 may be shared in order to facilitate prompt hearings and to effectuate transportation of persons  
112 found in need of treatment. In the event an individual requires transportation to a state hospital  
113 as defined by §27-1-6 of this code, ~~the sheriff shall contact the state hospital in advance of the~~  
114 ~~transportation to determine if the state hospital has available suitable bed capacity to place the~~  
115 ~~individual.~~

116 (e) Duty of sheriff, law-enforcement agency or alternative transportation provider- upon  
117 presentment to mental health care facility. — (1) When a person is brought to a mental health

118 care facility for purposes of evaluation for commitment under this article, if he or she is violent or  
119 combative, ~~the sheriff, or his or her designee~~ law-enforcement agency or alternative transportation  
120 provider shall maintain custody of the person in the facility until the evaluation is completed., ~~or~~  
121 ~~the county commission shall reimburse the mental health care facility at a reasonable rate for~~  
122 ~~security services provided by the mental health care facility for the period of time the person is at~~  
123 ~~the hospital prior to the determination of mental competence or incompetence.~~

124 (2) When a law-enforcement officer takes custody of a person pursuant to this article, the  
125 officer may request assistance from emergency medical personnel if such assistance is needed  
126 for the safety of the officer or the person in custody.

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

130 (g) *Duties of the Department of Health and Human Resources.* — The secretary shall  
131 develop an orientation program as provided in subsection (a) of this section. The orientation  
132 program shall include, but not be limited to, instruction regarding the nature and treatment of  
133 mental illness and substance use disorder; the goal and purpose of commitment; community-  
134 based treatment options; and less restrictive alternatives to inpatient commitment. The secretary  
135 shall provide to the Supreme Court of Appeals, the mental health centers and each law  
136 enforcement agency current information that identifies contact information for employees and staff  
137 at the state psychiatric hospitals who are responsible for facilitating the admission of persons who  
138 are involuntarily committed to state hospitals.

139 (h) *Civil Involuntary Commitment Audits.* — The Supreme Court of Appeals and the  
140 secretary shall establish a process to conduct retrospective quarterly audits of applications and  
141 licensed examiner forms prepared by certifiers for the involuntary civil commitment of persons as  
142 provided in §27-5-1 et seq. of this code. The process shall determine whether the licensed  
143 examiner forms prepared by certifiers are clinically justified and consistent with the requirements



144 of this code and, if not, develop corrective actions to redress identified issues. The process and  
145 the findings thereof shall be confidential and not subject to the provisions of §6-9A-1 et seq. and  
146 §29B-1-1 et seq. of this code.

147 (i) Duties of the Mental Health Center for Purposes of Evaluation for Commitment. – Each  
148 mental health center shall make available as reasonably necessary a qualified and competent  
149 licensed person to conduct prompt evaluations of persons for commitment in accordance with  
150 §27-5-1 et seq. of this code. Evaluations shall be conducted in person, unless an in-person  
151 evaluation would create a substantial delay to the resolution of the matter, then the evaluation  
152 may be conducted electronically. Each mental health center that performs these evaluations shall  
153 exercise reasonable diligence in performing the evaluations and communicating with the state  
154 hospital to provide all reasonable and necessary information to facilitate a prompt and orderly  
155 admission to the state hospital of any person who is or is likely to be involuntarily committed to  
156 such hospital. Each mental health center that performs these evaluations shall explain the  
157 involuntary commitment process to the applicant and the person proposed to be committed and  
158 further identify appropriate alternative forms of potential treatment, loss of liberty if committed,  
159 and the likely risks and benefits of commitment.

160 (j) All paperwork shall be communicated through electronic transmission.  
161 This includes referrals to diversion hospitals from state hospitals.

162 (k) Notwithstanding any provision of this code, the Supreme Court, mental health facilities,  
163 Cabell County, law enforcement, and the Department of Health and Human Resources may  
164 participate in a pilot project to implement an involuntary commitment process.

**§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~~ direct  
3 and specific knowledge that the individual to be examined has a substance use disorder as

4 defined by the most recent edition of the American Psychiatric Association in the Diagnostic and  
5 Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill  
6 and that as a direct and specific result of, because of his or her substance use disorder or mental  
7 illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to  
8 remain at liberty while awaiting an examination and certification by a physician, psychologist,  
9 licensed professional counselor, licensed independent social worker, an advanced nurse  
10 practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a  
11 diagnosis of dementia, epilepsy, or intellectual or developmental disability alone ~~may not serve~~  
12 ~~as~~ may not be a basis for involuntary commitment to a state hospital.

13 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be  
14 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional  
15 facility, then only the chief administrative officer of the facility holding the individual may file the  
16 application, and the application must include the additional statement that the correctional facility  
17 itself cannot reasonably provide treatment and other services directly necessary to treat ~~for~~ the  
18 individual's mental illness or substance use.

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

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

27 (d) The person making the application shall give information and state facts to which the  
28 person has direct and specific knowledge in the application required by the form provided for this  
29 purpose by the Supreme Court of Appeals.

30 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for  
31 the individual named in the application to be detained and taken into custody as provided in §27-  
32 5-1(d) and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided  
33 in §27-5-2(g) of this code. ~~for the purpose of~~ An examination of the individual to determine whether  
34 the individual meets involuntary hospitalization criteria shall be conducted in person unless an in  
35 person evaluation would create a substantial delay to the resolution of the matter, then the  
36 evaluation may be conducted electronically, and shall be performed by a physician, psychologist,  
37 a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a  
38 licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this  
39 code, an advanced nurse practitioner with psychiatric certification practicing in compliance with  
40 §30-7-1 *et seq.* of this code, a physician's assistant practicing in compliance with §30-3-1 *et seq.*  
41 of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code:  
42 *Provided*, That a licensed professional counselor, a licensed independent clinical social worker,  
43 a physician's assistant, or an advanced nurse practitioner with psychiatric certification may only  
44 perform the examination if he or she has previously been authorized by an order of the circuit  
45 court to do so, the order having found that the licensed professional counselor, the licensed  
46 independent clinical social worker, physician's assistant, or advanced nurse practitioner with  
47 psychiatric certification has particularized expertise in the areas of mental health and mental  
48 hygiene or substance use disorder sufficient to make the determinations required by the  
49 provisions of this section. The examination ~~is to~~ shall be provided or arranged by a community  
50 mental health center designated by the Secretary of the Department of Health and Human  
51 Resources to serve the county in which the action takes place. The order is to specify that the  
52 hearing evaluation be held ~~immediately~~ within a reasonable period of time not to exceed two hours  
53 ~~is to~~ shall provide for the appointment of counsel for the individual: *Provided, however*, ~~That the~~  
54 ~~order may allow the hearing to be held up to 24 hours after the person to be examined is taken~~  
55 ~~into custody rather than immediately if the circuit court of the county in which the person is found~~

56 ~~has previously entered a standing order which establishes within that jurisdiction a program for~~  
57 ~~placement of persons awaiting a hearing which assures the safety and humane treatment of~~  
58 ~~persons: *Provided further*~~ That the time requirements set forth in this subsection only apply to  
59 persons who are not in need of medical care for a physical condition or disease for which the  
60 need for treatment precludes the ability to comply with the time requirements. During periods of  
61 holding and detention authorized by this subsection, upon consent of the individual or ~~in the event~~  
62 ~~of~~ if there is a medical or psychiatric emergency, the individual may receive treatment. The  
63 medical provider shall exercise due diligence in determining the individual's existing medical  
64 needs and provide treatment the individual requires, including previously prescribed medications.  
65 As used in this section, "psychiatric emergency" means an incident during which an individual  
66 loses control and behaves in a manner that poses substantial likelihood of physical harm to  
67 himself, herself, or others. Where a physician, psychologist, licensed professional counselor,  
68 licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner  
69 with psychiatric certification has, within the preceding 72 hours, performed the examination  
70 required by ~~the provisions of~~ this subsection the community mental health center may waive the  
71 duty to perform or arrange another examination upon approving the previously performed  
72 examination. Notwithstanding ~~the provisions of~~ this subsection, §27-5-4(r) of this code applies  
73 regarding payment by the county commission for examinations at hearings. If the examination  
74 reveals that the individual is not mentally ill or has no substance use disorder, or is determined to  
75 be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or  
76 others, the individual shall be immediately released without the need for a probable cause hearing  
77 and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional  
78 negligence. The examiner shall immediately but no later than 60 minutes after completion of the  
79 examination provide the mental hygiene commissioner, circuit court, or magistrate before whom  
80 the matter is pending and the state hospital to which the individual may be involuntarily

81 hospitalized the results of the examination on the form provided for this purpose by the Supreme  
82 Court of Appeals for entry of an order reflecting the lack of probable cause.

83 (f) A probable cause hearing ~~is to~~ shall be held promptly before a magistrate, the mental  
84 hygiene commissioner, or circuit judge of the county of which the individual is a resident or where  
85 he or she was found. If requested by the individual or his or her counsel, the hearing may be  
86 postponed for a period not to exceed 48 hours. Hearings shall be conducted via  
87 videoconferencing unless the individual or his or her counsel objects, or the magistrate, mental  
88 hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is  
89 encouraged to develop regional mental hygiene collaboratives where mental hygiene  
90 commissioners can share on-call responsibilities, thereby reducing the burden on individual  
91 circuits and commissioners.

92 The individual ~~must~~ shall be present at the hearing and has the right to present evidence,  
93 confront all witnesses and other evidence against him or her, and examine testimony offered,  
94 including testimony by representatives of the community mental health center serving the area.  
95 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The  
96 individual has the right to remain silent and to be proceeded against in accordance with the Rules  
97 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the  
98 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge  
99 shall find and enter an order stating whether or not it is likely that deterioration will occur without  
100 clinically necessary treatment, or there is probable cause to believe that the individual, as a result  
101 of mental illness or substance use disorder, is likely to cause serious harm to himself or herself  
102 or to others. Any such order entered shall be provided to the state hospital to which the individual  
103 may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

104 (g) Probable cause hearings may occur in the county where a person is hospitalized. The  
105 judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons  
106 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is

107 accomplished; and specify other alternative or modified procedures that are consistent with the  
108 purposes and provisions of this article to promote a reasonably prompt, orderly, and efficient  
109 hearing. The alternative or modified procedures shall fully and effectively guarantee to the person  
110 who is the subject of the involuntary commitment proceeding and other interested parties due  
111 process of the law and access to the least restrictive available treatment needed to prevent  
112 serious harm to self or others.

113 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable  
114 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing  
115 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result  
116 of mental illness or substance use disorder except as otherwise provided in §27-5-2(a) of this  
117 code, is likely to cause serious harm to himself, herself, or others and because of mental illness  
118 or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or  
119 circuit court judge may consider evidence on the question of whether the individual's  
120 circumstances make him or her amenable to outpatient treatment in a nonresidential or  
121 nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing,  
122 the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order  
123 stating whether or not it is likely that deterioration will occur without clinically necessary treatment,  
124 or there is probable cause to believe that the individual, as a result of mental illness or substance  
125 use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to  
126 be in writing and approved by the individual, his or her counsel, and the magistrate, mental  
127 hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or  
128 circuit court judge determines that appropriate outpatient treatment is available in a nonresidential  
129 or nonhospital setting, the individual may be released to outpatient treatment upon the terms and  
130 conditions of the voluntary treatment agreement. The failure of an individual released to outpatient  
131 treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary  
132 treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a

133 hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of  
134 whether or not the individual failed or refused to comply with the terms and conditions of the  
135 voluntary treatment agreement and whether the individual as a result of mental illness or  
136 substance use disorder remains likely to cause serious harm to himself, herself, or others, the  
137 entry of an order requiring admission under involuntary hospitalization pursuant to ~~the provisions~~  
138 of §27-5-3 of this code may be entered except as otherwise provided in §27-5-2(a) of this code.

139 Nothing in the provisions of this article regarding release pursuant to a voluntary treatment  
140 agreement or convalescent status may be construed as creating a right to receive outpatient  
141 mental health services or treatment, or as obligating any person or agency to provide outpatient  
142 services or treatment. Time limitations set forth in this article relating to periods of involuntary  
143 commitment to a mental health facility for hospitalization do not apply to release pursuant to the  
144 terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary  
145 treatment agreement may not be for a period of more than six months if the individual has not  
146 been found to be involuntarily committed during the previous two years and for a period of no  
147 more than two years if the individual has been involuntarily committed during the preceding two  
148 years. If in any proceeding held pursuant to this article the individual objects to the issuance or  
149 conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge,  
150 magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant  
151 to a voluntary treatment agreement. If involuntary commitment with release pursuant to a  
152 voluntary treatment agreement is ordered, the individual subject to the order may, upon request  
153 during the period the order is in effect, have a hearing before a mental hygiene commissioner or  
154 circuit judge where the individual may seek to have the order canceled or modified. Nothing in  
155 this section affects the appellate and habeas corpus rights of any individual subject to any  
156 commitment order.

157 ~~Notwithstanding anything in this article to the contrary,~~ The commitment of any individual  
158 as provided in this article shall be in the least restrictive setting and in an outpatient community-

159 based treatment program to the extent resources and programs are available, unless the clear  
160 and convincing evidence of the certifying professional under subsection (e) of this section, who is  
161 acting in a manner consistent with the standard of care and after explaining the risks and benefits  
162 of potential commitment or treatment as required by §27-5-1(i) of this code, establishes that the  
163 commitment or treatment of that individual requires an inpatient hospital placement. Outpatient  
164 treatment will be based upon a plan jointly prepared by the department and the comprehensive  
165 community mental health center or licensed behavioral health provider.

166 (i) If the certifying professional determines that an individual requires involuntary  
167 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to  
168 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will  
169 cause significant medical complications, the person certifying the individual shall recommend that  
170 the individual be closely monitored for possible medical complications. If the magistrate, mental  
171 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or  
172 she shall include a recommendation that the individual be closely monitored in the order of  
173 commitment.

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

**§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 entry of such an order, the individual shall be  
4 examined by a qualified health care practitioner to determine whether the individual is medically  
5 stable. The results of any such examinations, assessments, and treatments shall be provided to  
6 the state hospital as soon as practicable but no later than 30 minutes after completion absent  
7 good cause. If the individual is determined to be medically stable or, if not medically stable and  
8 upon a resolution of the individual's acute medical issues as determined by the qualified health  
9 care practitioner, ~~upon a finding by a licensed physician that the individual is medically stable,~~  
10 and certification by a physician, psychologist, licensed professional counselor, licensed  
11 independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.*  
12 of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance  
13 with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-  
14 1 *et seq.* of this code with advanced duties in psychiatric medicine that he or she has examined  
15 the individual and is of the opinion that the individual is mentally ill or has a substance use disorder  
16 and, because of the mental illness or substance use disorder, is likely to cause serious harm to  
17 himself, herself, or to others if not immediately restrained and treated: *Provided*, That the opinions  
18 offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric  
19 certification, or a physician's assistant with advanced duties in psychiatric medicine ~~must~~ shall be  
20 within his or her particular areas of expertise, as recognized by the order of the authorizing court.

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

25 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of  
26 this code is valid for three days. Any individual with respect to whom the certification has been  
27 issued may not be admitted on the basis of the certification at any time after the expiration of three  
28 days from the date of the examination.

29           (d) *Findings and conclusions required for certification.* — A certification under this section  
30 ~~must~~ shall include findings and conclusions of the mental examination, the date, time, and place  
31 of the examination, and the facts upon which the conclusion that involuntary commitment is  
32 necessary is based, including facts that less restrictive interventions and placements were  
33 considered but are not appropriate and available and that the risks and benefits were explained  
34 as required by §27-5-1(i) of this code.

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

44           (f) *Three-day time limitation for examination and certification at mental health facility or*  
45 *state hospital.* — After the individual's admission to a mental health facility or state hospital, he or  
46 she may not be detained more than three days, excluding Sundays and holidays, unless, within  
47 the period, the individual is examined by a staff physician and the physician certifies that in his or  
48 her opinion the patient is mentally ill or has a substance use disorder and as a direct result of  
49 such illness or disorder is likely to injure himself, herself, or others and requires continued  
50 commitment and treatment. ~~if allowed to be at liberty. In the event~~ If the staff physician determines  
51 that the individual does not meet the criteria for continued commitment, that the individual can be  
52 treated in an available outpatient community-based treatment program and poses no present  
53 danger to himself, herself or others, or that the individual has an underlying medical issue or

54 issues that resulted in a determination that the individual should not have been committed, the  
55 staff physician shall release and discharge the individual as appropriate as soon as practicable.

56 (g) ~~Ten~~ Twenty-day time limitation for institution of final commitment proceedings. — If, in  
57 the opinion of the examining physician, the patient is mentally ill or has a substance use disorder  
58 and because of the mental illness or substance use disorder is likely to injure himself, herself, or  
59 others if allowed to be at liberty, the chief medical officer shall, within ~~40~~ 20 calendar days from  
60 the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code.  
61 If the proceedings are not instituted within the ~~40~~20-day period absent good cause, the individual  
62 shall be immediately released. After the request for hearing is filed, the hearing may not be  
63 canceled on the basis that the individual has become a voluntary patient unless the mental  
64 hygiene commissioner concurs in the motion for cancellation of the hearing.

65 (h) ~~Twenty-Thirty-five~~ day time limitation for conclusion of all proceedings. — If all  
66 proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed  
67 within ~~20~~ 35 days from the date of ~~institution of the proceedings~~ filing the Application for  
68 Involuntary Custody for Mental Health Examination, the individual shall be immediately released.  
69 The petition is valid in the community or petitioning institution for 15 days, and 20 days in the  
70 mental health facility.

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

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

9 the county of the individual's residence. Notwithstanding anything herein to the contrary, all  
10 hearings for the involuntary final civil commitment of a person who is committed in accordance  
11 with §27-6A-1 et al., of this code shall be held by the circuit court of the county that has jurisdiction  
12 over the person for the criminal charges and such circuit court shall have jurisdiction over the  
13 involuntary final civil commitment of such person.

14 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings  
15 for an individual may be commenced by the filing of a written application under oath by an adult  
16 person having ~~personal~~ direct and specific knowledge of the facts of the case. The certificate or  
17 affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county  
18 where the individual is a resident or where he or she may be found, or the county of a mental  
19 health facility if he or she is hospitalized in a mental health facility or state hospital located in a  
20 county other than where he or she resides or may be found. Notwithstanding anything herein to  
21 the contrary, all hearings for the involuntary final civil commitment of a person who is committed  
22 in accordance with §27-6A-1 et seq., of this code shall be commenced upon the filing only of the  
23 Certificate of the Licensed Certifier at the mental health facility where the person is currently  
24 committed.

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

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

28 (2) The application shall contain statements by the applicant that the individual is likely to  
29 cause serious harm to self or others due to what the applicant believes are symptoms of mental  
30 illness or substance use disorder. ~~The~~ Except for persons sought to be committed as provided in  
31 §27-6A-1 et seq., of this code, the applicant shall state in detail the recent overt acts within the  
32 prior 72 hours upon which the ~~belief~~ clinical opinion is based.

33 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,  
34 including any related documents, filed with a circuit court, mental hygiene commissioner, or

35 magistrate for the involuntary hospitalization of an individual are not open to inspection by any  
36 person other than the individual, unless authorized by the individual or his or her legal  
37 representative or by order of the circuit court. The records may not be published unless authorized  
38 by the individual or his or her legal representative. Disclosure of these records may, however, be  
39 made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to  
40 the Federal National Instant Criminal Background Check System established pursuant to section  
41 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state  
42 mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county  
43 performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may  
44 also be made to the prosecuting attorney and reviewing court in an action brought by the individual  
45 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

46 (4) Applications ~~may not be accepted~~ shall be denied for individuals ~~who only have~~  
47 ~~epilepsy, dementia, or an intellectual or developmental disability.~~ as provided in §27-5-2(a) of this  
48 code.

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

51 (1) The applicant shall file with his or her application the certificate of a physician or a  
52 psychologist stating that in his or her opinion the individual is mentally ill or has a substance use  
53 disorder and that ~~because of the~~ as a direct result of such mental illness or substance use  
54 disorder, the individual is likely to cause serious harm to self or others ~~if allowed to remain at~~  
55 ~~liberty and, therefore~~ and requires continued commitment and treatment, and should be  
56 hospitalized. The certificate shall state in detail the recent overt acts within the prior 72 hours on  
57 which the conclusion is based, including facts that less restrictive interventions and placements  
58 were considered but are not appropriate and available. The applicant shall further file with his or  
59 her application the names and last known addresses of the persons identified in §27-54(e)(3) of  
60 this code.

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

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

67 (1) To the individual;

68 (2) To the applicant or applicants;

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

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

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

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

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

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

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

80 (3) The right to have counsel appointed;

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

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

84 The notice to the individual's spouse, parents or parent or guardian, the individual's adult  
85 next of kin or to the circuit court in the county of the individual's residence may be by personal

86 service of process or by certified or registered mail, return receipt requested, and shall state the  
87 time and place of the hearing.

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

90 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after  
91 notice of the commencement of final commitment proceedings is given, the circuit court or mental  
92 hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner  
93 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric  
94 medicine to examine the individual and report to the circuit court or mental hygiene commissioner  
95 his or her findings as to the mental condition or substance use disorder of the individual and the  
96 likelihood of causing serious harm to self or others. Any such report shall include the names and  
97 last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

153 (1) Upon completion of the final commitment hearing and the evidence presented in the  
154 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following  
155 based upon clear and convincing evidence:

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

157 (B) Whether, ~~because~~ as a direct result of illness or substance use disorder, the individual  
158 is likely to cause serious harm to self or others if allowed to remain at liberty and requires  
159 continued commitment and treatment;

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

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

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

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

173 (1) Upon the requisite findings, the circuit court may order the individual to a mental health  
174 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this  
175 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*  
176 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall  
177 conduct a clinical assessment of the individual at least every 30 days to determine if the individual  
178 requires continued placement and treatment at the mental health facility or state hospital and  
179 whether the individual is suitable to receive any necessary treatment at an outpatient community-  
180 based treatment program. If at any time the chief medical officer, acting in good faith and in a  
181 manner consistent with the standard of care, determines that: (i) The individual is suitable for  
182 receiving outpatient community-based treatment; (ii) necessary outpatient community-based  
183 treatment is available in the individual's area as evidenced by a discharge and treatment plan  
184 jointly developed by the department and the comprehensive community mental health center or  
185 licensed behavioral health provider; and (iii) the individual's clinical presentation no longer  
186 requires inpatient commitment, the chief medical officer shall provide written notice to the court of  
187 record and prosecuting attorney as provided in subdivision (2) of this section that the individual is

188 suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice  
189 unless the court of record stays the discharge of the individual. In the event the court stays the  
190 discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the  
191 individual shall be thereafter discharged unless the court finds by clear and convincing evidence  
192 that the individual is a significant and present danger to self or others, and that continued  
193 placement at the mental health facility or state hospital is required.

194 If the chief medical officer determines that the individual requires commitment and  
195 treatment at the mental health facility or state hospital at any time for a period longer than 90  
196 days, then the individual shall remain at the mental health facility or state hospital until the chief  
197 medical officer of the mental health facility or state hospital determines that the individual's clinical  
198 presentation no longer requires further commitment and treatment. The chief medical officer shall  
199 provide notice to the court, ~~and~~ the prosecuting attorney, the individual, and the individual's  
200 guardian or attorney, or both, if applicable, that the individual requires commitment and treatment  
201 for a period in excess of 90 days and, in the notice, the chief medical officer shall describe ~~the~~  
202 ~~reasons~~ how the individual continues to meet commitment criteria and the need for ongoing  
203 commitment and treatment. ~~In its discretion, the~~ The court, ~~or~~ prosecuting attorney, the individual,  
204 or the individual's guardian or attorney, or both, if applicable, may request any information from  
205 the chief medical officer that the court or prosecuting attorney considers appropriate to justify the  
206 need for the individual's ongoing commitment and treatment. The court may hold any hearing that  
207 it considers appropriate.

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

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

214 (B) Whether the ~~individual's condition~~ individual has the independent ability to manage  
215 safely the risk factors resulting from his or her mental illness or substance use disorder and is not  
216 likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or  
217 others ~~unless~~ without continued commitment and ~~treatment is continued~~;

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

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

222 (E) Whether the individual ~~is not a danger to self or others~~ is capable of surviving safely in  
223 freedom by himself or herself or with the help of willing and responsible family members, guardian,  
224 or friends; and

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

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

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

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

236 (m) *Dismissal of proceedings.* — ~~In the event~~ If the individual is discharged as provided in  
237 subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the  
238 proceedings.

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

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

245           (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization  
246 should be ordered but finds that the individual is not a resident of the county in which the hearing  
247 is held and the individual is not currently a resident of a mental health facility or state hospital, a  
248 transcript of the evidence adduced at the final commitment hearing of the individual, certified by  
249 the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the  
250 county of which the individual is a resident. The clerk shall immediately present the transcript to  
251 the circuit court or mental hygiene commissioner of the county.

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

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

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

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

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

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

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

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

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

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

290           (3) The Department of Health and Human Resources shall reimburse for alternative  
291 transportation provider expenses incurred under the provisions of this article upon submission of  
292 requests for reimbursement payment.

**§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~~ law-enforcement agency or alternative  
3 transportation provider shall provide immediate transportation to or from the appropriate mental  
4 health facility or state hospital as described in §27-5-19(d) of this code: *Provided*, That, where  
5 hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the  
6 written request of a person having proper interest in the individual's hospitalization, for the  
7 interested person to arrange for the individual's transportation to the mental health facility or state  
8 hospital if the sheriff determines that those means are suitable given the individual's condition.

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

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

23 ~~ordinances, and who is currently certified as a law enforcement officer pursuant to §30-29-1 et~~  
24 ~~seq. of this code.~~

25 ~~(d) In the event an individual requires transportation to a state hospital as defined by §27-~~  
26 ~~1-6 of this code, the sheriff, or certified municipal law enforcement officer shall contact the state~~  
27 ~~hospital in advance of the transportation to determine if the state hospital has suitable bed~~  
28 ~~capacity to place the individual. If the sheriff, law-enforcement agency or alternative transportation~~  
29 ~~provider is informed by the state hospital as defined by §27-1-6 of this code as specified in the~~  
30 ~~commitment or transportation order that it lacks or is likely to lack suitable bed capacity to place~~  
31 ~~such individual, the sheriff, law-enforcement agency or alternative transportation provider shall~~  
32 ~~transport such individual to a diversion facility in the state as designated by the chief medical~~  
33 ~~officer of the state hospital: *Provided*, That the state hospital shall identify a diversion facility within~~  
34 ~~a reasonable period of time not to exceed two hours, after the state hospital receives the~~  
35 ~~application, certification, and order issued by any circuit court, mental hygiene commissioner, or~~  
36 ~~magistrate.~~

37 (d) Any person executing any transportation or commitment order as provided in this  
38 chapter issued by any circuit court, mental hygiene commissioner, or magistrate shall not be  
39 declared as violating the provisions of §27-12-2 of this code.

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

NOTE: The purpose of this bill is to update the involuntary commitment process.

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