

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### House Bill 3043

FISCAL  
NOTE

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FLUHARTY AND BROWN

[Introduced March 10, 2021; Referred to the

Committee on the Judiciary]

1 A BILL to amend §27-5-1 and §27-5-10 of the Code of West Virginia, 1931, as amended, relating  
2 to transport of persons accused of being mentally ill to mental health related hearings.

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

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.**

1 (a) *Appointment of mental hygiene commissioners.* — The chief judge in each judicial  
2 circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional  
3 attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization  
4 hearings. Mental hygiene commissioners shall be persons of good moral character and of  
5 standing in their profession and they shall, before assuming the duties of 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~~ If 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: Provided, That if a person is held in a  
79 regional jail, the Department of Corrections shall be responsible for transport.

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

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

**§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~~ If an individual requires transportation to a state hospital as defined by  
25 §27-1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the  
26 state 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.

30 (f) All transports required pursuant to this article from a regional jail shall be done by the  
31 Department of Corrections.

NOTE: The purpose of this bill is to remove the current law requirement that sheriffs are responsible for transports of persons accused of mental illness to hearings.

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