

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

House Bill 2347

By Delegates Worrell, Hite, Heckert, Chiarelli, Miller,

Petitto, Hamilton, and Pushkin

[Originating in the Standing Committee on Health and

Human Resources; Reported on March 6, 2025]

1 A BILL to amend and reenact §27-5-1, §27-5-1b, §27-5-2, and §27-5-4 of the Code of West
2 Virginia, 1931, as amended; to amend said code by adding thereto a new section,
3 designated §27-5-2b; to amend said code by adding a new article, designated §27-5A-1,
4 §27-5A-2; and §27-5A-3; relating generally to the creation of mental hygiene regions by the
5 Supreme Court of Appeals; clarifying that mental hygiene evaluations and proceedings
6 may be conducted by video technology; granting civil immunity for mental health service
7 providers who do involuntary commitment proceedings and setting out exceptions;
8 creating a temporary observation release for mental hygiene respondents; clarifying that
9 chief medical officer releases requiring approval of circuit court only apply to forensic
10 patients; requiring hearings for any commitment period of longer than 90 days and
11 prohibiting any person from being civilly committed to longer than 120 days without a
12 hearing to determine whether the individual continues to meet commitment criteria;
13 removing obsolete language regarding transcripts of proceedings to circuit court of county
14 of residence; restructuring the mental hygiene commissioner system by authorizing new
15 mental hygiene regions and full-time mental hygiene commissioners employed by the
16 Supreme Court of Appeals; authorizing mental hygiene proceedings and evaluations by
17 video and requiring facilities to provide technology that meets Supreme Court of Appeals
18 specifications; authorizing statewide coverage for mental hygiene evaluations and
19 permitting a mental hygiene commissioner to exclude evaluator testimony based on the
20 West Virginia Rules of Evidence; and requiring each Comprehensive Community Mental
21 Health Center to ensure that at least one examiner is available to provide uniform and
22 continuous coverage in each region, including afterhours, weekends, and holidays.

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.~~ In a county outside a mental hygiene region created as provided in §27-5A-1 of this
5 code, the chief circuit judge of that judicial circuit shall appoint a competent attorney, and may, if
6 necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over
7 involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good
8 moral character and of standing in their profession and they shall, before assuming the duties of a
9 commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et seq.*
10 of this code.

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

25 (b) Duties of mental hygiene commissioners. —

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but the findings and conclusions are not binding on the circuit court. All mental hygiene commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by the chief judge. A mental hygiene commissioner shall conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak, or who speaks a foreign language, and who may be subject to involuntary commitment to a mental health facility.

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

(c) Duties of prosecuting attorney. —The prosecuting attorney or one of his or her

52 assistants shall represent the applicants in all final commitment proceedings filed pursuant to the
53 provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to
54 the provisions of this article if he or she determines it to be in the public interest.

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

77 (e) Duty of sheriff upon presentment to ~~mental health care facility~~ comprehensive

community mental health center or the place the evaluation is being held — When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed. ~~or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.~~

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

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

§27-5-1b. Pilot projects and other initiatives.

~~(a) Duties of the Department of Human Services. — The Secretary shall, in collaboration with designees of the Supreme Court of Appeals, the Sheriff's Association, the Prosecuting Attorney's Association, the Public Defender Services, the Behavioral Health Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness Assessment Advisory Board, undertake an evaluation of the utilization of alternative transportation providers and the development of standards that define the role, scope, regulation, and training necessary for the safe and effective utilization of alternative transportation providers and shall further identify potential financial sources for the payment of alternative transportation providers. Recommendations regarding such evaluation shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature requests~~

11 ~~the Supreme Court of Appeals cooperate with the listed parties and undertake this evaluation.~~

12 (b) (a) Civil Involuntary Commitment Audits. — The secretary shall establish a process to
13 conduct retrospective quarterly audits of applications and licensed examiner forms prepared by
14 certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this
15 code. The process shall determine whether the licensed examiner forms prepared by certifiers are
16 clinically justified and consistent with the requirements of this code and, if not, develop corrective
17 actions to redress identified issues and, in consultation with the Supreme Court of Appeals provide
18 guidance to certifiers and judicial officers. The Legislature requests the Supreme Court of Appeals
19 participate in this process with the secretary. The process and the findings thereof shall be
20 confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and
21 §29B-1-1 *et seq.* of this code.

22 (i) (b) Duties of the ~~Mental Health Center~~ Comprehensive Community Mental Health
23 Center for Purposes of Evaluation for Commitment. — Each ~~mental health comprehensive~~
24 community mental health center shall make available as necessary a qualified and competent
25 licensed person to conduct prompt evaluations of persons for commitment in accordance with
26 §27-5-1 *et seq.* of this code. Evaluations ~~shall be conducted in person, unless an in-person~~
27 ~~evaluation would create a substantial delay to the resolution of the matter, and then the evaluation~~
28 may be conducted by videoconference. Each ~~mental health center comprehensive community~~
29 mental health center that performs these evaluations shall exercise reasonable diligence in
30 performing the evaluations and communicating with the state hospital to provide all reasonable
31 and necessary information to facilitate a prompt and orderly admission to the state hospital of any
32 person who is or is likely to be involuntarily committed to such hospital. Each ~~mental health center~~
33 comprehensive community mental health center that performs these evaluations shall explain the
34 involuntary commitment process to the applicant and the person proposed to be committed and
35 further identify appropriate alternative forms of potential treatment, loss of liberty if committed, and
36 the likely risks and benefits of commitment.

(k) ~~(c)~~ Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, ~~mental health facilities~~ comprehensive community mental health center, law enforcement, Department of Human Services and the Department of Health Facilities may participate in pilot projects in Cabell, Wood, Berkeley, and Ohio Counties to implement an involuntary commitment process. ~~Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative transportation provider as provided in subsection (a) of this section.~~

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

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

(b) Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services necessary to treat the individual's

17 mental illness or substance use.

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

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

27 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for
28 the individual named in the application to be detained and taken into custody as provided in §27-5-
29 1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in
30 §27-5-2 of this code. An examination of the individual to determine whether the individual meets
31 involuntary hospitalization criteria ~~shall be conducted in person unless an in person examination~~
32 ~~would create a substantial delay in the resolution of the matter in which case the examination may~~
33 be by video conference, and shall be performed by a physician, psychologist, a licensed
34 professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed
35 independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an
36 ~~advanced nurse practitioner, practice registered nurse, with psychiatric certification practicing in~~
37 ~~compliance with §30-7-1 *et seq.* of this code, a physician assistant practicing in compliance with~~
38 ~~§30-3-1 *et seq.* of this code, or a physician assistant. practicing in compliance with §30-3E-1 *et*~~
39 ~~*seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical~~
40 ~~social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification~~
41 ~~may only perform the examination if he or she has previously been authorized by an order of the~~
42 ~~circuit court to do so, the order having found that the licensed professional counselor, the licensed~~

~~independent clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section.~~ The examination shall be provided or arranged by a community mental health center designated by the Secretary of the Department of Human Services to serve the county in which the action takes place. The order is to specify that the evaluation be held within a reasonable period of time not to exceed two hours and shall provide for the appointment of counsel for the individual: *Provided, however,* That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician assistant, or ~~advanced nurse practitioner~~ practice registered nurse with psychiatric certification has, within the preceding 72 hours, performed the examination required by this subsection the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a

69 probable cause hearing. ~~and the examiner is not civilly liable for the rendering of the opinion~~
70 ~~absent a finding of professional negligence.~~ The examiner shall immediately, but no later than 60
71 minutes after completion of the examination, provide the mental hygiene commissioner, circuit
72 court, or magistrate before whom the matter is pending, and the state hospital to which the
73 individual may be involuntarily hospitalized, the results of the examination on the form provided for
74 this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable
75 cause.

76 (f) A mental hygiene health service provider authorized under this subsection who
77 performs an involuntary custody examination shall not be civilly liable to any party or non-party to
78 the proceeding regardless of the examination results unless the mental health service provider
79 acted with negligence demonstrated by clear and convincing evidence or in bad faith in performing
80 the examination or rendering his or her opinion.

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

90 The individual shall be present at the hearing and has the right to present evidence,
91 confront all witnesses and other evidence against him or her, and examine testimony offered,
92 including testimony by representatives of the community mental health center serving the area.
93 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
94 individual has the right to remain silent and to be proceeded against in accordance with the Rules

of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others and that placement of treatment in an out-patient community-based treatment program is not clinically appropriate. Any such order entered shall be provided to the state hospital to which the individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

~~(g)~~ (h) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: use videoconferencing and telephonic technology; permit ~~persons~~ individuals hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

~~(h)~~ (i) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit court judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.

At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit court judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding

held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit court judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit court judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

(j) The commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional, ~~under subsection (e) of this section,~~ who is acting in a manner consistent with the standard of care establishes that the commitment or treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the Department of Health Facilities and the comprehensive community mental health center or licensed behavioral health provider.

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

(+) (l) The Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities shall specifically develop and propose a statewide

system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretaries of the Department of Human Services and Department of Health Facilities shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-2b. Temporary observation release.

(a) If the chief medical officer determines that an individual committed under §27-5-3 or §27-5-5 of this code no longer requires treatment at the mental health facility, or that less restrictive treatment options are now available due to a change in the patient's condition, the hospital may release the individual on a temporary observation period of up to 120 days, conditioned on the patient's compliance with a treatment plan and monitoring by the comprehensive community mental health center where the patient resides.

(b) A temporary observation release automatically stays all other timeframes under this article. At the conclusion of the 120-day temporary observation release, if the individual is not readmitted, then the proceedings shall be dismissed.

(c) If a comprehensive community mental health center believes a patient is not complying with the terms of his or her treatment plan, or if the patient's condition has deteriorated so that a least restrictive treatment option is no longer viable, then the comprehensive community mental health center may request an assessment by the chief medical officer, or his or her designee to verify the factual basis supporting the need to revoke the temporary release.

(d) If revocation of the temporary release is appropriate, the chief medical officer at the designated state hospital shall prepare, in writing, recommendations and findings affirming that the patient is not in compliance with his or her treatment plan or that the patient's condition has deteriorated so that a least restrictive treatment option is no longer viable and the conditions requiring the original commitment have returned. The chief medical officer shall also state that

20 voluntary treatment options were presented and either declined or not viable and shall identify the
21 inpatient mental health facility where the individual will be committed for treatment. The
22 recommendations and findings shall be submitted to the court for ratification, and if ratified, shall
23 require the sheriff to take the individual into custody and transport the individual directly to a
24 inpatient mental health facility identified by the chief medical officer in the order.

25 (e) The chief medical officer shall serve the ratified order revoking temporary release on
26 the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if
27 applicable. The individual or the individual's attorney may request a hearing after readmittance to
28 determine whether revocation was appropriate.

29 (f) Once an individual is readmitted to an inpatient mental health facility, all timeframes
30 originally stayed by subsection (b) shall continue.

31 (g) Nothing in this section shall limit an adult person from filing a new application for
32 involuntary commitment against an individual under a temporary observation release, or otherwise
33 prohibit medical or law enforcement intervention in a life-threatening situation.

§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, no
2 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 or
4 was found, or if the individual is hospitalized in a mental health facility or state hospital located in a
5 county other than where he or she resides or was found, in the county of the mental health facility
6 and then only after a full hearing on issues relating to the necessity of committing an individual to a
7 mental health facility or state hospital. If the individual objects to the hearing being held in the
8 county where the mental health facility is located, the hearing shall be conducted in the county of
9 the individual's residence. Notwithstanding the provisions of this code to the contrary, all hearings
10 for the involuntary final civil commitment of a person who is committed in accordance with §27-6A-
11 1 *et al.* of this code shall be held by the circuit court of the county that has jurisdiction over the

person for the criminal charges and such circuit court shall have jurisdiction over the involuntary final civil commitment of such person. Final civil commitments of persons pursuant to §27-6A-1 et al., shall be done in accordance with a process to be developed by the Supreme Court of Appeals, the Prosecuting Attorney's Association, the Public Defender Services, Disability Rights of West Virginia, the Statewide Forensic Coordinator, and the Statewide Clinical Forensic Director to be implemented on or before September 1, 2025.

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

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

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

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

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,

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

(4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

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

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others and requires continued commitment and treatment, and should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et seq.* of this code, the certificate shall state in detail the recent overt acts on which the conclusion is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available. The applicant shall further file with his or her application the names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

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

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

(1) To the individual;

(2) To the applicant or applicants;

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

(4) To the ~~mental health authorities~~ comprehensive community mental health center serving the area;

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

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

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

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

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

(3) The right to have counsel appointed;

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

(5) The time and place of the hearing.

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

(g) Examination of individual by court-appointed physician, psychologist, licensed professional counselor, licensed independent clinical social worker, ~~advanced nurse practitioner practice registered nurse,~~ or physician assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, and except when a Certificate of the Licensed Examiner and an application for final civil commitment at the mental health facility where the person is currently committed has been completed and filed, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, ~~an advanced nurse practitioner with psychiatric certification practice registered nurse,~~ or a physician assistant ~~with advanced duties in psychiatric medicine~~ to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others. Any such report shall include the names and last known addresses of the persons identified in §27-5-4-(e)(3) of this code.

(2) If the designated physician, psychologist, licensed professional counselor, licensed independent clinical social worker, ~~advanced nurse practitioner practice registered nurse,~~ or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, psychologist, nurse practitioner, or physician assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, licensed professional counselor,

licensed independent clinical social worker, advanced nurse practitioner practice registered nurse,
or physician assistant do not confirm that the individual is mentally ill or has a substance use
disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization
shall be dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Requisite findings by the court. —

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

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

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

and treatment;

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

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

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

(I) Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement and treatment at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the Department of Health Facilities and the comprehensive community

194 mental health center or licensed behavioral health provider; and (iii) the individual's clinical
195 presentation no longer requires inpatient commitment, the chief medical officer shall provide
196 written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this
197 section that the individual is suitable for discharge. For an individual committed pursuant to §27-
198 6A-3 of this code, the chief medical officer may discharge the patient 30 days after the notice
199 unless the court of record stays the discharge of the individual. In the event the court stays the
200 discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the
201 individual shall be thereafter discharged unless the court finds by clear and convincing evidence
202 that the individual is a significant and present danger to self or others, and that continued
203 placement at the mental health facility or state hospital is required.

204 ~~If the chief medical officer determines that the individual requires commitment and~~
205 ~~treatment at the mental health facility or state hospital at any time for a period longer than 90 days,~~
206 ~~then the individual shall remain at the mental health facility or state hospital until the chief medical~~
207 ~~officer of the mental health facility or state hospital determines that the individual's clinical~~
208 ~~presentation no longer requires further commitment and treatment. The chief medical officer shall~~
209 ~~provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or~~
210 ~~attorney, or both, if applicable, that the individual requires commitment and treatment for a period~~
211 ~~in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual~~
212 ~~continues to meet commitment criteria and the need for ongoing commitment and treatment. The~~
213 ~~court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if~~
214 ~~applicable, may request any information from the chief medical officer that the court or prosecuting~~
215 ~~attorney considers appropriate to justify the need for the individual's ongoing commitment and~~
216 ~~treatment. The court may hold any hearing that it considers appropriate.~~

217 For persons who are not committed pursuant to §27-6A-3 of the code, if the chief medical
218 officer determines that the individual requires commitment and treatment at the mental health
219 facility or state hospital at any time for a period longer than 90 days, then the chief medical officer

shall file a petition with the court and shall serve the petition on the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable. The court shall hold a hearing on the petition within 10 days. If the court determines that extended commitment and treatment is required, then the court shall enter an order authorizing up to an additional 90 days of commitment and treatment. At the conclusion of the additional commitment period, if the chief medical officer determines that the individual requires additional commitment and treatment at the mental health facility or state hospital, then a new petition for additional commitment and treatment is required. No individual may be civilly committed under this article for more than 120 days without a hearing to determine whether the individual continues to meet commitment criteria.

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

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

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

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

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

(E) Whether the individual is capable of surviving safely in freedom by himself or herself or with the help of willing and responsible family members, guardian, or friends; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to

ongoing commitment.

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

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

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

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

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

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

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

~~(2) If the circuit court or mental hygiene commissioner of the county of the residence of the~~

~~individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.~~

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

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

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

~~(r)~~ (q) Report to the Secretary of the Department of Health Facilities. —

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

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

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

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

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

(3) ~~Effective July 1, 2022,~~ The Department of Health Facilities shall reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement agency for the actual costs related to transporting a patient who has been involuntary committed.

ARTICLE 5A MENTAL HYGIENE REFORM ACT.
§27-5A-1. Restructure of Mental Hygiene Commissioner System.

(a) The Supreme Court of Appeals may employ full-time mental hygiene commissioners with statewide jurisdiction who shall primarily serve in specified regions. Each full-time commissioner shall be selected, appointed, compensated, and supervised by the Supreme Court of Appeals, shall serve at the Court's pleasure, and shall serve in any region ordered by the Court. Full-time mental hygiene commissioners shall be persons of good standing in their profession and they shall, before assuming the duties of a commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code. The Court may also employ administrative staff to support the regional mental hygiene system in its discretion.

3 compliance with §30-31-1 et seq. of this code, advanced practice registered nurse or physician
4 assistant are authorized to examine the respondent in a mental hygiene proceeding in any region,
5 circuit, or county, and to make sufficient determinations as required by this chapter based on their
6 particular expertise in the areas of mental health, mental hygiene, or substance abuse disorders.
7 However, the presiding circuit court, magistrate court, or a mental hygiene commissioner may
8 exclude an examiner's testimony if it determines that the examiner's knowledge, skill, experience,
9 training, or education is insufficient to provide expert testimony under standards consistent with
10 the West Virginia Rules of Evidence.

11 (b) A comprehensive community mental health center shall ensure that at least one
12 examiner is available to provide uniform and continuous coverage in its designated service area,
13 including afterhours, weekends, and holidays.