

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Committee Substitute

for

Senate Bill 761

BY SENATORS STUART, BARTLETT, DEEDS, AND HELTON

[Reported March 27, 2025, from the Committee on
the Judiciary]

1 A BILL to amend and reenact §27-5-2 and §27-5-4 of the Code of West Virginia, 1931, as
2 amended, relating to involuntary custody and involuntary hospitalization; providing
3 additional grounds for application for involuntary hospitalization; modifying evidentiary
4 standards for imposing civil liability on mental health professionals rendering services in
5 mental hygiene cases; requiring individual to agree to voluntary treatment before being
6 removed from involuntary hospitalization prior to probable cause hearing; providing
7 additional grounds for satisfaction of probable cause and involuntary hospitalization
8 standards in mental hygiene proceedings; providing name of amendments; permitting
9 hospitalization of individuals with substance use disorder under certain circumstances;
10 providing prohibition on consideration of refusal of substance abuse services when
11 considering individual's judgment; providing for dismissal of involuntary hospitalization
12 proceedings under certain circumstances; setting forth additional required findings by the
13 chief medical officer; providing for restoration of firearm possession rights under certain
14 circumstances; and providing for removal of individual from mental health registry under
15 certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

1 (a) Any adult person may make an application for involuntary hospitalization for
2 examination of an individual when the person making the application has reason to believe that
3 the individual to be examined has a substance use disorder as defined by the most recent edition
4 of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental
5 Disorders, inclusive of substance use withdrawal, or is mentally ill and because of his or her
6 substance use disorder or mental illness, the individual is likely to cause serious harm to himself,
7 herself, or to others if allowed to remain at liberty while awaiting an examination and certification

8 by a physician, psychologist, licensed professional counselor, licensed independent social
9 worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of
10 this section: *Provided*, That a diagnosis of dementia, epilepsy, or intellectual or developmental
11 disability alone may not be a basis for involuntary commitment to a state hospital: *Provided,*
12 *however, That an application for involuntary hospitalization may be made where the person*
13 *making the application has reason to believe the individual to be examined has a substance use*
14 *disorder, has lost the power of self-control with respect to substance use, is in need of substance*
15 *abuse services and, by reason of substance abuse impairment, his or her judgment has been so*
16 *impaired that the individual is incapable of appreciating his or her need for such services and is*
17 *further incapable of making a rational decision in regard thereto: *Provided further*, That an*
18 *individual's mere refusal to receive substance abuse services does not constitute evidence of lack*
19 *of judgment with respect to his or her need for substance abuse services.*

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

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

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

(e) (1) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody as provided in §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in §27-5-2 of this code. An examination of the individual to determine whether the individual meets involuntary hospitalization criteria shall be conducted in person unless an in person examination would create a substantial delay in the resolution of the matter in which case the examination may be by video conference, and shall be performed by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the 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 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, or the individual has a substance use disorder but has not has lost the power of self-control with respect to substance use, is not in need of substance abuse services and, by reason of substance abuse impairment, or his or her judgment has not been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, then the individual shall be immediately released without the need for a probable cause hearing. ~~and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence.~~ The examiner shall immediately, but no later than 60 minutes after completion of the examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the state hospital to which the

individual may be involuntarily hospitalized, the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

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

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

The individual shall be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The 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. 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) 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 hospitalized for substance use disorder to be involuntarily hospitalized ~~only~~ until detoxification is accomplished and the individual agrees to voluntary treatment for substance use disorder; 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 or otherwise remedy the substance use disorder.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit 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, 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 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 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 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.

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.

(i) At any hearing held pursuant to subsection (h) of this section, where an individual is found have to have a substance use disorder under but is not found to be likely to cause serious harm to himself, herself, or others, both probable cause and grounds for involuntary hospitalization exist where the individual has lost the power of self-control with respect to substance use, and the individual is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services.

~~(i)~~(j) 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.

~~(j)~~ (k) 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.

(l) The amendments to this section enacted during the 2025 regular legislative session, shall be known as the known as the Joel Archer Substance Abuse Intervention Act.

(m) The Supreme Court of Appeals is requested to promulgate rules to implement the amendments made to this section during the 2025 regular session of the Legislature.

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

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

(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 be commenced only upon the filing of a Certificate of the Licensed Certifier at the mental health facility where the person is currently committed.

(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. Alternatively, the applicant shall file with his or her application the certificate of a physician or psychologist stating that in her or her opinion the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, and that any mere refusal by the individual to receive substance abuse services was not considered as evidence of lack of judgment with respect to the individual's need for substance abuse services.

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 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.

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

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

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

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

(3) If the reports of the appointed physician, psychologist, nurse practitioner, 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, or that the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto, then the proceedings for involuntary hospitalization shall be dismissed: Provided, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(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; or whether the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(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.

(l) *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 mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this subsection that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment and treatment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment and treatment. The chief medical officer shall

provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian or attorney, or both, if applicable, that the individual requires commitment and treatment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe how the individual continues to meet commitment criteria and the need for ongoing commitment and treatment. The court, prosecuting attorney, the individual, or the individual's guardian or attorney, or both, if applicable, may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment and treatment. The court may hold any hearing that it considers appropriate.

(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:

(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; or whether the individual has a substance use disorder, has lost the power of self-control with respect to substance use, is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that the individual is incapable of appreciating his or her need for such services and is further incapable of making a rational decision in regard thereto: *Provided*, That an individual's mere refusal to receive substance abuse services does not constitute evidence of lack of judgment with respect to his or her need for substance abuse services;

(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) *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) *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) *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 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) 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, 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.

(t) Completion of substance use disorder rehabilitation program. —

(1) An individual involuntarily committed on the basis of a substance use disorder who completes a substance use rehabilitation treatment program pursuant to the provisions of §27-2-1 *et seq.* of this code shall not be considered "a person adjudicated to be mentally defective" or "having had a prior involuntary commitment to a mental institution" for purposes of firearm possession under §61-7A-1 *et seq.* of this code.

321 (2) An individual involuntary committed on the basis of a substance use disorder who
322 completes an outpatient or inpatient substance use rehabilitation treatment program may petition
323 the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia
324 State Police to have his or her name removed from the central state mental health registry.
325 (u) The Supreme Court of Appeals is requested to promulgate rules to implement the
326 amendments made to this section during the 2025 regular session of the Legislature.