WEST VIRGINIA CODE: §27-5-1

§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.

(a) Appointment of mental hygiene commissioners. — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of 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.

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

(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

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

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

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(e) Duty of sheriff upon presentment to mental health care facility. — 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.

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