WEST VIRGINIA CODE CHAPTER 27 ARTICLE 6A

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§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

(a) For purposes of this article:

(1) "Competency restoration" means the treatment or education process for attempting to restore a criminal defendant's ability to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person. Competency restoration services may be provided in a jail-based, outpatient, or inpatient setting as may be ordered by the court.

(2) "Competency to stand trial" means the ability of a criminal defendant to consult with his or her attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the procedure and charges against him or her.

(3) "Court" or "court of record" means the circuit court with jurisdiction over the charge or charges against the defendant or acquittee.

(4) "Department" means the Department of Health Facilities.

(5) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.

(6) A "qualified forensic psychiatrist" is:

(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed post-graduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and

(B) Board-eligible or board-certified in forensic psychiatry by the American Board of Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program accredited by the Accreditation Council of Graduate Medical Education to make the evaluator eligible for board certification by the American Board of Psychiatry and Neurology in forensic psychiatry or has two years of experience in completing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(7) A "qualified forensic psychologist" is:

(A) A licensed psychologist licensed under the laws of this state to practice psychology; and

(B) Board-eligible or board-certified in forensic psychology by the American Board of Professional Psychology or actively enrolled in good standing in a West Virginia training program approved by the American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic psychology or has at least two years of experience in performing court-ordered forensic criminal evaluations, including having been qualified as

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an expert witness by a West Virginia circuit court.

(b) (A) qualified forensic evaluator may not perform a forensic evaluation on an individual under §27-1-1 *et seq*. of this code if the qualified forensic evaluator has been the individual's treating psychologist or psychiatrist within one year prior to any evaluation order.

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§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period; rules.

(a) Whenever a court of record has reasonable cause to believe that a defendant in a criminal matter in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial, it shall, sua sponte, or upon motion filed by the state or by or on behalf of the defendant, order a forensic evaluation of the defendant's competency to stand trial to be conducted by a qualified forensic evaluator. If a court of record orders both a competency evaluation and a criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed first, and if the qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial, no criminal responsibility or diminished capacity evaluation may be conducted absent further order of the court. The initial forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant is a current patient there or the court of record has found that the initial forensic evaluation cannot be performed at a community mental health center consistent with §27-2A-1(b)(4) of this code, at an outpatient facility, at a Division of Corrections and Rehabilitation Facility by a qualified forensic evaluator or at the office of the qualified forensic evaluator.

(b) The court shall require the party making the motion for the evaluation, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluations within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser included criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any court-ordered evaluation which may include record review and a defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic evaluator's opinion that the defendant is not competent to stand trial, the report shall state whether the defendant is substantially likely to attain competency within the next 90 days and, as provided in this section, and, whether the defendant may attain competency by receiving competency restoration services at an

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outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program, if available. If the qualified forensic evaluator determines that a defendant is likely to attain competency, but that competency restoration can only be attained by inpatient management in a mental health facility or state hospital, the qualified forensic evaluator shall set forth in his or her report the reasons why competency restoration is not viable in a less restrictive environment or a jail-based competency restoration program.

(d) The report of a qualified forensic evaluator as to a defendant's competency shall be performed with standards and requirements established by the department consistent with best medical practices. The report shall address:

(1) The forensic evaluator's opinion on the defendant's competency to stand trial;

(2) A diagnosis, if any;

(3) A proposed plan for competency attainment if appropriate; and

(4) An opinion as to whether the individual is dangerous to himself, herself, or others.

(5) The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days.

(e) If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section, or there have been one or more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section and the court has reason to believe that an observation period is necessary in order to determine if a person is competent to stand trial, the court may order the defendant be committed to a mental health facility designated by the department for a period not to exceed 15 days and an additional evaluation be conducted in accordance with subsection (a) of this section by a qualified forensic evaluator. The court shall order that at the conclusion of the 15-day observation period the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(f) A mental health facility not operated by the state has no obligation to admit and treat a defendant under this section if the facility has no outpatient competency restoration program established and recognized by the department, notwithstanding the provisions of §27-2A-1(b)(4) and §27-5-9 of this code: *Provided*, That medication administration and medication management for stabilization on an outpatient basis shall be provided by the mental health facility.

(g) A mental health facility not operated by the state that constitutes a charitable or public service organization as defined by §29-12-5(b)(1)(B) of this code, and provides competency

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restoration services pursuant to a court order may purchase liability coverage for injury or civil damages related to the provision of the services from the Board of Risk and Insurance Management.

(h) In consultation with the Supreme Court of Appeals, the secretary may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this article. The secretary may promulgate emergency rules, pursuant to §29A-3-15 of this code, as may be required.

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§27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.

(a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the issue of competency to stand trial, the court of record shall make a preliminary determination on the issue of whether the defendant is competent to stand trial. If the court of record finds that the defendant is not competent, the court shall make a further finding as to whether there is a substantial likelihood that the defendant can attain competency within 90 days, and whether competency can be attained by receiving competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program. If the court of record orders, or if the state or defendant or defendant's counsel within 20 days of receipt of the preliminary findings makes a motion for a hearing, then a hearing shall be held by the court of record within 15 days of the date of the motion for a hearing, absent good cause being shown for a continuance. If a hearing order or motion is not filed within 20 days, the findings of the court become the final order.

(b) At a hearing to determine a defendant's competency to stand trial, the defendant has the right to be present and he or she has the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded to a defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings, except trial by jury.

(c) The court of record pursuant to a preliminary finding or hearing on the issue of a defendant's competency to stand trial and with due consideration of any forensic evaluation conducted pursuant to §27-6A-2 and §27-6A-3 of this code, shall make findings of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether he or she has a rational as well as a factual understanding of the proceedings against him or her.

(d) If at any point in the proceedings the defendant is found not competent to stand trial and substantially likely to attain competency, the court of record shall in the same order, upon the evidence, make further findings as to whether the defendant, in order to attain competency, should receive outpatient competency restoration services or if the attainment of competency requires inpatient management in a mental health facility or state hospital. If inpatient management is required, the court shall order the defendant be committed to an inpatient mental health facility or state hospital designated by the department to attain competency to stand trial and for a competency evaluation. The information and documents obtained as required by §27-6A-2(b) of this code, shall be provided to the chief medical officer of the mental health facility or state hospital within two days of entry of the court order. The term of this commitment under this subsection may not exceed 90 days from the time of entry into the facility except as otherwise provided by subsection (g) of this section.

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(e) If at any point in the proceedings the defendant who has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person is found not competent to stand trial and is found not substantially likely to attain competency after having received competency restoration services for the lesser of 180 days or the maximum sentence he or she would serve, if convicted of the offense, the defendant shall be released upon any conditions that the court determines to be appropriate and shall have the criminal charges dismissed without prejudice. The discharge order may, however, be stayed for 20 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq*. of this code. The defendant shall be immediately released from any inpatient facility unless civilly committed.

(f) Subject to subsection (i) of this section, if at any point in the proceedings a defendant who has been indicted or charged with a misdemeanor or felony involving an act of violence against a person is found not competent to stand trial and is found not substantially likely to attain competency after having received competency restoration services for 180 days, he or she shall be placed in the least restrictive setting and shall remain under the jurisdiction of the court upon any conditions that the court considers appropriate and the charges against him or her shall be held in abeyance. Release of the defendant may be stayed by the court for up to 30 days or longer for good cause shown, upon the filing of a motion to challenge the individual's release to a less restrictive setting. The circuit court may, sua sponte or upon motion, order that a dangerousness evaluation be performed by a qualified forensic evaluator to aid in its consideration of the proposed placement and supervision of the defendant. The dangerousness evaluation shall be paid for by the department and completed within 30 days. The defendant shall be immediately released from any inpatient facility to the least restrictive setting necessary under §27-5-1 *et seq*. of this code, unless civilly committed.

(g)(1) If it is determined that a defendant indicted or charged as provided under subsection (f) of this section has a substantial probability of regaining competency, then the defendant may be ordered to remain in a mental health facility or state hospital for an additional reasonable time until he or she attains competency, or the pending charges are disposed of according to law, whichever is earlier in time: *Provided*, That a defendant may not be held in the mental health facility or state hospital for a period longer than 240 days for competency restoration treatment.

(2) If, at the end of the maximum period for inpatient competency restoration treatment as provided in this subsection, the court finds that the defendant has not attained competency and is not substantially likely to attain competency in the foreseeable future, the defendant shall be released to the least restrictive setting upon any conditions the court determines to be appropriate and the charges against him or her held in abeyance for the maximum sentence he or she could have received for the offense and the defendant released unless civil commitment proceedings have been initiated pursuant to §27-5-1 *et seq*. of this code. Notwithstanding anything in this article to the contrary, the court, in its discretion, may continue its oversight of the individual and the court's jurisdiction over the individual: *Provided*, That notwithstanding any provision of this article to the contrary, an individual

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may not be released as provided in this subsection until the court reviews and approves a recent dangerousness risk assessment of the individual and the chief medical officer's recommended release plan for the individual based on the needs of the individual and the public. The court shall order the discharge of the individual if it finds by a preponderance of the evidence that the individual has recovered from his or her mental illness and that he or she no longer creates a substantial risk of bodily injury to another person.

(3) When a defendant is released upon a condition the court determines to be appropriate and the charges against him or her are held in abeyance, the circuit court shall, no less frequently than every six months, review the defendant's circumstances to determine if his or her condition has deteriorated to the extent that requires civil commitment. Upon notice from the treatment provider that a defendant who is released on the condition that he or she continues treatment does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that the defendant is in violation of the conditions of his or her release, the court may reorder the defendant to a mental health facility under the authority of the department which is the least restrictive setting that will allow for the protection of the public.

(h) The prosecuting attorney may, by motion, cause the competency to stand trial of a defendant subject to the court's jurisdiction pursuant to subsection (f) of this section or released pursuant to subsection (g) of this section to be determined by the court of record while the defendant remains under the jurisdiction of the court. The court may order a forensic evaluation of competency to stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like manner as pursuant to §27-6A-2(a) and §27-6A-2(b) of this code.

(i) Any defendant found not competent to stand trial may at any time petition the court of record for a hearing on his or her competency but may do so not more than every six months.

(j) Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient management to attain competency, of dismissal of charges, of order for inpatient management to protect the public, of release or conditional release, or any hearings to be conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant, and his or her counsel, and the mental health facility or state hospital. Notice of a court release hearing or order for release or conditional release pursuant to subsection (e) of this section shall be provided to the victim or next of kin of the victim of the offense for which the defendant was charged by U.S. mail to such person's last known address. The burden is on the victim or next of kin of the victim to keep the court apprised of his or her current mailing address.

(k) A mental health facility not operated by the state is not obligated to admit or treat a defendant under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

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(l) Notwithstanding anything in this article to the contrary, for each individual who is committed to a state hospital, or committed to a state hospital and diverted to a licensed hospital prior to the effective date of the amendments to this section enacted during the regular session of the Legislature, 2021, who has received or will receive the maximum amount of competency restoration treatment authorized under this section prior to January 1, 2022, and who the medical director of the hospital and the court have determined is not restorable, the medical director shall inform the court and prosecutor of record for each such individual as soon as practicable but no later than March 31, 2022. The medical director shall immediately provide a recommendation to the court and prosecutor for the clinical disposition, placement, or treatment of each individual. The state hospital or prosecutor shall thereafter file a civil commitment proceeding, if warranted, as provided under §27-5-1 *et seq*. of this code for each individual or make other appropriate recommendations to the court of record. The court shall hold any hearing for each individual as soon as practicable, but no later than June 30, 2022.

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§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint a qualified forensic evaluator to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial then no criminal responsibility or diminished capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant has been ordered to a mental health facility or state hospital in accordance with §27-6A-2(c) or §27-6A-3(f) or §27-6A-3(h) of this code. To the extent possible, qualified forensic evaluators who have conducted evaluations of competency under §27-6A-2(a) of this code, shall be used to evaluate criminal responsibility or diminished capacity under this subsection and all evaluations shall be performed consistent with the department's program standards and requirements for the reports.

(b) The court shall require the party making the motion for the evaluations, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange within 15 days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of criminal responsibility, and if ordered, on diminished capacity. The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise

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be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility or state hospital designated by the department for a period not to exceed 15 days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by a qualified forensic evaluator. At the conclusion of the observation period, the court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquittee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquittee shall remain under the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within 30 days of admission to the mental health facility and a report rendered to the court within 10 business days of the completion of the evaluation. The dangerousness evaluation shall be performed consistent with the department's program standards and requirements for such evaluations. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction continues an additional 10 days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq*. of this code. The defendant shall then be immediately released from the facility unless civilly committed.

(f) In addition to any court-ordered evaluations completed pursuant to §27-6A-2, §27-6A-3, and §27-6A-4 of this code, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

(g) The court shall place persons acquitted under subsection (e) of this section in the temporary custody of the department for evaluation to determine if the acquittee may be released with or without conditions or if the acquittee requires commitment. The court may authorize that the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient evaluation, the department shall determine, on the basis of all information available, whether the evaluation shall be conducted on an outpatient basis or whether the acquittee shall be confined in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an outpatient basis fails to comply with the evaluation,

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the department shall petition the court for an order to confine the acquittee in a hospital for the evaluation. A copy of the petition shall be sent to the acquittee's attorney and the prosecutor of the acquittee's case. The evaluation shall be conducted by a qualified clinical evaluator skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform the evaluations. The evaluator shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his or her condition and need for hospitalization with respect to the factors set forth in §27-6A-5(b) of this code. The evaluator shall conduct an examination and report his or her findings separately within 30 days of the department's assumption of custody of the acquittee. Copies of the report shall be sent to the acquittee's attorney, the prosecuting attorney for the jurisdiction where the person was acquitted, and the comprehensive community mental health center designated by the department. If the evaluator recommends conditional release or release without conditions, the court shall extend the evaluation period to permit the department and the comprehensive community mental health center or licensed behavioral health provider to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

(h) A mental health facility not operated by the state is not required to admit or treat a defendant or acquittee under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

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§27-6A-5. Release of acquittee to less restrictive environment; discharge from jurisdiction of the court; conditional release; and commitment.

(a) Upon receipt of the evaluation report as provided in §27-6A-4(e) of this code, and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing to determine the appropriate disposition of the acquittee. The hearing shall be conducted within 30 days receipt of the evaluation report. The circuit court may, sua sponte or upon motion, order that an independent dangerousness evaluation by an independent qualified forensic evaluator be performed to aid in its consideration of the proposed placement and supervision of the acquittee. The dangerousness evaluation shall be paid for by the department and shall be performed consistent with the department's program standards and requirements for the evaluations. As an alternative to ordering an independent dangerousness assessment, the court may avail itself of the services of the Dangerousness Assessment Review Board established in §27-6A-12 of this code. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing is a civil proceeding.

(b) At the conclusion of the hearing, the court cannot commit the acquittee to a mental health facility or state hospital unless it finds by clear and convincing evidence that the acquittee has a mental illness or an intellectual disability, and that because of the nature or severity of acquittee's condition, the acquittee cannot be treated on an outpatient basis and requires inpatient management. The decision of the court shall be based upon consideration of the following factors:

(1) To what extent the acquittee has mental illness or an intellectual disability;

(2) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself or herself in the foreseeable future;

(3) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

(4) Any other factors reflected in §27-5-4 of this code.

(c) If inpatient hospitalization is ordered by the court, the mental health facility or state hospital shall periodically provide written clinical reports to the court regarding the continued need for hospitalization as provided by this subsection. A report shall be sent to the court after the initial six months of treatment and every two years after the initial report is made. The court shall provide copies of the reports to the prosecutor and attorney for the acquittee. Within 30 days after receipt of the report, the court shall hold a hearing to

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consider the issue of the continued commitment of the acquittee. The acquittee may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(d) Notwithstanding anything in this section to the contrary, the court shall order the acquittee released if the court finds that the acquittee meets the criteria for conditional release as set forth in subsection (f) of this section. The court may order any other conditions it determines to be necessary in accordance with subsection (c) of this section. If the court finds that the acquittee does not need inpatient hospitalization nor does the acquittee meet the criteria for conditional release, the court shall release the acquittee without conditions, provided the court has approved a discharge plan prepared by the appropriate comprehensive community mental health center or licensed behavioral health provider in consultation with the department.

(e) The court shall order that any person, acquitted by reason of mental illness and committed pursuant to this section, who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of mental illness, complete any sentence imposed for the other offense prior to being placed in the custody of the department until released from commitment pursuant to §27-1-1 *et seq*. of this code. The court shall order that any acquittee by reason of mental illness and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he or she is to serve his or her sentence, and, upon completion of his or her sentence, that person shall be placed in the custody of the department until released from commitment pursuant to §27-1-1 *et seq* of this code.

(f) At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this section, the court shall place the acquittee on conditional release if it finds that: (1) Based on consideration of the factors which the court must consider in its commitment decision as provided in subsection (b) of this section, the acquittee does not need inpatient hospitalization but may require outpatient treatment or monitoring to prevent his or her condition from deteriorating to a degree that he or she would become likely to cause serious harm to self or others; (2) appropriate outpatient supervision and treatment are reasonably available; (3) the acquittee is not mentally ill or does not have significant dangerousness risk factors associated with mental illness; (4) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (5) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to any orders and conditions it determines will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

(g) The comprehensive community mental health center or licensed behavioral health provider designated by the department shall implement the court's conditional release

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orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An acquittee's conditional release shall not be revoked solely because of his or her voluntary admission to a state hospital.

(h) If at any time the court that conditionally released an acquittee pursuant to subsection (f) of this section finds reasonable cause exists to believe that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and requires inpatient hospitalization, it may order an evaluation of the acquittee by a qualified forensic evaluator. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and has a mental illness or an intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him or her returned to the custody of the department.

(i) At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, of the right to the assistance of counsel in preparation for and during the hearing, and of the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis. Written notice of the hearing shall be provided to the prosecuting attorney for the committing jurisdiction. The hearing is a civil proceeding.

(j) If during the term of the acquittee's conditional release the court finds that the acquittee has violated the conditions of his or her release, but does not require inpatient hospitalization, the court may hold the acquittee in contempt of court for violation of the conditional release order.

(k) The court may modify the conditions of release or remove the conditions placed on release pursuant to subsection (f) of this section upon petition by the comprehensive community mental health center or licensed behavioral health provider, the prosecuting attorney, the acquittee, or upon its own motion based upon the report of the comprehensive community mental health center or behavioral health provider: *Provided*, That the acquittee may petition no more frequently than annually and only six months after the conditional release order is entered. Upon petition, the court shall require the comprehensive community mental health center or behavioral health provider to provide a report on the acquittee's progress while on conditional release.

(l) As it considers appropriate and based on the report from the comprehensive community mental health center or behavioral health provider and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it, within 10 days of its issuance, to the acquittee, the comprehensive community mental health center or behavioral health

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provider, and the prosecuting attorney for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within 10 days of its issuance. If an objection is filed, the court shall conduct a hearing at which the acquittee, the prosecuting attorney, and the comprehensive community mental health center or behavioral health provider have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release, as the court considers appropriate.

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§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

If a defendant who has been found to be not competent to stand trial believes that he or she can establish a defense of not guilty to the charges pending against him or her, other than the defense of not guilty by reason of mental illness, the defendant may request an opportunity to offer a defense thereto on the merits before the court which has criminal jurisdiction. If the defendant is unable to obtain legal counsel, the court of record shall appoint counsel for the defendant to assist him or her in supporting the request by affidavit or other evidence. If the court of record in its discretion grants the request, the evidence of the defendant and of the state shall be heard by the court of record sitting without a jury. If after hearing the petition the court of record finds insufficient evidence to support a conviction, it shall dismiss the indictment and order the release of the defendant from criminal custody. The release order, however, may be stayed for 10 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq*. of this code: *Provided*, That a defendant committed to a mental health facility or state hospital pursuant to §27-6A-3 (d) or §27-6A-3 (f) shall be immediately released from the facility unless civilly committed.

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§27-6A-7. Release of defendant during course of criminal proceedings.

Notwithstanding any finding of incompetence to stand trial under the provisions of this article, the court of record may at any stage of the criminal proceedings allow a defendant to be released with or without bail.

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§27-6A-8. Credit for time; expenses.

(a) If a person is convicted of a crime, any time spent in involuntary confinement in a mental health facility or state hospital as a result of being charged with the crime shall be credited to the sentence.

(b) All inpatient care and treatment shall be paid by the department.

(c) All competency restoration services not covered by other government, third-party funding sources, or other grant agreements shall be paid by the department.

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§27-6A-9. Competency to be adjudicated in juvenile court.

In a similar manner and in accordance with procedures set forth in subsection (a), section two of this article or subsection (a), section four of this article, a juvenile court may order a qualified forensic evaluator to conduct an evaluation of a juvenile to aid the court in its disposition under chapter forty-nine of this code. In a similar manner and in accordance with procedures set forth in subsection (d), section two of this article or subsection (d), section four of this article, a juvenile court may order a period of observation for an alleged delinquent or neglected juvenile at a mental health facility designated by the department to aid the court in its disposition. The period of observation may not exceed fifteen days.

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§27-6A-10. Medications and management of court-ordered individuals.

(a) At any time pursuant to §27-6A-2, §27-6A-3, or §27-6A-4 of this code, an individual is court ordered to a mental health facility or state hospital, the individual has the right to receive treatment under the standards of medical management.

(b) An individual with health care decision-making capacity may refuse medications or other management unless court-ordered to be treated, or unless a treating clinician determines that medication or other management is necessary in emergencies or to prevent danger to the individual or others: *Provided*, That medication management intended to treat an individual's condition that causes or contributes to incompetency shall constitute treatment.

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§27-6A-11. Payment to forensic evaluators.

The department shall pay qualified forensic evaluators for all matters related to conducting a court-ordered forensic evaluation. The department shall develop and implement a process for prompt payment to qualified forensic evaluators. The department shall establish policies and procedures for establishing a maximum rate schedule for each of the four evaluation types (competency to stand trial, criminal responsibility, diminished capacity, dangerousness) to include all efforts towards the completion of each evaluation such as scheduling and administrative tasks, record review, psychological and other testing, interviews, report writing, research, preparation and consultation. Such policies and procedures shall include input from provider representatives as necessary and appropriate. Any rate schedule shall be fair and reasonable. The department shall consider requests for payment in excess of established rates or other expenses for good cause shown.

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§27-6A-12. Development of a strategic plan for a sequential intercept model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities, and substance use disorders away from the criminal justice system into treatment and to promote continuity of care and interventions; directing submission of a report to the Legislature.

(a) The Legislature finds that the state's adult and juvenile forensic patient populations continue to increase and that the placement of forensic patients at state health care facilities, diversion facilities, group homes, transitional living facilities, in the community, and other settings continues to rapidly escalate. The Legislature further finds that persons with mental illness, developmental disabilities, cognitive disabilities including, but not limited to, brain injuries, and/or substance use disorder may be overrepresented in the criminal justice system, and many of these people might not present a danger to the public if they could participate in a functioning community behavioral health continuum of care. The Legislature further finds that the increasing adult and juvenile forensic patient populations, the placement and treatment of adult and juvenile forensic patients, and the release of persons with mental illness, developmental disabilities, and other disabilities creates significant clinical, public safety, staffing, and fiscal needs and burdens for the judiciary, law enforcement, state health care facilities, correctional facilities, behavioral health professionals, hospitals, and the public. The Legislature further finds that there is a need for improved coordination among the Department of Human Services, the Department of Health Facilities, the Division of Corrections and Rehabilitation, and the Division of Rehabilitation Services to promote the identification, safe discharge, and effective community intervention and placement of persons who suffer from mental illness, a developmental disability, a cognitive disability including, but not limited to, a brain injury, and/or substance use disorder. The Legislature further finds that there is a need to develop functional standards and protocols for the identification, management, qualified assessment, and treatment of adult and juvenile forensic patients.

(b) The Chairman of the Dangerousness Assessment Advisory Board shall convene a multi-disciplinary study group of the following persons:

(1) The Statewide Forensic Clinical Director;

(2) The Statewide Forensic Coordinator;

(3) The two forensic psychiatrists who are members of the Dangerousness Assessment Advisory Board;

(4) The two psychologists who are members of the Dangerousness Assessment Advisory Board;

(5) The Director of the Office of Drug Control Policy within the Department of Human Services;

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(6) A designee of the Supreme Court of Appeals;

(7) A designee of the Bureau for Social Services within the Department of Human Services with experience in juvenile forensic matters;

(8) A designee of the Division of Corrections and Rehabilitation within the Department of Homeland Security;

(9) A designee of the Division of Rehabilitation Services within the Department of Commerce;

(10) A designee of the Prosecuting Attorneys Institute;

(11) A designee of the Public Defender Services;

(12) A designee of the West Virginia Behavioral Healthcare Providers Association who is a licensed clinician with forensic patient experience;

(13) A designee of the West Virginia Hospital Association;

(14) A designee of the West Virginia Housing Development Fund;

(15) A designee of Disability Rights of West Virginia;

(16) A designee of the West Virginia Sheriff's Association;

(17) A designee of the Juvenile Justice Commission;

(18) A designee of the West Virginia University Center for Excellence in Disabilities;

(19) A designee of the Department of Veterans Assistance;

(20) A designee of the Department of Health Facilities;

(21) A senator appointed by the President of the Senate; and

(22) A delegate appointed by the Speaker of the House.

(c) The purpose of the multi-disciplinary study group is to provide opinion, guidance, and informed objective expertise to the Legislature regarding each of the following areas:

(1) The development and implementation of a sequential intercept model to divert adults and juveniles with mental illness, developmental disabilities, cognitive disabilities including, but not limited to, brain injuries, and/or substance use disorders away from the criminal justice system and into community-based treatment or other settings where appropriate;

(2) The review and recommendation of standards and protocols for the evaluation,

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treatment, management, and stabilization of adult and juvenile forensic patients;

(3) A recommendation regarding standards and protocols to promote continuity of care and interventions for adult and juvenile forensic patients and inmates released from correctional facilities;

(4) The recommendation of a model to coordinate services and interventions among the Department of Human Services, the Department of Health Facilities, the Division of Corrections and Rehabilitation, the Division of Rehabilitation Services, behavioral healthcare providers, law enforcement, and the court system to facilitate the appropriate diversion, identification, evaluation, assessment, management, and placement of adults and juveniles who suffer from mental illness, a development disability, a cognitive disability including, but not limited to, a brain injury, and/or substance use disorder to ensure public safety and the effective clinical management of such persons;

(5) The identification of potential funding sources and the scope of resources needed for the implementation of the study group's recommendations; and

(6) Any other issues related to addressing the Legislature's findings.

(d) The provisions of §6-9A-1 *et seq*. and §29B-1-1 *et seq*. of this code are inapplicable to the operation of the study group.

(e) The study group established in this section is hereby continued. The study group shall submit a supplemental report containing its findings and recommendations to the President of the Senate and the Speaker of the House of Delegates on or before November 30, 2024. Thereafter, the study group shall submit an annual report to the President of the Senate and the Speaker of the House of Delegates updating its findings and recommendations on topics specified by the Joint Standing Committee on the Judiciary, the Joint Standing Committee on Finance, the Joint Standing Committee on Health, or the Legislative Oversight Committee on Regional Jail and Correctional Facility Authority.

(f) Each member of the multi-disciplinary study group whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the study group. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition of the State Auditor.

(g) The study group steering committee comprised of the Chairman of the Dangerousness Assessment Advisory Board, the Statewide Forensic Clinical Director, and the Statewide Forensic Coordinator may:

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(1) Enter into any contract for administrative support services as necessary to accomplish the purposes of this section: *Provided*, That such services may only be paid for through grant funding;

(2) Enter into a memorandum of understanding with and between any of the members of the study group as necessary to accomplish the purposes of this section; and

(3) Seek grant funding to accomplish the purposes of this section.

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§27-6A-13. Dangerousness Assessment Advisory Board.

(a) The Dangerousness Assessment Advisory Board is continued. The board shall consist of the following persons:

(1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or a designee of the commissioner who was not involved in the decision under review;

(2) The forensic coordinator of the state;

(3) A representative of the protection and advocacy system for the state as defined by 29 U.S.C. § 794e, 42 U.S.C. § 15041 *et seq.*, and 42 U.S.C. § 10801 *et seq.*;

(4) An employee of the Division of Corrections and Rehabilitation designated by the commissioner with experience in inmate classification;

(5) An employee of the Division of Rehabilitation Services with experience in independent living programs;

(6) Two board-certified forensic psychiatrists appointed by the Governor with the advice and consent of the Senate; and

(7) Two psychologists who are West Virginia qualified forensic evaluators with at least five years demonstrated experience in state and federal courts, appointed by the Governor with the advice and consent of the Senate.

(b) The primary purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons, and the public generally. The board may, offer its services to a court when requested and may provide any information or recommendations to the court that the board in its independent judgment considers appropriate to assist the court with matters including, but not limited to, treatment, placement, discharge, release, community outings, custody, supervision, and barriers or obstacles to treatment, placement, discharge, release, community outings, custody, and supervision of forensic patients.

(c) A circuit court when reviewing a proposed less restrictive placement for a person found incompetent to stand trial and not restorable or not guilty by reason of mental illness may request the assistance of the board in considering the proposed placement plan. The circuit court may request that the forensic clinical director convene the board to seek its opinion or opinions on the appropriateness of the proposed placement. The secretary shall provide necessary suggestions, space, and support staff to the board to conduct its activities, but neither the secretary nor the medical director shall have supervisory authority over the board.

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(d) The provisions of §6-9A-1 *et seq*. and §29B-1-1 *et seq*. of this code are inapplicable to the operation of the board.

(e) In performing its duties under this section, the board shall have access to all court records and medical and mental health records available to the court, and all documents of any type used by the medical director in developing the proposed placement plan.

(f) Each member of the board whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

(g) A board member shall recuse himself or herself if he or she has previously evaluated a person whose classification or placement is under review.

(h) The members of the board are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, or loss of, property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of their board duties or responsibilities: *Provide*d, That nothing in this subsection shall be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(i) A board member is not subject to a subpoena to appear at a judicial hearing by virtue of being a member of the board, or fulfilling his or her duties under this section. Upon request of the circuit court, the board shall make all documents, reports, and other materials used in making its report available to the court or a party in the judicial proceeding regarding placement in redacted form upon the circuit court’s request.

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