# WEST VIRGINIA CODE CHAPTER 27

## §27-1-1. Definitions.

The following words and phrases when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this article, unless the context clearly requires a different meaning.

## §27-1-2. Mental illness.

"Mental illness" means a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion and physical well-being.

## §27-1-3. Intellectual disability.

"Intellectual disability" means significantly subaverage intellectual functioning which manifests itself in a person during his or her developmental period and which is characterized by his or her inadequacy in adaptive behavior. Notwithstanding any provision to the contrary, if any service provision or reimbursement is affected by the changes in terminology adopted in the 2010 First Extraordinary Session of the Legislature, the terms "intellectual disability" or "individuals with an intellectual disability" shall assume their previous terminology. It is not the intent of the Legislature to expand the class of individuals affected by this terminology change.

## §27-1-4. Inebriate.

An "inebriate" person is anyone over the age of eighteen years who is incapable or unfit to properly conduct himself or herself, or his or her affairs, or is dangerous to himself or herself or others, by reason of periodical, frequent or constant drunkenness, induced either by the use of alcoholic or other liquors, or of opium, morphine, or other narcotic or intoxicating or stupefying substance.

## §27-1-5. Physician.

A "physician" is a person licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

## §27-1-6. State hospital.

"State hospital" means any hospital, center or institution, or part of any hospital, center or institution, established, maintained and operated by the state, or by the state in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, intellectually disabled or addicted. The terms "hospital" and "state hospital" exclude correctional and regional jail facilities.

## §27-1-7. Administrator and clinical director.

(a) The administrator of a state-operated treatment facility is its chief executive officer and has the authority to manage and administer the financial, business and personnel affairs of such facility. All other persons employed at the state-operated treatment facility are under the jurisdiction and authority of the administrator of the treatment facility who need not be a physician.

(b) The clinical director has the responsibility for decisions involving clinical and medical treatment of patients in a state-operated mental health facility. The clinical director must be a physician duly licensed to practice medicine in this state who has completed training in an accredited program of post-graduate education in psychiatry.

(c) In any facility designated by the Secretary of the Department of Health Facilities as a facility for individuals with an intellectual disability in which programs and services are designed primarily to provide education, training and rehabilitation rather than medical or psychiatric treatment, the duties and responsibilities, other than those directly related to medical treatment services, assigned to the clinical director by this section or elsewhere in this chapter, are assigned to and become the responsibility of the administrator of that facility, or of a person with expertise in the field of intellectual disability, who need not be a physician, designated by the administrator.

## §27-1-8. Resident of state and county.

A "resident of the state" is any person who has had an established residency in this state for at least one year, and a "resident of the county" is any person who has had an established residency in a county for at least sixty days.

## §27-1-9. Mental health facility.

"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, intellectually disabled or addicted which is operated, or licensed to operate, by the Office of Health Facility Licensure and Certification and includes state hospitals as defined in §27-1-6 of this code. The term also includes veterans administration hospitals, but does not include any regional jail, juvenile or adult correctional facility, or juvenile detention facility.

## §27-1-10. Psychologists and psychiatrists.

(a) For the purposes of this chapter, "psychologist" means any person licensed under the laws of this state to engage in the practice of psychology, or any other psychologist not a resident of this state who engages in the practice of psychology in this state and who holds a license or certificate to engage in the practice of psychology issued by another state with licensing or certification requirements comparable to the licensing requirements of this state, as may be determined by the state board of examiners of psychologists.

(b) For purposes of this chapter, "psychiatrist" means a physician licensed under the laws of this state to practice medicine who has completed training in an accredited program of post-graduate education in psychiatry.

## §27-1-11. Addiction.

(a) As used in this chapter, “addiction” or substance use disorder means a maladaptive pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring within 30 days prior to the filing of the petition:

(1) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home, including, but not limited to, repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; or neglect of children or household;

(2) Recurrent use in situations in which it is physically hazardous, including, but not limited to, driving while intoxicated or operating a machine when impaired by substance use;

(3) Recurrent substance-related legal problems; or

(4) Continued use despite knowledge or having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

(b) As used in this section, “substance” means alcohol, controlled substances as defined in sections §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code, or anything consumed for its psychoactive effect whether or not designed for human consumption.

## §27-1-12. Likely to cause serious harm.

(a) "Likely to cause serious harm" means an individual is exhibiting behaviors consistent with a medically recognized mental disorder or addiction, excluding, however, disorders that are manifested only through antisocial or illegal behavior and as a result of the mental disorder or addiction:

(1) The individual has inflicted or attempted to inflict bodily harm on another;

(2) The individual, by threat or action, has placed others in reasonable fear of physical harm to themselves;

(3) The individual, by action or inaction, presents a danger to herself or others in his or her care;

(4) The individual has threatened or attempted suicide or serious bodily harm to himself or herself; or

(5) The individual is behaving in a manner as to indicate that he or she is unable, without supervision and the assistance of others, to satisfy his or her need for nourishment, medical care, shelter or self-protection and safety so that there is a substantial likelihood that death, serious bodily injury, serious physical debilitation, serious mental debilitation or life-threatening disease will ensue unless adequate treatment is afforded.

(b) In making the "likely to cause serious harm" determination, judicial, medical, psychological and other evaluators and decisionmakers should utilize all available information, including psychosocial, medical, hospitalization and psychiatric information and including the circumstances of any previous commitments or convalescent or conditional releases that are relevant to a current situation, in addition to the individual's current overt behavior. The rules of evidence shall be followed in making the "likely to cause serious harm" determination except that hearsay evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

## §27-1-13. Chief medical officer.

"Chief medical officer" means the physician responsible for medical programs within a mental health facility and shall include the clinical director of a state hospital.

## §27-1-14. Detained or taken into custody.

"Detained or taken into custody" where used in this chapter shall permit detention for custody in a county facility which may be in the same building as the county jail if the said county facility:

(a) Meets the standards which the Department of Health shall prescribe; and

(b) Is approved for such use by the Department of Health; and

(c) Is inspected annually by the Department of Health.

## §27-1-15. Computation of time.

The provisions of section one, article two, chapter two of this code shall apply to the time fixed for doing any act under this chapter.

## §27-1-16. Incapacitated.

"Incapacitated" means a level of intoxication at which an individual is incapable of physical or mental control of himself thus rendering him dangerous to himself or others or unable to protect himself from hazard.

## §27-1-17. Judicial officer.

"Judicial officer" in the context of the provisions of this and other chapters of this code dealing with disposition of a charge of public intoxication, means a municipal judge, a magistrate or any judge of a court of record in this state.

## §27-1A-1. Statement of policy.

The purpose of this article is to improve the administration of the state hospitals, raise the standards of treatment of the mentally ill and intellectually disabled in the state hospitals, encourage the further development of outpatient and diagnostic clinics, establish better research and training programs, and promote the development of mental health.

## §27-1A-2. Creation; composition; control of state hospitals.

There shall be a state department of mental health, to be known as the department of mental health. It shall be a corporation and, as such, shall have a seal and may contract and be contracted with. The department shall consist of a director of mental health, supervisors of divisions of the department, and such other employees as are needed to carry out its functions. The department shall supervise and control the state hospitals.

## §27-1A-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

The Governor shall appoint the Commissioner of the Department of Mental Health by and with the consent of the Senate; he shall be known as the Commissioner of Mental Health. Before entering upon the duties of his office, the commissioner shall take and subscribe the oath of office prescribed by section five, article four of the Constitution of this state, the certificate whereof shall be filed in the office of the Secretary of State, and he shall give bond in the penalty of $10,000, conditioned as required by law. The commissioner shall serve at the will and pleasure of the Governor. The salary of the commissioner shall be the salary specified in section two-a, article seven, chapter six of this code and in addition thereto he shall be reimbursed for all necessary travel and other expenses incurred in the performance of his duties. The commissioner shall be either a qualified psychiatrist or physician with both clinical and administrative experience, or, a qualified administrator who has at least a master's degree in business administration, hospital administration, or a related field, and not less than four years' experience in health services administration or hospital administration, and with general knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services: Provided, That if the commissioner is other than a psychiatrist or physician there shall be appointed by the commissioner a deputy commissioner for clinical services who shall be a psychiatrist.

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the director of the department of mental health, it shall be construed to mean and shall be a reference to the commissioner of the department of mental health.

**§27-1A-4. Powers and duties of the secretary.**

In addition to the powers and duties set forth in any other provision of this code, the Secretary of the Department of Health Facilities has the following powers and duties:

(a) To develop and maintain a state plan which sets forth needs of the state in the areas of mental health and intellectual disability; goals and objectives for meeting those needs; plan of operation for achieving the stated goals and objectives, including organizational structure; and statement of requirements in personnel funds and authority for achieving the goals and objectives.

(b) To appoint deputies and assistants to supervise the departmental programs, including hospital and residential services, and such other assistants and employees as may be necessary for the efficient operation of the department and all its programs.

(c) To promulgate rules clearly specifying the respective duties and responsibilities of program directors and fiscal administrators, making a clear distinction between the respective functions of these officials.

(d) To delegate to any of his or her appointees, assistants or employees all powers and duties vested in the commissioner, including the power to execute contracts and agreements in the name of the department as provided in this article, but the commissioner shall be responsible for the acts of such appointees, assistants and employees.

(e) To supervise and coordinate the operation of the state hospitals named in article two of this chapter and any other state hospitals, centers or institutions hereafter created for the care and treatment of the mentally ill or intellectually disabled, or both.

(f) To transfer a patient from any state hospital to any other state hospital or clinic under his or her control and, by agreement with the state Division of Corrections, transfer a patient from a state hospital to an institution, other than correctional, under the supervision of the state Division of Corrections.

(g) To make periodic reports to the Governor and to the Legislature on the condition of the state hospitals, centers and institutions or on other matters within his or her authority, which shall include recommendations for improvement of any mental health facility and any other matters affecting the mental health of the people of the state.

The Secretary of the Department of Health Facilities has all of the authority vested in the divisions of the former Department of Mental Health, as hereinafter provided.

The Secretary of the Department of Health Facilities is authorized and empowered to accept and use for the benefit of a state hospital, center or institution, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state hospital, center or institution, it shall be used as specified. Any gift or devise of any

property or thing which lawfully may be given and whatever profit may arise from its use or investment shall be deposited in a special revenue fund with the State Treasurer, and shall be used only as specified by the donor or donors.

## §27-1A-5. Division of administration; deputy; deputy commissioner; deputy commissioner's qualifications, powers and duties.

There shall be a division of administration in the department of mental health. The chief executive of this division shall be the deputy commissioner for administration. The deputy commissioner shall be a college graduate with not less than two years' experience in business administration, health services administration or hospital administration, with broad knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services. He shall have the following duties:

(a) To keep the records in the department.

(b) To receive and disburse funds for the department as the agent of the commissioner of the department.

(c) To assemble and analyze departmental budget estimates, review requests for transfer of funds and maintain departmental appropriation and fiscal records.

(d) To make rules and regulations governing the administration and business management of the state hospitals, formulate standard fiscal procedures, and make recommendations for improvement; to make regulations concerning any superintendent's trustee funds heretofore established by authority of section three-a, article one, chapter twenty-five of the Code of West Virginia, 1931, as amended.

(e) To have the responsibility for the maintenance of the land, buildings and equipment of state hospitals.

(f) To review requisitions for supplies and equipment, and cooperate with the division of purchases in development and drafting of specifications.

(g) To handle the personnel records of the department and to process payrolls.

(h) To enter into contracts for the department consistent with his assigned duties.

(i) To develop job classifications and standards for employees of the department.

(j) To perform any other duties assigned to the division by the commissioner.

## §27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

There is a Division of Professional Services established in the Department of Health Facilities. The supervisor of this division shall assist the director in the operation of the programs or services of the department and shall be a qualified psychiatrist.

The supervisor of this division has the following powers and duties:

(1) To develop professional standards, provide supervision of state hospitals, analyze hospital programs and inspect individual hospitals.

(2) To assist in recruiting professional staff.

(3) To take primary responsibility for the education and training of professional and subprofessional personnel.

(4) To carry on or stimulate research activities related to medical and psychiatric facilities of the department, and render specialized assistance to hospital superintendents.

(5) To establish liaison with appropriate state agencies and with private groups interested in mental health, including the state Bureau for Public Health, Division of Corrections, the Department of Education, the Board of Governors of West Virginia University, and the West Virginia Association for Mental Health, Incorporated.

(6) To license, supervise and inspect any hospital, center or institution, or part of any hospital, center or institution, maintained and operated by any political subdivision or by any person, persons, association or corporation to provide inpatient care and treatment for the mentally ill, or individuals with an intellectual disability, or both.

To perform any other duties assigned to the division by the Secretary of the Department of Health Facilities.

## §27-1A-7. Division of community services; powers and duties of supervisor.

There shall be a division of community services in the Department of Human Services. This division shall administer all funds made available to the State of West Virginia and any political subdivision thereof under the National Mental Health Act, and all other funds made available for use by this division. The director shall establish standards and criteria for reimbursing sponsoring groups for a portion of the cost of local mental health services which they may provide.

The supervisor of this division shall also have the following powers and duties:

(1) To establish standards for and supervise the operation of community mental health clinics for adults and children and to develop new community facilities and community service programs for the overall improvement of the regional mental health facilities.

(2) To develop a comprehensive and practical program of mental health education of the public, especially at the local level.

(3) To work with county mental hygiene commissions and circuit courts.

(4) To determine and approve schedules of reasonable cost for reimbursement by the patient or responsible relative for mental health services rendered.

(5) To perform any other duties assigned to the division by the director of the department.

## §27-1A-8. Superintendents to pay money to State Treasury through department of mental health; appropriations; deficiency; how met.

All moneys and funds belonging to the state which shall come into the possession or under the control of the superintendent or other officer of a state hospital under the control of the department of mental health shall be paid to the director of mental health monthly, on or before the tenth day of the month following the month in which such moneys or funds were received, under such rules and regulations as the director shall prescribe. The director shall pay such moneys and funds into the state Treasury immediately in the manner provided in article two, chapter twelve, of this code.

All moneys appropriated for the department of mental health and state hospitals may be expended on proper requisitions issued by the director of mental health or his duly authorized agent. Whenever the appropriations by the Legislature for the state hospitals are insufficient to pay the expenses of conducting such institutions, the director of mental health shall certify the deficiency to the Governor. The certificate shall state the name of the state hospital and the items and amount in detail needed, and the Governor may direct payment of the same or any part thereof out of any appropriation available for that purpose.

## §27-1A-9. Transfer of control, records and property from board of control to department of mental health.

The control of the financial, business and all other affairs of state hospitals is hereby transferred from the state board of control to the department of mental health, and, as its chief executive officer, the director shall, in respect to the control, management and property of such state hospitals, have the same rights and powers and shall perform the same duties and functions as were heretofore exercised or performed by the state board of control. The title to all property of such state hospitals is hereby transferred to and vested in the department of mental health.

## §27-1A-10. Transfer of records and personnel from department of health to division of community services.

The state Department of Health shall transfer to the Division of Community Services of the Department of Mental Health all of the records of the bureau of mental health and all records pertaining to the state hospitals. Persons employed by the state department of health in that bureau may also be transferred to this division. All persons now employed by the various guidance clinics in the state shall be under the supervision of this division.

## §27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

(a) The division on alcoholism, heretofore established in the department of health, shall continue and be known as the division on alcoholism and drug abuse.

(1) The supervisor and personnel of this division shall assist the director of the department of health in the establishment of a program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the causes, prevention, and treatment of alcoholism and drug abuse; for the training of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse.

(2) The department's program for the care, treatment, and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of one or more of the state hospitals under the control of the department of health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals or other facilities; and the utilization, through contracts or otherwise, of the available services and assistance of any professional or nonprofessional persons, groups, organizations or institutions in the development, promotion and conduct of the department's program.

(3) Neither the department of health nor the division on alcoholism and drug abuse shall be required to accept any alcoholic or drug abuser voluntarily seeking hospitalization for clinical or hospital care, treatment or rehabilitation; but the department may accept, pursuant to its adopted and promulgated rules and regulations, responsibility for clinical or hospital care, treatment or rehabilitation of any alcoholic or drug abuser through arrangements made voluntarily with the department by him or some person acting in his behalf: Provided, That any such person accepted by the department on a voluntary basis shall be charged a minimum fee unless he shows, to the satisfaction of the department, that he is unable to pay the fee: Provided, however, That the department shall accept all alcoholics and drug abusers committed by a mental hygiene commissioner or judicial officer in accordance with the procedures established by article six-a of this chapter: Provided further, That notwithstanding any provision in article five of this chapter which may be to the contrary, the supervisor of the division on alcoholism and drug abuse may specify the clinic or hospital to which the alcoholic or drug abuser shall be committed after a final commitment hearing provided in section four, article five of this chapter.

(4) The department's program of research into the causes, prevention and treatment of alcoholism and drug abuse may include the utilization, through contracts or otherwise, of the available services and assistance of any private and public professional or nonprofessional persons, groups, organizations or institutions, as well as cooperation with private and public agencies engaged in research in alcoholism or drug abuse or rehabilitation of alcoholics or drug abusers.

(5)(A) The department's programs shall also provide for the training of personnel to work with alcoholics and drug abusers and the informing of the public as well as interested groups and persons concerning alcoholism and drug abuse and the prevention and treatment thereof.

(B) The department shall train counselors who shall be responsible for working with youth and developing community programs for youth with drug and alcohol problems. Personnel shall be available to work with these youth in their community and school settings.

(C) The department shall provide at least two comprehensive outpatient programs for youth whose drug or alcohol problems make them a candidate for such programs as determined by qualified mental health professionals. At least one program shall serve a rural area. These programs shall include, at minimum: Educational lectures; codependency, peer group, individual and family counseling; services for at risk population; and relapse, prevention and after care programs. One such program shall be established by January 1, 1987, and a second program by July 1, 1987.

(6) The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

(b) As used in this chapter or in section ten, article one, chapter sixteen of the code:

(1) "Alcoholic" means a person who suffers from alcoholism as defined in subdivision (2) of this subsection.

(2) "Alcoholism" means a disease or illness characterized by psychological or physiological addiction to alcoholic beverages as manifested by: (A) The inability to control one's consumption of alcoholic beverages except through total abstinence or (B) the inability to control one's behavior when consuming alcoholic beverages, or (C) both.

(3) "Alcohol abuser" means a person whose use of alcohol has produced any of the effects described in subdivision (4) of this subsection.

(4) "Alcohol abuse" means the periodic, frequent or constant consumption of alcoholic beverages to the extent that one's health is substantially impaired or endangered or one's social or economic functioning is substantially disrupted.

(5) "Drug abuser" means a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(6) "Drug abuse" means the use of any controlled substance as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.

## §27-1A-12. Independent Informal Dispute Resolution.

(a) A behavioral health provider licensed by the Office of Health Facility Licensure and Certification adversely affected by an order or citation of a deficient practice issued pursuant to this article or pursuant to federal law may request to use the independent informal dispute resolution process established by this section. A licensee may contest a cited deficiency as contrary to rule, regulation or law or unwarranted by the facts, or any combination thereof.

(b) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilization of the independent informal dispute resolution process does not waive the right of the licensee to request a formal hearing with the secretary.

(c) The independent informal dispute resolution process shall consist of the following:

(1) The secretary shall transmit to the licensee a statement of deficiencies attributed to the licensee and request that the licensee submit a plan of correction addressing the cited deficiencies no later than ten working days following the last day of the survey or inspection, or no later than ten working days following the last day of a complaint investigation. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(2) When the licensee returns its plan of correction to the secretary, the licensee may request, in writing, to participate in the independent informal dispute resolution process to protest or refute all or part of the cited deficiencies within ten working days. The secretary may not release the final report until all dispute processes are resolved.

(3) The Secretary of the West Virginia Department of Health (hereinafter "secretary") shall approve and establish a panel of at least three independent review providers: *Provided*, That in lieu of establishing a panel, the secretary may use an existing panel of approved independent review providers. The secretary shall contract with the independent review providers to conduct the independent informal dispute resolution processes. Each independent review provider shall be accredited by the Utilization Review Accreditation Commission. When a licensee requests an independent informal dispute resolution process, the secretary shall choose one independent review provider from the approved panel to conduct the process.

(4) The secretary shall refer the request to an independent review provider from the panel of certified independent review providers approved by the department within five working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The secretary shall vary the selection of the independent review providers on a rotating basis. The secretary shall acknowledge in writing to the licensee that the request for independent review has been received and forwarded to the independent review provider. The notice shall include the name and professional address of the

independent review provider.

(5) The independent review provider shall hold an independent informal dispute resolution conference, unless additional time is requested by either the licensee, the Office of Health Facility Licensure and Certification or the independent review provider and approved by the secretary, within ten working days of receipt of the written request for the independent informal dispute resolution process made by a licensee. The licensee or the Office of Health Facility Licensure and Certification may submit additional information before the independent informal dispute resolution conference.

(6) Neither the secretary nor the licensee may be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the licensee, but is limited to:

(A) A review of written information submitted by the licensee;

(B) A telephonic conference; or

(C) A face-to-face conference held at a mutually agreed upon location.

(7) If the independent review provider determines the need for additional information, clarification or discussion at the conclusion of the independent informal dispute resolution conference, the secretary and the licensee shall present the requested information.

(8) The independent review provider shall make a determination within ten working days of receipt of any additional information as provided in subdivision (7) of this section or the conclusion of the independent informal dispute resolution conference, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the secretary.

(9) If the secretary disagrees with the determination, the secretary may reject the determination made by the independent review provider and shall issue an order setting forth the rationale for the reversal of the independent review provider's decision to the licensee within ten working days of receiving the independent review provider's determination.

(10) If the secretary accepts the determination, the secretary shall issue an order affirming the independent review provider's determination within ten working days of receiving the independent review provider's determination.

(11) If the independent review provider determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the secretary accepts the determination, the secretary shall transmit a revised statement of deficiencies to the licensee within ten working days of the independent review provider's determination.

(12) The licensee shall submit a revised plan to correct any remaining deficiencies to the secretary within ten working days of receipt of the secretary's order and the revised statement of deficiencies.

(d) Under the following circumstances, the licensee is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the secretary within sixty days of the informal conference order:

(1) If the licensee requests a face-to-face conference, the licensee shall pay any costs incurred by the independent review provider that exceed the cost of a telephonic conference, regardless of which party ultimately prevails;

(2) If the independent review provider's decision supports the entirety of the originally written contested deficiency or adverse action taken by the secretary, the licensee shall reimburse the secretary for the cost charged by the independent review provider; or

(3) If the independent review provider's decision supports some of the originally written contested deficiencies, but not all of them, the licensee shall reimburse the secretary for the cost charged by the independent review provider on a pro-rata basis as determined by the secretary.

(e) Establishment of the independent informal dispute resolution process does not preclude licensees from utilizing other informal dispute resolution processes provided by statute or rule in lieu of the independent informal dispute resolution process.

(f) Administrative and judicial review of a decision rendered through the independent informal dispute resolution process may be made in accordance with article five, chapter twenty-nine-a of this code.

(g) Any decision issued by the secretary as a result of the independent informal dispute resolution process shall be made effective from the date of issuance.

(h) The pendency of administrative or judicial review does not prevent the secretary or a licensee from obtaining injunctive relief as provided by statute or rule.

## §27-2-1. State hospitals and other facilities; transfer of control and property from Department of Mental Health to Department of Health and Human Resources; civil service coverage.

The state hospitals established at Weston, Huntington and Lakin, are continued and known respectively as the William R. Sharpe, Jr. Hospital, Mildred-Mitchell Bateman Hospital and Lakin Hospital. These state hospitals and centers are managed, directed and controlled by the Department of Health Facilities. Any person employed by the Department of Mental Health who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-2 of this code, remain in the civil service system as a covered employee. The Secretary of the Department of Health Facilities is authorized to bring the state hospitals into structural compliance with appropriate fire and health standards. All references in this code or elsewhere in law to the "West Virginia Training School" shall be taken and construed to mean and refer to the "Colin Anderson Center."

The control of the property, records, and financial and other affairs of state mental hospitals and other state mental health facilities is transferred from the Department of Mental Health to the Department of Health Facilities. The secretary shall, in respect to the control and management of the state hospitals and other state mental health facilities, perform the same duties and functions as were heretofore exercised or performed by the Director of Health. The title to all property of the state hospitals and other state facilities is transferred to and vested in the Department of Health Facilities.

Notwithstanding any other provisions of this code to the contrary, whenever in this code there is a reference to the Department of Mental Health, it shall be construed to mean and is a reference to the Department of Health Facilities.

**§27-2-1a.**

Repealed.

Acts, 2010 1 Ex. Sess., Ch 14.

**§27-2-1b.**

Repealed.

Acts, 2010 1 Ex. Sess., Ch 14.

## §27-2-2. Superintendents; qualifications and exceptions therefrom; salaries of superintendents and other officers and employees; furnishing of meals, household facilities, etc.

The superintendent of a state hospital shall be appointed for an indefinite period. He shall be a college graduate and have a minimum of two years' experience in business administration, health services administration or hospital administration with broad knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services.

The provisions of this section relating to the qualification of persons eligible to serve as superintendent shall not apply to any person serving in the capacity of business manager on the effective date hereof, and who has served in such capacity for at least six consecutive months next preceding such effective date.

The superintendents and other officers and employees of each state hospital or center shall be paid salaries commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given or paid to such superintendents, officers or employees as all or part of their salary; however, such superintendents, officers and employees may be provided meals, household facilities and supplies as may be necessary for them to perform their duties, if such superintendents, officers and employees agree to pay the reasonable cost thereof as established by the Director of the Department of Mental Health.

## §27-2-3. Rules as to patients.

The director of health shall implement rules and regulations as promulgated by the board of health in regard to the admission of patients to mental health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of such facilities and the release, trial visit and discharge of patients therefrom.

No patient under eighteen years of age in any state hospital shall be housed in any area also occupied by any patient over eighteen years of age. Any patient adjudged by the chief medical officer to have a likelihood of seriously harming others shall be confined in a secure area of a health facility.

## §27-2-4. Forms for committing patients; other records.

The director of health shall have authority to prepare, prescribe and have printed forms to be used for commitment to and discharge from the state hospitals.

## §27-2-5. Reports by superintendents; records of director of health.

The superintendent of each state hospital shall furnish to the director of health such information as he may require concerning admissions, discharges, deaths and other matters. From this and other information available to the director of health, he shall keep such records as are necessary to enable him to have current information concerning the extent of mental illness in the state. The names of individuals shall not be accessible to anyone except by permission of the director of health or by order of a judge of a court of record.

## §27-2-6. Moneys received by state hospitals and facilities.

All moneys and funds belonging to the state which shall come into the possession or under the control of the superintendent or other officer of a state hospital or facility under the control of the department of health shall be paid to the director or his designee twice a month, on or before the first and fifteenth of every month, but not more than twenty days from the time such moneys or funds were received under such rules and regulations as the director shall prescribe. The director or his designee shall pay such moneys and funds into the State Treasury immediately in the manner provided in article two, chapter twelve of this code.

**§27-2A-1. Comprehensive community mental health-intellectual disability centers; establishment, operation and location; access to treatment.**

(a) The Department of Human Services is directed to establish, maintain and operate comprehensive community mental health centers and comprehensive intellectual disability facilities, at locations within the state that are determined by the secretary in accordance with the state's comprehensive mental health plan and the state's comprehensive intellectual disability plan. Such facilities may be integrated with a general health care or other facility or remain separate as the Secretary of the Department of Human Services may by rules prescribe: *Provided*, That nothing contained herein may be construed to allow the Department of Human Services to assume the operation of comprehensive regional mental health centers or comprehensive intellectual disability facilities which have been heretofore established according to law and which, as of the effective date of this article, are being operated by local nonprofit organizations.

(b) Any new mental health centers and comprehensive mental retardation facilities herein provided may be operated and controlled by the Department of Human Services or operated, maintained and controlled by local nonprofit organizations and licensed according to rules promulgated by the Secretary of the Department of Human Services. All comprehensive regional mental health and intellectual disability facilities licensed in the state shall:

(1) Have a written plan for the provision of diagnostic, treatment, supportive and aftercare services, and written policies and procedures for implementing these services;

(2) Have sufficient employees appropriately qualified to provide these services;

(3) Maintain accurate medical and other records for all patients receiving services;

(4) Render outpatient services in the aftercare of any patient discharged from an inpatient hospital, consistent with the needs of the individual. No person who can be treated as an outpatient at a community mental health center may be admitted involuntarily into a state hospital.

(5) Have a chief administrative officer directly responsible to a legally constituted board of directors of a comprehensive mental health or intellectual disability facility operated by a local nonprofit organization, or to the Secretary of the Department of Human Services if the comprehensive mental health or intellectual disability center or facility is operated by the Department of Human Services; and

(6) Have a written plan for the referral of patients for evaluation and treatment for services not provided.

The state's share of costs of operating the facilities may be provided from funds appropriated for this purpose within the budget of the Department of Human Services. The Secretary of the Department of Human Services shall administer these funds among all comprehensive

mental health and intellectual disability facilities that are required to best provide comprehensive community mental health care and services to the citizens of the state.

After July 1, but not later than August 1 of each year, the chief administrative officer of each comprehensive regional mental health center and intellectual disability facility shall submit a report to the Secretary of the Department of Human Services and to the Legislative Auditor containing a listing of:

(1) All funds received by the center or facility;

(2) All funds expended by the center or facility;

(3) All funds obligated by the center or facility;

(4) All services provided by the center or facility;

(5) The number of persons served by the center or facility; and

(6) Other information as the Secretary of the Department of Human Services prescribes by regulation.

## §27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental, or emotional condition, any advice, instructions, or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient, and de-identified information from which there is no possible means to identify a client or patient.

(b) Confidential information shall not be disclosed, except:

(1) In a proceeding under §27-5-4 of this code to disclose the results of an involuntary examination made pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

(2) In a proceeding under §27-6A-1 et seq. of this code to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) 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, in accordance with §61-7A-1 et seq. of this code;

(5) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself, or another;

(6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance Portability and Accountability Act of 1996 in 45 CFR §164, as amended under the Health Information Technology for Economic and Clinical Health Act of the American and the Omnibus Final Rule, 78 FR 5566; or

(7) In a proceeding held under §44A-3-17 of this code or as required by §44A-3-18 of this code.

## §27-3-2. Authorization of disclosure of confidential information.

No consent or authorization for the transmission or disclosure of confidential information is effective unless it is in writing and signed by the patient or client by his or her legal guardian. Every person signing an authorization shall be given a copy.

Every person requesting the authorization shall inform the patient, client or authorized representative that refusal to give the authorization will in no way jeopardize his or her right to obtain present or future treatment.

**§27-4-1. Authority to receive voluntary patients.**

(a) The chief medical officer of a mental health facility, subject to the availability of suitable accommodations and to the rules promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(1) Eighteen years of age or older who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and who makes application for hospitalization; or

(2) Under eighteen years of age who is mentally ill, intellectually disabled or addicted or who has manifested symptoms of mental illness, intellectual disability or addiction and where there is an application for hospitalization, either made in person at the time of admission or by a notarized written application submitted by facsimile, e-mail or in person prior to, or at the time of, admission, on his or her behalf as follows:

(A) By the parents of such person;

(B) If only one parent is living, then by such parent;

(C) If the parents are living separate and apart, then by the parent who has the custody of such person; or

(D) If there is a guardian who has legal custody of such person, then by such guardian.

(E) If the subject person under eighteen years of age is an emancipated minor, the admission of that person as a voluntary patient shall be conditioned upon the consent of the patient.

(F) If the application for the subject person under eighteen years of age does not satisfy one of paragraphs (A) through (E) of this subdivision, the provisions of article five of this chapter shall be followed with respect to any hospitalization.

(b) For any application for hospitalization made pursuant to subdivision (2) of subsection (a) of this section, the person making the application shall transport the minor to the mental health facility, except as provided in this subsection. If the minor is violent or combative or the parent or guardian faces other circumstances that make the parent or guardian unable to transport the minor to the mental health facility, the parent or guardian may file an affidavit with the circuit court of the county in which the minor resides or of the county in which the minor may be found. The parent or guardian shall give information and state facts in the affidavit as may be required by the form provided for this purpose by the Supreme Court of Appeals. Upon ex parte review of the affidavit, a mental hygiene commissioner or circuit court judge, or when none are available the magistrate designated pursuant to article five of this chapter, may determine that the parent or guardian is unable to transport the minor for voluntary hospitalization and, if such a determination is made, shall enter an order requiring the sheriff of that county to transport the minor to the mental health facility.

(c) No person under eighteen years of age may be admitted under this section to any state hospital unless the person has first been reviewed and evaluated by a local mental health facility and recommended for admission.

(d) If the candidate for voluntary admission is a minor who is fourteen years of age or older, the admitting health care facility shall determine if the minor consents to or objects to his or her admission to the facility. If the parent or guardian who requested the minor's admission under this section revokes his or her consent at any time, or if the minor fourteen years of age or older objects at any time to his or her further treatment, the minor shall be discharged within ninety-six hours to the custody of the consenting parent or guardian, unless the chief medical officer of the mental health facility files a petition for involuntary hospitalization, pursuant to the provisions of section three of this article, or the minor's continued hospitalization is authorized as an involuntary hospitalization pursuant to the provisions of article five of this chapter: Provided, That if the ninety-six hour time period would result in the minor being discharged and released on a Saturday, a Sunday or a holiday on which the court is closed, the period of time in which the patient shall be released by the facility shall be extended until the next day which is not a Saturday, Sunday or legal holiday on which the court is lawfully closed.

(e) Nothing in this section may be construed to obligate the State of West Virginia for costs of voluntary hospitalizations permitted by the provisions of this section.

(f) For the purposes of this section, all mental health facilities in this state shall make a blank copy of their application for admission immediately available to any person or entity who requests the application. The application is "immediately available" if it is promptly sent by facsimile or e-mail to the requesting person or entity, or available through other immediate electronic means, such as posting the blank application on the facility's public website.

## §27-4-2. Release of voluntary patients.

The chief medical officer of a mental health facility shall release any voluntary patient who, in his opinion, has recovered or whose hospitalization is no longer advisable but he shall make every effort to assure that any further supportive services required to meet the patient's need upon his release will be provided.

## §27-4-3. Right to release on application.

A voluntary patient who requests his or her release or whose release is requested in writing by his or her parents, parent, guardian, spouse or adult next of kin shall be released immediately except that:

(a) If the patient was admitted on his or her own application, and request for release is made by a person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

(b) If the patient is under eighteen years of age, his or her release prior to becoming eighteen years of age may be conditioned upon the consent of the person or persons who applied for his or her admission; or

(c) If, within ninety-six hours of the receipt of the request, the chief medical officer of the mental health facility in which the patient is hospitalized files with the clerk of the circuit court or mental hygiene commissioner of the county where the facility is situated an application for involuntary hospitalization as provided in section four, article five of this chapter, release may be postponed for twenty days pending a finding in accordance with the legal proceedings prescribed therein.

Legal proceedings for involuntary hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by him or her or the individual or individuals who applied for his or her admission.

## §27-4-4. Admission and treatment of voluntary patients; statement of rights; consent for treatment.

(a) No person shall be admitted as an inpatient into a mental health facility as a voluntary patient until such person has been told and has received a written statement containing in bold print a statement that once he voluntarily admits himself into such facility, his release may not be voluntary, that the facility may seek to involuntarily commit him and may hold him against his will for thirty days pending a hearing and indefinitely after the hearing if he is committed, and that such statement shall inform the individual that he may request release at any time. Further, the individual shall be advised in writing of his rights upon admission as an inpatient to a mental health facility, including, but not limited to, those rights afforded pursuant to section nine, article five of this chapter. A copy of the statement shall be filed in the individual's permanent records and shall contain the name of the person who made the oral and written disclosure.

(b) No voluntary inpatient shall be subjected to any course of treatment without such patient's written consent. Such consent shall be revocable at any time and shall not be valid for a period exceeding six months.

(c) One person in every mental health facility shall be designated as the voluntary patient coordinator. Such coordinator, or his designee while the coordinator is not on duty, shall be responsible for the disclosures required by this section and for any and all discussions with voluntary patients relative to release.

**§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 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.

(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.

## §27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.

If, in any case, the prosecuting attorney and his assistants in a county in which there is a state mental health hospital are unable to act due to a burdensome number of cases brought under this article, the circuit court shall appoint some competent practicing attorney to act in that case. The court shall certify to the director of the administrative office of the Supreme Court of Appeals the performance of that service when completed and may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code. Compensation shall be paid out of the "Mental Hygiene Fund" provided for in section four of this article.

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

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

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

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

(k) Notwithstanding any provision of this code to the contrary, the Supreme Court of Appeals, mental health facilities, law enforcement, Department of Human Services and the Department of Health Facilties may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement an involuntary commitment process. Further, notwithstanding any provision of this code to the contrary, no alternative transportation provider may be utilized

until standards are developed and implemented that define the role, scope, regulation, and training necessary for an alternative transportation provider as provided in subsection (a) of this section.

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

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

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

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides, or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings 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. 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 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.

(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.

(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.

**§27-5-2a. Process for involuntary hospitalization.**

(a) As used in this section:

(1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

(2) "Authorized staff physician" means a physician, authorized pursuant to the provisions of §30-3-1 *et seq*. or §30-14-1 *et seq*. of this code, who is a bona fide member of the hospital's medical staff.

(3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 *et seq*. of this code, and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals under the supervision of physicians.

(4) "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.

(b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician may order the involuntary hospitalization of a patient or an individual who is present at, or presented at, a hospital emergency department in need of treatment, if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to generate a form for the statement to be signed by the authorized staff physician or other person authorized by the hospital and provided to the individual.

(2) Immediately upon admission, or as soon as practicable thereafter, but in no event later than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff physician or designated employee shall file a mental hygiene petition in which the authorized staff physician certifies that the individual for whom the involuntary hospitalization is sought is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff physician shall also certify the same in the individual's health records. Upon receipt of this filing, the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant to §27-5-2 of this code.

(3) An individual who is involuntarily hospitalized pursuant to this section shall be released from the hospital within 72 hours, unless further detained under the applicable provisions of this article.

(c) During a period of involuntary hospitalization authorized by this section, upon consent of the individual, or in the event of a medical or psychiatric emergency, the individual may receive treatment. The hospital or authorized staff physician shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications.

(d) Each hospital or authorized staff physician which provides services under this section shall be paid for the services at the same rate the hospital or authorized staff physician negotiates with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may file a claim for payment with the West Virginia Legislative Claims Commission in accordance with §14-2-1 *et seq*. of this code.

(e) Authorized staff physicians and hospitals and their employees carrying out duties or rendering professional opinions as provided in this section shall be free from liability for their actions, if the actions are performed in good faith and within the scope of their professional duties and in a manner consistent with the standard of care.

(f) The West Virginia Supreme Court of Appeals is requested to provide each hospital with a list of names and contact information of the mental hygiene commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the West Virginia Supreme Court of Appeals.

(g) An action taken against an individual pursuant to this section may not be construed to be an adjudication of the individual, nor shall any action taken pursuant to this section be construed to satisfy the requirements of §61-7-7(a)(4) of this code.

**§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.**

(a) *Admission to a mental health facility for examination*. — An individual shall be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code. Upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §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, or a physician's assistant practicing in compliance with §30-3E-1 *et seq*. of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or has a substance use disorder and, because of the mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained and treated: *Provided*, That the opinions offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine shall be within his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination*. — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification*. — The certification required in §27-5-3(a) of this code is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification*. — A certification under this section shall include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available and that the risks and benefits were explained as required by §27-5-1(i) of this code.

(e) *Notice requirements*. — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Three-day time limitation for examination and certification at mental health facility or state hospital*. — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than three days, excluding Sundays and holidays, unless, within the three-day period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is not suffering from a physical ailment manifesting behaviors which mimic mental illness but is mentally ill or has a substance use disorder and is likely to injure himself, herself, or others and requires continued commitment and treatment. If the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) *Twenty-day time limitation for institution of final commitment proceedings*. — If, in the opinion of the examining physician, the patient is mentally ill or has a substance use disorder and because of the mental illness or substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within 20 calendar days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within the 20-day period absent good cause, the individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) *Thirty-five day time limitation for conclusion of all proceedings*. — If all proceedings as provided in §27-3-1 *et seq*. and §27-4-1 *et seq*. of this code are not completed within 35 days from the date of filing the Application for Involuntary Custody for Mental Health Examination, the individual shall be immediately released.

**§27-5-3a. Legal effect of commitment after determined not to be based on mental illness or addiction.**

(a) In the event that a person is involuntarily hospitalized, and it is determined after the entry of the order that the behavior which led to the entry of the order of involuntary hospitalization was caused by a physical condition or disorder rather than mental illness or addiction, the hospitalization shall not serve to make him or her a proscribed person under state laws relating to firearms possession or to negatively affect a person's professional licensure, employment, employability, or parental rights. Furthermore, while it is clear that it is the government of the United States and not the government of West Virginia, which has authority under 18 U.S.C. 922(g)(4), to determine whether a person has been "committed to a mental institution" the Legislature notes that "federal courts often look to state law to help determine whether a commitment has occurred." United States v. Vertz, 40 F. App'x 69 (6th Cir. 2002). Under such principles of interpretation, it is the express intent of the legislature to make clear that in circumstances under which there is a judicial determination that a person's involuntary hospitalization was necessitated and ordered as a result of a physical condition or disorder, the legislature does not deem this to be a "commitment," under state law, and the Legislature's determination that such an involuntary hospitalization is not a "commitment" should be viewed by the government of the United States as consistent with the provisions of the amendments to the NICS Improvement Amendments Act of 2007, Public Law 110-180, Tit. 1, Sec 101(c)(1), 121 Stat. 2559, 2562-63 (2008).

(b) Consistent with subsection (a) of this section, whenever a mental hygiene commissioner, magistrate, or circuit judge is made aware that the circumstances addressed in subsection (a) of this section have occurred, the mental hygiene commissioner, magistrate, or circuit judge shall enter an order finding that the person was not suffering from a mental illness or addiction and not committed therefor.

## §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.

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

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

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

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

(3) If the reports of the appointed physician, psychologist, 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) 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.

(2) An individual involuntary committed on the basis of a substance use disorder who completes an outpatient or inpatient substance use rehabilitation treatment program may petition the Administrator of the Supreme Court of Appeals or the Superintendent of the West Virginia State Police to have his or her name removed from the central state mental health registry.

(u) 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.

**§27-5-5. Judicial review.**

Any individual adversely affected by any order of commitment entered by the circuit court under this article may seek review thereof by appeal to the state Supreme Court of Appeals and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally.

This section shall not be construed to in any way limit or precondition the right to seek release of such individual by habeas corpus.

**§27-5-6.**

Repealed.

Acts, 1979 Reg. Sess., Ch. 69.

### §27-5-7. Hospitalization by agency of the United States.

If an individual ordered to be hospitalized pursuant to section four of this article is eligible for hospital care or treatment by any agency of the United States, then, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, the circuit court or mental hygiene commissioner may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such circuit court or mental hygiene commissioner to any hospital or institution established, maintained or operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized shall, with respect to such individual, be vested with the same powers as the chief medical officers of mental health facilities or the director of health within this state with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in the appropriate circuit court or mental hygiene commissioner of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

**§27-5-8.**

Repealed.

Acts, 1979 Reg. Sess., Ch. 69.

**§27-5-9. Rights of patients.**

(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less frequently than once every three months;

(3) Periodic physical examination by a physician no less frequently than once every six months; and

(4) Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

(f) Every patient, upon his or her admission to a hospital and at any other reasonable time,

shall be given a copy of the rights afforded by this section.

(g) The Secretary of the Department of Health Facilities shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to protect the personal rights of patients not inconsistent with this section.

## §27-5-10. Transportation for the mentally ill or persons with substance use disorder.

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq*. and §27-5-1 *et seq*. of this code, the sheriff shall provide immediate transportation to or from the appropriate mental health facility or state hospital as described in §27-5-19(d) of this code: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq*. of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual's hospitalization, for the interested person to arrange for the individual's transportation to the mental health facility or state hospital if the sheriff determines that those means are suitable given the individual's condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) *Use of certified municipal law-enforcement officers*. — Sheriffs and municipal governments may enter into written agreements by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, "certified municipal law-enforcement officer" means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq*. of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff, or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual.

**§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; instituting modified mental hygiene procedures; establishing procedures; providing for forms and reports.**

(a) The Supreme Court of Appeals shall, in consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers, implement throughout the state modified mental hygiene procedures that are consistent with the requirements set forth in this section. The judicial circuits selected for implementing the modified procedures shall be circuits in which the Supreme Court of Appeals determines, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health consumers and service providers, that adequate resources will be available to implement the modified procedures. After July 1, 2012, the Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities in consultation with local mental health consumers and providers may add programs for modified mental hygiene procedures in any judicial circuit that establishes a need for the same.

(b) The Secretaries of the Department of Human Services and Department of Health Facilities, after consultation with the Supreme Court of Appeals and local mental health services consumers and service providers, shall prescribe appropriate forms to implement the modified procedures and shall annually prepare reports on the efficacy of the modified procedures and transmit the report to the Legislature on or before the first day of the 2013 and 2014 regular sessions of the Legislature.

(c) The Supreme Court of Appeals may, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers further modify any specific modified procedures that are implemented pursuant to this section. The modified procedures must be consistent with the requirements of this chapter and this section. If the Secretaries of the Department of Human Services and Department of Health Facilities determines that the use of any modified procedure in one or more judicial circuits is placing an unacceptable additional burden upon state mental health resources, the Supreme Court of Appeals shall, in consultation with the secretary, modify the procedures used in such a fashion as will address the concerns of the secretary, consistent with the requirements of this chapter. The provisions of this section and the modified procedures thereby authorized shall cease to have any force and effect on June 30, 2014, unless extended by an act of the Legislature prior to that date.

(1) The modified procedures shall authorize that a verified petition seeking a treatment compliance order may be filed by any person alleging:

(A) That an individual, on two or more occasions within a twenty-four month period prior to the filing of the petition, as a result of mental illness or addiction or both, has been hospitalized pursuant to the provisions of this chapter; or that the individual has been convicted of one or more crimes of violence against the person within a twenty-four month

period prior to the filing of the petition and the individual's failure to take prescribed medication or follow another prescribed regimen to treat a mental illness or addiction or both was a significant aggravating or contributing factor in the circumstances surrounding the crime;

(B) That the individual's previous hospitalizations due to mental illness or addiction or both or the individual's crime of violence occurred after or as a result of the individual's failure to take medication or other treatment as prescribed by a physician to treat the individual's mental illness or addiction or both; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition's review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the circuit judge or mental hygiene commissioner determines on the basis of the petition that it is necessary to protect the individual or to secure their examination, a detention order may be entered ordering that the individual be taken into custody and examined by a psychiatrist or licensed psychologist. A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to the provisions of section two of this article or a final commitment hearing conducted pursuant to the provisions of section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken into custody and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment compliance order are proved by the evidence adduced at the hearing, which must include expert testimony by a psychiatrist or licensed psychologist, the circuit judge or mental hygiene commissioner may enter a treatment compliance order for a period not to exceed six months upon making the following findings:

(A) That the individual is eighteen years of age or older;

(B) That on two or more occasions within a twenty-four month period prior to the filing of the petition an individual, as a result of mental illness, has been hospitalized pursuant to the provisions of this chapter; or that on at least one occasion within a twenty-four month period prior to the filing of the petition has been convicted of a crime of violence against any person;

(C) That the individual's previous hospitalizations due to mental illness or addiction or both occurred as a result of the individual's failure to take prescribed medication or follow a regimen or course of treatment as prescribed by a physician or psychiatrist to treat the individual's mental illness or addiction; or that the individual has been convicted for crimes of violence against any person and the individual's failure to take medication or follow a prescribed regimen or course of treatment of the individual's mental illness or addiction or both was a significant aggravating or contributing factor in the commission of the crime;

(D) That a psychiatrist or licensed psychologist who has personally examined the individual within the preceding twenty-four months has issued a written opinion that the individual, without the aid of the medication or other prescribed treatment, is likely to cause serious harm to himself or herself or to others;

(E) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or other treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against any person;

(F) That, where necessary, a responsible entity or individual is available to assist and monitor the individual's compliance with an order requiring the individual to take the medication or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed medication or follow other prescribed regimen or course of treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to assess the individual within forty-eight hours of the entry of the treatment compliance order.

(4) The order may require an individual to take medication and treatment as prescribed and if appropriate to attend scheduled medication and treatment-related appointments: *Provided*, That a treatment compliance order shall be subject to termination or modification by a circuit judge or mental hygiene commissioner if a petition is filed seeking termination or modification of the order and it is shown in a hearing on the petition that there has been a material change in the circumstances that led to the entry of the original order that justifies the order’s modification or termination: *Provided, however*, That a treatment compliance order may be extended by a circuit judge or mental hygiene commissioner for additional periods of time not to exceed six months, upon the filing of a petition seeking an extension and after a hearing on the petition or upon the agreement of the individual.

(5) After the entry of a treatment compliance order in accordance with the provisions of subdivisions (3) and (4) of this subsection if a verified petition is filed alleging that an individual has not complied with the terms of a medication and treatment compliance order and if a circuit judge or mental hygiene commissioner determines from the petition and any supporting evidence that there is probable cause to believe that the allegations in the

petition are true, counsel shall be appointed for the individual and a copy of the petition and all supporting evidence shall be furnished to the individual and his or her counsel. If the circuit judge or mental hygiene commissioner considers it necessary to protect the individual or to secure his or her examination, a detention order may be entered to require that the individual be examined by a psychiatrist or psychologist. (A) A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to section two of this article or a final commitment hearing conducted pursuant to section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(B) At a hearing on any petition filed pursuant to the provisions of paragraph (A) of this subdivision, the circuit judge or mental hygiene commissioner shall determine whether the individual has complied with the terms of the medication and treatment compliance order. If the individual has complied with the order, the petition shall be dismissed. If the evidence presented to the circuit judge or mental hygiene commissioner shows that the individual has complied with the terms of the existing order, but the individual's prescribed medication, dosage or course of treatment needs to be modified, then the newly modified medication and treatment prescribed by a psychiatrist who personally examined the individual may be properly incorporated into a modified order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself or herself, herself or others as a result of the individual’s mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment. Any procedures conducted pursuant to this subsection must comply with and satisfy all applicable due process and hearing requirements of sections two and three of this article.

(d) The modified procedures may authorize that upon the certification of a qualified mental health professional, as described in subsection (e) of this section, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious harm to himself or herself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the individual at a mental health facility for immediate examination and treatment.

(e) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or licensed

psychologists, whose qualifications and training have been reviewed and approved by the Supreme Court of Appeals, to issue certifications that authorize and direct the involuntary admission of an individual subject to the provisions of this section on a temporary probable cause basis to a mental health facility for examination and treatment. The authorized psychiatrist or licensed psychologist must conclude and certify based on personal observation prior to certification that the individual is mentally ill and, because of such mental illness or addiction or both, is imminently likely to cause serious harm to himself or herself or to others if not immediately restrained and promotion of the best interests of the individual requires immediate hospitalization. Immediately upon certification, the psychiatrist or licensed psychologist shall provide notice of the certification to a circuit judge, mental hygiene commissioner or designated magistrate in the county where the individual resides.

(f) No involuntary hospitalization pursuant to a temporary probable cause determination issued pursuant to the provisions of this section shall continue in effect for more than forty-eight hours without the filing of a petition for involuntary hospitalization and the occurrence of a probable cause hearing before a circuit judge, mental hygiene commissioner or designated magistrate. If at any time the chief medical officer of the mental health facility to which the individual is admitted determines that the individual is not likely to cause serious harm as a result of mental illness or addiction or both, the chief medical officer shall discharge the individual and immediately forward a copy of the individual’s discharge to the circuit judge, mental hygiene commissioner or designated magistrate.

## §27-6-1. Dissemination of information.

(a) The Bureau for Behavioral Health and Health Facilities shall, on or before August 1, 2015, post on its website suicide prevention awareness information, to include recognizing the warning signs of a suicide crisis. The website shall include information related to suicide prevention training opportunities offered by the bureau or an agency recognized by the bureau as a training provider.

(b) The bureau may assist the public middle and high school administrators in providing suicide prevention information to students in the public middle and high schools.

(c) The bureau shall annually review, for adequacy and completeness, the materials or programs posted on the websites of the institutions of higher education as required by section seven, article one-b, chapter eighteen-b of this code.

**§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

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.

**§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

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

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.

**§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.

(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

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.

(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.

**§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

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,

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.

**§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

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

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

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.

## §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.

## §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.

**§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.

## §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.

## §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.

## §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.

**§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;

(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,

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:

(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.

**§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.

(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.

## §27-7-1. Discharge.

The chief medical officer of the mental health facility shall continually review the case of each individual who is an involuntary patient at the facility pursuant to article five of this chapter and shall as frequently as practicable, in any event at least once every three months, cause a complete psychiatric examination of each patient, and whenever it is determined that the conditions justifying involuntary hospitalization no longer exist or that the individual can no longer benefit from hospitalization, the chief medical officer shall discharge the patient, and forward a copy of the patient's discharge to the clerk of the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

## §27-7-2. Release of patients on convalescent status.

(a) The chief medical officer of a mental health facility may release an involuntary patient on convalescent status (trial visit) when the chief medical officer believes such release is in the best interest of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by a mental health facility, not necessarily the facility in which the patient was previously hospitalized, including a plan of treatment on an outpatient basis to ensure that the patient receives whatever care and treatment he or she might require. At the end of six months on convalescent status, the patient must be discharged from any involuntary commitment order that might have been entered against him or her and he or she cannot be involuntarily returned to any mental health facility unless a new commitment proceeding has been instituted against him or her. When a patient released on convalescent status is discharged from his or her involuntary commitment, it shall be the responsibility of the chief medical officer of the mental health facility of which the individual was a patient prior to being placed on convalescent status to immediately make a report of the discharge of the patient to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

(b) Notwithstanding any provision of this code to the contrary, anytime an individual is involuntarily committed to a mental health facility for inpatient treatment pursuant to the provisions of article five of this chapter due to a mental illness and it is determined by the medical director of the mental health facility that the use of medication by the individual is necessary to avoid the recurrence of the behavior which caused the involuntary hospitalization, initial release from the mental health facility shall be on convalescent status with the requirement that the individual follow a designated treatment plan which may include the taking of medication unless the medical director makes a written finding that release on convalescent status will serve no treatment purpose. If an individual released on convalescent status does not comply with the terms and conditions of convalescent status, any person may file a petition to revoke such convalescent status and said petition shall be subject to the procedures and provisions of this article.

## §27-7-3. Release as unimproved.

The chief medical officer of a mental health facility may release an involuntary patient as unimproved when any person requests the patient's release and is willing and able to take proper care of the patient outside the mental health facility. In the event that a patient is released to a responsible person, a report shall be made by such person at least once every six months to the chief medical officer of the mental health facility. No discharge shall be given to said patient until he has returned to the mental health facility for examination by the chief medical officer and he has determined that said patient is no longer in need of hospitalization.

When a patient is released from a mental health facility as unimproved, it shall be the responsibility of the chief medical officer of the mental health facility of which the individual was a patient prior to being released as unimproved to immediately make a report of the discharge of the patient to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

## §27-7-4. Readmission of patients.

While any involuntary patient is out of the mental health facility under the provisions of section two or three of this article, he or she may be readmitted to the mental health facility on the basis of the original commitment. If there is reason to believe that it is in the best interest of the patient to be hospitalized, the chief medical officer of the mental health facility may issue a sworn notice for the immediate readmission of the patient, which notice shall contain facts concerning the original commitment and the current condition of the patient. This notice shall be sent to the clerk of the circuit court which ordered his or her admission, to the clerk of the circuit court of the county of the patient's residence, to the circuit court or mental hygiene commissioner of the county in which the patient may be found and to the patient at the location where the patient may be found. Upon receipt of such notice, the circuit court or mental hygiene commissioner may, if satisfied that the condition of the patient warrants his or her return, authorize any health officer or police officer to take the patient into custody and transport him or her to the mental health facility where the notice originated.

## §27-7-5. Return of escapees; veterans.

If any person confined in a mental health facility, pursuant to article five or six-a of this chapter, escapes therefrom, the chief medical officer thereof may issue a notice, giving the name and description of the person escaping and requesting the patient's apprehension and return to the mental health facility. The chief medical officer may issue an order directed to the sheriff of the county in which the patient is a resident, commanding him to take into custody and transport such escaped person back to the mental health facility, which order the sheriff may execute in any part of the state. If such person goes to another state, the chief medical officer may notify the director of health and the director may take such action as he may deem proper for the return of such person to the mental health facility.

If any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and any person makes complaint, under oath, to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving such information and stating such facts therein as may be required, or if any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and the chief medical officer of such hospital or institution issues a notice to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving the name and description of such veteran and requesting his apprehension and return to such hospital or institution, the circuit court upon receipt of such complaint or of such notice, may issue an order directed to the sheriff of the county from which the veteran was so committed commanding him to take into custody and transport such veteran back to such hospital or institution, which order the sheriff may execute in any part of the state.

The sheriff or other person taking any person into custody under this section shall be paid such compensation as is provided for like services in other cases.

A person who is taken into custody under this section may be detained, but not incarcerated in a jail or penal institution, for a period not in excess of fourteen hours, pending return to the appropriate mental health facility.

## §27-8-1. Maintenance of patients; patient assets; reimbursement procedures.

The cost of the maintenance of patients admitted to the state hospitals shall be paid out of funds appropriated for the department, but the state hospitals, through the director of health, shall have a right of reimbursement, for all or any part of such maintenance from each patient or from the committee or guardian of the estate of the patient, or the estate of the patient if deceased, or if that be insufficient, then from the patient's husband or wife, or if the patient be an unemancipated child, the father and mother, or any of them. If such a relative so liable does not reside in this state and has no estate or debts due him within the state by means of which the liability can be enforced against him the other relatives shall be liable as provided by this section. In exercising this right of reimbursement, the director of health may, whenever it is deemed just and expedient to do so, exonerate any person chargeable with such maintenance from the payment thereof in whole or in part, if the director finds that such person is unable to pay or that payment would work an undue hardship on him or on those dependent upon him

There shall be no discrimination on the part of the state hospitals as to food, care, protection, treatment or rehabilitation, between patients who pay for their maintenance and those who are unable to do so.

It shall be the responsibility of the director of health as provided by rules promulgated by the board of health to determine the ability of the patient or of his relative to pay for his maintenance: Provided, That any such determination shall be in writing and shall be considered an "order" under the provisions of chapter twenty-nine-a of this code: Provided, however, That any such determination shall be subject to review upon application of any such patient, relative or personal representative in the manner provided in chapter twenty-nine-a of this code.

**§27-8-2.**

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

**§27-8-2a.**

Repealed.

Acts, 1997 Reg. Sess., Ch. 95.

## §27-8-2b. Local mental health programs — Separate account for receiving and expending gifts, bequests, donations, fees and miscellaneous income.

**[Repealed.]**

## §27-8-3. Care of patients in boarding homes.

[Repealed.]

## §27-9-1. License; regulations.

No behavioral health center shall provide behavioral health services unless a license is first obtained from the Secretary of the Office of Health Facility Licensure and Certification. The director of the Office of Health Facility Licensure and Certification shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*, in regard to the operation of behavioral health centers. The director, or any person authorized by the director, has authority to investigate and inspect any licensed behavioral health center. The director may impose a civil money penalty, suspend, or revoke the license of any center for good cause after reasonable notice, including due process rights as provided in legislative rule.

## §27-9-2. Forensic group homes.

The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to amend the Behavioral Health Centers Licensure Rule, W.Va. C.S.R. §64-11-1 *et seq*. (hereinafter the "rule"), to implement the requirements of this section after consultation with appropriate stakeholders.

(1) The Inspector General shall amend the rule to include that the forensic group home shall not be located within one mile of a residential area, a public or private licensed day care center, or a public or private k-12 school learning pods and micro-schools.

(2) The Inspector General may grant a variance to an existing forensic group home referenced in subdivision (1) of this section only if the facility demonstrates that it has adequate patient population controls and that it otherwise meets the requirements set forth in the amended rule.

**§27-10-1.**

Repealed.

Acts, 1965 Reg. Sess., Ch. 98.

**§27-10-2.**

Repealed.

Acts, 1965 Reg. Sess., Ch. 98.

**§27-10-3.**

Repealed.

Acts, 1965 Reg. Sess., Ch. 98.

**§27-10-4.**

Repealed.

Acts, 1965 Reg. Sess., Ch. 98.

**§27-10-5.**

Repealed.

Acts, 1965 Reg. Sess., Ch. 98.

**§27-11-1.**

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

**§27-11-2.**

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

**§27-11-3.**

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

**§27-11-4.**

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

**§27-11-5.**

Repealed.

Acts, 1994 Reg. Sess., Ch. 64.

## §27-12-1. Malicious making of medical certificate or complaint as to mental condition.

Any physician who signs a certificate respecting the mental condition of any person without having made the examination as provided by this chapter, or makes any statement in any such certificate maliciously for the purpose of having such person declared mentally ill, intellectually disabled or an inebriate, and any person who maliciously makes application to any circuit court or mental hygiene commission for the purpose of having another person declared mentally ill, intellectually disabled, or an inebriate, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding $500, or imprisoned not exceeding one year, or both fined and imprisoned at the discretion of the court.

## §27-12-2. Trespass on grounds of state hospitals.

The enclosed premises and the lands adjoining the same belonging to any one of the state hospitals are hereby declared private grounds; and if any person be found thereon without authority, permission or good excuse, he shall be deemed a trespasser, and, on conviction thereof, shall be fined not exceeding $25; and if it shall appear that he was thereon for any unlawful or immoral purpose, in addition to being fined, he shall be imprisoned not exceeding sixty days.

## §27-12-3. Miscellaneous offenses.

If any person shall entice any patient from any state hospital who has been legally committed thereto, or attempt to do so; or shall counsel, cause, influence or assist, or attempt to do so, any such patient to escape or attempt to escape therefrom, or harbor or conceal any such patient who has escaped therefrom; or shall, without the permission of the superintendent of any such hospital, give or sell to any such patient, whether on the premises thereof or elsewhere, any money, firearms, drugs, cigarettes, tobacco, or any other article whatsoever; or shall receive from the hands of any such patient anything of value, whether belonging to the state or not; or shall cause or influence, or attempt to cause or influence, any such patient to violate any rule or to rebel against the government or discipline of such hospital; or shall tease, pester, annoy, or molest any such patient, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than $100, or imprisoned not exceeding six months, or, in the discretion of the court, both fined and imprisoned. If any person shall aid or abet the commission of any of the foregoing offenses or aid or abet an attempt to commit the same, he shall be guilty of the same as if he were the principal, and be punished as above provided. In the trial of an indictment for committing any of the above-named offenses, the accused may be found guilty of an attempt to commit the same, or of aiding or abetting another in committing or in an attempt to commit the same. If any person, not her husband, shall have sexual intercourse with any female patient who is a patient of any of said state hospitals, he shall be guilty of a felony, and, on conviction thereof, shall be confined in the penitentiary not less than ten nor more than fifteen years; and if such female patient be under sixteen years of age, he shall be imprisoned not less than ten nor more than twenty years.

## §27-13-1. Laws repealed.

All other laws or parts of law inconsistent with the provisions of this chapter are hereby repealed to the extent of any such inconsistency.

## §27-13-2. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or its application, and to this end the provisions of this chapter are declared to be severable.

**§27-14-1. Governor to execute compact.**

The Governor of this state is hereby authorized and directed to execute a compact on behalf of the State of West Virginia with any state or states of the United States legally joining therein in form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted

requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authority to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or

supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of an incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific

agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: Provided, however, That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for

which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the Governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by article VII (b) as to costs or from any supplementary agreement made pursuant to article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

## §27-14-2. Compact administrator.

The director of health shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

## §27-14-3. Supplementary agreements.

The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to articles VII and XI of the compact. In the event that any such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

## §27-14-4. Financial arrangements.

The compact administrator, subject to the approval of the State Auditor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

## §27-14-5. Transmittal of copies of article.

Duly authenticated copies of this article shall, upon its approval, be transmitted by the Secretary of State to the Governor of each state, the Attorney General and the Secretary of State of the United States, and the council of state governments.

## §27-15-1. Enactment of compact.

The interstate compact on the mentally disordered offender, hereinafter called "the compact," is hereby ratified, enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

Interstate Compact on the Mentally

Disordered Offender

Article I. Purpose and Policy.

(a) The party states, desiring by common action to improve their programs for the care and treatment of mentally disordered offenders, declare that it is the policy of each of the party states to:

(1) Strengthen their own programs and laws for the care and treatment of the mentally disordered offender.

(2) Encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare and auxiliary services and facilities and, to every extent practicable, to do so in geographic locations convenient for providing a therapeutic environment.

(3) Authorize cooperation among the party states in providing services and facilities, when it is found that cooperative programs can be more effective and efficient than programs separately pursued.

(4) Place each mentally disordered offender in a legal status which will facilitate his care, treatment and rehabilitation.

(5) Authorize research and training of personnel on a cooperative basis, in order to improve the quality or quantity of personnel available for the proper staffing of programs, services and facilities for mentally disordered offenders.

(6) Care for and treat mentally disordered offenders under conditions which will improve the public safety.

(b) Within the policies set forth in this article, it is the purpose of this compact to:

(1) Authorize negotiation, entry into, and operations under contractual arrangements among any two or more of the party states for the establishment and maintenance of cooperative programs in any one or more of the fields for which specific provision is made in the several articles of this compact.

(2) Set the limits within which such contracts may operate, so as to assure protection of the

civil rights of mentally disordered offenders and protection of the rights and obligations of the public and of the party states.

(3) Facilitate the proper disposition of criminal charges pending against mentally disordered offenders, so that programs for their care, treatment and rehabilitation may be carried on efficiently.

Article II. Definitions.

As used in this compact:

(a) "Mentally disordered offender" means a person who has been determined, by adjudication or other method legally sufficient for the purpose in the party state where the determination is made, to be mentally ill and:

(1) Is under sentence for the commission of crime; or

(2) Who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, said person would be subject to incarceration in a penal or correctional facility.

(b) "Patient" means a mentally disordered offender who is cared for, treated, or transferred pursuant to this compact.

(c) "Sending state" means a state party to this compact in which the mentally disordered offender was convicted; or the state in which he would be subject to trial on or conviction of an offense, except for his mental condition; or, within the meaning of Article V of this compact, the state whose authorities have filed a petition in connection with an untried indictment, information or complaint.

(d) "Receiving state" means a state party to this compact to which a mentally disordered offender is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article V of this compact, the state in which a petition in connection with an untried indictment, information or complaint has been filed.

Article III. Contracts.

(a) Each party state may make one or more contracts with any one or more of the other party states for the care and treatment of mentally disordered offenders on behalf of a sending state in facilities situated in receiving states, or for the participation of such mentally disordered offenders in programs of aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for patient care,

treatment and extraordinary services, if any.

(3) Determination of responsibility for ordering or permitting the furnishing of extraordinary services, if any.

(4) Participation in compensated activities, if any, available to patients; the disposition or crediting of any payment received by patients on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(5) Delivery and retaking of mentally disordered offenders.

(6) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any facility for mentally disordered offenders or addition to such facility by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the facility to be kept available for use by patients of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) A party state may contract with any one or more other party states for the training of professional or other personnel whose services, by reason of such training, would become available for or be improved in respect of ability to participate in the care and treatment of mentally disordered offenders. Such contracts may provide for such training to take place at any facility being operated or to be operated for the care and treatment of mentally disordered offenders; at any institution or facility having resources suitable for the offering of such training; or may provide for the separate establishment of training facilities: Provided, That no such separate establishment shall be undertaken, unless it is determined that an appropriate existing facility or institution cannot be found at which to conduct the contemplated program. Any contract entered into pursuant to this paragraph shall provide for:

(1) The administration, financing and precise nature of the program.

(2) The status and employment or other rights of the trainees.

(3) All other necessary matters.

(d) No contract entered into pursuant to this compact shall be inconsistent with any provision thereof.

Article IV. Procedures and Rights.

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that custody, care and treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional release for aftercare in another party state is necessary in order to provide adequate care and treatment or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for clinical reasons, said officials may direct that the custody, care and treatment be within a facility or in a program of aftercare within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any facility in which it has a contractual right to secure care or treatment of patients for the purpose of inspection and visiting such of its patients as may be in the facility or served by it.

(c) Except as otherwise provided in Article VI, patients in a facility pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed for transfer to a facility within the sending state, for transfer to another facility in which the sending state may have a contractual or other right to secure care and treatment of patients, for release on aftercare or other conditional status, for discharge, or for any other purpose permitted by the laws of the sending state: Provided, That the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the patients of that sending state in facilities pursuant to this compact including a psychiatric and behavioral record of each patient and certify said record to the official designated by the sending state, in order that each patient may have the benefit of his or her record in determining and altering the disposition of said patient in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All patients who may be in a facility or receiving aftercare from a facility pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for, treated and supervised in accordance with the standards pertaining to the program administered at the facility. The fact of presence in a receiving state shall not deprive any patient of any legal rights which said patient would have had if in custody or receiving care, treatment or supervision as appropriate in the sending state.

(f) Any hearing or hearings to which a patient present in a receiving state pursuant to this compact may be entitled by the laws of the sending state shall be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted

by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this paragraph, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this paragraph shall be borne by the sending state.

(g) Any patient confined pursuant to this compact shall be released within the territory of the sending state unless the patient, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any patient pursuant to the terms of this compact shall be subject to civil process and shall have any and all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if in any appropriate facility of the sending state or being supervised therefrom, as the case may be, located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any patient shall not be deprived of or restricted in his exercise of any power in respect of any patient pursuant to the terms of this compact.

Article V. Disposition of Charges.

(a) Whenever the authorities responsible for the care and treatment of a mentally disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments, informations or complaints in another party state present obstacles to the proper care and treatment of a mentally disordered offender or to the planning or execution of a suitable program for him such authorities may petition the appropriate court in the state where the untried indictment, information or complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a receiving state, the appropriate authorities of the sending state, upon recommendation of the appropriate authorities in the receiving state, shall, if they concur in the recommendation, file the petition contemplated by this paragraph.

(b) The court shall hold a hearing on the petition within thirty days of the filing thereof. Such hearing shall be only to determine whether the proper safeguarding and advancement of the public interest; the condition of the mentally disordered offender; and the prospects for

more satisfactory care, treatment and rehabilitation of him warrant disposition of the untried indictment, information or complaint prior to termination of the defendant's status as a mentally disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the untried indictment, information or complaint is pending, the petitioning authorities, and such other persons as the court may determine shall be entitled to be heard.

(c) Upon any hearing pursuant to this article, the court may order such adjournments or continuances as may be necessary for the examination or observation of the mentally disordered offender or for the securing of necessary evidence. In granting or denying any such adjournment or continuance, the court shall give primary consideration to the purposes of this compact, and more particularly to the need for expeditious determination of the legal and mental status of a mentally disordered offender so that his care, treatment and discharge to the community only under conditions which will be consonant with the public safety may be implemented.

(d) The presence of a mentally disordered offender within a state wherein a petition is pending or being heard pursuant to this article, or his presence within any other state through which he is being transported in connection with such petition or hearing, shall be only for the purposes of this compact, and no court, agency or person shall have or obtain jurisdiction over such mentally disordered offender for any other purpose by reason of his presence pursuant to this article. The mentally disordered offender shall, at all times, remain in the custody of the sending state. Any acts of officers, employees, or agencies of the receiving state in providing or facilitating detention, housing or transportation for the mentally disordered offender shall be only as agents for the sending state.

(e) Promptly upon conclusion of the hearing the court shall dismiss the untried indictment, information or complaint, if it finds that the purposes enumerated in paragraph (b) of this article would be served thereby. Otherwise, the court shall make such order with respect to the petition and the untried indictment, information or complaint as may be appropriate in the circumstances and consistent with the status of the defendant as a mentally disordered offender in the custody of and subject to the jurisdiction of the sending state.

(f) No fact or other matter established or adjudicated at any hearing pursuant to this article, or in connection therewith, shall be deemed established or adjudicated, nor shall the same be admissible in evidence, in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to this article unless:

(1) The defendant or his duly empowered legal representative requested or expressly acquiesced in the making of the petition, and was afforded an opportunity to participate in person in the hearing; or

(2) The defendant himself offers or consents to the introduction of the determination or adjudication at such subsequent proceedings.

Article VI. Acts Not Reviewable in Receiving

State; Return.

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove a patient from the receiving state there is pending against the patient within such state any criminal charge or if the patient is suspected of having committed within such state a criminal offense, the patient shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant to this compact through any and all states party to this compact without interference.

(b) A patient who escapes while receiving care and treatment or who violates provisions of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact shall be deemed an escapee from the sending state and from the state in which the facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VII. Federal Aid.

Any state party to this compact may accept federal aid for use in connection with any facility or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any patient in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision: Provided, That if such program or activity is not part of the customary regimen of the facility or program the express consent of the appropriate official of the sending state shall be required therefor.

Article VIII. Entry into Force.

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state upon similar action by such state.

Article IX. Withdrawal and Termination.

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice

of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such patients as it may have in other party states pursuant to the provisions of this compact.

Article X. Other Arrangements Unaffected.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the custody, care, treatment, rehabilitation or aftercare of patients nor to repeal any other laws of a party state authorizing the making of cooperative arrangements.

Article XI. Construction and Severability.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

## §27-15-2. Who may enter into contracts under compact.

The Governor, the state commissioner of public institutions, the state Board of Education, the state board of vocational education, the division of vocational rehabilitation, the state commission on higher education, the West Virginia board of regents, the state department of welfare, the department of public safety, the state department of health and the West Virginia board of probation and parole may negotiate and enter into contracts on behalf of this state pursuant to Article III of the compact and may perform such contracts: Provided, That no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor.

**§27-15-3. Effective date.**

The effective date of this article shall be July 1, 1970.

**§27-16-1.**

Repealed.

Acts, 2013 Reg. Sess., Ch. 28.

**§27-16-2.**

Repealed.

Acts, 2013 Reg. Sess., Ch. 28.

**§27-16-3.**

Repealed.

Acts, 2013 Reg. Sess., Ch. 28.

**§27-16-4.**

Repealed.

Acts, 2013 Reg. Sess., Ch. 28.

**§27-16-5.**

Repealed.

Acts, 2013 Reg. Sess., Ch. 28.

## §27-17-1. Definitions.

(a) "Developmental disability" means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

(b) "Behavioral disability" means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency; and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

(c) "Group residential facility" means a facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than 12 individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Office of Health Facility Licensure and Certification; and (4) complies with the state Fire Commission for residential facilities.

(d) "Group residential home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in this article.

## §27-17-2. Permitted use of group residential facilities; restrictions.

Both a group residential facility and a group residential home shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts. No county commission, governing board of a municipality or planning commission shall require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance for location of such facility in any zone or district.

## §27-17-3. License from Office of Health Facility Licensure and Certification; regulations; and penalties.

(a) No group residential facility shall be established or operated unless a license is obtained from the Office of Health Facility Licensure and Certification. The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.,* including the operation of the group residential facility; a statement of the rights of patients in group residential facilities to ensure the adequate care and supervision of patients; and shall have the authority to investigate and inspect a facility, and may impose a civil money penalty, suspend or revoke the license for good cause after notice, hearing, and other due process rights as provided by legislative rule.

(b) A group residential home is not required to obtain a license from the Inspector General.

**§27-17-4. Exclusion by private agreement void.**

Any restriction, reservation, condition, exception or covenant in any subdivision plan, deed, or other instrument of or pertaining to the transfer, sale, lease or use of property which would permit residential use of property but prohibit the use of such property as a group residential facility or group residential home shall, to the extent of such prohibition, be void as against the public policy of this state and shall be given no legal or equitable force or effect.