WEST VIRGINIA CODE CHAPTER 28 ARTICLE 5

WV Legislature

§28-5-1.

Repealed.

Acts, 1998 Reg. Sess., Ch. 100.

WV Legislature

§28-5-2.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-3.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-3a.

Repealed.

Acts, 1963 Reg. Sess., Ch. 170.

WV Legislature

§28-5-4.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-5.

Repealed.

Acts, 1999 Reg. Sess., Ch. 61.

WV Legislature

§28-5-6.

Repealed.

Acts, 2000 Reg. Sess., Ch. 61.

WV Legislature

§28-5-7

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§28-5-8.

Repealed.

Acts, 2000 Reg. Sess., Ch. 56.

WV Legislature

§28-5-8a

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§28-5-9.

Repealed.

Acts, 1967 Reg. Sess., Ch. 79.

WV Legislature

§28-5-10.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-11.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-12.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-13.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-14.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-15.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-16.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-17.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-18.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-19.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-20.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-21.

Repealed.

Acts, 2008 Reg. Sess., Ch. 33.

WV Legislature

§28-5-22.

Repealed.

Acts, 1998 Reg. Sess., Ch. 100.

WV Legislature

§28-5-23

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§28-5-24

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§28-5-25.

Repealed.

Acts, 1986 Reg. Sess., Ch. 54.

WV Legislature

§28-5-26.

Repealed.

Acts, 2005 Reg. Sess., Ch. 51.

WV Legislature

§28-5-27

Repealed

Acts, 2018 Reg. Sess., Ch. 107.

WV Legislature

§28-5-27a.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-28.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-29.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

WV Legislature

§28-5-30.

Repealed.

Acts, 1939 Reg. Sess., Ch. 24 and 1984 Reg. Sess., Ch. 46.

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§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to section four, article five, chapter twenty-seven of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled or addicted, as those terms are defined in article one, chapter twenty-seven of this code, and in need of treatment, training or other services, the facts relating to such illness, shall be presented to the chief administrative officer of the facility. Such facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of such facts, the chief administrative officer shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training or other services are required which cannot reasonably be provided at the correctional facility, the chief administrative officer shall file within twenty days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. Such application for transfer shall include a statement of the nature of the treatment which the person's condition warrants and the facility to which transfer is sought.

Within ten days of receipt of the application from the chief administrative officer, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that such application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within fifteen days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within fifteen days of the

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receipt of notice, informing the court or mental hygiene commissioner as to whether the needed treatment or other services can be provided within that facility. If said superintendent objects to receiving the convicted person for treatment or services, the reasons for such objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed thirty days from the date of the return opposing such transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional facility, at least ten days' written notice, by certified mail, return receipt requested, of the purpose, time and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross- examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from such expert as a medical witness on the person's behalf. The cost of providing such medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within thirty days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not (1) the individual is mentally ill, intellectually disabled or addicted; (2) the individual because of mental illness, mental retardation or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide such treatment or training with such security as the court finds appropriate; and, if all such findings are in the affirmative, the circuit court may order the transfer of such person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

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§28-5-32.

Repealed.

Acts, 2002 Reg. Sess., Ch. 61.

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§28-5-33. Appointment of committee of convict; bond.

When a person is confined in the penitentiary of this or any other state, or of the United States, under sentence for one year or more, or to suffer death, the estate of such convict in this state, if he have any, both real and personal, shall, on the motion of any party interested, be committed by the county commission of the county in which his estate or some part thereof may be, to a person selected by such county commission, who, after giving bond before the county commission in such penalty as it may prescribe, shall have charge and management of such estate until the convict is discharged from confinement or dies; and upon such motion the county commission shall appoint said committee, although the convict has no estate, either real or personal, located in this state. In the event said convict has no such estate, or his estate does not exceed $1,000, reference to a fiduciary commissioner shall not be necessary. All appointments of committees heretofore made and decrees or judgments heretofore awarded by any court of record in this state against or on behalf of any convict shall not be considered invalid for the reason that the convict had no such estate at the time of the appointment of such committee.

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§28-5-34. When estate committed to sheriff as committee.

If the person so appointed refuse the trust, or fail to give bond as aforesaid, the county court, on like motion, shall, or such court may in the first instance, commit the estate to the sheriff of the county, who shall be the committee, and he and the sureties on his official bond shall be bound for the faithful performance of his trust.

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§28-5-35. Appraisement, inventories and accounts by and compensation of committee.

The committee shall have the estate appraised, return inventories, render accounts of his trust, and be made to account therefor, shall be entitled to compensation for his services, and may forfeit his right thereto, all in the same manner, to the same extent, and within the same time, as if he were an administrator or guardian.

WV Legislature

§28-5-36. Suits by or against convict or committee.

Such committee may sue and be sued in respect to debts due to or from such convict, and respecting all other causes of action for which the convict might sue or be sued had no such incarceration taken place, and shall have the privilege of an administrator as to the right of retaining his own debt. No action or suit shall be instituted by or against such convict after he is incarcerated, and all actions or suits to which he is a party at the time of his incarceration shall abate, and continue so until revived by or against the committee, whose duty it shall be to prosecute or defend, as the case may be. Any judgment recovered against such committee shall be a lien upon the lands of the convict to the same extent as if recovered against the convict before the conviction. But the plaintiff in any action, suit or proceeding against the committee of a convict shall not be examined as a witness in his own behalf in such action, suit or proceeding in respect to any transaction or communication had personally with the convict, unless such committee shall be examined as a witness in his own behalf in respect to such transaction or communication, or such convict personally testifies, or his testimony in respect to such transaction or communication is given in evidence.

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§28-5-37. Maintenance of convict's wife and family.

The committee of any convict who was, at the time of incarceration, a resident of this state shall allow (subject to the claims of creditors) a sufficient maintenance out of the convict's estate for his wife and family, if any; the wife to be entitled, as long as he is confined, to the profits of such portion of his estate as she would have if he had died intestate.

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§28-5-38. Mortgage, lease or sale of real estate of convicts.

If the personal estate of such convict be insufficient for the discharge of his debts, or if such estate, or the residue thereof after payment of the debts, and the rents and profits of the real estate, be insufficient for the maintenance of the wife and family of such convict, when it is proper to make provision for such maintenance, his committee may proceed, as provided in article one, chapter thirty-seven, of this code, to obtain authority to mortgage, lease or sell so much of the real estate of such convict as may be necessary for the purposes aforesaid, or any of them, setting forth in the bill or petition the particulars and the amount of the estate, real and personal, the application which may have been made of any personal estate, and an account of the debts and demands existing against the estate.

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§28-5-39. Disposition of estate on discharge or death of convict.

Every committee of a convict shall deliver such estate as he may be liable for at that time to the convict on his discharge, or to his heirs, devisees or personal representatives, on his death.

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§28-5-40. How estate of nonresident convict paid over to foreign committee.

The committee or other similar fiduciary appointed in any other state for any convict who was a nonresident of this state at the time of his incarceration, and who at such time was possessed of estate within this state, may, in the manner and under the same conditions as are prescribed for the removal of the estate of a nonresident infant in article eleven, chapter forty-four, of this code, have the committee of such convict in this state authorized to pay over such estate to such committee or other similar fiduciary of such other state.

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