

HB 4377

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4377**

BY DELEGATES ROHRBACH, D. JEFFRIES, PACK, REED,  
WORRELL, BATES, ROWAN, G. WARD, MILLER, CRISS AND  
PINSON

[Passed March 12, 2022; in effect ninety days from passage.]

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

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1 AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto three new  
2 sections, designated §27-5-1b and §27-5-3a; to amend and reenact §27-5-2, §27-5-3,  
3 §27-5-4 and §27-5-10 of said code and to amend and reenact §61-7A-2, §61-7A-4 and  
4 §61-7A-5 of said code, all relating generally to involuntary commitment; directing  
5 participation by certain groups and entities in a study of the feasibility of developing  
6 alternatives to law enforcement transportation of patients; requiring an audit process for  
7 mental hygiene services; clarifying conditions for which involuntary commitment is  
8 inappropriate; authorizing video conferencing for hearings and evaluations; establishing  
9 time limits for completion tasks necessary to the commitment process; requiring  
10 reimbursement for transportation costs to the appropriate law enforcement agency;  
11 establishing state policy that a person committed for what is determined to be a physical  
12 condition is not considered to have been committed for a mental illness or addiction and  
13 not a basis for firearms disqualification, professional licensure, or employment purposes;  
14 requiring the entry of an order when a mistaken commitment is discovered; clarifying the  
15 distinction between hospitalizations for evaluation from those for treatment; and defining  
16 terms.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

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

1 (a) *Duties of the Department of Health and Human Resources.* —The Secretary shall, in  
2 collaboration with designees of the Supreme Court of Appeals, the Sheriff's Association, the  
3 Prosecuting Attorney's Association, the Public Defender Services, the Behavioral Health  
4 Providers Association, Disability Rights of West Virginia, and a designee of the Dangerousness  
5 Assessment Advisory Board, undertake an evaluation of the utilization of alternative  
6 transportation providers and the development of standards that define the role, scope, regulation,  
7 and training necessary for the safe and effective utilization of alternative transportation providers

8 and shall further identify potential financial sources for the payment of alternative transportation  
9 providers. Recommendations regarding such evaluation shall be submitted to the President of  
10 the Senate and the Speaker of the House of Delegates on or before July 31, 2022. The Legislature  
11 requests the Supreme Court of Appeals cooperate with the listed parties and undertake this  
12 evaluation.

13 (b) *Civil Involuntary Commitment Audits.* – The secretary shall establish a process to  
14 conduct retrospective quarterly audits of applications and licensed examiner forms prepared by  
15 certifiers for the involuntary civil commitment of persons as provided in §27-5-1 *et seq.* of this  
16 code. The process shall determine whether the licensed examiner forms prepared by certifiers  
17 are clinically justified and consistent with the requirements of this code and, if not, develop  
18 corrective actions to redress identified issues. The Legislature requests the Supreme Court of  
19 Appeals participate in this process with the secretary. The process and the findings thereof shall  
20 be confidential, not subject to subpoena, and not subject to the provisions of §6-9A-1 *et seq.* and  
21 §29B-1-1 *et seq.* of this code.

22 (i) *Duties of the Mental Health Center for Purposes of Evaluation for Commitment.* – Each  
23 mental health center shall make available as necessary a qualified and competent licensed  
24 person to conduct prompt evaluations of persons for commitment in accordance with §27-5-1 *et*  
25 *seq.* of this code. Evaluations shall be conducted in person, unless an in-person evaluation would  
26 create a substantial delay to the resolution of the matter, and then the evaluation may be  
27 conducted by videoconference. Each mental health center that performs these evaluations shall  
28 exercise reasonable diligence in performing the evaluations and communicating with the state  
29 hospital to provide all reasonable and necessary information to facilitate a prompt and orderly  
30 admission to the state hospital of any person who is or is likely to be involuntarily committed to  
31 such hospital. Each mental health center that performs these evaluations shall explain the  
32 involuntary commitment process to the applicant and the person proposed to be committed and

33 further identify appropriate alternative forms of potential treatment, loss of liberty if committed,  
34 and the likely risks and benefits of commitment.

35 (k) Notwithstanding any provision of this code to the contrary, the Supreme Court of  
36 Appeals, mental health facilities, law enforcement, and the Department of Health and Human  
37 Resources may participate in pilot projects in Cabell, Berkeley, and Ohio Counties to implement  
38 an involuntary commitment process. Further, notwithstanding any provision of this code to the  
39 contrary, no alternative transportation provider may be utilized until standards are developed and  
40 implemented that define the role, scope, regulation, and training necessary for an alternative  
41 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.**

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

12 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be  
13 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional  
14 facility, then only the chief administrative officer of the facility holding the individual may file the  
15 application, and the application must include the additional statement that the correctional facility

16     itself cannot reasonably provide treatment and other services necessary to treat the individual's  
17     mental illness or substance use.

18             (c) Application for involuntary custody for examination may be made to the circuit court,  
19     magistrate court, or a mental hygiene commissioner of the county in which the individual resides,  
20     or of the county in which he or she may be found. A magistrate before whom an application or  
21     matter is pending may, upon the availability of a mental hygiene commissioner or circuit court  
22     judge for immediate presentation of an application or pending matter, transfer the pending matter  
23     or application to the mental hygiene commissioner or circuit court judge for further proceedings  
24     unless otherwise ordered by the chief judge of the judicial circuit.

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

27             (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for  
28     the individual named in the application to be detained and taken into custody as provided in §27-  
29     5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in  
30     §27-5-2 of this code. An examination of the individual to determine whether the individual meets  
31     involuntary hospitalization criteria shall be conducted in person unless an in person examination  
32     would create a substantial delay in the resolution of the matter in which case the examination may  
33     be by video conference, and shall be performed by a physician, psychologist, a licensed  
34     professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed  
35     independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an  
36     advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et*  
37     *seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code,  
38     or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided,*  
39     That a licensed professional counselor, a licensed independent clinical social worker, a physician  
40     assistant, or an advanced nurse practitioner with psychiatric certification may only perform the  
41     examination if he or she has previously been authorized by an order of the circuit court to do so,

42 the order having found that the licensed professional counselor, the licensed independent clinical  
43 social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has  
44 particularized expertise in the areas of mental health and mental hygiene or substance use  
45 disorder sufficient to make the determinations required by the provisions of this section. The  
46 examination shall be provided or arranged by a community mental health center designated by  
47 the Secretary of the Department of Health and Human Resources to serve the county in which  
48 the action takes place. The order is to specify that the evaluation be held within a reasonable  
49 period of time not to exceed two hours and shall provide for the appointment of counsel for the  
50 individual: *Provided, however,* That the time requirements set forth in this subsection only apply  
51 to persons who are not in need of medical care for a physical condition or disease for which the  
52 need for treatment precludes the ability to comply with the time requirements. During periods of  
53 holding and detention authorized by this subsection, upon consent of the individual or if there is  
54 a medical or psychiatric emergency, the individual may receive treatment. The medical provider  
55 shall exercise due diligence in determining the individual's existing medical needs and provide  
56 treatment the individual requires, including previously prescribed medications. As used in this  
57 section, "psychiatric emergency" means an incident during which an individual loses control and  
58 behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or  
59 others. Where a physician, psychologist, licensed professional counselor, licensed independent  
60 clinical social worker, physician assistant, or advanced nurse practitioner with psychiatric  
61 certification has, within the preceding 72 hours, performed the examination required by this  
62 subsection the community mental health center may waive the duty to perform or arrange another  
63 examination upon approving the previously performed examination. Notwithstanding this  
64 subsection, §27-5-4(r) of this code applies regarding payment by the county commission for  
65 examinations at hearings. If the examination reveals that the individual is not mentally ill or has  
66 no substance use disorder, or is determined to be mentally ill or has a substance use disorder but  
67 not likely to cause harm to himself, herself, or others, the individual shall be immediately released

68 without the need for a probable cause hearing and the examiner is not civilly liable for the  
69 rendering of the opinion absent a finding of professional negligence. The examiner shall  
70 immediately, but no later than 60 minutes after completion of the examination, provide the mental  
71 hygiene commissioner, circuit court, or magistrate before whom the matter is pending, and the  
72 state hospital to which the individual may be involuntarily hospitalized, the results of the  
73 examination on the form provided for this purpose by the Supreme Court of Appeals for entry of  
74 an order reflecting the lack of probable cause.

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

84 The individual shall be present at the hearing and has the right to present evidence,  
85 confront all witnesses and other evidence against him or her, and examine testimony offered,  
86 including testimony by representatives of the community mental health center serving the area.  
87 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The  
88 individual has the right to remain silent and to be proceeded against in accordance with the Rules  
89 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the  
90 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge  
91 shall find and enter an order stating whether or not it is likely that deterioration will occur without  
92 clinically necessary treatment, or there is probable cause to believe that the individual, as a result  
93 of mental illness or substance use disorder, is likely to cause serious harm to himself or herself

94 or to others. Any such order entered shall be provided to the state hospital to which the individual  
95 may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

96 (g) Probable cause hearings may occur in the county where a person is hospitalized. The  
97 judicial hearing officer may: use videoconferencing and telephonic technology; permit persons  
98 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is  
99 accomplished; and specify other alternative or modified procedures that are consistent with the  
100 purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The  
101 alternative or modified procedures shall fully and effectively guarantee to the person who is the  
102 subject of the involuntary commitment proceeding and other interested parties due process of the  
103 law and access to the least restrictive available treatment needed to prevent serious harm to self  
104 or others.

105 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable  
106 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing  
107 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result  
108 of mental illness or substance use disorder is likely to cause serious harm to himself, herself, or  
109 others and because of mental illness or a substance use disorder requires treatment, the  
110 magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the  
111 question of whether the individual's circumstances make him or her amenable to outpatient  
112 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.  
113 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court  
114 judge shall find and enter an order stating whether or not it is likely that deterioration will occur  
115 without clinically necessary treatment, or there is probable cause to believe that the individual, as  
116 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or  
117 herself or others. The agreement is to be in writing and approved by the individual, his or her  
118 counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the

119 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate  
120 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be  
121 released to outpatient treatment upon the terms and conditions of the voluntary treatment  
122 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary  
123 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes  
124 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental  
125 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or  
126 refused to comply with the terms and conditions of the voluntary treatment agreement and  
127 whether the individual as a result of mental illness or substance use disorder remains likely to  
128 cause serious harm to himself, herself, or others, the entry of an order requiring admission under  
129 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the  
130 provisions of this article regarding release pursuant to a voluntary treatment agreement or  
131 convalescent status may be construed as creating a right to receive outpatient mental health  
132 services or treatment, or as obligating any person or agency to provide outpatient services or  
133 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to  
134 a mental health facility for hospitalization do not apply to release pursuant to the terms of a  
135 voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment  
136 agreement may not be for a period of more than six months if the individual has not been found  
137 to be involuntarily committed during the previous two years and for a period of no more than two  
138 years if the individual has been involuntarily committed during the preceding two years. If in any  
139 proceeding held pursuant to this article the individual objects to the issuance or conditions and  
140 terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or  
141 mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary  
142 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment  
143 agreement is ordered, the individual subject to the order may, upon request during the period the

144 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where  
145 the individual may seek to have the order canceled or modified. Nothing in this section affects the  
146 appellate and habeas corpus rights of any individual subject to any commitment order.

147         The commitment of any individual as provided in this article shall be in the least restrictive  
148 setting and in an outpatient community-based treatment program to the extent resources and  
149 programs are available, unless the clear and convincing evidence of the certifying professional  
150 under subsection (e) of this section, who is acting in a manner consistent with the standard of  
151 care establishes that the commitment or treatment of that individual requires an inpatient hospital  
152 placement. Outpatient treatment will be based upon a plan jointly prepared by the department  
153 and the comprehensive community mental health center or licensed behavioral health provider.

154         (i) If the certifying professional determines that an individual requires involuntary  
155 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to  
156 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will  
157 cause significant medical complications, the person certifying the individual shall recommend that  
158 the individual be closely monitored for possible medical complications. If the magistrate, mental  
159 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or  
160 she shall include a recommendation that the individual be closely monitored in the order of  
161 commitment.

162         (j) The Supreme Court of Appeals and the Secretary of the Department of Health and  
163 Human Resources shall specifically develop and propose a statewide system for evaluation and  
164 adjudication of mental hygiene petitions which shall include payment schedules and  
165 recommendations regarding funding sources. Additionally, the Secretary of the Department of  
166 Health and Human Resources shall also immediately seek reciprocal agreements with officials in  
167 contiguous states to develop interstate/intergovernmental agreements to provide efficient and

168 efficacious services to out-of-state residents found in West Virginia and who are in need of mental  
169 hygiene services.

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

1           (a) *Admission to a mental health facility for examination.* —An individual shall be admitted  
2 to a mental health facility for examination and treatment upon entry of an order finding probable  
3 cause as provided in §27-5-2 of this code. Upon certification by a physician, psychologist,  
4 licensed professional counselor, licensed independent clinical social worker practicing in  
5 compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner  
6 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a  
7 physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with advanced  
8 duties in psychiatric medicine that he or she has examined the individual and is of the opinion that  
9 the individual is mentally ill or has a substance use disorder and, because of the mental illness or  
10 substance use disorder, is likely to cause serious harm to himself, herself, or to others if not  
11 immediately restrained and treated: *Provided,* That the opinions offered by an independent clinical  
12 social worker, an advanced nurse practitioner with psychiatric certification, or a physician  
13 assistant with advanced duties in psychiatric medicine shall be within his or her particular areas  
14 of expertise, as recognized by the order of the authorizing court.

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

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

23           (d) *Findings and conclusions required for certification.* — A certification under this section  
24 shall include findings and conclusions of the mental examination, the date, time, and place of the  
25 examination, and the facts upon which the conclusion that involuntary commitment is necessary  
26 is based, including facts that less restrictive interventions and placements were considered but  
27 are not appropriate and available and that the risks and benefits were explained as required by  
28 §27-5-1(i) of this code.

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

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

49 committed, the staff physician shall release and discharge the individual as appropriate as soon  
50 as practicable.

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

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

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

1 (a) In the event that a person is involuntarily hospitalized, and it is determined after the  
2 entry of the order that the behavior which led to the entry of the order of involuntary hospitalization  
3 was caused by a physical condition or disorder rather than mental illness or addiction, the  
4 hospitalization shall not serve to make him or her a proscribed person under state laws relating  
5 to firearms possession or to negatively affect a person's professional licensure, employment,  
6 employability, or parental rights. Furthermore, while it is clear that it is the government of the  
7 United States and not the government of West Virginia, which has authority under 18 U.S.C.  
8 922(g)(4), to determine whether a person has been "committed to a mental institution" the

9 Legislature notes that “federal courts often look to state law to help determine whether a  
10 commitment has occurred.” *United States v. Vertz*, 40 F. App’x 69 (6<sup>th</sup> Cir. 2002). Under such  
11 principles of interpretation, it is the express intent of the legislature to make clear that in  
12 circumstances under which there is a judicial determination that a person’s involuntary  
13 hospitalization was necessitated and ordered as a result of a physical condition or disorder, the  
14 legislature does not deem this to be a “commitment,” under state law, and the Legislature’s  
15 determination that such an involuntary hospitalization is not a “commitment” should be viewed by  
16 the government of the United States as consistent with the provisions of the amendments to the  
17 NICS Improvement Amendments Act of 2007, Public Law 110-180, Tit. 1, Sec 101(c)(1), 121 Stat.  
18 2559, 2562-63 (2008).

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

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

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

11 accordance with §27-6A-1 et al. of this code shall be held by the circuit court of the county that  
12 has jurisdiction over the person for the criminal charges and such circuit court shall have  
13 jurisdiction over the involuntary final civil commitment of such person.

14 (b) *How final commitment proceedings are commenced.* — Final commitment proceedings  
15 for an individual may be commenced by the filing of a written application under oath by an adult  
16 person having personal knowledge of the facts of the case. The certificate or affidavit is filed with  
17 the clerk of the circuit court or mental hygiene commissioner of the county where the individual is  
18 a resident or where he or she may be found, or the county of a mental health facility if he or she  
19 is hospitalized in a mental health facility or state hospital located in a county other than where he  
20 or she resides or may be found. Notwithstanding anything any provision of this code to the  
21 contrary, all hearings for the involuntary final civil commitment of a person who is committed in  
22 accordance with §27-6A-1 et seq. of this code shall be commenced only upon the filing of a  
23 Certificate of the Licensed Certifier at the mental health facility where the person is currently  
24 committed.

25 (c) *Oath; contents of application; who may inspect application; when application cannot*  
26 *be filed.* —

27 (1) The person making the application shall do so under oath.

28 (2) The application shall contain statements by the applicant that the individual is likely to  
29 cause serious harm to self or others due to what the applicant believes are symptoms of mental  
30 illness or substance use disorder. Except for persons sought to be committed as provided in §27-  
31 6A-1 et seq. of this code, the applicant shall state in detail the recent overt acts upon which the  
32 clinical opinion is based.

33 (3) The written application, certificate, affidavit, and any warrants issued pursuant thereto,  
34 including any related documents filed with a circuit court, mental hygiene commissioner, or  
35 magistrate for the involuntary hospitalization of an individual are not open to inspection by any  
36 person other than the individual, unless authorized by the individual or his or her legal

37 representative or by order of the circuit court. The records may not be published unless authorized  
38 by the individual or his or her legal representative. Disclosure of these records may, however, be  
39 made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to  
40 the Federal National Instant Criminal Background Check System established pursuant to section  
41 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state  
42 mental health registry, in accordance with §61-7A-1 *et seq.* of this code, and the sheriff of a county  
43 performing background investigations pursuant to §61-7-1 *et seq.* of this code. Disclosure may  
44 also be made to the prosecuting attorney and reviewing court in an action brought by the individual  
45 pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

46 (4) Applications shall be denied for individuals as provided in §27-5-2(a) of this code.

47 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place*  
48 *of certificate.* —

49 (1) The applicant shall file with his or her application the certificate of a physician or a  
50 psychologist stating that in his or her opinion the individual is mentally ill or has a substance use  
51 disorder and that because of the mental illness or substance use disorder, the individual is likely  
52 to cause serious harm to self or others and requires continued commitment and treatment, and  
53 should be hospitalized. Except for persons sought to be committed as provided in §27-6A-1 *et*  
54 *seq.* of this code, the certificate shall state in detail the recent overt acts on which the conclusion  
55 is based, including facts that less restrictive interventions and placements were considered but  
56 are not appropriate and available. The applicant shall further file with his or her application the  
57 names and last known addresses of the persons identified in §27-5-4(e)(3) of this code.

58 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts  
59 and the individual has refused to submit to examination by a physician or a psychologist.

60 (e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the  
61 mental hygiene commissioner or circuit court shall review the application, and if it is determined

62 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix  
63 a date for and have the clerk of the circuit court give notice of the hearing:

64 (1) To the individual;

65 (2) To the applicant or applicants;

66 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does  
67 not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the  
68 next of kin is not the applicant;

69 (4) To the mental health authorities serving the area;

70 (5) To the circuit court in the county of the individual's residence if the hearing is to be held  
71 in a county other than that of the individual's residence; and

72 (6) To the prosecuting attorney of the county in which the hearing is to be held.

73 (f) The notice shall be served on the individual by personal service of process not less  
74 than eight days prior to the date of the hearing and shall specify:

75 (1) The nature of the charges against the individual;

76 (2) The facts underlying and supporting the application of involuntary commitment;

77 (3) The right to have counsel appointed;

78 (4) The right to consult with and be represented by counsel at every stage of the  
79 proceedings; and

80 (5) The time and place of the hearing.

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

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

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

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

106 (3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician  
107 assistant do not confirm that the individual is mentally ill or has a substance use disorder and  
108 might be harmful to self or others, then the proceedings for involuntary hospitalization shall be  
109 dismissed.

110 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*  
111 *required. —*

112 (1) The individual shall be present at the final commitment hearing, and he or she, the  
113 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify  
114 and to present and cross-examine witnesses.

115 (2) If the individual has not retained counsel, the court or mental hygiene commissioner,  
116 at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual  
117 of the name, address, and telephone number of his or her appointed counsel.

118 (3) The individual has the right to have an examination by an independent expert of his or  
119 her choice and to present testimony from the expert as a medical witness on his or her behalf.  
120 The cost of the independent expert is paid by the individual unless he or she is indigent.

121 (4) The individual may not be compelled to be a witness against himself or herself.

122 (i) *Duties of counsel representing individual; payment of counsel representing indigent. —*

123 (1) Counsel representing an individual shall conduct a timely interview, make investigation,  
124 and secure appropriate witnesses, be present at the hearing, and protect the interests of the  
125 individual.

126 (2) Counsel representing an individual is entitled to copies of all medical reports,  
127 psychiatric or otherwise.

128 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to  
129 exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et*  
130 *seq.* of this code.

131 (j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. —*

132 (1) The circuit court or mental hygiene commissioner shall hear evidence from all  
133 interested parties in chamber, including testimony from representatives of the community mental  
134 health facility.

135 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material  
136 evidence which may be offered.

137 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence  
138 promulgated by the Supreme Court of Appeals except that statements made to health care  
139 professionals appointed under subsection (g) of this section by the individual may be admitted  
140 into evidence by the health care professional's testimony, notwithstanding failure to inform the  
141 individual that this statement may be used against him or her. A health care professional testifying  
142 shall bring all records pertaining to the individual to the hearing. The medical evidence obtained  
143 pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged  
144 information for purposes of a hearing pursuant to this section.

145 (4) All final commitment proceedings shall be reported or recorded, whether before the  
146 circuit court or mental hygiene commissioner, and a transcript made available to the individual,  
147 his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further  
148 proceedings. In any case where an indigent person intends to pursue further proceedings, the  
149 circuit court shall, by order entered of record, authorize, and direct the court reporter to furnish a  
150 transcript of the hearings.

151 (k) *Requisite findings by the court.* —

152 (1) Upon completion of the final commitment hearing and the evidence presented in the  
153 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following  
154 based upon clear and convincing evidence:

155 (A) Whether the individual is mentally ill or has a substance use disorder;

156 (B) Whether, as a result of illness or substance use disorder, the individual is likely to  
157 cause serious harm to self or others if allowed to remain at liberty and requires continued  
158 commitment and treatment;

159 (C) Whether the individual is a resident of the county in which the hearing is held or  
160 currently is a patient at a mental health facility in the county; and

161 (D) Whether there is a less restrictive alternative than commitment appropriate for the  
162 individual that is appropriate and available. The burden of proof of the lack of a less restrictive

163 alternative than commitment is on the person or persons seeking the commitment of the  
164 individual: *Provided*, That for any commitment to a state hospital as defined by §27-1-6 of this  
165 code, a specific finding shall be made that the commitment of, or treatment for, the individual  
166 requires inpatient hospital placement and that no suitable outpatient community-based treatment  
167 program exists that is appropriate and available in the individual's area.

168 (2) The findings of fact shall be incorporated into the order entered by the circuit court and  
169 must be based upon clear, cogent, and convincing proof.

170 (l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*  
171 *court; expiration of order. —*

172 (1) Upon the requisite findings, the circuit court may order the individual to a mental health  
173 facility or state hospital for a period not to exceed 90 days except as otherwise provided in this  
174 subdivision. During that period and solely for individuals who are committed under §27-6A-1 *et*  
175 *seq.* of this code, the chief medical officer of the mental health facility or state hospital shall  
176 conduct a clinical assessment of the individual at least every 30 days to determine if the individual  
177 requires continued placement and treatment at the mental health facility or state hospital and  
178 whether the individual is suitable to receive any necessary treatment at an outpatient community-  
179 based treatment program. If at any time the chief medical officer, acting in good faith and in a  
180 manner consistent with the standard of care, determines that: (i) The individual is suitable for  
181 receiving outpatient community-based treatment; (ii) necessary outpatient community-based  
182 treatment is available in the individual's area as evidenced by a discharge and treatment plan  
183 jointly developed by the department and the comprehensive community mental health center or  
184 licensed behavioral health provider; and (iii) the individual's clinical presentation no longer  
185 requires inpatient commitment, the chief medical officer shall provide written notice to the court of  
186 record and prosecuting attorney as provided in subdivision (2) of this section that the individual is  
187 suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice  
188 unless the court of record stays the discharge of the individual. In the event the court stays the

189 discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the  
190 individual shall be thereafter discharged unless the court finds by clear and convincing evidence  
191 that the individual is a significant and present danger to self or others, and that continued  
192 placement at the mental health facility or state hospital is required.

193         If the chief medical officer determines that the individual requires commitment and  
194 treatment at the mental health facility or state hospital at any time for a period longer than 90  
195 days, then the individual shall remain at the mental health facility or state hospital until the chief  
196 medical officer of the mental health facility or state hospital determines that the individual's clinical  
197 presentation no longer requires further commitment and treatment. The chief medical officer shall  
198 provide notice to the court, the prosecuting attorney, the individual, and the individual's guardian  
199 or attorney, or both, if applicable, that the individual requires commitment and treatment for a  
200 period in excess of 90 days and, in the notice, the chief medical officer shall describe how the  
201 individual continues to meet commitment criteria and the need for ongoing commitment and  
202 treatment. The court, prosecuting attorney, the individual, or the individual's guardian or attorney,  
203 or both, if applicable, may request any information from the chief medical officer that the court or  
204 prosecuting attorney considers appropriate to justify the need for the individual's ongoing  
205 commitment and treatment. The court may hold any hearing that it considers appropriate.

206         (2) Notice to the court of record and prosecuting attorney shall be provided by personal  
207 service or certified mail, return receipt requested. The chief medical officer shall make the  
208 following findings:

209         (A) Whether the individual has a mental illness or substance use disorder that does not  
210 require inpatient treatment, and the mental illness or serious emotional disturbance is in  
211 substantial remission;

212         (B) Whether the individual has the independent ability to manage safely the risk factors  
213 resulting from his or her mental illness or substance use disorder and is not likely to deteriorate

214 to the point that the individual will pose a likelihood of serious harm to self or others without  
215 continued commitment and treatment;

216 (C) Whether the individual is likely to participate in outpatient treatment with a legal  
217 obligation to do so;

218 (D) Whether the individual is not likely to participate in outpatient treatment unless legally  
219 obligated to do so;

220 (E) Whether the individual is capable of surviving safely in freedom by himself or herself  
221 or with the help of willing and responsible family members, guardian, or friends; and

222 (F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to  
223 ongoing commitment.

224 (3) The individual may not be detained in a mental health facility or state hospital for a  
225 period in excess of 10 days after a final commitment hearing pursuant to this section unless an  
226 order has been entered and received by the facility.

227 (4) An individual committed pursuant to §27-6A-3 of this code may be committed for the  
228 period he or she is determined by the court to remain an imminent danger to self or others.

229 (5) If the commitment of the individual as provided under subdivision (1) of this subsection  
230 exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall  
231 be held by the mental hygiene commissioner or by the circuit court of the county as provided in  
232 subsection (a) of this section.

233 (m) *Dismissal of proceedings.* —If the individual is discharged as provided in subsection  
234 (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.

235 (n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in  
236 which an order directing hospitalization is entered, if not in the county of the individual's residence,  
237 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the  
238 circuit court of the county of which the individual is a resident.

239           (o) *Consideration of transcript by circuit court of county of individual's residence; order of*  
240 *hospitalization; execution of order. —*

241           (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization  
242 should be ordered but finds that the individual is not a resident of the county in which the hearing  
243 is held and the individual is not currently a resident of a mental health facility or state hospital, a  
244 transcript of the evidence adduced at the final commitment hearing of the individual, certified by  
245 the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the  
246 county of which the individual is a resident. The clerk shall immediately present the transcript to  
247 the circuit court or mental hygiene commissioner of the county.

248           (2) If the circuit court or mental hygiene commissioner of the county of the residence of  
249 the individual is satisfied from the evidence contained in the transcript that the individual should  
250 be hospitalized as determined by the standard set forth in subdivision one of this subsection, the  
251 circuit court shall order the appropriate hospitalization as though the individual had been brought  
252 before the circuit court or its mental hygiene commissioner in the first instance.

253           (3) This order shall be transmitted immediately to the clerk of the circuit court of the county  
254 in which the hearing was held who shall execute the order promptly.

255           (p) *Order of custody to responsible person. —* In lieu of ordering the individual to a mental  
256 health facility or state hospital, the circuit court may order the individual delivered to some  
257 responsible person who will agree to take care of the individual and the circuit court may take  
258 from the responsible person a bond in an amount to be determined by the circuit court with  
259 condition to restrain and take proper care of the individual until further order of the court.

260           (q) *Individual not a resident of this state. —* If the individual is found to be mentally ill or to  
261 have a substance use disorder by the circuit court or mental hygiene commissioner is a resident  
262 of another state, this information shall be immediately given to the Secretary of the Department  
263 of Health and Human Resources, or to his or her designee, who shall make appropriate

264 arrangements for transfer of the individual to the state of his or her residence conditioned on the  
265 agreement of the individual, except as qualified by the interstate compact on mental health.

266 (r) *Report to the Secretary of the Department of Health and Human Resources.* —

267 (1) The chief medical officer of a mental health facility or state hospital admitting a patient  
268 pursuant to proceedings under this section shall immediately make a report of the admission to  
269 the Secretary of the Department of Health and Human Resources or to his or her designee.

270 (2) Whenever an individual is released from custody due to the failure of an employee of  
271 a mental health facility or state hospital to comply with the time requirements of this article, the  
272 chief medical officer of the mental health or state hospital facility shall immediately, after the  
273 release of the individual, make a report to the Secretary of the Department of Health and Human  
274 Resources or to his or her designee of the failure to comply.

275 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*  
276 *paid by the county commission.* —

277 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid  
278 and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within  
279 the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

280 (2) The county commission shall pay out of the county treasury all other expenses incurred  
281 in the hearings conducted under the provisions of this article whether or not hospitalization is  
282 ordered, including any fee allowed by the circuit court by order entered of record for any physician,  
283 psychologist, and witness called by the indigent individual. The copying and mailing costs  
284 associated with providing notice of the final commitment hearing and issuance of the final order  
285 shall be paid by the county where the involuntary commitment petition was initially filed.

286 (3) Effective July 1, 2022, the Department of Health and Human Resources shall  
287 reimburse the Sheriff, the Department of Corrections and Rehabilitation, or other law enforcement  
288 agency for the actual costs related to transporting a patient who has been involuntary committed.

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

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

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

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

25 (d) In the event an individual requires transportation to a state hospital as defined by §27-  
26 1-6 of this code, the sheriff, or certified municipal law-enforcement officer shall contact the state  
27 hospital in advance of the transportation to determine if the state hospital has suitable bed  
28 capacity to place the individual.

**§61-7A-2. Definitions.**

1 As used in this article and as the terms are deemed to mean in 18 U. S. C. § 922(g) and  
2 §61-7-7 of this code as each exists as of January 31, 2008:

3 (1) "A person adjudicated as a mental defective" means a person who has been  
4 determined by a duly authorized court, tribunal, board or other entity to be mentally ill to the point  
5 where he or she has been found to be incompetent to stand trial due to mental illness or insanity,  
6 has been found not guilty in a criminal proceeding by reason of mental illness or insanity or has  
7 been determined to be unable to handle his or her own affairs due to mental illness or insanity. A  
8 child under fourteen years of age is not considered "a person adjudicated as a mental defective"  
9 for purposes of this article.

10 (2) "Committed to a mental institution" means to have been involuntarily committed for  
11 treatment pursuant to the provisions of §27-5-4(l) of this code. Children under 14 years of age  
12 are not considered "committed to a mental institution" for purposes of this article. "Committed to  
13 a mental institution" does not mean voluntary admission for mental health treatment.

14 (3) "Mental institution" means any facility or part of a facility used for the treatment of  
15 persons committed for treatment of mental illness.

**§61-7A-4. Confidentiality; limits on use of registry information.**

1 (a) Notwithstanding any provision of this code to the contrary, the Superintendent of the  
2 State Police, the Secretary of the Department of Health and Human Resources, the circuit clerks,  
3 and the Administrator of the Supreme Court of Appeals may provide notice to the central state  
4 mental health registry and the National Instant Criminal Background Check System established  
5 pursuant to Section 103(d) of the Brady Handgun Violence Protection Act, 18 U. S. C. §922, that

6 a person: (i) Has been involuntarily committed to a mental institution pursuant to §27-5-4(I); (ii)  
7 has been adjudicated as a mental defective ; or (iii) has regained the ability to possess a firearm  
8 by order of a circuit court in a proceeding under section five of this article.

9 (b) The information contained in the central state mental health registry is to be used solely  
10 for the purpose of records checks related to firearms purchases and for eligibility for a state license  
11 or permit to possess or carry a concealed firearm.

12 (c) Whenever a person's name and other identifying information has been added to the  
13 central state mental health registry, a review of the state concealed handgun registry shall be  
14 undertaken and if such review reveals that the person possesses a current concealed handgun  
15 license, the sheriff of the county issuing the concealed handgun license shall be informed of the  
16 person's change in status.

**§61-7A-5. Petition to regain right to possess firearms.**

1 (a) Any person who is prohibited from possessing a firearm pursuant to the provisions of  
2 §61-7-7 or by provisions of federal law by virtue solely of having previously been adjudicated to  
3 be mentally defective or to having a prior involuntary commitment to a mental institution pursuant  
4 to §27-5-4(I) of this code may petition the circuit court of the county of his or her residence to  
5 regain the ability to lawfully possess a firearm.

6 (b) Petitioners prohibited from possession of firearms due to a mental health disability,  
7 must include in the petition for relief from disability:

8 (1) A listing of facilities and location addresses of all prior mental health treatment received  
9 by petitioner;

10 (2) An authorization, signed by the petitioner, for release of mental health records to the  
11 prosecuting attorney of the county; and

12 (3) A verified certificate of mental health examination by a licensed psychologist or  
13 psychiatrist occurring within thirty days prior to filing of the petition which supports that the  
14 petitioner is competent and not likely to act in a manner dangerous to public safety.

15 (c) The court may only consider petitions for relief due to mental health adjudications or  
16 commitments that occurred in this state, and only give the relief specifically requested in the  
17 petition.

18 (d) In determining whether to grant the petition, the court shall receive and consider at a  
19 minimum evidence:

20 (1) Concerning the circumstances regarding the firearms disabilities imposed by 18 U.S.C.  
21 §922(g)(4);

22 (2) The petitioner's record which must include the petitioner's mental health and criminal  
23 history records; and

24 (3) The petitioner's reputation developed through character witness statements,  
25 testimony, or other character evidence.

26 (e) If the court finds by clear and convincing evidence that the person is competent and  
27 capable of exercising the responsibilities concomitant with the possession of a firearm, will not be  
28 likely to act in a manner dangerous to public safety, and that granting the relief will not be contrary  
29 to public interest, the court may enter an order allowing the petitioner to possess a firearm. If the  
30 order denies petitioner's ability to possess a firearm, the petitioner may appeal the denial, which  
31 appeal is to include the record of the circuit court rendering the decision.

32 (f) All proceedings for relief to regain firearm or ammunition rights shall be reported or  
33 recorded and maintained for review.

34 (g) The prosecuting attorney or one of his or her assistants shall represent the state in all  
35 proceedings for relief to regain firearm rights and provide the court the petitioner's criminal history  
36 records.

37 (h) The written petition, certificate, mental health or substance abuse treatment records  
38 and any papers or documents containing substance abuse or mental health information of the  
39 petitioner, filed with the circuit court, are confidential. These documents may not be open to  
40 inspection by any person other than the prosecuting attorney or one of his or her assistants only

41 for purposes of representing the state in and during these proceedings and by the petitioner and  
42 his or her counsel. No other person may inspect these documents, except upon authorization of  
43 the petitioner or his or her legal representative or by order of the court, and these records may  
44 not be published except upon the authorization of the petitioner or his or her legal representative.

45 (i) The circuit clerk of each county shall provide the Superintendent of the West Virginia  
46 State Police, or his or her designee, and the Administrator of the West Virginia Supreme Court of  
47 Appeals, or his or her designee, with a certified copy of any order entered pursuant to the  
48 provisions of this section which removes a petitioner's prohibition to possess firearms. If the order  
49 restores the petitioner's ability to possess a firearm, petitioner's name shall be promptly removed  
50 from the central state mental health registry and the superintendent or administrator shall forthwith  
51 inform the Federal Bureau of Investigation, the United States Attorney General, or other federal  
52 entity operating the National Instant Criminal Background Check System of the court action.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Dean Jeffers*  
.....  
Chairman, House Committee

*Mark Raymond*  
.....  
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

*Steve Hays*  
.....  
Clerk of the House of Delegates

*Joe Linn*  
.....  
Clerk of the Senate

*Les Hankew*  
.....  
Speaker of the House of Delegates

*C. P. ...*  
.....  
President of the Senate

2022 MAR 30 P 5:05  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

FILED

The within *is approved* this the *30<sup>th</sup>*  
day of *March* .....  
.....  
..... 2022

*James ...*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 25 2022

Time 11:38am