

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 3166**

By Delegates Summers, Tully and Heckert

[Introduced January 31, 2023; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]



1 A BILL to amend and reenact §27-5-2a of the Code of West Virginia, 1931, as amended, relating to  
2 a hospital holding a patient for a certain period of time.

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

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

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

1 (a) As used in this section:

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

3 (2) "Authorized staff physician" means a physician, authorized pursuant to the provisions  
4 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  
5 medical staff.

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

10 (4) "Psychiatric emergency" means an incident during which an individual loses control  
11 and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or  
12 others.

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

22 generate a form for the statement to be signed by the authorized staff physician or other person  
23 authorized by the hospital and provided to the individual.

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

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

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

41 (d) Each hospital or authorized staff physician which provides services under this section  
42 shall be paid for the services at the same rate the hospital or authorized staff physician negotiates  
43 with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may  
44 file a claim for payment with the West Virginia Legislative Claims Commission in accordance with  
45 §14-2-1 *et seq.* of this code.

46 (e) Authorized staff physicians and hospitals and their employees carrying out duties or  
47 rendering professional opinions as provided in this section shall be free from liability for their

48 actions, if the actions are performed in good faith and within the scope of their professional duties  
49 and in a manner consistent with the standard of care.

50 (f) The West Virginia Supreme Court of Appeals is requested by ~~no later than July 1, 2020,~~  
51 to provide each hospital with a list of names and contact information of the mental hygiene  
52 commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county  
53 where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update  
54 this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner,  
55 county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall  
56 be filed to the West Virginia Supreme Court of Appeals.

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

NOTE: The purpose of this bill is to permit a hospital to hold a patient experiencing a psychiatric emergency for up to 72 hours.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.