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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

Revised Committee Substitute for
SENATE BILL NO. 193

(By Senator Hunter, et al)

PASSED April 14, 2001

In Effect 90 days from Passage

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REVISED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 193

(SENATORS HUNTER, FANNING, MINARD, MITCHELL,
OLIVERIO, REDD, FACEMYER, MCKENZIE, KESSLER
AND UNGER, *original sponsors*)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections eleven and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four and ten, article five of said chapter; and to amend and reenact section two, article seven of said chapter, all relating to mental hygiene generally; updating definitions; creating an outpatient commitment alternative upon a voluntary treatment agreement; required findings for commitment; directing convalescent status for certain patients; training for new commissioner; authorizing the hiring of municipal officers for transportation; creating exception to requirement of a forthwith hearing with conditions therefor; authorizing

multicounty cooperative agreements to allow prompt hearings during nonjudicial hours or on nonjudicial days; authorizing limited period of evaluation and treatment prior to final hearings with consent of the patient or in the event of a psychiatric or medical emergency; duties of prosecuting attorneys, mental hygiene commissioners, circuit judges and magistrates in mental hygiene proceedings; allowing, under certain circumstances, for hearings to be held in a jurisdiction other than that in which the person is found; authorizing prosecutors, mental hygiene commissioners and sheriffs to function outside their jurisdictions upon agreement; allowing introduction of reliable hearsay at probable cause proceedings; allowing for transfer of out-of-state residents where probable cause is found; allowing counties to seek reimbursement of expenses for out-of-county residents found in the committing county; and requiring only authorized personnel to transport patients involuntarily committed.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, three, four and ten, article five of said chapter be amended and reenacted; and that section two, article seven of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

- 1 (a) As used in this chapter, "addiction" means a
- 2 maladaptive pattern of substance use leading to clinically
- 3 significant impairment or distress as manifested by one or
- 4 more of the following occurring within thirty days prior to
- 5 the filing of the petition:
 - 6 (1) Recurrent substance use resulting in a failure to
 - 7 fulfill major role obligations at work, school or home,
 - 8 including, but not limited to, repeated absences or poor
 - 9 work performance related to substance use; substance-

10 related absences, suspensions or expulsions from school; or
11 neglect of children or household;

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

16 (3) Recurrent substance-related legal problems; or

17 (4) Continued use despite knowledge or having persis-
18 tent or recurrent social or interpersonal problems caused
19 or exacerbated by the effects of the substance.

20 (b) As used in this section, “substance” shall mean
21 alcohol, controlled substances as defined in sections two
22 hundred four, two hundred six, two hundred eight and two
23 hundred ten, article two, chapter sixty-a of this code or
24 anything consumed for its psychoactive effect whether or
25 not designed for human consumption.

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

1 (a) “Likely to cause serious harm” means an individual
2 is exhibiting behaviors consistent with a medically recog-
3 nized mental disorder or addiction, excluding, however,
4 disorders that are manifested only through antisocial or
5 illegal behavior and as a result of the mental disorder or
6 addiction:

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

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

11 (3) The individual, by action or inaction, has presented
12 a danger to others in his or her care; or

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

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

23 (b) In making the “likely to cause serious harm” deter-
24 mination, judicial, medical, psychological and other
25 evaluators and decisionmakers should utilize all available
26 information, including psychosocial, medical, hospitaliza-
27 tion and psychiatric information and including the cir-
28 cumstances of any previous commitments or convalescent
29 or conditional releases that are relevant to a current
30 situation, in addition to the individual’s current overt
31 behavior. The rules of evidence shall be followed in
32 making the “likely to cause serious harm” determination
33 except that hearsay evidence not admissible thereunder
34 may be admitted, except where precluded by statute, if it
35 is of a type commonly relied upon by reasonably prudent
36 persons in the conduct of their affairs.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§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.

1 (a) *Appointment of mental hygiene commissioners.* – The
2 chief judge in each judicial circuit of this state shall
3 appoint a competent attorney and may, if necessary,
4 appoint additional attorneys to serve as mental hygiene
5 commissioners to preside over involuntary hospitalization
6 hearings. Mental hygiene commissioners shall be persons
7 of good moral character and of standing in their profession
8 and they shall, before assuming the duties of such commis-

9 sioner, take the oath required of other special commission-
10 ers as provided in article one, chapter six of this code.

11 All persons newly appointed to serve as mental hygiene
12 commissioners shall attend and complete an orientation
13 course, within one year of their appointment, consisting of
14 at least three days of training provided annually by the
15 supreme court of appeals. In addition, existing mental
16 hygiene commissioners and any magistrates designated by
17 the chief judge of a judicial circuit to hold probable cause
18 and emergency detention hearings involving involuntary
19 hospitalization shall attend and complete a course pro-
20 vided by the supreme court of appeals, which course shall
21 include, but not be limited to, instruction on the manifes-
22 tations of mental illness and addiction. Persons attending
23 such courses outside the county of their residence shall be
24 reimbursed out of the budget of the supreme court –
25 general judicial for reasonable expenses incurred. The
26 supreme court shall establish rules for such courses,
27 including rules providing for the reimbursement of
28 reasonable expenses as authorized herein.

29 (b) *Duties of mental hygiene commissioners.* –

30 (1) Mental hygiene commissioners may sign and issue
31 summonses for the attendance, at any hearing held pursu-
32 ant to section four, article five of this chapter, of the
33 individual sought to be committed; may sign and issue
34 subpoenas for witnesses, including subpoenas duces tecum;
35 may place any witness under oath; and may make findings
36 of fact on evidence and may make conclusions of law, but
37 such findings and conclusions shall not be binding on the
38 circuit court. The circuit court, by order entered of record,
39 shall allow the commissioner a reasonable fee for services
40 rendered in connection with each case. Mental hygiene
41 commissioners shall discharge their duties and hold their
42 offices at the pleasure of the chief judge of the judicial
43 circuit in which he or she is appointed and may be re-
44 moved at any time by such chief judge. It shall be the duty
45 of a mental hygiene commissioner to conduct orderly

46 inquiries into the mental health of the individual sought to
47 be committed concerning the advisability of committing
48 the individual to a mental health facility. The mental
49 hygiene commissioner shall safeguard, at all times, the
50 rights and interests of the individual as well as the inter-
51 ests of the state. The mental hygiene commissioner shall
52 make a written report of his or her findings to the circuit
53 court. In any proceedings before any court of record as set
54 forth in this article, the court of record shall appoint an
55 interpreter for any individual who is deaf or cannot speak
56 or who speaks a foreign language and who may be subject
57 to involuntary commitment to a mental health facility.

58 (2) A mental hygiene commissioner appointed by the
59 circuit court of one county or multiple county circuit may
60 serve in such capacity in a jurisdiction other than that of
61 his or her original appointment if such be agreed upon by
62 the terms of a cooperative agreement between the circuit
63 courts and county commissions of contiguous counties
64 entered into to provide prompt resolution of mental
65 hygiene matters during noncourt hours or on nonjudicial
66 days.

67 (c) *Duties of prosecuting attorney.* – It shall be the duty
68 of the prosecuting attorney or one of his or her assistants
69 to represent the applicants in all proceedings filed pursu-
70 ant to the provisions of this article. The services of a
71 prosecuting attorney or an assistant prosecuting attorney
72 at a proceeding held under the provisions of this article,
73 during noncourt hours or on a nonjudicial day, may be
74 waived by the circuit court, mental hygiene commissioner
75 or magistrate holding such proceeding with the concu-
76 rrence of the applicant if a finding is made by the circuit
77 court, mental hygiene commissioner or magistrate that the
78 applicant's interests are not jeopardized by such waiver.
79 Notwithstanding any provision of this code to the con-
80 trary, prosecuting attorneys may enter into cooperative
81 agreements with prosecuting attorneys of contiguous
82 counties, with the concurrence of their respective circuit

83 courts and county commissions, whereby hearings held
84 during noncourt hours or nonjudicial days may be held in
85 a county other than that where the person is found or
86 prosecuting attorneys or assistant prosecuting attorneys of
87 a county which is party to such a cooperative agreement
88 may serve or a prosecutor in a hearing held in the county
89 where the person is found in order to facilitate prompt
90 resolution of the matter.

91 (d) *Duties of sheriff.* – Upon written order of the circuit
92 court or of a mental hygiene commissioner in the county
93 where the individual formally accused of being mentally
94 ill or addicted is a resident or is found, the sheriff of that
95 county shall take said individual into custody and trans-
96 port him or her to and from the place of hearing and the
97 mental health facility. The sheriff shall also maintain
98 custody and control of the accused individual during the
99 period of time in which the individual is waiting for the
100 involuntary commitment hearing to be convened and while
101 such hearing is being conducted: *Provided*, That an
102 individual who is a resident of a state other than West
103 Virginia shall, upon a finding of probable cause, be
104 transferred to his or her state of residence for treatment
105 pursuant to the provisions of subsection (p), section four of
106 this article: *Provided, however*, That where an individual
107 is a resident of West Virginia but not a resident of the
108 county in which he or she is found and there is a finding of
109 probable cause, the county in which the hearing is held
110 may seek reimbursement from the county of residence for
111 reasonable costs incurred by the county attendant to the
112 mental hygiene proceeding. Notwithstanding any provi-
113 sion of this code to the contrary, sheriffs may enter into
114 cooperative agreements with sheriffs of contiguous
115 counties, with the concurrence of their respective circuit
116 courts and county commissions, whereby transportation
117 and security responsibilities for hearings held pursuant to
118 the provisions of this article during noncourt hours or on
119 nonjudicial days may be shared in order to facilitate

120 prompt hearings and to effectuate transportation of
121 persons found in need of treatment.

122 (e) *Duty of sheriff upon presentment to mental health*
123 *care facility.* – Where a person is brought to a mental
124 health care facility for purposes of evaluation for commit-
125 ment under the provisions of this article, if he or she is
126 violent or combative, the sheriff or his or her designee
127 shall maintain custody of the person in the facility until
128 the evaluation is completed or the county commission shall
129 reimburse the mental health care facility at a reasonable
130 rate for security services provided by the mental health
131 care facility for the period of time the person is at the
132 hospital prior to the determination of mental competence
133 or incompetence.

134 (f) *Duties of supreme court of appeals.* – The supreme
135 court of appeals shall provide uniform petition, procedure
136 and order forms which shall be used in all involuntary
137 hospitalization proceedings brought in this state.

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

1 (a) *When application for involuntary custody for exami-*
2 *nation may be made.* – Any adult person may make
3 application for involuntary hospitalization for examina-
4 tion of an individual when said person has reason to
5 believe that:

6 (1) The individual is addicted, as defined in section
7 eleven, article one of this chapter; or

8 (2) The individual is mentally ill and, because of his or
9 her mental illness, the individual is likely to cause serious
10 harm to himself or herself or to others if allowed to remain
11 at liberty while awaiting an examination and certification
12 by a physician or psychologist.

13 (b) *Oath; to whom application for involuntary custody*
14 *for examination is made; contents of application; custody;*
15 *probable cause hearing; examination. –*

16 (1) The person making such application shall do so
17 under oath.

18 (2) Application for involuntary custody for examination
19 may be made to the circuit court or a mental hygiene
20 commissioner of the county in which the individual resides
21 or of the county in which he or she may be found.

22 (3) The person making such application shall give such
23 information and state such facts therein as may be re-
24 quired upon the form provided for this purpose by the
25 supreme court of appeals.

26 (4) The circuit court or the mental hygiene commissioner
27 may thereupon enter an order for the individual named in
28 such action to be detained and taken into custody for the
29 purpose of holding a probable cause hearing as provided
30 for in subdivision (5) of this subsection and for the purpose
31 of an examination of the individual by a physician or a
32 psychologist. Such examination shall be provided or
33 arranged by a community mental health center designated
34 by the secretary of the department of health and human
35 resources to serve the county in which the action takes
36 place. Said order shall specify that such hearing be held
37 forthwith and shall provide for the appointment of counsel
38 for the individual: *Provided*, That the order may allow
39 the hearing to be held up to twelve hours after its entry
40 rather than forthwith if the circuit court of the county or
41 circuit in which the person is found has previously entered
42 a standing order which establishes within that jurisdiction
43 a program for placement of persons awaiting a hearing
44 which assures the safety and humane treatment of said
45 persons. Where a physician or psychologist has performed
46 the examination required by the provisions of this subdivi-
47 sion, the community mental health center may waive the

48 requirement of a forthwith hearing upon approving such
49 examination. Notwithstanding the provisions of this
50 subsection, subsection (r), section four of this article shall
51 apply regarding payment by the county commission for
52 examinations at hearings.

53 In the event immediate detention is believed to be
54 necessary for the protection of the individual or others at
55 a time when no circuit court judge or mental hygiene
56 commissioner is available for immediate presentation of
57 the application, a magistrate designated by the chief judge
58 of the judicial circuit may accept the application and,
59 upon a finding that such immediate detention is necessary
60 pending presentation of the application to the circuit court
61 or mental hygiene commissioner, may order the individual
62 to be temporarily detained in custody until the earliest
63 reasonable time that the application can be presented to
64 the circuit court or mental hygiene commissioner, which
65 temporary period of detention may not exceed twenty-four
66 hours: *Provided*, That where the individual has been
67 examined by a psychologist or physician and said psychol-
68 ogist or physician has certified the individual meets the
69 criteria for involuntary hospitalization, the individual may
70 be temporarily detained until the next judicial day. In no
71 event shall an individual be so detained for more than
72 seventy-two hours without a hearing.

73 (5) A probable cause hearing shall be held before a
74 magistrate designated by the chief judge of the judicial
75 circuit, the mental hygiene commissioner or circuit judge
76 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
78 or her counsel, the hearing may be postponed for a period
79 not to exceed forty-eight hours.

80 The individual must be present at the hearing and shall
81 have the right to present evidence, confront all witnesses
82 and other evidence against him or her and to examine

83 testimony offered, including testimony by representatives
84 of the community mental health center serving the area.
85 The individual shall have the right to remain silent and to
86 be proceeded against in accordance with the rules of
87 evidence of the supreme court of appeals except as pro-
88 vided for in section twelve, article one of this chapter. At
89 the conclusion of the hearing, the magistrate, mental
90 hygiene commissioner or circuit court judge shall find and
91 enter an order stating whether or not there is probable
92 cause to believe that such individual, as a result of mental
93 illness, is likely to cause serious harm to himself or herself
94 or to others or is addicted.

95 (6) If the magistrate, mental hygiene commissioner or
96 circuit court judge at a probable cause hearing or at a final
97 commitment hearing held pursuant to the provisions of
98 section four of this article finds that the individual, as a
99 result of mental illness, is likely to cause serious harm to
100 himself, herself or others or is addicted and because of
101 such mental illness or addiction requires treatment, the
102 magistrate, mental hygiene commissioner or circuit court
103 judge may consider evidence on the question of whether
104 the individual's circumstances make him or her amenable
105 to outpatient treatment in a nonresidential or nonhospital
106 setting pursuant to a voluntary treatment agreement.
107 Such agreement shall be in writing and approved by the
108 individual, his or her counsel and the magistrate, mental
109 hygiene commissioner or circuit judge and the mental
110 health treatment provider. If the magistrate, mental
111 hygiene commissioner or circuit court judge determines
112 that appropriate outpatient treatment is available in a
113 nonresidential or nonhospital setting, the individual may
114 be released to such outpatient treatment upon the terms
115 and conditions of the voluntary treatment agreement. The
116 failure of an individual released to outpatient treatment
117 pursuant to a voluntary treatment agreement to comply
118 with the terms of the voluntary treatment agreement shall
119 constitute evidence that such treatment is insufficient and,

120 after a hearing before a magistrate, mental hygiene
121 commissioner or circuit judge on the issue of whether or
122 not the individual failed or refused to comply with the
123 terms and conditions of the voluntary treatment agree-
124 ment and whether the individual as a result of mental
125 illness remains likely to cause serious harm to himself,
126 herself or others or remains addicted, the entry of an order
127 requiring admission under involuntary hospitalization
128 pursuant to the provisions of section three of this article
129 may be entered. In the event a person released pursuant to
130 a voluntary treatment agreement is unable to pay for the
131 outpatient treatment and has no applicable insurance
132 coverage, including, but not limited to, private insurance
133 or medicaid, the secretary of health and human resources
134 may transfer funds for the purpose of reimbursing commu-
135 nity providers for services provided on an outpatient basis
136 for individuals for whom payment for treatment is the
137 responsibility of the department: *Provided*, That the
138 department may not authorize payment of outpatient
139 services for an individual subject to a voluntary treatment
140 agreement in an amount in excess of the cost of involun-
141 tary hospitalization of the individual. The secretary shall
142 establish and maintain fee schedules for outpatient
143 treatment provided in lieu of involuntary hospitalization.
144 Nothing in the provisions of this article regarding release
145 pursuant to a voluntary treatment agreement or conva-
146 lent status shall be construed as creating a right to receive
147 outpatient mental health services or treatment or as
148 obligating any persons or agency to provide such services
149 or treatment. Time limitations set forth in this article
150 relating to periods of involuntary commitment to a mental
151 health facility for hospitalization shall not apply to release
152 pursuant to the terms of a voluntary treatment agreement:
153 *Provided, however*, That release pursuant to a voluntary
154 treatment agreement shall not be for a period of more than
155 six months if the individual has not been found to be
156 involuntarily committed during the previous two years and
157 for a period of no more than two years if the individual has

158 been involuntarily committed during the preceding two
 159 years. If in any proceeding held pursuant to article five of
 160 this chapter the individual objects to the issuance or
 161 conditions and terms of an order adopting a voluntary
 162 treatment agreement, then the presiding officer shall not
 163 enter an order directing treatment pursuant to a voluntary
 164 treatment agreement. If involuntary commitment with
 165 release pursuant to a voluntary treatment agreement is
 166 ordered, the individual made subject to said order may,
 167 upon request during the period the order is in effect, have
 168 a hearing before a mental hygiene commissioner or circuit
 169 judge where the individual may seek to have the order
 170 cancelled or modified. Nothing in this section shall affect
 171 the appellate and habeas corpus rights of any individual
 172 subject to any commitment order.

173 (7) If the certifying physician or psychologist determines
 174 that a person requires involuntary hospitalization for an
 175 addiction to a substance which, due to the degree of
 176 addiction, creates a reasonable likelihood that withdrawal
 177 or detoxification from the substance of addiction will
 178 cause significant medical complications, the person
 179 certifying the individual shall recommend that the individ-
 180 ual be closely monitored for possible medical complica-
 181 tions. If the magistrate, mental hygiene commissioner or
 182 circuit court judge presiding orders involuntary hospital-
 183 ization, he or she shall include a recommendation that the
 184 individual be closely monitored in the order of commit-
 185 ment.

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

1 (a) *Admission to a mental health facility for examina-*
 2 *tion.* – Any individual may be admitted to a mental health
 3 facility for examination and treatment upon entry of an
 4 order finding probable cause as provided in section two of
 5 this article and upon certification by one physician or one
 6 psychologist that he or she has examined the individual
 7 and is of the opinion that the individual is mentally ill, and

8 because of such mental illness is likely to cause serious
9 harm to himself or herself or to others if not immediately
10 restrained, or is addicted. Where a magistrate has ordered
11 the temporary detention of an individual pending a
12 hearing pursuant to the provisions of subdivision (4),
13 subsection (b), section two of this article and the individ-
14 ual has been examined by a psychologist or physician and
15 found to meet the criteria for involuntary hospitalization,
16 such individual may be examined, with his or her consent
17 or in the event of a medical or psychiatric emergency, and
18 treated until the next judicial day, or for up to seventy-two
19 hours, whichever shall first occur. The chief medical
20 officer of said mental health facility may, with the ap-
21 proval of the secretary of health and human resources,
22 transfer such individual to a state hospital or to another
23 similar type of mental health facility after determining
24 that no less restrictive treatment alternative is suitable or
25 available. The chief medical officer of the mental health
26 facility admitting the individual shall forthwith make a
27 report thereof to the secretary of the department of health
28 and human resources.

29 (b) *Three-day time limitation on examination.* – If said
30 examination does not take place within three days from
31 the date the individual is taken into custody, the individ-
32 ual shall be released. If the examination reveals that the
33 individual is not mentally ill or addicted, the individual
34 shall be released.

35 (c) *Three-day time limitation on certification.* – The
36 certification required in subsection (a) of this section shall
37 be valid for three days. Any individual with respect to
38 whom such certification has been issued may not be
39 admitted on the basis thereof at any time after the expira-
40 tion of three days from the date of such examination.

41 (d) *Findings and conclusions required for certification.*
42 – A certification under this section must include findings
43 and conclusions of the mental examination, the date, time

44 and place thereof and the facts upon which the conclusion
45 that involuntary commitment is necessary is based.

46 (e) *Notice requirements.* – When an individual is admit-
47 ted to a mental health facility pursuant to the provisions
48 of this section, the chief medical officer thereof shall
49 immediately give notice of the individual’s admission to
50 the individual’s spouse, if any, and one of the individual’s
51 parents or guardians, or if there be no such spouse, parents
52 or guardians, to one of the individual’s adult next of kin:
53 *Provided,* That such next of kin shall not be the applicant.
54 Notice shall also be given to the community mental health
55 facility, if any, having jurisdiction in the county of the
56 individual’s residence. Such notices other than to the
57 community mental health facility shall be in writing and
58 shall be transmitted to such person or persons at his, her
59 or their last-known address by certified or registered mail,
60 return receipt requested.

61 (f) *Five-day time limitation for examination and certifi-*
62 *cation at mental health facility.* – After the individual’s
63 admission to a mental health facility, he or she may not be
64 detained more than five days, excluding Sundays and
65 holidays, unless, within such period, the individual is
66 examined by a staff physician and such physician certifies
67 that in his or her opinion the patient is mentally ill and is
68 likely to injure himself or herself or others or will remain
69 addicted if allowed to be at liberty.

70 (g) *Ten-day time limitation for institution of final*
71 *commitment proceedings.* – If, in the opinion of the
72 examining physician, the patient is mentally ill and
73 because of such mental illness is likely to injure himself or
74 herself or others or will continue to abuse a substance to
75 which he or she is addicted if allowed to be at liberty, the
76 chief medical officer shall, within ten days from the date
77 of admission, institute final commitment proceedings as
78 provided in section four of this article. If such proceedings
79 are not instituted within such ten-day period, the patient
80 shall be immediately released. After the request for

81 hearing is filed, the hearing shall not be canceled on the
82 basis that the individual has become a voluntary patient
83 unless the mental hygiene commissioner concurs in the
84 motion for cancellation of the hearing.

85 (h) *Thirty-day time limitation for conclusion of all*
86 *proceedings.* – If all proceedings as provided in articles
87 three and four of this chapter are not completed within
88 thirty days from the date of institution of such proceed-
89 ings, the patient shall be immediately released.

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

1 (a) *Involuntary commitment.* – Except as provided in
2 section three of this article, no individual may be involun-
3 tarily committed to a mental health facility except by
4 order entered of record at any time by the circuit court of
5 the county wherein such person resides or was found, or if
6 the individual is hospitalized in a mental health facility
7 located in a county other than where he or she resides or
8 was found, in the county of the mental health facility and
9 then only after a full hearing on issues relating to the
10 necessity of committing an individual to a mental health
11 facility: *Provided, That,* if said individual objects to the
12 hearing being held in the county where the mental health
13 facility is located, the hearing shall be conducted in the
14 county of the individual's residence.

15 (b) *How final commitment proceedings are commenced.*
16 – Final commitment proceedings for an individual may be
17 commenced by the filing of a written application under
18 oath and the certificate or affidavit is hereinafter provided
19 with the clerk of the circuit court or mental hygiene
20 commissioner of the county of which the individual is a
21 resident, or where he or she may be found, or the county of
22 the mental health facility, if he or she is hospitalized in a
23 mental health facility located in a county other than where
24 he or she resides or may be found by an adult person
25 having personal knowledge of the facts of the case.

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

28 (1) The person making such application shall do so
29 under oath.

30 (2) The application shall contain statements by the
31 applicant that he or she believes because of symptoms of
32 mental illness the individual is likely to cause serious harm
33 to himself or herself or to others or is addicted and the
34 grounds for such belief, stating in detail the recent overt
35 acts upon which such belief is based.

36 (3) The written application, certificate, affidavit and any
37 warrants issued pursuant thereto, including any papers
38 and documents related thereto, filed with any circuit court
39 or mental hygiene commissioner for the involuntary
40 hospitalization of any individual shall not be open to
41 inspection by any person other than the individual, except
42 upon authorization of the individual or his or her legal
43 representative or by order of the circuit court, and such
44 records may not be published except upon the authoriza-
45 tion of the individual or his or her legal representative.

46 (4) Applications shall not be accepted for individuals
47 who only have epilepsy, a mental deficiency or senility.

48 (d) *Certificate filed with application; contents of certifi-*
49 *cate; affidavit by applicant in place of certificate. –*

50 (1) The applicant shall file with his or her application
51 the certificate of a physician or a psychologist stating that
52 in his or her opinion the individual is mentally ill and that
53 because of such mental illness the individual is likely to
54 cause serious harm to himself or herself or to others if he
55 or she is allowed to remain at liberty or is addicted and
56 therefore he or she should be hospitalized, stating in detail
57 the recent overt acts upon which such conclusion is based.

58 (2) A certificate is not necessary only when an affidavit
59 is filed by the applicant showing facts and the individual

60 has refused to submit to examination by a physician or a
61 psychologist.

62 (e) *Notice requirements; eight days' notice required.* –
63 Upon receipt of an application, the mental hygiene
64 commissioner or circuit court shall review the application
65 and if it is determined that the facts alleged, if any, are
66 sufficient to warrant involuntary hospitalization, forth-
67 with fix a date for and have the clerk of the circuit court
68 give notice of the hearing: (1) To the individual; (2) to the
69 applicant or applicants; (3) to the individual's spouse, one
70 of the parents or guardians, or if the individual does not
71 have a spouse, parents or parent or guardian, to one of the
72 individual's adult next of kin: *Provided*, That such person
73 is not the applicant; (4) to the mental health authorities
74 serving the area; (5) to the circuit court in the county of the
75 individual's residence if the hearing is to be held in a
76 county other than that of such individual's residence; and
77 (6) to the prosecuting attorney of the county in which the
78 hearing is to be held. Such notice shall be served on the
79 individual by personal service of process not less than
80 eight days prior to the date of the hearing and shall specify
81 the nature of the charges against the individual; the facts
82 underlying and supporting the application of involuntary
83 commitment; the right to have counsel appointed; the right
84 to consult with and be represented by counsel at every
85 stage of the proceedings; and the time and place of the
86 hearing. The notice to the individual's spouse, parents or
87 parent or guardian, the individual's adult next of kin, or to
88 the circuit court in the county of the individual's residence
89 may be by personal service of process or by certified or
90 registered mail, return receipt requested, and shall state
91 the time and place of the hearing.

92 (f) *Examination of individual by court-appointed*
93 *physician or psychologist; custody for examination;*
94 *dismissal of proceedings.* –

95 (1) Except as provided in subdivision (3) of this subsec-
96 tion, within a reasonable time after notice of the com-

97 mencement of final commitment proceedings is given, the
98 circuit court or mental hygiene commissioner shall appoint
99 a physician or psychologist to examine the individual and
100 report to the circuit court or mental hygiene commissioner
101 his or her findings as to the mental condition of the
102 individual and the likelihood of him or her causing serious
103 harm to himself or herself or to others or being addicted.

104 (2) If the designated physician or psychologist reports to
105 the circuit court or mental hygiene commissioner that the
106 individual has refused to submit to an examination, the
107 circuit court or mental hygiene commissioner shall order
108 him or her to submit to such examination. The circuit
109 court or mental hygiene commissioner may direct that the
110 individual be detained or taken into custody for the
111 purpose of an immediate examination by the designated
112 physician or psychologist. All such orders shall be di-
113 rected to the sheriff of the county or other appropriate
114 law-enforcement officer. After such examination has been
115 completed, the individual shall be released from custody
116 unless proceedings are instituted pursuant to section three
117 of this article.

118 (3) If the reports of the appointed physician or psycholo-
119 gist do not confirm that the individual is mentally ill and
120 might be harmful to himself or herself or to others or is
121 addicted then the proceedings for involuntary hospitaliza-
122 tion shall be dismissed.

123 (g) *Rights of the individual at the final commitment*
124 *hearing; seven days' notice to counsel required. –*

125 (1) The individual shall be present at the final commit-
126 ment hearing and he or she, the applicant and all persons
127 entitled to notice of such hearing shall be afforded an
128 opportunity to testify and to present and cross-examine
129 witnesses.

130 (2) In the event that the individual has not retained
131 counsel, the court or mental hygiene commissioner at least

132 six days prior to hearing shall appoint a competent
133 attorney and shall inform the individual of the name,
134 address and telephone number of his or her appointed
135 counsel.

136 (3) The individual shall have the right to have an
137 examination by an independent expert of his or her choice
138 and testimony from such expert as a medical witness on
139 his or her behalf. The cost of such independent expert
140 shall be borne by the individual unless he or she is indi-
141 gent.

142 (4) The individual shall not be compelled to be a witness
143 against himself or herself.

144 (h) *Duties of counsel representing individual; payment*
145 *of counsel representing indigent. —*

146 (1) The counsel representing an individual shall conduct
147 a timely interview, make investigation and secure appro-
148 priate witnesses and shall be present at the hearing and
149 protect the interest of the individual.

150 (2) Any counsel representing an individual shall be
151 entitled to copies of all medical reports, psychiatric or
152 otherwise.

153 (3) The circuit court, by order of record, may allow the
154 attorney a reasonable fee not to exceed the amount
155 allowed for attorneys in defense of needy persons as
156 provided in article twenty-one, chapter twenty-nine of this
157 code.

158 (i) *Conduct of hearing; receipt of evidence; no eviden-*
159 *tiary privilege; record of hearing. —*

160 (1) The circuit court or mental hygiene commissioner
161 shall hear evidence from all interested parties in chamber,
162 including testimony from representatives of the commu-
163 nity mental health facility.

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

167 (3) The circuit court or mental hygiene commissioner
168 shall be bound by the rules of evidence promulgated by the
169 supreme court of appeals except that statements made to
170 physicians or psychologists by the individual may be
171 admitted into evidence by the physician's or psychologist's
172 testimony, notwithstanding failure to inform the individ-
173 ual that this statement may be used against him or her.
174 Any psychologist or physician testifying shall bring all
175 records pertaining to said individual to said hearing. Such
176 medical evidence obtained pursuant to an examination
177 under this section, or section two or three of this article, is
178 not privileged information for purposes of a hearing
179 pursuant to this section.

180 (4) All final commitment proceedings shall be reported
181 or recorded, whether before the circuit court or mental
182 hygiene commissioner, and a transcript shall be made
183 available to the individual, his or her counsel or the
184 prosecuting attorney within thirty days, if the same is
185 requested for the purpose of further proceedings. In any
186 case wherein an indigent person intends to pursue further
187 proceedings, the circuit court shall, by order entered of
188 record, authorize and direct the court reporter to furnish
189 a transcript of the hearings.

190 (j) *Requisite findings by the court.* –

191 (1) Upon completion of the final commitment hearing,
192 and the evidence presented therein, the circuit court or
193 mental hygiene commissioner shall make findings as to
194 whether or not the individual is mentally ill and because
195 of illness is likely to cause serious harm to himself or
196 herself or to others if allowed to remain at liberty or is
197 addicted and is a resident of the county in which the
198 hearing is held or currently is a patient at a mental health
199 facility in such county.

200 (2) The circuit court or mental hygiene commissioner
201 shall also make a finding as to whether or not there is a
202 less restrictive alternative than commitment appropriate
203 for the individual. The burden of proof of the lack of a less
204 restrictive alternative than commitment shall be on the
205 person or persons seeking the commitment of the individ-
206 ual.

207 (3) The findings of fact shall be incorporated into the
208 order entered by the circuit court and must be based upon
209 clear, cogent and convincing proof.

210 (k) *Orders issued pursuant to final commitment hearing;*
211 *entry of order; change in order of court; expiration of*
212 *order. —*

213 (1) Upon the requisite findings, the circuit court may
214 order the individual to a mental health facility for an
215 indeterminate period or for a temporary observatory
216 period not exceeding six months.

217 (2) The individual shall not be detained in a mental
218 health facility for a period in excess of ten days after a
219 final commitment hearing pursuant to this section unless
220 an order has been entered and received by the facility.

221 (3) If the order pursuant to a final commitment hearing
222 is for a temporary observation period, the circuit court or
223 mental hygiene commissioner may, at any time prior to the
224 expiration of such period on the basis of a report by the
225 chief medical officer of the mental health facility in which
226 the patient is confined, hold another hearing pursuant to
227 the terms of this section and in the same manner as the
228 hearing was held as if it were an original petition for
229 involuntary hospitalization to determine whether the
230 original order for a temporary observation period should
231 be modified or changed to an order of indeterminate
232 hospitalization of the patient. At the conclusion of the
233 hearing, the circuit court shall order indeterminate

234 hospitalization of the patient or dismissal of the proceedings.

235 (4) An order for an indeterminate period shall expire of
236 its own terms at the expiration of two years from the date
237 of the last order of commitment unless prior to the expira-
238 tion, the department of health and human resources, upon
239 findings based on an examination of the patient by a
240 physician or a psychologist, extends the order for indeter-
241 minate hospitalization: *Provided*, That if the patient or his
242 or her counsel requests a hearing, then a hearing shall be
243 held by the mental hygiene commissioner or by the circuit
244 court of the county as provided in subsection (a) of this
245 section.

246 (l) *Dismissal of proceedings.* – If the circuit court or
247 mental hygiene commissioner finds that the individual is
248 not mentally ill or addicted, the proceedings shall be
249 dismissed. If the circuit court or mental hygiene commis-
250 sioner finds that the individual is mentally ill but is not
251 because of such illness likely to cause serious harm to
252 himself or herself or to others if allowed to remain at
253 liberty, the proceedings shall be dismissed.

254 (m) *Immediate notification of order of hospitalization.* –
255 The clerk of the circuit court in which an order directing
256 hospitalization is entered, if not in the county of the
257 individual's residence, shall immediately upon entry
258 thereof forward a certified copy of same to the clerk of the
259 circuit court of the county of which the individual is a
260 resident.

261 (n) *Consideration of transcript by circuit court of county*
262 *of individual's residence; order of hospitalization; execu-*
263 *tion of order.* –

264 (1) If the circuit court or mental hygiene commissioner
265 is satisfied that hospitalization should be ordered but finds
266 that the individual is not a resident of the county in which
267 the hearing is held and the individual is not currently a
268 resident of a mental health facility, a transcript of the
269 evidence adduced at the final commitment hearing of such

270 individual, certified by the clerk of the circuit court, shall
271 forthwith be forwarded to the clerk of the circuit court of
272 the county of which such individual is a resident, who
273 shall immediately present such transcript to the circuit
274 court or mental hygiene commissioner of said county.

275 (2) If the circuit court or mental hygiene commissioner
276 of the county of the residence of the individual is satisfied
277 from the evidence contained in such transcript that such
278 individual should be hospitalized as determined by the
279 standard set forth above, the circuit court shall order the
280 appropriate hospitalization as though the individual had
281 been brought before the circuit court or its mental hygiene
282 commissioner in the first instance.

283 (3) This order shall be transmitted forthwith to the clerk
284 of the circuit court of the county in which the hearing was
285 held who shall execute said order promptly.

286 (o) *Order of custody to responsible person.* – In lieu of
287 ordering the patient to a mental health facility, the circuit
288 court may order the individual delivered to some responsi-
289 ble person who will agree to take care of the individual
290 and the circuit court may take from such responsible
291 person a bond in an amount to be determined by the
292 circuit court with condition to restrain and take proper
293 care of such individual until further order of the court.

294 (p) *Individual not a resident of this state.* – If the
295 individual found to be mentally ill or addicted by the
296 circuit court or mental hygiene commissioner is a resident
297 of another state, this information shall be forthwith given
298 to the secretary of the department of health and human
299 resources, or to his or her designee, who shall make
300 appropriate arrangements for transfer of the individual to
301 the state of his or her residence conditioned on the agree-
302 ment of the individual except as qualified by the interstate
303 compact on mental health.

304 (q) *Report to the secretary of the department of health*
305 *and human resources.* –

306 (1) The chief medical officer of a mental health facility
307 admitting a patient pursuant to proceedings under this
308 section shall forthwith make a report of such admission to
309 the secretary of the department of health and human
310 resources or to his or her designee.

311 (2) Whenever an individual is released from custody due
312 to the failure of an employee of a mental health facility to
313 comply with the time requirements of this article, the chief
314 medical officer of such mental health facility shall forth-
315 with after the release of the individual make a report to
316 the secretary of the department of health and human
317 resources or to his or her designee of the failure to comply.

318 (r) *Payment of some expenses by the state; mental*
319 *hygiene fund established; expenses paid by the county*
320 *commission.* –

321 (1) The state shall pay the commissioner's fee and such
322 court reporter fees as are not paid and reimbursed under
323 article twenty-one, chapter twenty-nine of this code out of
324 a special fund to be established within the supreme court
325 of appeals to be known as the "mental hygiene fund".

326 (2) The county commission shall pay out of the county
327 treasury all other expenses incurred in the hearings
328 conducted under the provisions of this article whether or
329 not hospitalization is ordered, including any fee allowed
330 by the circuit court by order entered of record for any
331 physician, psychologist and witness called by the indigent
332 individual.

**§27-5-10. Transportation for the mentally ill or substance
abuser.**

1 (a) Whenever transportation of an individual is required
2 under the provisions of article four or five of this chapter,
3 it shall be the duty of the sheriff to provide immediate

4 transportation to or from the appropriate mental health
5 facility or state hospital: *Provided*, That, where hospital-
6 ization occurs pursuant to article four of this chapter, the
7 sheriff may permit, upon the written request of a person
8 having proper interest in the individual's hospitalization,
9 for the interested person to arrange for the individual's
10 transportation to the mental health facility or state
11 hospital if the sheriff determines that such means are
12 suitable given the individual's condition.

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

21 (c) *Use of certified municipal law-enforcement officers.*
22 – Sheriffs and municipal governments are hereby autho-
23 rized to enter into written agreements whereby certified
24 municipal law-enforcement officers may perform the
25 duties of the sheriff as described in this article. The
26 agreement shall determine jurisdiction, responsibility of
27 costs and all other necessary requirements, including
28 training related to the performance of these duties, and
29 shall be approved by the county commission and circuit
30 court of the county in which the agreement is made. For
31 purposes of this subsection, “certified municipal
32 law-enforcement officer” means any duly authorized
33 member of a municipal law-enforcement agency who is
34 empowered to maintain public peace and order, make
35 arrests and enforce the laws of this state or any political
36 subdivision thereof, other than parking ordinances, and
37 who is currently certified as a law-enforcement officer
38 pursuant to article twenty-nine, chapter thirty of this
39 code.

40 (d) Nothing in this section is intended to alter security
41 responsibilities for the patient by the sheriff unless
42 mutually agreed upon as provided in subsection (c) of this
43 section.

**ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS;
ESCAPEES.**

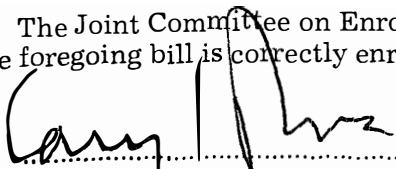
§27-7-2. Release of patients on convalescent status.

1 (a) The chief medical officer of a mental health facility
2 may release an involuntary patient on convalescent status
3 (trial visit) when the chief medical officer believes such
4 release is in the best interest of the patient. Release on
5 convalescent status shall include provisions for continuing
6 responsibility to and by a mental health facility, not
7 necessarily the facility in which the patient was previously
8 hospitalized, including a plan of treatment on an outpa-
9 tient basis to insure that the patient receives whatever care
10 and treatment he or she might require. At the end of six
11 months on convalescent status, the patient must be
12 discharged from any involuntary commitment order that
13 might have been entered against him or her and he or she
14 cannot be involuntarily returned to any mental health
15 facility unless a new commitment proceeding has been
16 instituted against him or her. When a patient released on
17 convalescent status is discharged from his or her involun-
18 tary commitment, it shall be the responsibility of the chief
19 medical officer of the mental health facility of which the
20 individual was a patient prior to being placed on convales-
21 cent status to immediately make a report of the discharge
22 of the patient to the circuit court or mental hygiene
23 commissioner of the county in which the involuntary
24 hospitalization was ordered and to the circuit court or
25 mental hygiene commissioner of the county wherein the
26 individual is a resident.

27 (b) Notwithstanding any provision of this code to the
28 contrary, anytime an individual is involuntarily committed
29 to a mental health facility for inpatient treatment pursu-

30 ant to the provisions of article five of this chapter due to
31 a mental illness and it is determined by the medical
32 director of the mental health facility that the use of
33 medication by the individual is necessary to avoid the
34 recurrence of the behavior which caused the involuntary
35 hospitalization, initial release from the mental health
36 facility shall be on convalescent status with the require-
37 ment that the individual follow a designated treatment
38 plan which may include the taking of medication unless
39 the medical director makes a written finding that release
40 on convalescent status will serve no treatment purpose. If
41 an individual released on convalescent status does not
42 comply with the terms and conditions of convalescent
43 status, any person may file a petition to revoke such
44 convalescent status and said petition shall be subject to
45 the procedures and provisions of this article.

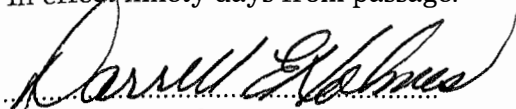
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

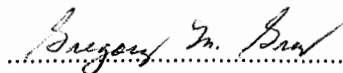

.....
Chairman Senate Committee


.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 2nd
Day of May, 2001.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time 2:20 pm