

H. B. 2755

(By Delegates Swartzmiller and M. Poling)
[Introduced January 21, 2011; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §27-5-1, §27-5-2 and §27-5-3 of the
Code of West Virginia, 1931, as amended, all relating to
mentally ill persons; involuntary hospitalization; duties of
sheriff; including the President of the West Virginia
Sheriffs' Association in the development and proposal of a
statewide system for evaluation and adjudication of mental
hygiene petitions; and providing that the Department of Health
and Human Resources shall reimburse the county commission for
deposit into the sheriff's budget for expenses incurred in
hearings conducted under the article.

Be it enacted by the Legislature of West Virginia:

That §27-5-1, §27-5-2 and §27-5-3 of the Code of West
Virginia, 1931, as amended, be amended and reenacted, all to read
as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of

1 **mental hygiene commissioner; duties of prosecuting**
2 **attorney; duties of sheriff; duties of Supreme Court**
3 **of Appeals; use of certified municipal law-enforcement**
4 **officers.**

5 (a) *Appointment of mental hygiene commissioners.* -- The chief
6 judge in each judicial circuit of this state shall appoint a
7 competent attorney and may, if necessary, appoint additional
8 attorneys to serve as mental hygiene commissioners to preside over
9 involuntary hospitalization hearings. Mental hygiene commissioners
10 shall be persons of good moral character and of standing in their
11 profession and they shall, before assuming the duties of ~~such a~~ a
12 commissioner, take the oath required of other special commissioners
13 as provided in article one, chapter six of this code.

14 All persons newly appointed to serve as mental hygiene
15 commissioners shall attend and complete an orientation course,
16 within one year of their appointment, consisting of at least three
17 days of training provided annually by the Supreme Court of Appeals.
18 In addition, existing mental hygiene commissioners and any
19 magistrates designated by the chief judge of a judicial circuit to
20 hold probable cause and emergency detention hearings involving
21 involuntary hospitalization shall attend and complete a course
22 provided by the Supreme Court of Appeals, which course shall
23 include, but not be limited to, instruction on the manifestations
24 of mental illness and addiction. Persons attending ~~such the~~ the
25 courses outside the county of their residence shall be reimbursed

1 out of the budget of the Supreme Court -- general judicial for
2 reasonable expenses incurred. The Supreme Court shall establish
3 rules for ~~such~~ these courses, including rules providing for the
4 reimbursement of reasonable expenses as authorized herein.

5 (b) *Duties of mental hygiene commissioners.* --

6 (1) Mental hygiene commissioners may sign and issue summonses
7 for the attendance, at any hearing held pursuant to section four,
8 article five of this chapter, of the individual sought to be
9 committed; may sign and issue subpoenas for witnesses, including
10 subpoenas duces tecum; may place any witness under oath; may elicit
11 testimony from applicants, respondents and witnesses regarding
12 factual issues raised in the petition; and may make findings of
13 fact on evidence and may make conclusions of law, but such findings
14 and conclusions shall not be binding on the circuit court. The
15 circuit court, by order entered of record, shall allow the
16 commissioner a reasonable fee for services rendered in connection
17 with each case. Mental hygiene commissioners shall discharge their
18 duties and hold their offices at the pleasure of the chief judge of
19 the judicial circuit in which he or she is appointed and may be
20 removed at any time by such chief judge. It ~~shall be~~ is the duty
21 of a mental hygiene commissioner to conduct orderly inquiries into
22 the mental health of the individual sought to be committed
23 concerning the advisability of committing the individual to a
24 mental health facility. The mental hygiene commissioner shall
25 safeguard, at all times, the rights and interests of the individual

1 as well as the interests of the state. The mental hygiene
2 commissioner shall make a written report of his or her findings to
3 the circuit court. In any proceedings before any court of record
4 as set forth in this article, the court of record shall appoint an
5 interpreter for any individual who is deaf or cannot speak or who
6 speaks a foreign language and who may be subject to involuntary
7 commitment to a mental health facility.

8 (2) A mental hygiene commissioner appointed by the circuit
9 court of one county or multiple county circuit may serve in ~~such~~
10 that capacity in a jurisdiction other than that of his or her
11 original appointment if ~~such be~~ it is agreed upon by the terms of
12 a cooperative agreement between the circuit courts and county
13 commissions of two or more counties entered into to provide prompt
14 resolution of mental hygiene matters during noncourt hours or on
15 nonjudicial days.

16 (c) *Duties of prosecuting attorney.* -- It ~~shall be~~ is the
17 duty of the prosecuting attorney or one of his or her assistants to
18 represent the applicants in all final commitment proceedings filed
19 pursuant to the provisions of this article. The prosecuting
20 attorney may appear in any proceeding held pursuant to the
21 provisions of this article if he or she ~~deems~~ considers it to be in
22 the public interest.

23 (d) *Duties of sheriff.* -- Upon written order of the circuit
24 court, mental hygiene commissioner or magistrate in the county
25 where the individual formally accused of being mentally ill or

1 addicted is a resident or is found, the sheriff of that county
2 shall take ~~said~~ the individual into custody and transport him or
3 her to and from the place of hearing and the mental health
4 facility. The sheriff shall also maintain custody and control of
5 the accused individual during the period of time in which the
6 individual is waiting for the involuntary commitment hearing to be
7 convened and while ~~such~~ the hearing is being conducted: *Provided,*
8 That an individual who is a resident of a state other than West
9 Virginia shall, upon a finding of probable cause, be transferred to
10 his or her state of residence for treatment pursuant to the
11 provisions of subsection (p), section four of this article:
12 *Provided, however,* That where an individual is a resident of West
13 Virginia but not a resident of the county in which he or she is
14 found and there is a finding of probable cause, the county in which
15 the hearing is held may seek reimbursement from the county of
16 residence for reasonable costs incurred by the county attendant to
17 the mental hygiene proceeding. Notwithstanding any provision of
18 this code to the contrary, sheriffs may enter into cooperative
19 agreements with sheriffs of one or more other counties, with the
20 concurrence of their respective circuit courts and county
21 commissions, whereby transportation and security responsibilities
22 for hearings held pursuant to the provisions of this article during
23 noncourt hours or on nonjudicial days may be shared in order to
24 facilitate prompt hearings and to effectuate transportation of
25 persons found in need of treatment.

1 (e) *Duty of sheriff upon presentment to mental health care*
 2 *facility.* -- Where a person is brought to a mental health care
 3 facility for purposes of evaluation for commitment under the
 4 provisions of this article, if he or she is violent or combative,
 5 the sheriff or his or her designee shall maintain custody of the
 6 person in the facility until the evaluation is completed. ~~or the~~
 7 ~~county commission shall reimburse the mental health care facility~~
 8 ~~at a reasonable rate for security services provided by the mental~~
 9 ~~health care facility for the period of time the person is at the~~
 10 ~~hospital prior to the determination of mental competence or~~
 11 ~~incompetence.~~

12 (f) *Duties of Supreme Court of Appeals.* -- The Supreme Court
 13 of Appeals shall provide uniform petition, procedure and order
 14 forms which shall be used in all involuntary hospitalization
 15 proceedings brought in this state.

16 **§27-5-2. Institution of proceedings for involuntary custody for**
 17 **examination; custody; probable cause hearing;**
 18 **examination of individual.**

19 (a) Any adult person may make an application for involuntary
 20 hospitalization for examination of an individual when the person
 21 making the application has reason to believe that the individual to
 22 be examined is addicted, as defined in section eleven, article one
 23 of this chapter, or is mentally ill and, because of his or her
 24 addiction or mental illness, the individual is likely to cause
 25 serious harm to himself, herself or to others if allowed to remain

1 at liberty while awaiting an examination and certification by a
2 physician or psychologist.

3 Notwithstanding any language in this subsection to the
4 contrary, if the individual to be examined under the provisions of
5 this section is incarcerated in a jail, prison or other
6 correctional facility, then only the chief administrative officer
7 of the facility holding the individual may file the application and
8 the application ~~must~~ shall include the additional statement that
9 the correctional facility itself cannot reasonably provide
10 treatment and other services for the individual's mental illness or
11 addiction.

12 (b) The person making the application shall make the
13 application under oath.

14 (c) Application for involuntary custody for examination may be
15 made to the circuit court or a mental hygiene commissioner of the
16 county in which the individual resides or of the county in which he
17 or she may be found. When no circuit court judge or mental hygiene
18 commissioner is available for immediate presentation of the
19 application, the application may be made to a magistrate designated
20 by the chief judge of the judicial circuit to accept applications
21 and hold probable cause hearings. A designated magistrate before
22 whom an application or matter is pending may, upon the availability
23 of a mental hygiene commissioner or circuit court judge for
24 immediate presentation of an application or pending matter,
25 transfer the pending matter or application to the mental hygiene

1 commissioner or circuit court judge for further proceedings unless
2 otherwise ordered by the chief judge of the judicial circuit.

3 (d) The person making the application shall give information
4 and state facts in the application as may be required by the form
5 provided for this purpose by the Supreme Court of Appeals.

6 (e) The circuit court, mental hygiene commissioner or
7 designated magistrate may enter an order for the individual named
8 in the application to be detained and taken into custody for the
9 purpose of holding a probable cause hearing as provided in
10 subsection (g) of this section for the purpose of an examination of
11 the individual by a physician, psychologist, a licensed independent
12 clinical social worker practicing in compliance with article
13 thirty, chapter thirty of this code, an advanced nurse practitioner
14 with psychiatric certification practicing in compliance with
15 article seven of said chapter, a physician assistant practicing in
16 compliance with article three of said chapter or a physician
17 assistant practicing in compliance with article fourteen-a of said
18 chapter: *Provided*, That a licensed independent clinical social
19 worker, a physician assistant or an advanced nurse practitioner
20 with psychiatric certification may only perform the examination if
21 he or she has previously been authorized by an order of the circuit
22 court to do so, the order having found that the licensed
23 independent clinical social worker, physician assistant or advanced
24 nurse practitioner with psychiatric certification has
25 particularized expertise in the areas of mental health and mental

1 hygiene or addiction sufficient to make the determinations as are
2 required by the provisions of this section. The examination is to
3 be provided or arranged by a community mental health center
4 designated by the Secretary of the Department of Health and Human
5 Resources to serve the county in which the action takes place. The
6 order is to specify that the hearing be held forthwith and is to
7 provide for the appointment of counsel for the individual:
8 *Provided, however,* That the order may allow the hearing to be held
9 up to twenty-four hours after the person to be examined is taken
10 into custody rather than forthwith if the circuit court of the
11 county in which the person is found has previously entered a
12 standing order which establishes within that jurisdiction a program
13 for placement of persons awaiting a hearing which assures the
14 safety and humane treatment of persons: *Provided further,* That the
15 time requirements set forth in this subsection only apply to
16 persons who are not in need of medical care for a physical
17 condition or disease for which the need for treatment precludes the
18 ability to comply with the time requirements. During periods of
19 holding and detention authorized by this subsection, upon consent
20 of the individual or in the event of a medical or psychiatric
21 emergency, the individual may receive treatment. The medical
22 provider shall exercise due diligence in determining the
23 individual's existing medical needs and provide treatment the
24 individual requires, including previously prescribed medications.
25 As used in this section, "psychiatric emergency" means an incident

1 during which an individual loses control and behaves in a manner
2 that poses substantial likelihood of physical harm to himself,
3 herself or others. Where a physician, psychologist, licensed
4 independent clinical social worker, physician assistant or advanced
5 nurse practitioner with psychiatric certification has within the
6 preceding seventy-two hours performed the examination required by
7 the provisions of this subdivision, the community mental health
8 center may waive the duty to perform or arrange another examination
9 upon approving the previously performed examination.

10 Notwithstanding the provisions of this subsection, subsection (r),
11 section four of this article applies regarding payment by the
12 county commission for examinations at hearings. If the examination
13 reveals that the individual is not mentally ill or addicted or is
14 determined to be mentally ill or addicted but not likely to cause
15 harm to himself, herself or others, the individual shall be
16 immediately released without the need for a probable cause hearing
17 and absent a finding of professional negligence the examiner is not
18 civilly liable for the rendering of the opinion absent a finding of
19 professional negligence. The examiner shall immediately provide
20 the mental hygiene commissioner, circuit court or designated
21 magistrate before whom the matter is pending the results of the
22 examination on the form provided for this purpose by the Supreme
23 Court of Appeals for entry of an order reflecting the lack of
24 probable cause.

25 (f) A probable cause hearing is to be held before a magistrate

1 designated by the chief judge of the judicial circuit, the mental
2 hygiene commissioner or circuit judge of the county of which the
3 individual is a resident or where he or she was found. If
4 requested by the individual or his or her counsel, the hearing may
5 be postponed for a period not to exceed forty-eight hours.

6 The individual must be present at the hearing and has the
7 right to present evidence, confront all witnesses and other
8 evidence against him or her and to examine testimony offered,
9 including testimony by representatives of the community mental
10 health center serving the area. Expert testimony at the hearing
11 may be taken telephonically or via videoconferencing. The
12 individual has the right to remain silent and to be proceeded
13 against in accordance with the Rules of Evidence of the Supreme
14 Court of Appeals, except as provided in section twelve, article one
15 of this chapter. At the conclusion of the hearing, the magistrate,
16 mental hygiene commissioner or circuit court judge shall find and
17 enter an order stating whether or not there is probable cause to
18 believe that the individual, as a result of mental illness or
19 addiction, is likely to cause serious harm to himself or herself or
20 to others.

21 (g) Probable cause hearings may occur in the county where a
22 person is hospitalized. The judicial hearing officer may: Use
23 videoconferencing and telephonic technology; permit persons
24 hospitalized for addiction to be involuntarily hospitalized only
25 until detoxification is accomplished; and specify other alternative

1 or modified procedures that are consistent with the purposes and
2 provisions of this article. The alternative or modified procedures
3 shall fully and effectively guarantee to the person who is the
4 subject of the involuntary commitment proceeding and other
5 interested parties due process of the law and access to the least
6 restrictive available treatment needed to prevent serious harm to
7 self or others.

8 (h) If the magistrate, mental hygiene commissioner or circuit
9 court judge at a probable cause hearing or at a final commitment
10 hearing held pursuant to the provisions of section four of this
11 article finds that the individual, as a result of mental illness or
12 addiction, is likely to cause serious harm to himself, herself or
13 others and because of mental illness or addiction requires
14 treatment, the magistrate, mental hygiene commissioner or circuit
15 court judge may consider evidence on the question of whether the
16 individual's circumstances make him or her amenable to outpatient
17 treatment in a nonresidential or nonhospital setting pursuant to a
18 voluntary treatment agreement. The agreement is to be in writing
19 and approved by the individual, his or her counsel and the
20 magistrate, mental hygiene commissioner or circuit court judge. If
21 the magistrate, mental hygiene commissioner or circuit court judge
22 determines that appropriate outpatient treatment is available in a
23 nonresidential or nonhospital setting, the individual may be
24 released to outpatient treatment upon the terms and conditions of
25 the voluntary treatment agreement. The failure of an individual

1 released to outpatient treatment pursuant to a voluntary treatment
2 agreement to comply with the terms of the voluntary treatment
3 agreement constitutes evidence that outpatient treatment is
4 insufficient and, after a hearing before a magistrate, mental
5 hygiene commissioner or circuit judge on the issue of whether or
6 not the individual failed or refused to comply with the terms and
7 conditions of the voluntary treatment agreement and whether the
8 individual as a result of mental illness or addiction remains
9 likely to cause serious harm to himself, herself or others, the
10 entry of an order requiring admission under involuntary
11 hospitalization pursuant to the provisions of section three of this
12 article may be entered. In the event a person released pursuant to
13 a voluntary treatment agreement is unable to pay for the outpatient
14 treatment and has no applicable insurance coverage, including, but
15 not limited to, private insurance or Medicaid, the Secretary of the
16 Department of Health and Human Resources may transfer funds for the
17 purpose of reimbursing community providers for services provided on
18 an outpatient basis for individuals for whom payment for treatment
19 is the responsibility of the department: *Provided*, That the
20 department may not authorize payment of outpatient services for an
21 individual subject to a voluntary treatment agreement in an amount
22 in excess of the cost of involuntary hospitalization of the
23 individual. The secretary shall establish and maintain fee
24 schedules for outpatient treatment provided in lieu of involuntary
25 hospitalization. Nothing in the provisions of this article

1 regarding release pursuant to a voluntary treatment agreement or
2 convalescent status may be construed as creating a right to receive
3 outpatient mental health services or treatment or as obligating any
4 person or agency to provide outpatient services or treatment. Time
5 limitations set forth in this article relating to periods of
6 involuntary commitment to a mental health facility for
7 hospitalization do not apply to release pursuant to the terms of a
8 voluntary treatment agreement: *Provided, however,* That release
9 pursuant to a voluntary treatment agreement may not be for a period
10 of more than six months if the individual has not been found to be
11 involuntarily committed during the previous two years and for a
12 period of no more than two years if the individual has been
13 involuntarily committed during the preceding two years. If in any
14 proceeding held pursuant to this article the individual objects to
15 the issuance or conditions and terms of an order adopting a
16 voluntary treatment agreement, then the circuit judge, magistrate
17 or mental hygiene commissioner may not enter an order directing
18 treatment pursuant to a voluntary treatment agreement. If
19 involuntary commitment with release pursuant to a voluntary
20 treatment agreement is ordered, the individual subject to the order
21 may, upon request during the period the order is in effect, have a
22 hearing before a mental hygiene commissioner or circuit judge where
23 the individual may seek to have the order canceled or modified.
24 Nothing in this section affects the appellate and habeas corpus
25 rights of any individual subject to any commitment order.

1 (i) If the certifying physician or psychologist determines
2 that a person requires involuntary hospitalization for an addiction
3 to a substance which, due to the degree of addiction, creates a
4 reasonable likelihood that withdrawal or detoxification from the
5 substance of addiction will cause significant medical
6 complications, the person certifying the individual shall recommend
7 that the individual be closely monitored for possible medical
8 complications. If the magistrate, mental hygiene commissioner or
9 circuit court judge presiding orders involuntary hospitalization,
10 he or she shall include a recommendation that the individual be
11 closely monitored in the order of commitment.

12 (j) The Supreme Court of Appeals, ~~and~~ the Secretary of the
13 Department of Health and Human Resources and the President of the
14 West Virginia Sheriffs' Association, or his or her designee, shall
15 specifically develop and propose a statewide system for evaluation
16 and adjudication of mental hygiene petitions which shall include
17 payment schedules and recommendations regarding funding sources.
18 Additionally, the Secretary of the Department of Health and Human
19 Resources shall also immediately seek reciprocal agreements with
20 officials in contiguous states to develop
21 interstate/intergovernmental agreements to provide efficient and
22 efficacious services to out-of-state residents found in West
23 Virginia and who are in need of mental hygiene services.

24 **§27-5-4. Institution of final commitment proceedings; hearing**
25 **requirements; release.**

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

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

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

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

2 (2) The application shall contain statements by the applicant
3 that he or she believes because of symptoms of mental illness or
4 addiction the individual is likely to cause serious harm to
5 himself, herself or to others and the grounds for the belief,
6 stating in detail the recent overt acts upon which the belief is
7 based.

8 (3) The written application, certificate, affidavit and any
9 warrants issued pursuant thereto, including any papers and
10 documents related thereto, filed with any circuit court or mental
11 hygiene commissioner for the involuntary hospitalization of any
12 individual are not open to inspection by any person other than the
13 individual, except upon authorization of the individual or his or
14 her legal representative or by order of the circuit court, and the
15 records may not be published except upon the authorization of the
16 individual or his or her legal representative.

17 (4) Applications may not be accepted for individuals who only
18 have epilepsy, a mental deficiency or senility.

19 (d) *Certificate filed with application; contents of*
20 *certificate; affidavit by applicant in place of certificate. --*

21 (1) The applicant shall file with his or her application the
22 certificate of a physician or a psychologist stating that in his or
23 her opinion the individual is mentally ill or addicted and that
24 because of the mental illness or addiction the individual is likely
25 to cause serious harm to himself, herself or to others if he or she

1 is allowed to remain at liberty and therefore he or she should be
2 hospitalized, stating in detail the recent overt acts upon which
3 the conclusion is based.

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

7 (e) *Notice requirements; eight days' notice required.* -- Upon
8 receipt of an application, the mental hygiene commissioner or
9 circuit court shall review the application and if it is determined
10 that the facts alleged, if any, are sufficient to warrant
11 involuntary hospitalization, forthwith fix a date for and have the
12 clerk of the circuit court give notice of the hearing: (1) To the
13 individual; (2) to the applicant or applicants; (3) to the
14 individual's spouse, one of the parents or guardians, or if the
15 individual does not have a spouse, parents or parent or guardian,
16 to one of the individual's adult next of kin if the next of kin is
17 not the applicant; (4) to the mental health authorities serving the
18 area; (5) to the circuit court in the county of the individual's
19 residence if the hearing is to be held in a county other than that
20 of the individual's residence; and (6) to the prosecuting attorney
21 of the county in which the hearing is to be held. The notice shall
22 be served on the individual by personal service of process not less
23 than eight days prior to the date of the hearing and shall specify
24 the nature of the charges against the individual; the facts
25 underlying and supporting the application of involuntary

1 commitment; the right to have counsel appointed; the right to
2 consult with and be represented by counsel at every stage of the
3 proceedings; and the time and place of the hearing. The notice to
4 the individual's spouse, parents or parent or guardian, the
5 individual's adult next of kin, or to the circuit court in the
6 county of the individual's residence may be by personal service of
7 process or by certified or registered mail, return receipt
8 requested, and shall state the time and place of the hearing.

9 (f) *Examination of individual by court-appointed physician or*
10 *psychologist; custody for examination; dismissal of proceedings. --*

11 (1) Except as provided in subdivision (3) of this subsection,
12 within a reasonable time after notice of the commencement of final
13 commitment proceedings is given, the circuit court or mental
14 hygiene commissioner shall appoint a physician or psychologist to
15 examine the individual and report to the circuit court or mental
16 hygiene commissioner his or her findings as to the mental condition
17 or addiction of the individual and the likelihood of him or her
18 causing serious harm to himself, herself or to others.

19 (2) If the designated physician or psychologist reports to the
20 circuit court or mental hygiene commissioner that the individual
21 has refused to submit to an examination, the circuit court or
22 mental hygiene commissioner shall order him or her to submit to the
23 examination. The circuit court or mental hygiene commissioner may
24 direct that the individual be detained or taken into custody for
25 the purpose of an immediate examination by the designated physician

1 or psychologist. All such orders shall be directed to the sheriff
2 of the county or other appropriate law-enforcement officer. After
3 the examination has been completed, the individual shall be
4 released from custody unless proceedings are instituted pursuant to
5 section three of this article.

6 (3) If the reports of the appointed physician or psychologist
7 do not confirm that the individual is mentally ill or addicted and
8 might be harmful to himself, herself or to others then the
9 proceedings for involuntary hospitalization shall be dismissed.

10 (g) *Rights of the individual at the final commitment hearing;*
11 *seven days' notice to counsel required. --*

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

16 (2) In the event that the individual has not retained counsel,
17 the court or mental hygiene commissioner at least six days prior to
18 hearing shall appoint a competent attorney and shall inform the
19 individual of the name, address and telephone number of his or her
20 appointed counsel.

21 (3) The individual has the right to have an examination by an
22 independent expert of his or her choice and testimony from the
23 expert as a medical witness on his or her behalf. The cost of the
24 independent expert shall be borne by the individual unless he or
25 she is indigent.

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

3 (h) *Duties of counsel representing individual; payment of*
4 *counsel representing indigent. --*

5 (1) The counsel representing an individual shall conduct a
6 timely interview, make investigation and secure appropriate
7 witnesses and shall be present at the hearing and protect the
8 interest of the individual.

9 (2) Any counsel representing an individual is entitled to
10 copies of all medical reports, psychiatric or otherwise.

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

15 (i) *Conduct of hearing; receipt of evidence; no evidentiary*
16 *privilege; record of hearing. --*

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

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

23 (3) The circuit court or mental hygiene commissioner is bound
24 by the rules of evidence promulgated by the Supreme Court of
25 Appeals except that statements made to physicians or psychologists

1 by the individual may be admitted into evidence by the physician's
2 or psychologist's testimony, notwithstanding failure to inform the
3 individual that this statement may be used against him or her. Any
4 psychologist or physician testifying shall bring all records
5 pertaining to the individual to the hearing. The medical evidence
6 obtained pursuant to an examination under this section, or section
7 two or three of this article, is not privileged information for
8 purposes of a hearing pursuant to this section.

9 (4) All final commitment proceedings shall be reported or
10 recorded, whether before the circuit court or mental hygiene
11 commissioner, and a transcript shall be made available to the
12 individual, his or her counsel or the prosecuting attorney within
13 thirty days, if it is requested for the purpose of further
14 proceedings. In any case where an indigent person intends to
15 pursue further proceedings, the circuit court shall, by order
16 entered of record, authorize and direct the court reporter to
17 furnish a transcript of the hearings.

18 (j) *Requisite findings by the court.* --

19 (1) Upon completion of the final commitment hearing, and the
20 evidence presented in the hearing, the circuit court or mental
21 hygiene commissioner shall make findings as to whether or not the
22 individual is mentally ill or addicted and because of illness or
23 addiction is likely to cause serious harm to himself, herself or to
24 others if allowed to remain at liberty and is a resident of the
25 county in which the hearing is held or currently is a patient at a

1 mental health facility in the county.

2 (2) The circuit court or mental hygiene commissioner shall
3 also make a finding as to whether or not there is a less
4 restrictive alternative than commitment appropriate for the
5 individual. The burden of proof of the lack of a less restrictive
6 alternative than commitment is on the person or persons seeking the
7 commitment of the individual.

8 (3) The findings of fact shall be incorporated into the order
9 entered by the circuit court and ~~must~~ shall be based upon clear,
10 cogent and convincing proof.

11 (k) *Orders issued pursuant to final commitment hearing; entry*
12 *of order; change in order of court; expiration of order. --*

13 (1) Upon the requisite findings, the circuit court may order
14 the individual to a mental health facility for an indeterminate
15 period or for a temporary observatory period not exceeding six
16 months.

17 (2) The individual may not be detained in a mental health
18 facility for a period in excess of ten days after a final
19 commitment hearing pursuant to this section unless an order has
20 been entered and received by the facility.

21 (3) If the order pursuant to a final commitment hearing is for
22 a temporary observation period, the circuit court or mental hygiene
23 commissioner may, at any time prior to the expiration of such
24 period on the basis of a report by the chief medical officer of the
25 mental health facility in which the patient is confined, hold

1 another hearing pursuant to the terms of this section and in the
2 same manner as the hearing was held as if it were an original
3 petition for involuntary hospitalization to determine whether the
4 original order for a temporary observation period should be
5 modified or changed to an order of indeterminate hospitalization of
6 the patient. At the conclusion of the hearing, the circuit court
7 shall order indeterminate hospitalization of the patient or
8 dismissal of the proceedings.

9 (4) An order for an indeterminate period expires of its own
10 terms at the expiration of two years from the date of the last
11 order of commitment unless prior to the expiration, the Department
12 of Health and Human Resources, upon findings based on an
13 examination of the patient by a physician or a psychologist,
14 extends the order for indeterminate hospitalization: *Provided,*
15 That if the patient or his or her counsel requests a hearing, then
16 a hearing shall be held by the mental hygiene commissioner or by
17 the circuit court of the county as provided in subsection (a) of
18 this section.

19 (1) *Dismissal of proceedings.* -- If the circuit court or
20 mental hygiene commissioner finds that the individual is not
21 mentally ill or addicted, the proceedings shall be dismissed. If
22 the circuit court or mental hygiene commissioner finds that the
23 individual is mentally ill or addicted but is not because of the
24 illness or addiction likely to cause serious harm to himself,
25 herself or to others if allowed to remain at liberty, the

1 proceedings shall be dismissed.

2 (m) *Immediate notification of order of hospitalization.* -- The
3 clerk of the circuit court in which an order directing
4 hospitalization is entered, if not in the county of the
5 individual's residence, shall immediately upon entry of the order
6 forward a certified copy of the order to the clerk of the circuit
7 court of the county of which the individual is a resident.

8 (n) *Consideration of transcript by circuit court of county of*
9 *individual's residence; order of hospitalization; execution of*
10 *order.* --

11 (1) If the circuit court or mental hygiene commissioner is
12 satisfied that hospitalization should be ordered but finds that the
13 individual is not a resident of the county in which the hearing is
14 held and the individual is not currently a resident of a mental
15 health facility, a transcript of the evidence adduced at the final
16 commitment hearing of the individual, certified by the clerk of the
17 circuit court, shall forthwith be forwarded to the clerk of the
18 circuit court of the county of which the individual is a resident,
19 who shall immediately present the transcript to the circuit court
20 or mental hygiene commissioner of the county.

21 (2) If the circuit court or mental hygiene commissioner of the
22 county of the residence of the individual is satisfied from the
23 evidence contained in the transcript that the individual should be
24 hospitalized as determined by the standard set forth above, the
25 circuit court shall order the appropriate hospitalization as though

1 the individual had been brought before the circuit court or its
2 mental hygiene commissioner in the first instance.

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

6 (o) *Order of custody to responsible person.* -- In lieu of
7 ordering the patient to a mental health facility, the circuit court
8 may order the individual delivered to some responsible person who
9 will agree to take care of the individual and the circuit court may
10 take from the responsible person a bond in an amount to be
11 determined by the circuit court with condition to restrain and take
12 proper care of the individual until further order of the court.

13 (p) *Individual not a resident of this state.* -- If the
14 individual found to be mentally ill or addicted by the circuit
15 court or mental hygiene commissioner is a resident of another
16 state, this information shall be forthwith given to the Secretary
17 of the Department of Health and Human Resources, or to his or her
18 designee, who shall make appropriate arrangements for transfer of
19 the individual to the state of his or her residence conditioned on
20 the agreement of the individual except as qualified by the
21 interstate compact on mental health.

22 (q) *Report to the Secretary of the Department of Health and*
23 *Human Resources.* --

24 (1) The chief medical officer of a mental health facility
25 admitting a patient pursuant to proceedings under this section

1 shall forthwith make a report of the admission to the Secretary of
2 the Department of Health and Human Resources or to his or her
3 designee.

4 (2) Whenever an individual is released from custody due to the
5 failure of an employee of a mental health facility to comply with
6 the time requirements of this article, the chief medical officer of
7 the mental health facility shall forthwith after the release of the
8 individual make a report to the Secretary of the Department of
9 Health and Human Resources or to his or her designee of the failure
10 to comply.

11 (r) *Payment of some expenses by the state; Mental Hygiene Fund*
12 *established; expenses paid by the county commission. --*

13 (1) The state shall pay the commissioner's fee and the court
14 reporter fees that are not paid and reimbursed under article
15 twenty-one, chapter twenty-nine of this code out of a special fund
16 to be established within the Supreme Court of Appeals to be known
17 as the Mental Hygiene Fund.

18 (2) The Department of Health and Human Resources shall
19 reimburse the county commission ~~shall pay out of the county~~
20 ~~treasury~~ for direct and immediate deposit into the sheriff's budget
21 all other expenses incurred, including, but not limited to, mileage
22 expenses and salary expenses of those involved in the
23 transportation process, in the hearings conducted under the
24 provisions of this article whether or not hospitalization is
25 ordered, ~~including~~ and shall reimburse the county commission for

1 any fee allowed by the circuit court by order entered of record for
2 any physician, psychologist and witness called by the indigent
3 individual.

NOTE: The purpose of this bill is to delete language allowing a county commission to reimburse a mental health care facility for security services for the period of time a person is at the hospital prior to the determination of mental competence or incompetence. The bill further provides that the President of the West Virginia Sheriffs' Association, along with the Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions. The bill further provides that the Department of Health and Human Resources shall reimburse the county commission for direct deposit into the Sheriff's budget all other expenses incurred in the hearings conducted under the provisions of the article.

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