

1 **H. B. 4132**

2  
3 (By Delegates Smith, Miller C., Morgan,  
4 Stephens, Sobonya, Craig and Reynolds)

5 [Introduced January 19, 2012; referred to the  
6 Committee on the Judiciary then Finance.]

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §27-5-4 of the Code of West Virginia,  
11 1931, as amended, relating to requiring the Department of  
12 Health and Human Resources to reimburse the circuit clerk of  
13 the county where involuntary commitment hearings are held for  
14 expenses of filing, postage and copies.

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

16 That §27-5-4 of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

19 **§27-5-4. Institution of final commitment proceedings; hearing**  
20 **requirements; release.**

21 (a) *Involuntary commitment.* -- Except as provided in section  
22 three of this article, no individual may be involuntarily committed  
23 to a mental health facility except by order entered of record at  
24 any time by the circuit court of the county in which the person

1 resides or was found, or if the individual is hospitalized in a  
2 mental health facility located in a county other than where he or  
3 she resides or was found, in the county of the mental health  
4 facility and then only after a full hearing on issues relating to  
5 the necessity of committing an individual to a mental health  
6 facility: *Provided*, That if the individual objects to the hearing  
7 being held in the county where the mental health facility is  
8 located, the hearing shall be conducted in the county of the  
9 individual's residence.

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

20       © *Oath; contents of application; who may inspect application;*  
21 *when application cannot be filed.* --

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

23       (2) The application shall contain statements by the applicant  
24 that he or she believes because of symptoms of mental illness or

1 addiction the individual is likely to cause serious harm to  
2 himself, herself or to others and the grounds for the belief,  
3 stating in detail the recent overt acts upon which the belief is  
4 based.

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

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

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

18 (1) The applicant shall file with his or her application the  
19 certificate of a physician or a psychologist stating that in his or  
20 her opinion the individual is mentally ill or addicted and that  
21 because of the mental illness or addiction the individual is likely  
22 to cause serious harm to himself, herself or to others if he or she  
23 is allowed to remain at liberty and therefore he or she should be  
24 hospitalized, stating in detail the recent overt acts upon which

1 the conclusion is based.

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

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

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

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

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

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

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

1 is indigent.

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

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

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

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

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

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

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

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

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

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

20 (1) Upon completion of the final commitment hearing, and the  
21 evidence presented in the hearing, the circuit court or mental  
22 hygiene commissioner shall make findings as to whether or not the  
23 individual is mentally ill or addicted and because of illness or  
24 addiction is likely to cause serious harm to himself, herself or to

1 others if allowed to remain at liberty and is a resident of the  
2 county in which the hearing is held or currently is a patient at a  
3 mental health facility in the county.

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

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

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

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

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

23 (3) If the order pursuant to a final commitment hearing is for  
24 a temporary observation period, the circuit court or mental hygiene

1 commissioner may, at any time prior to the expiration of such period  
2 on the basis of a report by the chief medical officer of the mental  
3 health facility in which the patient is confined, hold another  
4 hearing pursuant to the terms of this section and in the same manner  
5 as the hearing was held as if it were an original petition for  
6 involuntary hospitalization to determine whether the original order  
7 for a temporary observation period should be modified or changed to  
8 an order of indeterminate hospitalization of the patient. At the  
9 conclusion of the hearing, the circuit court shall order  
10 indeterminate hospitalization of the patient or dismissal of the  
11 proceedings.

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

21 (1) *Dismissal of proceedings.* -- If the circuit court or mental  
22 hygiene commissioner finds that the individual is not mentally ill  
23 or addicted, the proceedings shall be dismissed. If the circuit  
24 court or mental hygiene commissioner finds that the individual is

1 mentally ill or addicted but is not because of the illness or  
2 addiction likely to cause serious harm to himself, herself or to  
3 others if allowed to remain at liberty, the proceedings shall be  
4 dismissed.

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

11       (n) *Consideration of transcript by circuit court of county of*  
12 *individual's residence; order of hospitalization; execution of*  
13 *order.* --

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

24       (2) If the circuit court or mental hygiene commissioner of the

1 county of the residence of the individual is satisfied from the  
2 evidence contained in the transcript that the individual should be  
3 hospitalized as determined by the standard set forth above, the  
4 circuit court shall order the appropriate hospitalization as though  
5 the individual had been brought before the circuit court or its  
6 mental hygiene commissioner in the first instance.

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

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

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

1 compact on mental health.

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

4       (1) The chief medical officer of a mental health facility  
5 admitting a patient pursuant to proceedings under this section shall  
6 forthwith make a report of the admission to the Secretary of the  
7 Department of Health and Human Resources or to his or her designee.

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

15       ® *Payment of some expenses by the state; Mental Hygiene Fund*  
16 *established; expenses paid by the county commission.* --

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

22       (2) The county commission shall pay out of the county treasury  
23 all other expenses incurred in the hearings conducted under the  
24 provisions of this article whether or not hospitalization is

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

4 (3) The Department of Health and Human Resources shall  
5 reimburse the circuit clerk of the county where the hearings are  
6 held for expenses of filing, postage and copies.

NOTE: The purpose of this bill is to require the Department of Health and Human Resources to reimburse the circuit clerk of the county where involuntary commitment hearings are held for expenses of filing, postage and copies.

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