

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2012



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4424

(By Delegates Morgan, Stephens, Butcher,
Staggers and Border)



Passed March 10, 2012

To Take Effect Ninety Days From Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4424

(BY DELEGATES MORGAN, STEPHENS, BUTCHER,
STAGGERS AND BORDER)

[Passed March 10, 2012; to take effect ninety days from passage.]

AN ACT to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to modified mental hygiene procedures; extending the termination date of the modified mental hygiene procedures pilot project; including addiction as a basis for treatment under the pilot project; authorizing additional programs throughout the state; continuing the pilot project through July 1, 2014; and requiring the secretary of the Department of Health and Human Resources to report to the legislature regarding the efficacy of the pilot program on or before the first day of the 2013 and 2014 regular sessions of the Legislature.

Be it enacted by the Legislature of West Virginia:

That §27-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; instituting modified mental hygiene procedures; establishing procedures; providing for forms and reports.

1 (a) The Supreme Court of Appeals shall, in consultation
2 with the Secretary of the Department of Health and Human
3 Resources and local mental health services consumers and
4 providers, implement throughout the state modified mental
5 hygiene procedures that are consistent with the requirements
6 set forth in this section. The judicial circuits selected for
7 implementing the modified procedures shall be circuits in
8 which the Supreme Court of Appeals determines, after
9 consultation with the Secretary of the Department of Health
10 and Human Resources and local mental health consumers and
11 service providers, that adequate resources will be available to
12 implement the modified procedures. After July 1, 2012, the
13 Supreme Court of Appeals and the Secretary of the
14 Department of Health and Human Resources in consultation
15 with local mental health consumers and providers may add
16 programs for modified mental hygiene procedures in any
17 judicial circuit that establishes a need for the same.

18 (b) The Secretary of the Department of Health and
19 Human Resources, after consultation with the Supreme Court
20 of Appeals and local mental health services consumers and
21 service providers, shall prescribe appropriate forms to
22 implement the modified procedures and shall annually
23 prepare reports on the efficacy of the modified procedures
24 and transmit the report to the Legislature on or before the first
25 day of the 2013 and 2014 regular sessions of the Legislature.

26 (c) The Supreme Court of Appeals may, after
27 consultation with the Secretary of the Department of Health
28 and Human Resources and local mental health services
29 consumers and providers further modify any specific
30 modified procedures that are implemented pursuant to this
31 section. The modified procedures must be consistent with the
32 requirements of this chapter and this section. If the Secretary
33 of the Department of Health and Human Resources
34 determines that the use of any modified procedure in one or
35 more judicial circuits is placing an unacceptable additional
36 burden upon state mental health resources, the Supreme
37 Court of Appeals shall, in consultation with the secretary,
38 modify the procedures used in such a fashion as will address
39 the concerns of the secretary, consistent with the
40 requirements of this chapter. The provisions of this section
41 and the modified procedures thereby authorized shall cease
42 to have any force and effect on June 30, 2014, unless
43 extended by an act of the Legislature prior to that date.

44 (1) The modified procedures shall authorize that a
45 verified petition seeking a treatment compliance order may be
46 filed by any person alleging:

47 (A) That an individual, on two or more occasions within
48 a twenty-four month period prior to the filing of the petition,
49 as a result of mental illness or addiction or both, has been
50 hospitalized pursuant to the provisions of this chapter; or that
51 the individual has been convicted of one or more crimes of
52 violence against the person within a twenty-four month
53 period prior to the filing of the petition and the individual's
54 failure to take prescribed medication or follow another
55 prescribed regimen to treat a mental illness or addiction or
56 both was a significant aggravating or contributing factor in
57 the circumstances surrounding the crime;

58 (B) That the individual's previous hospitalizations due to
59 mental illness or addiction or both or the individual's crime
60 of violence occurred after or as a result of the individual's
61 failure to take medication or other treatment as prescribed by
62 a physician to treat the individual's mental illness or
63 addiction or both; and

64 (C) That the individual, in the absence of a court order
65 requiring him or her to take medication or other treatment as
66 prescribed, is unlikely to do so and that his or her failure to
67 take medication or follow other regimen or treatment as
68 prescribed is likely to lead to further instances in the
69 reasonably near future in which the individual becomes likely
70 to cause serious harm or commit a crime of violence against
71 the person.

72 (2) Upon the filing of a petition seeking a treatment
73 compliance order and the petition's review by a circuit judge
74 or mental hygiene commissioner, counsel shall be appointed
75 for the individual if the individual does not already have
76 counsel and a copy of the petition and all supporting evidence
77 shall be furnished to the individual and their counsel. If the
78 circuit judge or mental hygiene commissioner determines on
79 the basis of the petition that it is necessary to protect the
80 individual or to secure their examination, a detention order
81 may be entered ordering that the individual be taken into
82 custody and examined by a psychiatrist or licensed
83 psychologist. A hearing on the allegations in the petition,
84 which may be combined with a hearing on a probable cause
85 petition conducted pursuant to the provisions of section two
86 of this article or a final commitment hearing conducted
87 pursuant to the provisions of section four of this article, shall
88 be held before a circuit judge or mental hygiene
89 commissioner. If the individual is taken into custody and
90 remains in custody as a result of a detention order, the

91 hearing shall be held within forty-eight hours of the time that
92 the individual is taken into custody.

93 (3) If the allegations in the petition seeking a treatment
94 compliance order are proved by the evidence adduced at the
95 hearing, which must include expert testimony by a
96 psychiatrist or licensed psychologist, the circuit judge or
97 mental hygiene commissioner may enter a treatment
98 compliance order for a period not to exceed six months upon
99 making the following findings:

100 (A) That the individual is eighteen years of age or older;

101 (B) That on two or more occasions within a twenty-four
102 month period prior to the filing of the petition an individual,
103 as a result of mental illness, has been hospitalized pursuant to
104 the provisions of this chapter; or that on at least one occasion
105 within a twenty-four month period prior to the filing of the
106 petition has been convicted of a crime of violence against any
107 person;

108 (C) That the individual's previous hospitalizations due to
109 mental illness or addiction or both occurred as a result of the
110 individual's failure to take prescribed medication or follow a
111 regimen or course of treatment as prescribed by a physician
112 or psychiatrist to treat the individual's mental illness or
113 addiction; or that the individual has been convicted for crimes
114 of violence against any person and the individual's failure to
115 take medication or follow a prescribed regimen or course of
116 treatment of the individual's mental illness or addiction or
117 both was a significant aggravating or contributing factor in
118 the commission of the crime;

119 (D) That a psychiatrist or licensed psychologist who has
120 personally examined the individual within the preceding
121 twenty-four months has issued a written opinion that the

122 individual, without the aid of the medication or other
123 prescribed treatment, is likely to cause serious harm to
124 himself or herself or to others;

125 (E) That the individual, in the absence of a court order
126 requiring him or her to take medication or other treatment as
127 prescribed, is unlikely to do so and that his or her failure to
128 take medication or other treatment as prescribed is likely to
129 lead to further instances in the reasonably near future in
130 which the individual becomes likely to cause serious harm or
131 commit a crime of violence against any person;

132 (F) That, where necessary, a responsible entity or
133 individual is available to assist and monitor the individual's
134 compliance with an order requiring the individual to take the
135 medication or follow other prescribed regimen or course of
136 treatment;

137 (G) That the individual can obtain and take the prescribed
138 medication or follow other prescribed regimen or course of
139 treatment without undue financial or other hardship; and

140 (H) That, if necessary, a medical provider is available to
141 assess the individual within forty-eight hours of the entry of
142 the treatment compliance order.

143 (4) The order may require an individual to take
144 medication and treatment as prescribed and if appropriate to
145 attend scheduled medication and treatment-related
146 appointments: *Provided*, That a treatment compliance order
147 shall be subject to termination or modification by a circuit
148 judge or mental hygiene commissioner if a petition is filed
149 seeking termination or modification of the order and it is
150 shown in a hearing on the petition that there has been a
151 material change in the circumstances that led to the entry of
152 the original order that justifies the order's modification or

153 termination: *Provided, however,* That a treatment compliance
154 order may be extended by a circuit judge or mental hygiene
155 commissioner for additional periods of time not to exceed six
156 months, upon the filing of a petition seeking an extension and
157 after a hearing on the petition or upon the agreement of the
158 individual.

159 (5) After the entry of a treatment compliance order in
160 accordance with the provisions of subdivisions (3) and (4) of
161 this subsection if a verified petition is filed alleging that an
162 individual has not complied with the terms of a medication
163 and treatment compliance order and if a circuit judge or
164 mental hygiene commissioner determines from the petition
165 and any supporting evidence that there is probable cause to
166 believe that the allegations in the petition are true, counsel
167 shall be appointed for the individual and a copy of the
168 petition and all supporting evidence shall be furnished to the
169 individual and his or her counsel. If the circuit judge or
170 mental hygiene commissioner considers it necessary to
171 protect the individual or to secure his or her examination, a
172 detention order may be entered to require that the individual
173 be examined by a psychiatrist or psychologist.

174 (A) A hearing on the allegations in the petition, which
175 may be combined with a hearing on a probable cause petition
176 conducted pursuant to section two of this article or a final
177 commitment hearing conducted pursuant to section four of
178 this article, shall be held before a circuit judge or mental
179 hygiene commissioner. If the individual is taken and remains
180 in custody as a result of a detention order, the hearing shall be
181 held within forty-eight hours of the time that the individual is
182 taken into custody.

183 (B) At a hearing on any petition filed pursuant to the
184 provisions of paragraph (A) of this subdivision, the circuit
185 judge or mental hygiene commissioner shall determine

186 whether the individual has complied with the terms of the
187 medication and treatment compliance order. If the individual
188 has complied with the order, the petition shall be dismissed.
189 If the evidence presented to the circuit judge or mental
190 hygiene commissioner shows that the individual has complied
191 with the terms of the existing order, but the individual's
192 prescribed medication, dosage or course of treatment needs
193 to be modified, then the newly modified medication and
194 treatment prescribed by a psychiatrist who personally
195 examined the individual may be properly incorporated into a
196 modified order. If the order has not been complied with, the
197 circuit judge or mental hygiene commissioner, after inquiring
198 into the reasons for noncompliance and whether any aspects
199 of the order should be modified, may continue the individual
200 upon the terms of the original order and direct the individual
201 to comply with the order or may modify the order in light of
202 the evidence presented at the hearing. If the evidence shows
203 that the individual at the time of the hearing is likely to cause
204 serious harm to himself or herself, herself or others as a result
205 of the individual's mental illness, the circuit judge or mental
206 hygiene commissioner may convert the proceeding into a
207 probable cause proceeding and enter a probable cause order
208 directing the involuntary admission of the individual to a
209 mental health facility for examination and treatment. Any
210 procedures conducted pursuant to this subsection must
211 comply with and satisfy all applicable due process and
212 hearing requirements of sections two and three of this article.

213 (d) The modified procedures may authorize that upon the
214 certification of a qualified mental health professional, as
215 described in subsection (e) of this section, that there is
216 probable cause to believe that an individual who has been
217 hospitalized two or more times in the previous twenty-four
218 months because of mental illness is likely to cause serious
219 harm to himself or herself, herself or to others as a result of
220 the mental illness if not immediately restrained and that the

221 best interests of the individual would be served by immediate
222 hospitalization, a circuit judge, mental hygiene commissioner
223 or designated magistrate may enter a temporary probable
224 cause order directing the involuntary hospitalization of the
225 individual at a mental health facility for immediate
226 examination and treatment.

227 (e) The modified procedures may authorize the chief
228 judge of a judicial circuit, or circuit judge if there is no chief
229 judge, to enter orders authorizing specific psychiatrists or
230 licensed psychologists, whose qualifications and training
231 have been reviewed and approved by the Supreme Court of
232 Appeals, to issue certifications that authorize and direct the
233 involuntary admission of an individual subject to the
234 provisions of this section on a temporary probable cause basis
235 to a mental health facility for examination and treatment. The
236 authorized psychiatrist or licensed psychologist must
237 conclude and certify based on personal observation prior to
238 certification that the individual is mentally ill and, because of
239 such mental illness or addiction or both, is imminently likely
240 to cause serious harm to himself or herself or to others if not
241 immediately restrained and promotion of the best interests of
242 the individual requires immediate hospitalization.
243 Immediately upon certification, the psychiatrist or licensed
244 psychologist shall provide notice of the certification to a
245 circuit judge, mental hygiene commissioner or designated
246 magistrate in the county where the individual resides.

247 (f) No involuntary hospitalization pursuant to a temporary
248 probable cause determination issued pursuant to the
249 provisions of this section shall continue in effect for more
250 than forty-eight hours without the filing of a petition for
251 involuntary hospitalization and the occurrence of a probable
252 cause hearing before a circuit judge, mental hygiene
253 commissioner or designated magistrate. If at any time the
254 chief medical officer of the mental health facility to which the

255 individual is admitted determines that the individual is not
256 likely to cause serious harm as a result of mental illness or
257 addiction or both, the chief medical officer shall discharge the
258 individual and immediately forward a copy of the
259 individual's discharge to the circuit judge, mental hygiene
260 commissioner or designated magistrate.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2012.

Governor