

H. B. 2401

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(By Delegates M. Smith, C. Miller, Morgan,
Stephens and Reynolds)
[Introduced February 13, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

(a) *Involuntary commitment.* -- Except as provided in section
three of this article, no individual may be involuntarily committed
to a mental health facility except by order entered of record at
any time by the circuit court of the county in which the person
resides or was found, or if the individual is hospitalized in a

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

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

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

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

21 (2) The application shall contain statements by the applicant
22 that the individual is likely to cause serious harm to self or
23 others due to what the applicant believes are symptoms of mental
24 illness or addiction. The applicant shall state in detail the

1 recent overt acts upon which the belief is based.

2 (3) The written application, certificate, affidavit and any
3 warrants issued pursuant thereto, including any related documents,
4 filed with a circuit court, mental hygiene commissioner or
5 designated magistrate for the involuntary hospitalization of an
6 individual are not open to inspection by any person other than the
7 individual, unless authorized by the individual or his or her legal
8 representative or by order of the circuit court. The records may
9 not be published unless authorized by the individual or his or her
10 legal representative. Disclosure of these records may, however, be
11 made by the clerk, circuit court, mental hygiene commissioner or
12 designated magistrate to provide notice to the Federal National
13 Instant Criminal Background Check System established pursuant to
14 section 103(d) of the Brady Handgun Violence Prevention Act, 18
15 U.S.C. §922, and the central state mental health registry, in
16 accordance with article seven-a, chapter sixty-one of this code.
17 Disclosure may also be made to the prosecuting attorney and
18 reviewing court in an action brought by the individual pursuant to
19 section five, article seven-a, chapter sixty-one of this code to
20 regain firearm and ammunition rights.

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

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

1 (1) The applicant shall file with his or her application the
2 certificate of a physician or a psychologist stating that in his or
3 her opinion the individual is mentally ill or addicted and that
4 because of the mental illness or addiction, the individual is
5 likely to cause serious harm to self or others if allowed to remain
6 at liberty and, therefore, should be hospitalized. The certificate
7 shall state in detail the recent overt acts on which the conclusion
8 is based.

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

12 (e) *Notice requirements; eight days notice required.* -- Upon
13 receipt of an application, the mental hygiene commissioner or
14 circuit court shall review the application and if it is determined
15 that the facts alleged, if any, are sufficient to warrant
16 involuntary hospitalization, forthwith fix a date for and have the
17 clerk of the circuit court give notice of the hearing:

18 (1) To the individual;

19 (2) To the applicant or applicants;

20 (3) To the individual's spouse, one of the parents or
21 guardians, or, if the individual does not have a spouse, parents or
22 parent or guardian, to one of the individual's adult next of kin if
23 the next of kin is not the applicant;

24 (4) To the mental health authorities serving the area;

1 (5) To the circuit court in the county of the individual's
2 residence if the hearing is to be held in a county other than that
3 of the individual's residence; and

4 (6) To the prosecuting attorney of the county in which the
5 hearing is to be held.

6 (f) The notice shall be served on the individual by personal
7 service of process not less than eight days prior to the date of
8 the hearing and shall specify:

9 (1) The nature of the charges against the individual;

10 (2) The facts underlying and supporting the application of
11 involuntary commitment;

12 (3) The right to have counsel appointed;

13 (4) The right to consult with and be represented by counsel at
14 every stage of the proceedings; and

15 (5) The time and place of the hearing.

16 The notice to the individual's spouse, parents or parent or
17 guardian, the individual's adult next of kin or to the circuit
18 court in the county of the individual's residence may be by
19 personal service of process or by certified or registered mail,
20 return receipt requested, and shall state the time and place of the
21 hearing.

22 (g) *Examination of individual by court-appointed physician or*
23 *psychologist; custody for examination; dismissal of proceedings.*

24 --

1 (1) Except as provided in subdivision (3) of this subsection,
2 within a reasonable time after notice of the commencement of final
3 commitment proceedings is given, the circuit court or mental
4 hygiene commissioner shall appoint a physician or psychologist to
5 examine the individual and report to the circuit court or mental
6 hygiene commissioner his or her findings as to the mental condition
7 or addiction of the individual and the likelihood of causing
8 serious harm to self or others.

9 (2) If the designated physician or psychologist reports to the
10 circuit court or mental hygiene commissioner that the individual
11 has refused to submit to an examination, the circuit court or
12 mental hygiene commissioner shall order him or her to submit to the
13 examination. The circuit court or mental hygiene commissioner may
14 direct that the individual be detained or taken into custody for
15 the purpose of an immediate examination by the designated physician
16 or psychologist. All such orders shall be directed to the sheriff
17 of the county or other appropriate law-enforcement officer. After
18 the examination has been completed, the individual shall be
19 released from custody unless proceedings are instituted pursuant to
20 section three of this article.

21 (3) If the reports of the appointed physician or psychologist
22 do not confirm that the individual is mentally ill or addicted and
23 might be harmful to self or others, then the proceedings for
24 involuntary hospitalization shall be dismissed.

1 (h) *Rights of the individual at the final commitment hearing;*
2 *seven days' notice to counsel required. -*

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

7 (2) In the event the individual has not retained counsel, the
8 court or mental hygiene commissioner, at least six days prior to
9 hearing, shall appoint a competent attorney and shall inform the
10 individual of the name, address and telephone number of his or her
11 appointed counsel.

12 (3) The individual has the right to have an examination by an
13 independent expert of his or her choice and to present testimony
14 from the expert as a medical witness on his or her behalf. The
15 cost of the independent expert is paid by the individual unless he
16 or she is indigent.

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

19 (i) *Duties of counsel representing individual; payment of*
20 *counsel representing indigent. -*

21 (1) Counsel representing an individual shall conduct a timely
22 interview, make investigation and secure appropriate witnesses, be
23 present at the hearing and protect the interests of the individual.

24 (2) Counsel representing an individual is entitled to copies

1 of all medical reports, psychiatric or otherwise.

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

6 (j) *Conduct of hearing; receipt of evidence; no evidentiary*
7 *privilege; record of hearing.* -

8 (1) The circuit court or mental hygiene commissioner shall
9 hear evidence from all interested parties in chamber including
10 testimony from representatives of the community mental health
11 facility.

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

14 (3) The circuit court or mental hygiene commissioner is bound
15 by the rules of evidence promulgated by the Supreme Court of
16 Appeals except that statements made to physicians or psychologists
17 by the individual may be admitted into evidence by the physician's
18 or psychologist's testimony, notwithstanding failure to inform the
19 individual that this statement may be used against him or her. A
20 psychologist or physician testifying shall bring all records
21 pertaining to the individual to the hearing. The medical evidence
22 obtained pursuant to an examination under this section, or section
23 two or three of this article, is not privileged information for
24 purposes of a hearing pursuant to this section.

1 (4) All final commitment proceedings shall be reported or
2 recorded, whether before the circuit court or mental hygiene
3 commissioner, and a transcript made available to the individual,
4 his or her counsel or the prosecuting attorney within thirty days
5 if requested for the purpose of further proceedings. In any case
6 where an indigent person intends to pursue further proceedings, the
7 circuit court shall, by order entered of record, authorize and
8 direct the court reporter to furnish a transcript of the hearings.

9 (k) *Requisite findings by the court.* -

10 (1) Upon completion of the final commitment hearing and the
11 evidence presented in the hearing, the circuit court or mental
12 hygiene commissioner shall make findings as to the following:

13 (A) Whether the individual is mentally ill or addicted;

14 (B) Whether, because of illness or addiction, the individual
15 is likely to cause serious harm to self or others if allowed to
16 remain at liberty;

17 (C) Whether the individual is a resident of the county in
18 which the hearing is held or currently is a patient at a mental
19 health facility in the county; and

20 (D) Whether there is a less restrictive alternative than
21 commitment appropriate for the individual. The burden of proof of
22 the lack of a less restrictive alternative than commitment is on
23 the person or persons seeking the commitment of the individual.

24 (2) The findings of fact shall be incorporated into the order

1 entered by the circuit court and must be based upon clear, cogent
2 and convincing proof.

3 (1) *Orders issued pursuant to final commitment hearing; entry*
4 *of order; change in order of court; expiration of order. --*

5 (1) Upon the requisite findings, the circuit court may order
6 the individual to a mental health facility for an indeterminate
7 period or for a temporary observatory period not exceeding six
8 months.

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

13 (3) If the order pursuant to a final commitment hearing is for
14 a temporary observation period, the circuit court or mental hygiene
15 commissioner may, at any time prior to the expiration of such
16 period on the basis of a report by the chief medical officer of the
17 mental health facility in which the patient is confined, hold
18 another hearing pursuant to the terms of this section and in the
19 same manner as the hearing was held as if it were an original
20 petition for involuntary hospitalization to determine whether the
21 original order for a temporary observation period should be
22 modified or changed to an order of indeterminate hospitalization of
23 the patient. At the conclusion of the hearing, the circuit court
24 shall order indeterminate hospitalization of the patient or

1 dismissal of the proceedings.

2 (4) An order for an indeterminate period expires of its own
3 terms at the expiration of two years from the date of the last
4 order of commitment unless prior to the expiration, the Department
5 of Health and Human Resources, upon findings based on an
6 examination of the patient by a physician or a psychologist,
7 extends the order for indeterminate hospitalization. If the
8 patient or his or her counsel requests a hearing, a hearing shall
9 be held by the mental hygiene commissioner or by the circuit court
10 of the county as provided in subsection (a) of this section.

11 (m) *Dismissal of proceedings.* -- If the circuit court or
12 mental hygiene commissioner finds that the individual is not
13 mentally ill or addicted, the proceedings shall be dismissed. If
14 the circuit court or mental hygiene commissioner finds that the
15 individual is mentally ill or addicted but is not, because of the
16 illness or addiction, likely to cause serious harm to self or
17 others if allowed to remain at liberty, the proceedings shall be
18 dismissed.

19 (n) *Immediate notification of order of hospitalization.* --
20 The clerk of the circuit court in which an order directing
21 hospitalization is entered, if not in the county of the
22 individual's residence, shall immediately upon entry of the order
23 forward a certified copy of the order to the clerk of the circuit
24 court of the county of which the individual is a resident.

1 (o) *Consideration of transcript by circuit court of county of*
2 *individual's residence; order of hospitalization; execution of*
3 *order.* -

4 (1) If the circuit court or mental hygiene commissioner is
5 satisfied that hospitalization should be ordered but finds that the
6 individual is not a resident of the county in which the hearing is
7 held and the individual is not currently a resident of a mental
8 health facility, a transcript of the evidence adduced at the final
9 commitment hearing of the individual, certified by the clerk of the
10 circuit court, shall forthwith be forwarded to the clerk of the
11 circuit court of the county of which the individual is a resident.
12 The clerk shall immediately present the transcript to the circuit
13 court or mental hygiene commissioner of the county.

14 (2) If the circuit court or mental hygiene commissioner of the
15 county of the residence of the individual is satisfied from the
16 evidence contained in the transcript that the individual should be
17 hospitalized as determined by the standard set forth above, the
18 circuit court shall order the appropriate hospitalization as though
19 the individual had been brought before the circuit court or its
20 mental hygiene commissioner in the first instance.

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

24 (p) *Order of custody to responsible person.* -- In lieu of

1 ordering the patient to a mental health facility, the circuit court
2 may order the individual delivered to some responsible person who
3 will agree to take care of the individual and the circuit court may
4 take from the responsible person a bond in an amount to be
5 determined by the circuit court with condition to restrain and take
6 proper care of the individual until further order of the court.

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

16 (r) *Report to the Secretary of the Department of Health and*
17 *Human Resources.* -

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

23 (2) Whenever an individual is released from custody due to the
24 failure of an employee of a mental health facility to comply with

1 the time requirements of this article, the chief medical officer of
2 the mental health facility shall forthwith, after the release of
3 the individual, make a report to the Secretary of the Department of
4 Health and Human Resources or to his or her designee of the failure
5 to comply.

6 (s) *Payment of some expenses by the state; mental hygiene fund*
7 *established; expenses paid by the county commission. -*

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

13 (2) The county commission shall pay out of the county treasury
14 all other expenses incurred in the hearings conducted under ~~the~~
15 ~~provisions of~~ this article whether or not hospitalization is
16 ordered, including any fee allowed by the circuit court by order
17 entered of record for any physician, psychologist and witness
18 called by the indigent individual. The copying and mailing costs
19 associated with providing notice of the final commitment hearing
20 and issuance of the final order shall be paid by the county where
21 the involuntary commitment petition was initially filed.

22 (3) The Department of Health and Human Resources shall
23 reimburse the circuit clerk of the county where the hearings are
24 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.