

Senate Bill No. 425

(By Senators Tucker, Kessler (Mr. President) and Cookman)

[Introduced March 4, 2013; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-5-2a; to amend and reenact §27-5-11 of said code; and to amend said code by adding thereto a new section, designated §27-5-12, all relating to mental health treatment alternatives to involuntary commitment; allowing the court to convert an involuntary hospitalization application into a petition for a temporary compliance order; eliminating the sunset provision; modifying the requirements and process necessary to enter a treatment compliance order; clarifying that persons who use the modified procedures of this section are not subject to reporting to certain databases; and creating a new database for compilation of certain persons to be used by the circuit courts.

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

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new section, designated §27-5-2a; that §27-5-11
4 of said code be amended and reenacted; and that said code be
5 amended by adding thereto a new section, designated §27-5-12, all
6 to read as follows:

7 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

8 **§27-5-2a. Authorizing court to use temporary compliance order**
9 **during involuntary commitment procedures.**

10 After the evaluation of the individual during the involuntary
11 commitment procedures contained in this article is completed and
12 reported to the court, the circuit court, mental hygiene
13 commissioner or designated magistrate may convert an application
14 for involuntary hospitalization into a petition for a treatment
15 compliance order under section eleven of this article. The circuit
16 court, mental hygiene commissioner or designated magistrate may use
17 the information contained in the application for involuntary
18 hospitalization and the entire record of proceedings with respect
19 to the individual, including any prior proceedings, to determine if
20 the necessary findings for a treatment compliance order, as stated
21 in section eleven of this article, are present and if that course
22 of treatment is appropriate in lieu of involuntary hospitalization.

1 **§27-5-11. Modified procedures for mental hygiene; treatment**
2 **compliance orders; temporary probable cause orders;**
3 **establishing procedures; providing for forms and**
4 **reports.**

5 (a) The Supreme Court of Appeals shall, in consultation with
6 the Secretary of the Department of Health and Human Resources and
7 local mental health services consumers and providers, implement
8 throughout the state modified mental hygiene procedures that are
9 consistent with the requirements set forth in this section. The
10 judicial circuits selected for implementing the modified procedures
11 shall be circuits in which the Supreme Court of Appeals determines,
12 after consultation with the Secretary of the Department of Health
13 and Human Resources and local mental health consumers and service
14 providers, that adequate resources will be available to implement
15 the modified procedures. After July 1, 2012, the Supreme Court of
16 Appeals and the Secretary of the Department of Health and Human
17 Resources in consultation with local mental health consumers and
18 providers may add programs for modified mental hygiene procedures
19 in any judicial circuit that establishes a need for the same. The
20 personal information of an individual receiving modified mental
21 hygiene procedures pursuant to this section may not be reported to
22 the central state mental health registry detailed in article

1 seven-a of chapter sixty-one of this code or to the National
2 Instant Criminal Background Check System.

3 (b) The Secretary of the Department of Health and Human
4 Resources, after consultation with the Supreme Court of Appeals and
5 local mental health services consumers and service providers, ~~shall~~
6 ~~prescribe appropriate forms to implement the modified procedures~~
7 ~~and shall annually prepare reports~~ shall prepare a written report
8 on the efficacy of the modified procedures and transmit the report
9 to the Legislature on or before the first day of the ~~2013 and 2014~~
10 ~~regular sessions~~ 2014 session of the Legislature.

11 (c) The Supreme Court of Appeals may, after consultation with
12 the Secretary of the Department of Health and Human Resources and
13 local mental health services consumers and providers, further
14 modify any specific modified procedures that are implemented
15 pursuant to this section. The modified procedures must be
16 consistent with the requirements of this chapter and this section.
17 If the Secretary of the Department of Health and Human Resources
18 determines that the use of any modified procedure in one or more
19 judicial circuits is placing an unacceptable additional burden upon
20 state mental health resources, the Supreme Court of Appeals shall,
21 in consultation with the secretary, modify the procedures used in
22 such a fashion as will address the concerns of the secretary,
23 consistent with the requirements of this chapter. The Supreme

1 Court of Appeals shall provide uniform petition, procedure and
2 order forms which shall be used in all modified mental hygiene
3 proceedings brought in this state. ~~The provisions of this section~~
4 ~~and the modified procedures thereby authorized shall cease to have~~
5 ~~any force and effect on June 30, 2014, unless extended by an act of~~
6 ~~the Legislature prior to that date.~~

7 (1) The modified procedures shall authorize that a verified
8 petition seeking a treatment compliance order may be filed by ~~any~~
9 an adult person alleging:

10 ~~(A) That an individual, on two or more occasions within a~~
11 ~~twenty-four month period prior to the filing of the petition, as a~~
12 ~~result of mental illness or addiction or both, has been~~
13 ~~hospitalized pursuant to the provisions of this chapter; or that~~
14 ~~the individual has been convicted of one or more crimes of violence~~
15 ~~against the person within a twenty-four month period prior to the~~
16 ~~filing of the petition and the individual's failure to take~~
17 ~~prescribed medication or follow another prescribed regimen to treat~~
18 ~~a mental illness or addiction or both was a significant aggravating~~
19 ~~or contributing factor in the circumstances surrounding the crime;~~

20 ~~(B)~~ (A) A psychiatrist or licensed psychologist concludes that
21 without the aid of medication or other prescribed treatment, the
22 individual is likely to decompensate in mental health or due to
23 substance abuse to the point that he or she becomes likely to cause

1 serious harm to himself or herself or to others or commit a crime
2 of violence; ~~That the individual's previous hospitalizations due to~~
3 ~~mental illness or addiction or both or the individual's crime of~~
4 ~~violence occurred after or as a result of the individual's failure~~
5 ~~to take medication or other treatment as prescribed by a physician~~
6 ~~to treat the individual's mental illness or addiction or both; and~~

7 ~~(C)~~ (B) That the individual, in the absence of a court order
8 requiring him or her to take medication or other treatment as
9 prescribed, is unlikely to do so and that his or her failure to
10 take medication or follow other regimen or treatment as prescribed
11 is likely to lead to further instances ~~in the reasonably near~~
12 ~~future~~ in which the individual is likely to decompensate in mental
13 health or due to substance abuse to the point that he or she
14 becomes likely to cause serious harm to himself or herself or
15 others or commit a crime of violence; and ~~against the person.~~

16 (C) Such information and facts in the petition as may be
17 required by the form provided for this purpose by the Supreme Court
18 of Appeals.

19 (2) Upon the filing of a petition seeking a treatment
20 compliance order and the petition's review by a circuit judge or
21 Mental Hygiene Commissioner, counsel shall be appointed for the
22 individual if the individual does not already have counsel and a
23 copy of the petition and all supporting evidence shall be furnished

1 to the individual and their counsel. If the circuit judge or
2 Mental Hygiene Commissioner determines on the basis of the petition
3 that it is necessary to protect the individual or to secure their
4 examination, a detention order may be entered ordering that the
5 individual be taken into custody and examined by a psychiatrist or
6 licensed psychologist. The examination is to be provided or
7 arranged by a community mental health center designated by the
8 Secretary of the Department of Health and Human Resources to serve
9 the county in which the action takes place. A hearing on the
10 allegations in the petition, which may be combined with a hearing
11 on a probable cause petition conducted pursuant to the provisions
12 of section two of this article or a final commitment hearing
13 conducted pursuant to the provisions of section four of this
14 article, shall be held before a circuit judge or mental hygiene
15 commissioner. If the individual is taken into custody and remains
16 in custody as a result of a detention order, the hearing shall be
17 held within forty-eight hours of the time that the individual is
18 taken into custody.

19 (3) If the allegations in the petition seeking a treatment
20 compliance order are proved by the evidence adduced at the hearing,
21 which must include expert testimony by a psychiatrist or licensed
22 psychologist, the circuit judge or mental hygiene commissioner may
23 enter a treatment compliance order for a period not to exceed six

1 months upon making the following findings:

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

3 ~~(B) That on two or more occasions within a twenty-four month~~
4 ~~period prior to the filing of the petition an individual, as a~~
5 ~~result of mental illness, has been hospitalized pursuant to the~~
6 ~~provisions of this chapter; or that on at least one occasion within~~
7 ~~a twenty-four month period prior to the filing of the petition has~~
8 ~~been convicted of a crime of violence against any person;~~

9 ~~(C) That the individual's previous hospitalizations due to~~
10 ~~mental illness or addiction or both occurred as a result of the~~
11 ~~individual's failure to take prescribed medication or follow a~~
12 ~~regimen or course of treatment as prescribed by a physician or~~
13 ~~psychiatrist to treat the individual's mental illness or addiction;~~
14 ~~or that the individual has been convicted for crimes of violence~~
15 ~~against any person and the individual's failure to take medication~~
16 ~~or follow a prescribed regimen or course of treatment of the~~
17 ~~individual's mental illness or addiction or both was a significant~~
18 ~~aggravating or contributing factor in the commission of the crime;~~

19 ~~(D)~~ (A) That a psychiatrist or licensed psychologist who has
20 personally examined the individual within the preceding ~~twenty-four~~
21 ~~months~~ ninety days has issued a written opinion that the
22 individual, without the aid of the medication or other prescribed
23 treatment, is likely to decompensate in mental health or due to

1 substance abuse to the point that he or she becomes likely to cause
2 serious harm to himself or herself or to others or commit a crime
3 of violence;

4 ~~(E)~~ (B) That the individual, in the absence of a court order
5 requiring him or her to take medication or other treatment as
6 prescribed, is unlikely to do so and that his or her failure to
7 take medication or other treatment as prescribed is likely to lead
8 to ~~further instances in the reasonably near future~~ instances in
9 which the individual is likely to decompensate in mental health or
10 due to substance abuse to the point that he or she becomes likely
11 to cause serious harm or commit a crime of violence; ~~against any~~
12 ~~person;~~

13 ~~(F)~~ (C) That, where necessary, a responsible entity or
14 individual is available to assist and monitor the individual's
15 compliance with an order requiring the individual to take the
16 medication or follow other prescribed regimen or course of
17 treatment;

18 ~~(G)~~ (D) That the individual, or the individual's guardian, can
19 obtain ~~and take~~ the prescribed medication or ~~follow~~ other
20 prescribed regimen or course of treatment without undue financial
21 or other hardship; and

22 ~~(H)~~ (E) That, if necessary, a medical provider is available to
23 assess the individual within forty-eight hours of the entry of the

1 treatment compliance order.

2 (4) The order may require an individual to take medication and
3 treatment as prescribed and, if appropriate, to attend scheduled
4 medication and treatment related appointments. ~~Provided, That~~ A
5 treatment compliance order ~~shall be~~ is subject to termination or
6 modification by a circuit judge or mental hygiene commissioner if
7 a petition is filed seeking termination or modification of the
8 order and it is shown in a hearing on the petition that there has
9 been a material change in the circumstances that led to the entry
10 of the original order that justifies the order's modification or
11 termination. ~~Provided, however, That~~ A treatment compliance order
12 may be extended by a circuit judge or mental hygiene commissioner
13 for additional periods of time, not to exceed six months, upon the
14 filing of a petition seeking an extension and after a hearing on
15 the petition or upon the agreement of the individual.

16 (5) After the entry of a treatment compliance order in
17 accordance with the provisions of subdivisions (3) and (4) of this
18 subsection, if a verified petition is filed alleging that an
19 individual has not complied with the terms of a medication and
20 treatment compliance order and if a circuit judge or mental hygiene
21 commissioner determines from the petition and any supporting
22 evidence that there is probable cause to believe that the
23 allegations in the petition are true, counsel shall be appointed

1 for the individual and a copy of the petition and all supporting
2 evidence shall be furnished to the individual and his or her
3 counsel. If the circuit judge or mental hygiene commissioner
4 considers it necessary to protect the individual or to secure his
5 or her examination, a detention order may be entered to require
6 that the individual be examined by a psychiatrist or psychologist.
7 The examination is to be provided or arranged by a community mental
8 health center designated by the Secretary of the Department of
9 Health and Human Resources to serve the county in which the action
10 takes place.

11 (A) A hearing on the allegations in the petition, which may be
12 combined with a hearing on a probable cause petition conducted
13 pursuant to section two of this article or a final commitment
14 hearing conducted pursuant to section four of this article, shall
15 be held before a circuit judge or mental hygiene commissioner. If
16 the individual is taken and remains in custody as a result of a
17 detention order, the hearing shall be held within forty-eight hours
18 of the time that the individual is taken into custody.

19 (B) At a hearing on any petition filed pursuant to the
20 provisions of paragraph (A) of this subdivision, the circuit judge
21 or mental hygiene commissioner shall determine whether the
22 individual has complied with the terms of the medication and
23 treatment compliance order. If the individual has complied with

1 the order, the petition shall be dismissed. If the evidence
2 presented to the circuit judge or mental hygiene commissioner shows
3 that the individual has complied with the terms of the existing
4 order, but the individual's prescribed medication, dosage or course
5 of treatment needs to be modified, then the newly modified
6 medication and treatment prescribed by a psychiatrist who
7 personally examined the individual may be properly incorporated
8 into a modified order. If the order has not been complied with,
9 the circuit judge or mental hygiene commissioner, after inquiring
10 into the reasons for noncompliance and whether any aspects of the
11 order should be modified, may continue the individual upon the
12 terms of the original order and direct the individual to comply
13 with the order or may modify the order in light of the evidence
14 presented at the hearing. If the evidence shows that the
15 individual at the time of the hearing is likely to cause serious
16 harm to himself or herself, ~~herself~~ or to others as a result of the
17 individual's mental illness, the circuit judge or mental hygiene
18 commissioner may convert the proceeding into a probable cause
19 proceeding and enter a probable cause order directing the
20 involuntary admission of the individual to a mental health facility
21 for examination and treatment. ~~Any~~ Procedures conducted pursuant
22 to this subsection must comply with and satisfy all applicable due
23 process and hearing requirements of sections two and three of this

1 article.

2 (d) The modified procedures may authorize that upon the
3 certification of a qualified mental health professional, as
4 described in subsection (e) of this section, that there is probable
5 cause to believe that an individual who has been hospitalized two
6 or more times in the previous twenty-four months because of mental
7 illness is likely to cause serious harm to himself or herself, or
8 to others as a result of the mental illness if not immediately
9 restrained and that the best interests of the individual would be
10 served by immediate hospitalization, a circuit judge, mental
11 hygiene commissioner or designated magistrate may enter a temporary
12 probable cause order directing the involuntary hospitalization of
13 the individual at a mental health facility for immediate
14 examination and treatment.

15 (e) The modified procedures may authorize the chief judge of
16 a judicial circuit, or circuit judge if there is no chief judge, to
17 enter orders authorizing specific psychiatrists or licensed
18 psychologists, whose qualifications and training have been reviewed
19 and approved by the Supreme Court of Appeals, to issue
20 certifications that authorize and direct the involuntary admission
21 of an individual subject to the provisions of this section on a
22 temporary probable cause basis to a mental health facility for
23 examination and treatment. The authorized psychiatrist or licensed

1 psychologist must conclude and certify, based on personal
2 observation prior to certification, that the individual is mentally
3 ill and, because of such mental illness or addiction or both, is
4 imminently likely to cause serious harm to himself or herself or to
5 others if not immediately restrained and promotion of the best
6 interests of the individual requires immediate hospitalization.
7 Immediately upon certification, the psychiatrist or licensed
8 psychologist shall provide notice of the certification to a circuit
9 judge, mental hygiene commissioner or designated magistrate in the
10 county where the individual resides.

11 (f) No involuntary hospitalization pursuant to a temporary
12 probable cause determination issued pursuant to the provisions of
13 this section ~~shall~~ may continue in effect for more than forty-eight
14 hours without the filing of a petition for involuntary
15 hospitalization and the occurrence of a probable cause hearing
16 before a circuit judge, mental hygiene commissioner or designated
17 magistrate. If, at any time, the chief medical officer of the
18 mental health facility to which the individual is admitted
19 determines that the individual is not likely to cause serious harm
20 as a result of mental illness or addiction or both, the chief
21 medical officer shall discharge the individual and immediately
22 forward a copy of the individual's discharge to the circuit judge,
23 mental hygiene commissioner or designated magistrate.

1 **§27-5-12. Circuit Court Shared Information Database.**

2 Notwithstanding any confidentiality provisions within this
3 chapter or elsewhere in this code to the contrary, a treatment
4 compliance order entered pursuant to section eleven of this article
5 or a voluntary treatment agreement order entered pursuant to
6 section two of this article is open to inspection by any other
7 circuit court pursuant to this section. The Supreme Court of
8 Appeals shall create a centralized database for the exchange of
9 information regarding treatment compliance orders and voluntary
10 treatment agreement orders among circuit courts. When a circuit
11 court enters a treatment compliance order or a voluntary treatment
12 agreement order, the court shall transmit the personal information
13 necessary to identify the individual subject to the order to the
14 Supreme Court of Appeals on a form created by the Supreme Court of
15 Appeals. The information contained on the form shall be placed in
16 the centralized database created by this section and shall be
17 accessible by all circuit courts in the state. Before a circuit
18 court addresses any matter relating to involuntary hospitalization
19 or treatment compliance order, the circuit court shall access the
20 database and determine if a treatment compliance order or voluntary
21 treatment agreement order has been filed in another circuit court
22 on the same individual. The existence of a treatment compliance
23 order or voluntary treatment agreement order may be used by the

1 circuit court in its discretion to limit duplication of efforts by
2 multiple circuit courts.

NOTE: The purpose of this bill is to provide mental health treatment alternatives to involuntary commitment; allow a court to convert an involuntary hospitalization application into a petition for a temporary compliance order; eliminate the sunset provision; modify the requirements and process necessary to enter a treatment compliance order; clarify that persons who use the modified procedures of this section are not subject to reporting to certain databases; and create a new database for compilation of certain persons to be used by the circuit courts.

§27-5-2a and §27-5-12 are new; therefore, underscoring and strike-throughs have been omitted.

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