

**H. B. 2418**

(By Delegates P. Smith, Rodighiero and Lynch)

[Introduced January 27, 2015; 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 mental health facility located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing

1 on issues relating to the necessity of committing an individual to a mental health facility. If the  
2 individual objects to the hearing being held in the county where the mental health facility is located,  
3 the hearing shall be conducted in the county of the individual's residence.

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

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

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

14       (2) The application shall contain statements by the applicant that the individual is likely to  
15 cause serious harm to self or others due to what the applicant believes are symptoms of mental  
16 illness or addiction. The applicant shall state in detail the recent overt acts upon which the belief is  
17 based.

18       (3) The written application, certificate, affidavit and any warrants issued pursuant thereto,  
19 including any related documents, filed with a circuit court, mental hygiene commissioner or  
20 designated magistrate for the involuntary hospitalization of an individual are not open to inspection  
21 by any person other than the individual, unless authorized by the individual or his or her legal  
22 representative or by order of the circuit court. The records may not be published unless authorized

1 by the individual or his or her legal representative. Disclosure of these records may, however, be  
2 made by the clerk, circuit court, mental hygiene commissioner or designated magistrate to provide  
3 notice to the Federal National Instant Criminal Background Check System established pursuant to  
4 section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. §922, and the central state  
5 mental health registry, in accordance with article seven-a, chapter sixty-one of this code. Disclosure  
6 may also be made to the prosecuting attorney and reviewing court in an action brought by the  
7 individual pursuant to section five, article seven-a, chapter sixty-one of this code to regain firearm  
8 and ammunition rights.

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

11 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place*  
12 *of certificate. –*

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

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

20 (e) *Notice requirements; eight days notice required. --* Upon receipt of an application, the  
21 mental hygiene commissioner or circuit court shall review the application and if it is determined that  
22 the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a date for

1 and have the clerk of the circuit court give notice of the hearing:

2 (1) To the individual;

3 (2) To the applicant or applicants;

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

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

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

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

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

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

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

15 (3) The right to have counsel appointed;

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

17 and

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

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

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

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

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

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

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

21           (1) The individual shall be present at the final commitment hearing and he or she, the  
22 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify

1 and to present and cross-examine witnesses.

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

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

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

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

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

12 (2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric  
13 or otherwise.

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

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

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

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

22 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence

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

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

14 (k) *Requisite findings by the court.* –

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

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

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

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

22 (D) Whether there is a less restrictive alternative than commitment appropriate for the

1 individual. The burden of proof of the lack of a less restrictive alternative than commitment is on  
2 the person or persons seeking the commitment of the individual. (2) The findings of fact shall be  
3 incorporated into the order entered by the circuit court and must be based upon clear, cogent and  
4 convincing proof.

5 (1) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*  
6 *court; expiration of order.* -- (1) Upon the requisite findings, the circuit court may order the  
7 individual to a mental health facility for an indeterminate period or for a temporary observatory  
8 period not exceeding six months.

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

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

20 (4) An order for an indeterminate period expires of its own terms at the expiration of two  
21 years from the date of the last order of commitment unless prior to the expiration, the Department  
22 of Health and Human Resources, upon findings based on an examination of the patient by a



1 physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or his  
2 or her counsel requests a hearing, a hearing shall be held by the mental hygiene commissioner or by  
3 the circuit court of the county as provided in subsection (a) of this section.

4 (m) *Dismissal of proceedings.* -- If the circuit court or mental hygiene commissioner finds  
5 that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit  
6 court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not,  
7 because of the illness or addiction, likely to cause serious harm to self or others if allowed to remain  
8 at liberty, the proceedings shall be dismissed.

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

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

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

22 (2) If the circuit court or mental hygiene commissioner of the county of the residence of the

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

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

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

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

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

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

22 (2) Whenever an individual is released from custody due to the failure of an employee of a

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

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

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

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

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