

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4438**

(BY DELEGATES SUMMERS, ELLINGTON, ROHRBACH,  
WAXMAN, STANSBURY, BLAIR, HAMRICK AND FAST)

[Originating in the Committee on the Judiciary;

February 27, 2016.]



1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §27-5-2a; and to amend and reenact §27-5-3 of said code, all relating to the  
3 involuntary examination of individuals experiencing a psychiatric emergency or mental  
4 illness; authorizing physicians to execute a certificate directing that individuals found to be  
5 experiencing a psychiatric emergency to be held involuntarily for examination and  
6 treatment; defining psychiatric emergency; directing another physician, registered nurse  
7 or physician assistant to sign the certificate under oath stating that he or she has also  
8 examined the individual and concurs with the initial physician's opinions; requiring the  
9 chief medical officer of the facility to provide notice of the involuntary detention to an  
10 individual's spouse or one of the individual's parents or guardians, if no spouse, or to an  
11 adult individual's next of kin; authorizing law enforcement to take individuals into custody  
12 and to transport; directing notice to be provided to mental hygiene commissioners;  
13 authorizing mental hygiene commissioners to conduct hearings under certain W.Va. Code  
14 circumstances; requiring the mental health facility to file an application for involuntary  
15 hospitalization pursuant to W.Va. Code §27-5-2a within seventy-two hours of the person  
16 arriving at the mental health facility; and authorizing individuals certificated to be  
17 experiencing a psychiatric emergency to be admitted to mental health facilities for  
18 involuntary examination and treatment.

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

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

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-2a. Involuntary examination order by medical professional.**

1 (a) Notwithstanding the application process in section two of this article, a physician may  
2 execute a certificate stating that he or she has in person examined a person and finds the person

3 to be experiencing a psychiatric emergency necessitating involuntary examination and treatment  
4 pursuant to section three of this article. The certificate shall be signed under oath and state the  
5 observations upon which the conclusions for involuntary examination are based. As used in this  
6 section, "psychiatric emergency" means an acute disturbance of thought, mood, behavior or social  
7 relationship that results in behavior that poses a substantial likelihood of imminent physical harm  
8 to himself, herself or others.

9 (b) The certificate shall additionally be signed by at least one other physician, registered  
10 nurse, or physician assistant who shall also sign the certificate under oath that he or she has also  
11 examined the person and concurs that the person is experiencing a psychiatric emergency  
12 necessitating involuntary examination and treatment pursuant to section three of this article.

13 (c) Notice requirements – When an individual is admitted to a mental health facility  
14 pursuant to the provisions of this section, the chief medical officer of the facility shall immediately  
15 give notice of the admission to the individual's spouse, if any, or one of the individual's parents or  
16 guardians, if there is no spouse, or to an adult individual's next of kin.

17 (d) If other less restrictive means are not available or appropriate under the circumstances,  
18 such as a medical transport, a law-enforcement officer shall take the person named in the  
19 certificate into custody and deliver him or her to the nearest available mental health facility for  
20 involuntary examination. The law-enforcement officer shall execute a written report detailing the  
21 circumstances under which the person was taken into custody. The report and certificate shall be  
22 made a part of the patient's clinical record.

23 (e) Upon a person being transported to a mental health facility pursuant to this section,  
24 the initiating physician that executed the certificate shall forthwith give notice, along with a copy  
25 of such certificate, to the designated Mental Hygiene Commissioner for the region in which the  
26 certificate was issued. If the Mental Hygiene Commissioner has specific reason to believe the  
27 certificate was not executed in good faith or that the certificate fails to sufficiently set forth or  
28 constitute a psychiatric emergency, the Mental Hygiene Commissioner shall conduct a hearing

29 within twenty-four hours of receipt of the certificate to determine if probable cause exists for  
30 involuntary examination and detention of the person. To the extent possible, the hearing shall be  
31 in conformity with a probable cause hearing conducted under section two of this article: *Provided,*  
32 That the physicians executing the certificate shall be given reasonable notice of the hearing and  
33 may utilize telephonic or videoconferencing technology to attend.

34 (f) If the Mental Hygiene Commissioner finds that a psychiatric emergency did not exist at  
35 the time of the execution of the certificate and that probable cause does not exist for the continued  
36 involuntary detention and examination, the commissioner shall order the immediate release of the  
37 person from the mental health facility. If the commissioner finds probable cause to exist for the  
38 continued involuntary detention and examination, he or she shall provide a copy of such finding  
39 to the mental health facility to be made a part of the patient's clinical record.

40 (g) If a hearing is not held by a Mental Hygiene Commissioner pursuant to subsection (d),  
41 the mental health facility must file an application pursuant to section two of this article within  
42 seventy-two hours of the person arriving at the mental health facility. If an application pursuant  
43 to section two of this article is not filed within seventy-two hours of the person arriving at the  
44 mental health facility, the person shall be released.

**§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.**

1 (a) *Admission to a mental health facility for examination.* — Any individual may be  
2 admitted to a mental health facility for examination and treatment: (i) Pursuant to an executed  
3 certificate of a physician, that has been attested by another physician, issued in accordance with  
4 section two-a of this article; or (ii) upon entry of an order finding probable cause as provided in  
5 section two of this article, and upon certification by a physician, psychologist, licensed  
6 independent clinical social worker practicing in compliance with the provisions of article thirty,  
7 chapter thirty of this code or an advanced nurse practitioner with psychiatric certification practicing  
8 in compliance with article seven of said chapter, that he or she has examined the individual and  
9 is of the opinion that the individual is mentally ill or addicted and, because of such mental illness

10 or addiction, is likely to cause serious harm to himself, herself or to others if not immediately  
11 restrained: *Provided*, That the opinions offered by an independent clinical social worker or an  
12 advanced nurse practitioner with psychiatric certification must be within their particular areas of  
13 expertise, as recognized by the order of the authorizing court.

14 (b) *Three-day time limitation on examination.* — If the examination does not take place  
15 within three days from the date the individual is taken into custody, the individual shall be released.  
16 If the examination reveals that the individual is not mentally ill or addicted, the individual shall be  
17 released.

18 (c) *Three-day time limitation on certification.* — The certification required in subsection (a)  
19 of this section shall be valid for three days. Any individual with respect to whom the certification  
20 has been issued may not be admitted on the basis of the certification at any time after the  
21 expiration of three days from the date of the examination.

22 (d) *Findings and conclusions required for certification.* — A certification under this section  
23 must include findings and conclusions of the mental examination, the date, time and place of the  
24 examination and the facts upon which the conclusion that involuntary commitment is necessary  
25 is based.

26 (e) *Notice requirements.* — When an individual is admitted to a mental health facility  
27 pursuant to the provisions of this section, the chief medical officer of the facility shall immediately  
28 give notice of the individual's admission to the individual's spouse, if any, and one of the  
29 individual's parents or guardians or if there is no spouse and are no parents or guardians, to one  
30 of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given  
31 to the community mental health facility, if any, having jurisdiction in the county of the individual's  
32 residence. The notices other than to the community mental health facility shall be in writing and  
33 shall be transmitted to the person or persons at his, her or their last known address by certified  
34 mail, return receipt requested.

35           (f) *Five-day time limitation for examination and certification at mental health facility.* —  
36 After the individual's admission to a mental health facility, he or she may not be detained more  
37 than five days, excluding Sundays and holidays, unless, within the period, the individual is  
38 examined by a staff physician and the physician certifies that in his or her opinion the patient is  
39 mentally ill or addicted and is likely to injure himself, herself or others if allowed to be at liberty.

40           (g) *Fifteen-day time limitation for institution of final commitment proceedings.* — If, in the  
41 opinion of the examining physician, the patient is mentally ill or addicted and because of the  
42 mental illness or addiction is likely to injure himself, herself or others if allowed to be at liberty, the  
43 chief medical officer shall, within fifteen days from the date of admission, institute final  
44 commitment proceedings as provided in section four of this article. If the proceedings are not  
45 instituted within such fifteen-day period, the patient shall be immediately released. After the  
46 request for hearing is filed, the hearing may not be canceled on the basis that the individual has  
47 become a voluntary patient unless the mental hygiene commissioner concurs in the motion for  
48 cancellation of the hearing.

49           (h) *Thirty-day time limitation for conclusion of all proceedings.* — If all proceedings as  
50 provided in articles three and four of this chapter are not completed within thirty days from the  
51 date of institution of the proceedings, the patient shall be immediately released.

NOTE: The purpose of this bill is to authorize certain medical providers to involuntarily hold and examine individuals experiencing a psychiatric emergency without first conducting a probable cause hearing before a Mental Health Commissioner.

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