

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 375

**FISCAL
NOTE**

BY SENATORS ASHLEY, BOLEY, BOSO, HALL, LEONHARDT,

TRUMP AND BLAIR

[Introduced January 25, 2016;

Referred to the Committee on Health and Human

Resources; and then to then Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §27-18-1, §27-18-2, §27-18-3, §27-18-4, §27-18-5, §27-18-6, §27-18-7, §27-
 3 18-8, §27-18-9, §27-18-10, §27-18-11 and §27-18-12, all relating to establishing
 4 procedure for involuntary treatment of persons suffering from alcohol and other drug
 5 abuse disorders; protecting rights of patients; establishing limits; requiring legal
 6 proceedings; requiring notice and examinations; granting Department of Health and
 7 Human Resources authority to administer programs and issue licenses; permitting
 8 contracts between agencies and providers; requiring reports, studies and evaluations;
 9 prohibiting denial of treatment; protecting confidentiality; defining terms; and granting rule-
 10 making authority.

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 article, designated §27-18-1, §27-18-2, §27-18-3, §27-18-4, §27-18-5, §27-18-6, §27-18-7, §27-
 3 18-8, §27-18-9, §27-18-10, §27-18-11 and §27-18-12, all to read as follows:

**ARTICLE 18. INVOLUNTARY TREATMENT OF PERSONS SUFFERING FROM
 ALCOHOL AND OTHER DRUG ABUSE DISORDERS.**

§27-18-1. Involuntary treatment; procedures; rights guaranteed.

1 (a) Involuntary treatment ordered for hospitalization of a person suffering from alcohol and
 2 other drug abuse disorders and mental health disturbances shall follow the procedures set forth
 3 in this article and take the same procedures as involuntary hospitalization as provided in article
 4 five of this chapter.

5 (b) Except as otherwise provided in this article, all rights guaranteed by this code to
 6 involuntarily hospitalized mentally ill persons are guaranteed to a person ordered to undergo
 7 treatment for alcohol and other drug abuse disorders.

§27-18-2. Prohibitions; exceptions.

1 No person suffering from alcohol and other drug abuse may be ordered to undergo
2 treatment unless that person:

3 (1) Suffers from alcohol and other drug abuse;

4 (2) Presents an imminent threat of danger to self, family, or others as a result of alcohol
5 and other drug abuse, or there exists a substantial likelihood of such a threat in the near future;
6 and

7 (3) Can reasonably benefit from treatment.

27-18-3. Definitions.

1 As used in this article, unless the context otherwise requires:

2 "Administrator" means the person or the designee of the person, in charge of the operation
3 of an alcohol and other drug abuse prevention, intervention, or treatment program;

4 "Agency" means a legal entity operating hospital-based or nonhospital-based alcohol and
5 other drug abuse prevention, intervention, or treatment programs.

6 "Alcohol and other drug abuse" means a dysfunctional use of alcohol or other drugs or
7 both, characterized by one or more of the following patterns of use:

8 (A) The continued use despite knowledge of having a persistent or recurrent social, legal,
9 occupational, psychological, or physical problem that is caused or exacerbated by use of alcohol
10 or other drugs or both;

11 (B) Use in situations which are potentially physically hazardous;

12 (C) Loss of control over the use of alcohol or other drugs or both; and

13 (D) Use of alcohol or other drugs or both is accompanied by symptoms of physiological
14 dependence, including pronounced withdrawal syndrome and tolerance of body tissues to alcohol
15 or other drugs or both.

16 "Department" means the Department of Health and Human Resources.

17 "Hospital" means an establishment with organized medical staff and permanent facilities
18 with inpatient beds which provide medical services, including physician services and continuous

19 nursing services for the diagnosis and treatment of patients who have a variety of medical
20 conditions, both surgical and nonsurgical.

21 "Intoxication" means being under the influence of alcohol or other drugs, or both, which
22 significantly impairs a person's ability to function.

23 "Narcotic treatment program" means a substance abuse program using approved
24 controlled substances and offering a range of treatment procedures and services for the
25 rehabilitation of persons dependent on opium, morphine, heroin, or any derivative or synthetic
26 drug of that group.

27 "Patient" means any person admitted to a hospital or a licensed alcohol and other drug
28 abuse treatment program;

29 "Program" means a set of services rendered directly to the public that is organized around
30 a common goal of either preventing, intervening, or treating alcohol or other drug abuse problems.

31 "Qualified health professional" means:

32 (A) A physician licensed under the laws of West Virginia to practice medicine or
33 osteopathy, or a medical officer of the government of the United States while engaged in the
34 performance of official duties;

35 (B) A psychiatrist licensed under the laws of West Virginia to practice medicine or
36 osteopathy, or a medical officer of the government of the United States while engaged in the
37 practice of official duties, and who is certified or eligible to apply for certification by the American
38 Board of Psychiatry and Neurology, Inc.;

39 (C) A psychologist with the health service provider designation, a psychological
40 practitioner, a certified psychologist, or a psychological associate licensed under the provisions
41 of this code;

42 (D) A licensed registered nurse with a master's degree in psychiatric nursing from an
43 accredited institution and two years of clinical experience with mentally ill persons, or a licensed
44 registered nurse with a bachelor's degree in nursing from an accredited institution who is certified

45 as a psychiatric and mental health nurse by the American Nurses Association and who has three
46 years of inpatient or outpatient clinical experience in psychiatric nursing and who is currently
47 employed by a hospital or forensic psychiatric facility licensed by the state or a psychiatric unit of
48 a general hospital or a regional comprehensive care center;

49 (E) A licensed clinical social worker licensed under the provisions of this code, or a certified
50 social worker licensed under the provisions of this code with three years of inpatient or outpatient
51 clinical experience in psychiatric social work and currently employed by a hospital or forensic
52 psychiatric facility licensed by the state or a psychiatric unit of a general hospital or a regional
53 comprehensive care center;

54 (F) A marriage and family therapist licensed under the provisions of this code with three
55 years of inpatient or outpatient clinical experience in psychiatric mental health practice and
56 currently employed by a hospital or forensic psychiatric facility licensed by the state, a psychiatric
57 unit of a general hospital, or a regional comprehensive care center; or

58 (G) A professional counselor credentialed under the provisions of this code with three
59 years of inpatient or outpatient clinical experience in psychiatric mental health practice and
60 currently employed by a hospital or forensic facility licensed by the state, a psychiatric unit of a
61 general hospital, or a regional comprehensive care center.

62 "Secretary" means the Secretary of the Department of Health and Human Resources.

63 "Treatment" means services and programs for the care and rehabilitation of intoxicated
64 persons and persons suffering from alcohol and other drug abuse. "Treatment" includes those
65 services provided by the department in this article.

§27-18-4. Legal proceedings; petitions; requirements; examinations; orders.

1 (a) Proceedings for sixty days or three hundred sixty days of treatment for an individual
2 suffering from alcohol and other drug abuse shall be initiated by the filing of a verified petition in
3 the circuit court.

4 (b) The petition and all subsequent court documents shall be entitled: "In the interest of

5 (name of respondent)."

6 (c) The petition shall be filed by a spouse, relative, friend, or guardian of the individual
7 concerning whom the petition is filed.

8 (d) The petition shall set forth:

9 (1) Petitioner's relationship to the respondent;

10 (2) Respondent's name, residence and current location, if known;

11 (3) The name and residence of respondent's parents, if living and if known, or respondent's
12 legal guardian, if any and if known;

13 (4) The name and residence of respondent's husband or wife, if any and if known;

14 (5) The name and residence of the person having custody of the respondent, if any, or if
15 no such person is known, the name and residence of a near relative or that the person is unknown;
16 and

17 (6) Petitioner's belief, including the factual basis therefor, that the respondent is suffering
18 from an alcohol and other drug abuse disorder and presents a danger or threat of danger to self,
19 family, or others if not treated for alcohol or other drug abuse.

20 Any petition filed pursuant to this subsection shall be accompanied by a guarantee, signed
21 by the petitioner or other person authorized under subsection (b) of this section, obligating that
22 person to pay all costs for treatment of the respondent for alcohol and other drug abuse that is
23 ordered by the court.

§27-18-5. Courts; hearings; notification.

1 (a) Upon receipt of the petition, the court shall examine the petitioner under oath as to the
2 contents of the petition.

3 (b) If, after reviewing the allegations contained in the petition and examining the petitioner
4 under oath, it appears to the court that there is probable cause to believe the respondent should
5 be ordered to undergo treatment, then the court shall:

6 (1) Set a date for a hearing within fourteen days to determine if there is probable cause to

7 believe the respondent should be ordered to undergo treatment for alcohol and other drug abuse;
8 and

9 (2) Notify the respondent, the legal guardian, if any and if known, and the spouse, parents,
10 or nearest relative or friend of the respondent concerning the allegations and contents of the
11 petition and the date and purpose of the hearing; and the name, address and telephone number
12 of the attorney appointed to represent the respondent; and

13 (3) Cause the respondent to be examined no later than twenty-four hours before the
14 hearing date by two qualified health professionals, at least one of whom is a physician. The
15 qualified health professionals shall certify their findings to the court within twenty-four hours of the
16 examinations.

17 (c) If, upon completion of the hearing, the court finds the respondent should be ordered to
18 undergo treatment, then the court shall order such treatment for a period not to exceed sixty
19 consecutive days from the date of the court order or a period not to exceed three hundred sixty
20 consecutive days from the date of the court order, whatever was the period of time that was
21 requested in the petition or otherwise agreed to at the hearing.

22 Failure of a respondent to undergo treatment ordered pursuant to this subsection may
23 place the respondent in contempt of court.

24 (d) If, at any time after the petition is filed, the court finds that there is no probable cause
25 to continue treatment or if the petitioner withdraws the petition, then the proceedings against the
26 respondent shall be dismissed.

§27-18-6. Examinations; hospitalization; requirements; time limits; prohibition.

1 (a) Following an examination by a qualified health professional and a certification by that
2 professional that the person meets the criteria specified in section two of this article, the court
3 may order the person hospitalized for a period not to exceed seventy-two hours if the court finds,
4 by clear and convincing evidence, that the respondent presents an imminent threat of danger to
5 self, family, or others as a result of alcohol and other drug abuse.

6 (b) Any person who has been admitted to a hospital under subsection (a) of this section
7 shall be released from the hospital within seventy-two hours of admittance.

8 (c) No respondent ordered hospitalized under this section may be held in a correctional
9 facility pending transportation to the hospital or evaluation unless the court has previously found
10 the respondent to be in contempt of court for either failure to undergo treatment or failure to appear
11 at the evaluation ordered pursuant to section five of this article.

§27-18-7. Court orders; summons to appear; enforcement.

1 When the court is authorized to issue an order that the respondent be transported to a
2 hospital the court may, or if the respondent fails to attend an examination scheduled before the
3 hearing provided in section five of this article then the court shall issue a summons. A summons
4 so issued shall be directed to the respondent and shall command the respondent to appear at a
5 time and place therein specified. If a respondent who has been summoned fails to appear at the
6 hospital or the examination, then the court may order the sheriff or other law-enforcement officer
7 to transport the respondent to a hospital or psychiatric facility designated by the department for
8 treatment under section eight of this article. The sheriff or other law-enforcement officer may,
9 upon agreement of a person authorized by the law-enforcement officer, authorize the department,
10 a private agency on contract with the department, or an ambulance service designated by the
11 department to transport the respondent to the hospital. The transportation costs of the sheriff,
12 other law-enforcement officer, ambulance service, or other private agency on contract with the
13 department shall be included in the costs of treatment for alcohol and other drug abuse to be paid
14 by the petitioner.

§27-18-8. Comprehensive community mental health centers and comprehensive
intellectual disability facilities; lists submitted to circuit clerks; annual report.

1 Regional comprehensive community mental health centers and comprehensive
2 intellectual disability facilities licensed by the department pursuant to section one, article two-a of
3 this chapter shall, on at least an annual basis, submit the following lists to the circuit clerks in each

4 board's region:

5 (1) A list of hospitals and psychiatric facilities in the judicial districts within the board's
6 region which are able and willing to take respondents ordered to undergo seventy-two hours of
7 treatment and observation pursuant to section six of this article; and

8 (2) A list of hospitals and treatment providers in the judicial districts within the facility's
9 region who are able and willing to provide treatment for alcohol and other drug abuse ordered
10 pursuant to section five of this article.

11 The department shall annually submit to the Governor and the Legislature a treatment-
12 center evaluation report. The report shall include, but not be limited to, the following information:

13 (1) An inventory of all licensed chemical dependency treatment services in West Virginia;

14 (2) The information submitted by each treatment center or program; and

15 (3) The employment, educational and criminal history of clients in each program that
16 received state or federal funds.

§27-18-9. Chemical Dependency Treatment Services; rule-making; standards; licensing;
hearings; contracts; programs; requirements; rule-making.

1 (a) The department shall issue for a term of one year, and may renew for like terms, a
2 license, subject to revocation by it for cause, to any persons, other than an alcohol and other drug
3 abuse program that has been issued a license by the department entitled "Chemical Dependency
4 Treatment Services" or a department, agency, or institution of the federal government, deemed
5 by it to be responsible and suitable to establish and maintain a program and to meet applicable
6 licensure standards and requirements.

7 (b) The department shall promulgate rules, pursuant to article three-b, chapter twenty-
8 nine-a of this code establishing requirements and standards for licensing agencies and approving
9 programs. The requirements and standards shall include, but be limited to:

10 (1) The health and safety standards to be met by a facility housing a program;

11 (2) Patient care standards and minimum operating, training and maintenance of patient

12 records standards;

13 (3) Licensing fees, application, renewal and revocation procedures, and the procedures
14 for evaluation of the alcohol and other drug abuse programs; and

15 (4) Classification of alcohol and other drug abuse programs according to type, range of
16 services, and level of care provided.

17 (c) The department may establish different requirements and standards for different kinds
18 of programs, and may impose stricter requirements and standards in contracts with other
19 agencies.

20 (d) Each agency shall be individually licensed or approved.

21 (e) Each agency shall file with the department from time to time, the data, statistics,
22 schedules, or information the department may reasonably require for the purposes of this section.

23 (f) The department has the authority to deny, revoke, modify, or suspend a license in any
24 case in which it finds that there has been a substantial failure to comply with the provisions of this
25 article or the administrative regulations promulgated thereunder. The denial, revocation,
26 modification, or suspension shall be effected by mailing to the applicant or licensee, by certified
27 mail, a notice setting forth the particular reasons for the action. The denial, revocation,
28 modification, or suspension shall become final and conclusive thirty days after notice is given,
29 unless the applicant or licensee, within this thirty day period, shall file a request in writing for a
30 hearing before the department.

31 (g) The department, after holding a hearing conducted by a hearing officer appointed by
32 the secretary and conducted in accordance with this code may refuse to grant, suspend, revoke,
33 limit, or restrict the applicability of or refuse to renew any agency license or approval of programs
34 for any failure to meet the requirements of its administrative regulations or standards concerning
35 a licensed agency and its program. A petition for judicial review shall be made to the Kanawha
36 County Circuit Court.

37 (h) No person, excepting an alcohol and other drug abuse program that has been issued

38 a license by the department entitled "Chemical Dependency Treatment Services" or a
39 department, agency, or institution of the federal government, shall operate a program without a
40 license pursuant to this section.

41 (i) Each program operated by a licensed agency is subject to visitation and inspection by
42 the department and the department shall inspect each agency prior to granting or renewing a
43 license. The department may examine the books and accounts of any program if it deems the
44 examination necessary for the purposes of this section.

45 (j) The director may require agencies which contract with the state to admit as an inpatient
46 or outpatient any person to be afforded treatment pursuant to this article, subject to service and
47 bed availability and medical necessity.

48 (k) The department shall promulgate rules pursuant to article three-b, chapter twenty-nine-
49 a of this code the extent to which programs may be required to treat any person on an inpatient
50 or outpatient basis pursuant to this article, except that no licensed hospital with an emergency
51 service may refuse any person suffering from acute alcohol or other drug intoxication or severe
52 withdrawal syndrome from emergency medical care.

53 (l) All narcotic treatment programs shall be licensed under this section prior to operation.
54 The department shall promulgate rules pursuant to article three-b, chapter twenty-nine-a of this
55 code to establish additional standards of operation for narcotic treatment programs. The
56 administrative rules shall include minimum requirements in the following areas:

57 (1) Compliance with relevant local ordinances and zoning requirements;

58 (2) Submission of a plan of operation, including memoranda of agreement which reflect
59 supportive services from local hospitals, law-enforcement agencies, correctional facilities,
60 community mental health and mentally challenged agencies, and other alcohol and drug abuse
61 services in the community;

62 (3) Criminal records checks for employees of the narcotic treatment program. Narcotic
63 treatment programs may not employ any person convicted of a crime involving a controlled

64 substance;

65 (4) Conditions under which clients are permitted to take home doses of medications;

66 (5) Urine screening requirements;

67 (6) Quality assurance procedures;

68 (7) Program sponsor requirements;

69 (8) Qualifications for the medical director for a narcotic treatment program, who at a

70 minimum shall:

71 (A) Be a licensed physician and function autonomously within the narcotic treatment
72 program;

73 (B) Be a board eligible psychiatrist licensed to practice in West Virginia and have three
74 years documented experience in the provision of services to persons who are addicted to alcohol
75 or other drugs; or

76 (C) Be a physician licensed and certified as an addictionologist by the American Society
77 of Addiction Medicine.

78 (9) Security and control of narcotics and medications;

79 (10) Program admissions standards;

80 (11) Treatment protocols;

81 (12) Treatment compliance requirements for program clients;

82 (13) Rights of clients; and

83 (14) Monitoring of narcotic treatment programs by the department.

§27-18-10. Denial of treatment prohibited.

1 (a) No hospital shall deny treatment to a person solely because of his alcohol or other
2 drug abuse.

3 (b) Any intoxicated person admitted to a licensed alcohol or other drug abuse program or
4 a hospital licensed to provide chemical dependency treatment or detoxification services, shall
5 receive treatment at the program or hospital for as long as the person wishes to remain, or until

6 benefits expire, or the administrator determines that treatment will no longer benefit the person.

§27-18-11. Priority access; reports.

1 (a) Any person may request treatment from a physician or alcohol and other drug abuse
2 program licensed or approved by the department to provide alcohol and other drug abuse
3 treatment services. Persons infected with HIV, hepatitis B, or hepatitis C have priority access to
4 any licensed treatment services.

5 (b) Every alcohol and other drug abuse program that provides intervention or treatment
6 services to a person with an alcohol and other drug abuse problem or prevention programming to
7 any persons in the community shall, upon request of the department make a statistical report to
8 the secretary, in a form and manner the secretary shall prescribe, of persons provided prevention,
9 intervention and treatment services during a specified period of time. The name or address of any
10 person to whom prevention, intervention, or treatment services were provided may not be
11 reported. The secretary shall provide compilations of the statistical information to other
12 appropriate agencies upon request.

§27-18-12. Study; confidentiality.

1 (a) As a requirement to receive state or federal funds, including Medicaid, a treatment
2 center or program licensed as a chemical dependency treatment service shall participate in an
3 evaluation or client-outcome effectiveness study conducted by the department.

4 (b) Information for the evaluation shall include, but is not limited to, the following:

5 (1) The total number of alcohol and drug abuse clients admitted to treatment;

6 (2) The total number of referrals from the circuit courts and the Department of Corrections;

7 (3) The client's change in alcohol and other drug use patterns from admission to discharge
8 from treatment;

9 (4) The client's change in employment status from admission to discharge from treatment;

10 and

11 (5) The client's change in involvement with the criminal justice system from admission to

12 discharge from treatment.

13 (c) All information collected pursuant to this article is confidential with respect to the identity
14 of individual clients. Access to information that identifies individual clients may be provided to
15 qualified persons or organizations with a valid scientific interest, as determined by the secretary
16 who are engaged in research related to patterns of drug and alcohol use, the effectiveness of
17 treatment, or similar studies and who agree in writing to maintain confidentiality.

NOTE: The purpose of this bill is to establishing a procedure for the involuntary treatment of persons suffering from alcohol and other drug abuse disorders. The bill protects the rights of patients. The bill establishes limits. The bill requires legal proceedings. The bill requires notice and examinations. The bill grants the Department of Health and Human Resources authority to administer programs and to issue licenses. The bill permits contracts between agencies and providers requires reports, studies and evaluations. The bill prohibits the denial of treatment and protects confidentiality. The bill defines terms and grants rule-making authority.

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