

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4438

FISCAL
NOTE

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

[Introduced February 8, 2016; Referred
to the Committee on Health and Human Resources
then the Judiciary.]

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 a second physician to attest to the
7 certificate; authorizing law enforcement to take individuals into custody and to transport;
8 directing notice to be provided to mental hygiene commissioners; authorizing mental
9 hygiene commissioners to conduct hearings under certain circumstances; and authorizing
10 individuals certificated to be experiencing a psychiatric emergency to be admitted to
11 mental health facilities for 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.

4 (a) Notwithstanding the application process in section two of this article, a physician may
5 execute a certificate stating that he or she has examined a person and finds the person to be
6 experiencing a psychiatric emergency necessitating involuntary examination and treatment
7 pursuant to section three of this article. The certificate shall be signed under oath and state the
8 observations upon which the conclusions for involuntary examination are based. As used in this
9 section, “psychiatric emergency” means an incident during which an individual loses control and
10 behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or
11 others.

12 (b) The certificate shall additionally be signed by at least one other physician who shall

13 attest that he or she has also examined the person and concurs that the person is experiencing
14 a psychiatric emergency necessitating involuntary examination and treatment pursuant to section
15 three of this article.

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

22 (d) Upon a person being transported to a mental health facility pursuant to this section,
23 the initiating physician that executed the certificate shall forthwith give notice, along with a copy
24 of such certificate, to the designated Mental Hygiene Commissioner for the Circuit in which the
25 certificate was issued. If the Mental Hygiene Commissioner has specific reason to believe the
26 certificate was not executed in good faith or that the certificate fails to sufficiently set forth or
27 constitute a psychiatric emergency, the Mental Hygiene Commissioner shall conduct a hearing
28 within twenty-four hours of receipt of the certificate to determine if probable cause exists for
29 involuntary examination and detention of the person. To the extent possible, the hearing shall be
30 in conformity with a probable cause hearing conducted under section two of this article: *Provided,*
31 That the physicians executing the certificate shall be given reasonable notice of the hearing and
32 may utilize telephonic or videoconferencing technology to attend.

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

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

39 (a) *Admission to a mental health facility for examination.* -- Any individual may be admitted
40 to a mental health facility for examination and treatment: (i) Pursuant to an executed certificate of
41 a physician, that has been attested by another physician, issued in accordance with section two-
42 a of this article; or (ii) upon entry of an order finding probable cause as provided in section two of
43 this article, and upon certification by a physician, psychologist, licensed independent clinical social
44 worker practicing in compliance with the provisions of article thirty, chapter thirty of this code or
45 an advanced nurse practitioner with psychiatric certification practicing in compliance with article
46 seven of said chapter, that he or she has examined the individual and is of the opinion that the
47 individual is mentally ill or addicted and, because of such mental illness or addiction, is likely to
48 cause serious harm to himself, herself or to others if not immediately restrained: *Provided*, That
49 the opinions offered by an independent clinical social worker or an advanced nurse practitioner
50 with psychiatric certification must be within their particular areas of expertise, as recognized by
51 the order of the authorizing court.

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

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

60 (d) *Findings and conclusions required for certification.* -- A certification under this section
61 must include findings and conclusions of the mental examination, the date, time and place of the
62 examination and the facts upon which the conclusion that involuntary commitment is necessary
63 is based.

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

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

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

87 (h) *Thirty-day time limitation for conclusion of all proceedings.* -- If all proceedings as
88 provided in articles three and four of this chapter are not completed within thirty days from the
89 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.