

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2808

BY DELEGATES SUMMERS, ATKINSON, ELLINGTON,

ROHRBACH AND SHOTT

[Introduced March 7, 2017; 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 article,
2 designated §27-5A-1, §27-5A-2, §27-5A-3, §27-5A-4, §27-5A-5, §27-5A-6, §27-5A-7,
3 §27-5A-8, §27-5A-9, §27-5A-10, §27-5A-11, §27-5A-12, §27-5A-13, §27-5A-14, §27-5A-
4 15, and §27-5A-16, all relating to establishing assisted outpatient treatment of persons
5 suffering from mental illness; providing the policy and purpose behind assisted outpatient
6 treatment; defining terms; setting forth who may file a petition for assisted outpatient
7 treatment of an adult individual or emancipated minor and when such a petition may be
8 filed; providing that such a petition for assisted outpatient treatment must be in writing,
9 executed under oath and include specified information; providing where a petition for
10 assisted outpatient treatment may be filed; providing the timeline and procedure that the
11 court or mental hygiene commissioner must follow within twenty-four hours of the filing of
12 the petition; stating who may inspect the petition, evaluation report, and other filed or
13 issued documents related to the case filed with the circuit court or mental hygiene
14 commissioner; providing that individual must be examined not more than seven days
15 before the petition is filed and the process by which such an examination must occur;
16 providing criminal penalties for a person who knowingly files, or causes to be filed, a
17 petition that contains a false material statement or information; providing the procedure
18 for which the notice of hearing and petition must be provided to the respondent and who
19 else must be mailed the notice of hearing and petition; providing the assisted outpatient
20 treatment hearing procedure; providing that the petitioner and respondent may proffer a
21 mutually agreed upon proposed assisted treatment order; providing an alternative to a
22 mutually agreed upon order in which the mental hygiene commissioner or circuit court
23 judge shall find and enter an order stating where there is clear and convincing evidence
24 to believe that the respondent, as a result of mental illness, requires necessary treatment;
25 requires that any treatment ordered must be the least restrictive potentially effective
26 treatment available; stating that such order for assisted outpatient may be up for one

27 hundred and eighty calendar days; providing what treatment such an order for assisted
28 outpatient treatment may contain; stating that the determination that a person is in need
29 of assisted outpatient treatment is not a determination that the individual is legally
30 incompetent or incapacitated for any purpose other than those set out in the order
31 concerning treatment for mental illness or substance use disorder and clarifying that such
32 orders are not to be reported to the West Virginia Central State Mental Health Registry or
33 the National Instant Criminal Background Check System; providing for how the outpatient
34 treatment will be paid for; providing procedures for conversion to and from involuntary
35 hospitalization; providing procedures for how an assisted outpatient treatment order can
36 be modified or reviewed; providing procedures for how an assisted outpatient treatment
37 order can be renewed; explaining under what circumstances and how a patient under an
38 assisted outpatient treatment order may be discharged from treatment and how such a
39 discharge can occur; providing procedures to follow if a patient under an assisted
40 outpatient treatment order fails to adhere to the order; and stating the options for the court
41 or mental hygiene commissioner may order upon a finding of a failure to adhere to the
42 requirements of an assisted outpatient treatment order.

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, §27-5A-1, §27-5A-2, §27-5A-3, §27-5A-4, §27-5A-5, §27-5A-6, §27-5A-7,
3 §27-5A-8, §27-5A-9, §27-5A-10, §27-5A-11, §27-5A-12, §27-5A-13, §27-5A-14, §27-5A-15, and
4 §27-5A-16, all to read as follows:

ARTICLE 5A. THE WEST VIRGINIA ASSISTED OUTPATIENT TREATMENT ACT.

§27-5A-1. Policy and purpose.

1 The consequences of untreated mental illness are as apparent as they are devastating:
2 criminalization; homelessness; victimization; lost productivity; permanently decreased medication

3 responses; resultant inpatient hospitalization and its related costs as conditions deteriorate
4 unchecked; functional loss of civil liberties as individuals are criminally imprisoned for actions
5 stemming from their illness or are civilly involuntarily committed upon reaching levels of
6 dangerousness, or are restricted in meaningful exercise of their liberties or loss of free will by the
7 mental and physical effects of their illness; and the incalculable costs of unnecessary suffering.
8 Mental illness may render many people incapable of voluntarily entering treatment because they
9 become unable to make rational decisions or are unaware that they are ill. When individuals
10 become incapable of making rational or informed medical decisions concerning their treatment,
11 they may require assisted treatment to avoid tragic personal and societal consequences and to
12 protect their lives. The West Virginia Assisted Outpatient Treatment Act is designed to be the
13 legal framework for the provision of care to individuals who, due to the symptoms of mental illness,
14 become incapable of making rational and informed medical decisions concerning their treatment,
15 yet the act provides safeguards to protect both the rights and well-being of those subject to it.

§27-5A-2. Definitions.

1 In addition to the definitions under article one of this chapter, the following definitions are
2 added specific to this article:

3 “Assisted outpatient treatment” means court ordered outpatient treatment.

4 “Least restrictive potentially effective treatment” means treatment that will not over-
5 compensate for the situation causing undue stress and potential harm to the patient concerned
6 and which has a reasonable likelihood of positively impacting the individual’s behavior or condition
7 of mental illness or substance use disorder. Treatment presenting a significant and likely risk of
8 harm to the individual shall not be ordered by the court.

9 “Cooccurring disorder” means an individual has one or more substance use disorders and
10 one or more mental health or psychiatric disorders coexisting at the same time.

11 “Requires necessary treatment” means an individual is:

12 (A) Suffering from severe and persistent mental illness; and

13 (B) Has a reasonable prospect of benefiting by or being stabilized with outpatient
14 treatment; and

15 (C) The individual has an inability to participate in outpatient treatment services effectively
16 and voluntarily, demonstrated by:

17 (i) The individual's level of impairment or psychiatric or substance use history, or actions
18 occurring within the two-year period immediately preceding the hearing; or

19 (ii) Noncompliance with treatment has been a factor in the individual's prior placement in
20 a psychiatric hospital, substance abuse facility, prison, or jail, or has resulted in involuntary
21 hospitalization under article five of this chapter;

22 and

23 (iii) As a consequence of the mental illness, the individual will, if not treated, continue to:

24 (I) Suffer severe and abnormal psychiatric, emotional, or physical distress or harm, or
25 become likely to cause serious harm to self or others, or

26 (II) Experience deterioration of the ability to function independently to the extent that the
27 individual will be unable to live safely in the community without court ordered outpatient services.

28 "In reasonable accessibility" means within the community, county, or region near
29 respondent's residence, preferably within one hour's transport, public or private. Available means
30 and costs of transportation must be considered by the judge or mental hygiene commissioner in
31 making the determination of reasonable accessibility.

32 "Outpatient treatment" means any of the services set forth under section nine-e of this
33 article and chapter that are delivered without overnight inpatient hospitalization, and, in addition,
34 includes all outpatient mental health or substance use disorder services covered and defined by
35 third party payor sources, including Medicare, for a respondent. These services may be obtained
36 at hospitals, centers, clinics, treatment provider offices, or at other qualified facilities or community
37 settings.

38 “Substance use disorder” means a substance related disorder, including substance use
39 and induced disorders, as defined by the American Psychiatric Association’s “Diagnostic and
40 Statistical Manual of Mental Disorders” excluding those for tobacco, caffeine, and substances
41 used as prescribed by a medical professional. Addiction as defined under article one, section
42 eleven of this chapter is a type of substance use disorder.

§27-5A-3. Institution of proceedings for assisted outpatient treatment.

1 (a) Any of the following adult persons may file a petition for assisted outpatient treatment
2 of an adult individual or emancipated minor when the person making the petition has reason to
3 believe that the individual is mentally ill and, because of his or her mental illness, “requires
4 necessary treatment”, as defined in section two of this article, but has not as of the time of filing
5 deteriorated in condition to behaviors likely to cause serious harm to self or others:

6 (1) Any person with whom the individual resides; or

7 (2) Parent, guardian, spouse, sibling, or child eighteen years of age or older of the
8 individual; or

9 (3) Chief medical officer, pursuant to section thirteen, article one of this chapter, of a
10 hospital in which the individual is hospitalized; or

11 (4) Primary care physician or attending physician; or

12 (5) Director of any public, private or charitable organization, agency, treatment facility, or
13 care home providing substance use disorder or mental health services to the individual, in whose
14 institution the individual resides; or

15 (6) Psychiatrist who is either supervising the treatment of or treating the individual for
16 substance use disorder or mental illness; or

17 (7) Psychologist, social worker, or other licensed mental health or substance use disorder
18 professional who is treating the individual for substance use disorder or mental illness; or

19 (8) Department of health officials, including adult protective services officials, of the county
20 in which the individual resides or is found; or

21 (9) Parole or probation officer assigned to supervise the individual; or

22 (10) Chief administrative officer of a jail, or other correctional facility holding the individual:
23 Provided, That the individual is scheduled to be released from the facility within ten days. Any
24 assisted outpatient treatment ordered must be effective upon release of the inmate from the
25 correctional facility; or

26 (11) In the event of conversion of a pending matter for involuntary hospitalization pursuant
27 to section twelve of this article, the adult filing the application for involuntary hospitalization, or via
28 sua sponte conversion action of the judicial officer under section twelve of this article.

29 (b) The petition must be in writing, executed under oath, and must include the following
30 information:

31 (1) The petitioner's name, address, and, if any, relationship to the individual;

32 (2) The name, address, and other relevant identifying information of the individual;

33 (3) The name and address, if known, of the individual's spouse, legal counsel, conservator
34 or guardian, and next-of-kin;

35 (4) The name and address, if known, of anyone currently providing substance use disorder
36 or mental health care to the individual;

37 (5) That the petitioner has reason to believe the individual meets the criteria listed in the
38 definition of "requires necessary treatment" in section two of this article for assisted outpatient
39 treatment pursuant to this article;

40 (6) That the beliefs of the petitioner are based on specific behavior, acts, attempts, or
41 threats, which must be specified and described in detail;

42 (7) The names and addresses, if known, of other persons with knowledge of respondent's
43 mental illness who may be called as witnesses;

44 (8) An examination report pursuant to section four of this article, unless the individual
45 named in the petition refuses to be examined which must be indicated on the petition. A petition
46 filed without an examination report must present sufficient evidence to establish the reasonable
47 belief that the respondent may be subject to assisted outpatient treatment;

48 (9) A proposed outpatient treatment plan for the individual, approved by a medical
49 professional of a type pursuant to section four of this article; and

50 (10) Such additional information and facts in the petition as may be required by the form
51 provided for this purpose by the Supreme Court of Appeals.

52 (c) The petition may be made to the circuit court or a mental hygiene commissioner
53 pursuant to section eight, article one of this chapter. A designated magistrate before whom an
54 involuntary hospitalization matter under article five of this chapter is pending and who, upon
55 hearing the evidence at hearing, converts the matter pursuant to section twelve of this article to
56 an action for assisted outpatient treatment, must transfer the pending matter to the circuit court
57 judge or mental hygiene commissioner of the county for further proceedings.

58 (d) Within twenty-four hours of the filing of the petition for assisted outpatient treatment,
59 the court or mental hygiene commissioner must:

60 (1) Determine whether the petition is sufficient to establish the reasonable belief that the
61 respondent may be subject to assisted outpatient treatment, and dismiss without prejudice those
62 that do not;

63 (2) Schedule a hearing on the petition, if not dismissed, within fifteen calendar days of
64 filing of the petition. The hearing may be continued by the court or mental hygiene commissioner
65 to allow for the court ordered examination of the individual or upon motion for good cause shown;

66 (3) If necessary, issue an order for the individual to be examined pursuant to section four
67 of this article; and

68 (4) Forward a copy of any petition not dismissed and notice of hearing to the local
69 community mental health center designated by the Secretary of the Department of Health and
70 Human Resources to serve the county in which the action takes place. The mental health center
71 may send a representative to the hearing to advise the court of available treatment and services
72 for the respondent.

73 (e) The petition, evaluation report, and other filed or issued documents and records
74 related to the case filed with the circuit court or mental hygiene commissioner are not open to
75 inspection by any person other than the parties to the action and their legal representatives while
76 the case is open; to the individual or his or her legal representative, except upon authorization of
77 the respondent or his or her legal representative; to court ordered treatment providers of the
78 individual while the case is open; as otherwise authorized by this article; or by order of the court.
79 The documents and records may not be published except upon authorization of the respondent
80 or his or her legal representative.

§27-5A-4. Examination.

1 (a) The individual must have been examined not more than seven days before the
2 petition is filed. For purposes of section three-(b)(8) of this article and chapter, the examination
3 must be completed by a physician, psychologist, or other examiner permitted under section two,
4 article five of this chapter. The examiner may not be the petitioner.

5 (b) The examiner must personally examine the individual; recommend assisted outpatient
6 treatment for the individual as may be appropriate; approve or disapprove based on the
7 examination and examiner's educational and clinical judgment all or part of the proposed
8 outpatient treatment plan filed by the petitioner, and be willing and able to testify at the hearing
9 on the petition. The court or mental hygiene commissioner may permit this testimony to be
10 presented telephonically or via videoconferencing. The examiner must state the facts and clinical

11 determinations which support the allegation that the individual meets each criterion, as listed in
12 the definition of “requires necessary treatment” in section two of this article, for assisted outpatient
13 treatment.

14 (c) If the respondent refuses to be examined, the circuit court or mental hygiene
15 commissioner may order the respondent named in the petition to submit to examination.
16 Respondent’s refusal to be examined may be considered as slight evidence indicative of the need
17 for assisted outpatient treatment. The court or mental hygiene commissioner may continue the
18 proceeding for purposes of examination, and if the respondent presents good and credible reason
19 why he or she was not present for an ordered examination, the court or mental hygiene
20 commissioner may issue another order for examination. If the respondent does not comply with
21 the order for examination, the circuit court or mental hygiene commissioner may enter an order
22 for the respondent named in the petition to be detained and taken into custody by the sheriff of
23 the county for the purpose of an examination to be provided or arranged by a community mental
24 health center designated by the Secretary of the Department of Health and Human Resources to
25 serve the county in which the action takes place. The respondent must be immediately released
26 from custody upon completion of the ordered examination, and retention of the respondent for
27 purposes of examination is not to exceed twenty-four hours.

28 (d) Notwithstanding the provisions of this chapter, subsection (s), section four of article
29 five of this chapter applies regarding payment by the county commission for court ordered
30 examinations.

31 (e) If the examination reveals that the respondent is not mentally ill, the petition shall be
32 dismissed. Absent a finding of professional gross negligence or willful misconduct the examiner
33 is not civilly liable for the rendering of the opinion. The court-ordered examiner shall provide the
34 circuit court or mental hygiene commissioner before whom the matter is pending the results of
35 the examination on a form provided for this purpose by the Supreme Court of Appeals at least
36 seventy-two hours prior to the hearing under section seven of this article and chapter.

§27-5A-5. Criminal penalty for false petition.

1 A person who knowingly files, or causes to be filed, a petition pursuant to this article
2 containing a false material statement or information, is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year,
4 or both fined and confined.

§27-5A-6. Notice of hearing

1 (a) The notice of hearing and a copy of the petition must be served on the individual by
2 certified or registered mail not less than eight days prior to the date of the hearing and shall
3 specify:

4 (1) The facts underlying and supporting the application of assisted outpatient treatment;

5 (2) The right to have counsel appointed;

6 (3) The right to consult with and be represented by counsel at every stage of the
7 proceedings; and

8 (4) The time and place of the hearing.

9 (b) The clerk must mail notice of hearing and a copy of the petition to the respondent
10 named in the petition the respondent's legal counsel, if any; the respondent's legal guardian and
11 conservator, if known; an adult member of the respondent's household, if known; petitioner; and
12 petitioner's counsel, if known.

§27-5A-7. Assisted outpatient treatment hearing procedure.

1 (a) The respondent must be present at the hearing and has the right to present evidence,
2 confront all witnesses and other evidence against him or her and to examine testimony offered.

3 The respondent has the right to remain silent and to be proceeded against in accordance with the
4 Rules of Evidence of the Supreme Court of Appeals, except as provided in section twelve, article
5 one of this chapter.

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

9 (c) The testimony of a licensed treating mental health professional, or examiner pursuant
10 to section four of this article, who has examined the respondent more recently than seven
11 calendar days before the filing of the petition is required at hearing. Expert testimony at the
12 hearing may be taken telephonically or via videoconferencing. The mental health professional
13 who testifies must state: (1) The facts known which support the allegation that the respondent
14 meets each criterion, as listed in the definition of “requires necessary treatment” in section two of
15 this article, for assisted outpatient treatment; (2) the recommended assisted outpatient treatment;
16 (3) that the treatment is the least restrictive available; (4) the rationale for the recommended
17 assisted outpatient treatment. If the recommended treatment included medication, the examiner
18 must describe the types or classes of medication which should be authorized, any beneficial or
19 detrimental physical and mental effects of the medication, and whether the medication should be
20 self-administered or administered by authorized personnel.

21 (d) Consistent with subdivision (3), subsection-(h), section four, article five of this chapter,
22 the individual has the right to have an examination by an independent expert of his or her choice
23 and to present testimony from the expert as a medical witness on his or her behalf. The cost of
24 the independent expert is to be paid by the respondent.

25 (e) Assisted outpatient treatment hearings may occur in the county where a person resides
26 or is hospitalized.

27 (f) Assisted outpatient treatment hearings must be reported or recorded.

28 (g) The hearing is closed to the public; however, the court or mental hygiene commissioner
29 may permit any individual or entity to attend and observe the proceeding if not objected to by the
30 respondent, or upon request of the respondent. The court or mental hygiene commissioner may
31 also approve a motion for a family member of the respondent to participate upon a showing of

32 substantial interest in the proceeding. An approved participating family member has the right to
33 representation by counsel at his or her own expense, to present evidence, to cross-examine
34 witnesses, and to appeal.

35 (h) Leave for a continuance of the hearing may be granted to allow the respondent the
36 time and opportunity to retain the services of an attorney or to prepare for the case or to retain an
37 expert witness.

§27-5A-8. Agreed order.

1 At the hearing, the petitioner and respondent may proffer a mutually agreed upon
2 proposed assisted treatment order. The terms of the order must be consistent with those of an
3 initial order for assisted treatment under this article. The proposed order must be accompanied
4 with an affidavit of a licensed treating mental health professional testifying that the suggested
5 order is clinically appropriate for the respondent. The court or mental hygiene commissioner may
6 enter the proposed order without a full hearing. Once entered, the agreed order has the same
7 effect as an assisted treatment order issued pursuant to section nine of this article.

§27-5A-9. Assisted outpatient treatment hearing initial order.

1 (a) At the conclusion of the hearing, the mental hygiene commissioner or circuit court
2 judge shall find and enter an order stating whether or not there is clear and convincing evidence
3 to believe that the respondent, as a result of mental illness, requires necessary treatment,
4 pursuant to section two of this article. Any treatment ordered must be the least restrictive
5 potentially effective treatment available.

6 (b) If the evidence, via expert testimony, establishes that a respondent's cooccurring
7 substance use disorder creates a reasonable likelihood that withdrawal or detoxification from the
8 substance will cause significant medical complications, the court or mental hygiene commissioner
9 may order monitored or inpatient detoxification for the respondent, and detoxification ordered
10 must be the least restrictive available and needed.

11 (c) An order for assisted outpatient treatment, for its duration, subordinates the
12 respondent's right to refuse the administration of medication or other minor medical treatment to
13 the department of health, its designee, or other medical provider obligated to care for the person
14 in the order. The treatment setting must be the least restrictive possible appropriate alternative.
15 Each patient receiving medication pursuant to an assisted outpatient treatment order shall be
16 examined every thirty days for serious side effects by a psychiatrist or physician as part of the
17 terms of the order. If the psychiatrist or physician determines, in his or her clinical judgment that
18 the patient has serious side effects from his or her current medication, an alternative appropriate
19 treatment that will have fewer side effects must be prescribed.

20 (d) An order for assisted outpatient treatment may be for up to one hundred eighty
21 calendar days.

22 (e) Services in the order for assisted outpatient treatment must include provisions for
23 intensive case management, assertive community treatment, or other regularly scheduled case
24 management. The order may also require the patient's care providers to supply any or all of the
25 following categories of services to the individual:

26 (1) Medication;

27 (2) Periodic blood tests or urinalysis to determine compliance, side effects, and treatment
28 effectiveness;

29 (3) Individual or group therapy;

30 (4) Day or partial day programming activities;

31 (5) Educational and vocational training or activities;

32 (6) Alcohol or substance use disorder treatment and counseling for cooccurring disorders,
33 and periodic tests for the presence of alcohol or other drugs for persons with a history of alcohol
34 or substance abuse;

35 (7) Supervision of living arrangements;

36 (8) Any other services prescribed to treat the patient's mental illness or cooccurring
37 disorder and to assist the patient in living and functioning in the community, or to attempt to
38 prevent a relapse or deterioration.

39 (9) All ordered services must be in reasonable accessibility for the patient, as defined in
40 section two of this article. The lack of all needed services within reasonable accessibility for the
41 patient does not preclude the court or mental hygiene commissioner from ordering those services
42 which are within reasonable accessibility for the patient.

43 (10) If the patient is gainfully employed, outpatient services may not be ordered which
44 conflict with the respondent's continued employment.

45 (11) If the patient has executed a medical power of attorney, the same, if known, must be
46 considered in ordering assisted outpatient treatment.

47 (12) In implementation of the order, any material modifications of the provisions of the
48 assisted treatment order to which the patient does not agree must be approved by the court.

§27-5A-10. Effect of assisted outpatient treatment determination on other rights.

1 (a) The determination that a person is in need of assisted outpatient treatment is not a
2 determination that the individual is legally incompetent or incapacitated for any purpose other than
3 those set out in the order concerning treatment for mental illness or substance use disorder.

4 (b) An individual subject to an assisted outpatient treatment order or agreed order under
5 this article is not to be reported to the West Virginia Central State Mental Health Registry or the
6 National Instant Criminal Background Check System.

§27-5A-11. Payment for outpatient treatment.

1 (a) The providers and facilities providing outpatient treatment and services under an
2 assisted outpatient treatment order are to seek payment from any available insurance, federal or
3 state entitlement program or benefit available to the respondent, including Medicaid, or any other
4 third party payor source of the respondent. Thereafter, the providers and facilities may seek
5 payment for services rendered directly from the patient. After these sources are exhausted and/or

6 reasonable efforts have been made to collect the costs of treatment, the remaining unpaid cost
7 of outpatient treatment: *Provided*, That the total of paid and unpaid costs do not exceed current
8 Medicaid rates for the services provided, is to be paid out of funds appropriated for the Department
9 of Health and Human Resources, but the department, through the director of health, shall have a
10 right of reimbursement, for all or any part of such costs from each patient or from the committee
11 or guardian of the estate of the patient, or the estate of the patient if deceased, or if that be
12 insufficient, then from the patient's husband or wife, or if the patient be an unemancipated child,
13 the father and mother, or any of them. If a relative so liable does not reside in this state and has
14 no estate or debts due him within the state by means of which the liability can be enforced against
15 him, the other relatives shall be liable as provided by this section. In exercising this right of
16 reimbursement, the director of health may, whenever it is deemed just and expedient to do so,
17 exonerate any person chargeable with such costs from the payment thereof, in whole or in part,
18 if the director finds that the person is unable to pay or that payment would work an undue hardship
19 on him or her, or on those dependent upon him or her; *Provided, however*, That the Department
20 of Health and Human Resources shall have no right to reimbursement from the patient's husband
21 or wife for any bill for treatment incurred after the date of separation of the patient from his or her
22 spouse as defined by W. Va. Code § 48-1-238.

23 (b) There shall be no discrimination on the part of providers and facilities as to care,
24 protection, treatment or rehabilitation, between patients who pay for their services and those who
25 are unable to do so.

§27-5A-12. Conversion to and from involuntary hospitalization.

1 (a) If at hearing on an application for involuntary hospitalization under article five of this
2 chapter the evidence presented to the court, mental hygiene commissioner, or designated
3 magistrate does not meet the standard for involuntary hospitalization, but does provide evidence
4 sufficient to meet the requirements for assisted outpatient treatment, and the respondent is an

5 adult or emancipated minor who is a resident of the county, the action may be converted by the
6 court, mental hygiene commissioner, designated magistrate, or upon motion of the applicant, to
7 a proceeding for assisted outpatient treatment under this article.

8 (b) If at hearing on a petition for assisted outpatient treatment, evidence is presented to
9 the court or mental hygiene commissioner that the respondent is likely to cause serious harm to
10 self or others as a result of mental illness or addiction sufficient to meet the burden of proof of
11 probable cause under section two, article five of this chapter, and there is no less restrictive
12 alternative available, the proceeding may be converted by the court or mental hygiene
13 commissioner to a probable cause action for involuntary hospitalization under section two, article
14 five of this chapter. Notice of the hearing for assisted outpatient treatment must include notice of
15 possible conversion and involuntary hospitalization under article five of this chapter. The
16 respondent must be represented by counsel at hearing. Regardless of any provision in this
17 chapter to the contrary, the examination for assisted outpatient treatment is sufficient for purposes
18 of evaluation under article five involuntary hospitalization: *Provided*, That an independent
19 evaluation under article five is to be ordered if the examination for assisted outpatient treatment
20 is not court ordered or does make a determination of whether the respondent is mentally ill or
21 addicted and as a result likely to cause serious harm to self or others.

§27-5A-13. Modification and review.

1 (a) The petitioner or patient who is subject to an assisted outpatient treatment order, under
2 this article may seek review thereof by the circuit court judge for any order entered by a mental
3 hygiene commissioner, under such rules and forms as may be promulgated by the state Supreme
4 Court of Appeals for this purpose. The review must be requested within seven days of entry of
5 the order to be reviewed, and the review may be ex parte by the circuit court judge.

6 (b) Any patient adversely affected by an assisted outpatient treatment order or renewal
7 entered or reviewed as in subsection (a) of this section, by the circuit court under this article may

8 seek review thereof by appeal to the state Supreme Court of Appeals and jurisdiction is hereby
9 conferred upon such court to hear and entertain such appeals upon application made therefor in
10 the manner and within the time provided by law for civil appeals generally.

11 (c) If the time for appeal of an assisted outpatient treatment order or renewal order has
12 expired, the patient may request modification or review of the assisted outpatient treatment order
13 or renewal order by the circuit court or mental hygiene commissioner. A hearing on the
14 modification or review must be held within fourteen calendar days. The patient may request
15 modification or review not more than once every ninety days.

16 (d) Notice of hearing must be provided to those who received notice of hearing of the
17 original petition or were recognized as a party at the initial hearing or subsequent renewal
18 hearings.

§27-5A-14. Renewal of assisted outpatient treatment.

1 (a) The assisted outpatient treatment order may be renewed for a period not to exceed
2 three hundred sixty days on any subsequent renewals by the circuit court judge of the county,
3 upon hearing, and upon a finding of clear and convincing evidence of the requirements in this
4 article for assisted outpatient treatment. The circuit judge may direct the mental hygiene
5 commissioner to hold the hearing as trier of fact and present findings and recommendations to
6 the circuit judge.

7 (b) Notice of renewal hearing must be provided in the same manner as that of the initial
8 hearing, or any subsequent modification and review hearings, or subsequent renewal hearings.

9 (c) A motion for renewal must be filed not less than thirty days prior to the expiration of the
10 assisted outpatient treatment order in effect.

§27-5A-15. Medical discharge from assisted outpatient treatment.

1 (a) A patient under an assisted outpatient treatment order may be discharged from
2 treatment on the signatures of both the patient's treating medical professional and the director of
3 the outpatient treatment program.

4 (b) Notice of discharge must be mailed at least seventy-two hours before the planned
5 discharge to the petitioner; the patient's legal guardian and conservator, if known; the patient's
6 attorney; an adult member of the patient's household, if known; and anyone recognized as a party.
7 A notice of discharge must be filed with the circuit court.

8 (c) A hearing on early discharge may be demanded by the petitioner or any other party to
9 the assisted outpatient treatment action. A hearing on early discharge may be held by the court
10 or mental hygiene commissioner. Filing of a demand for hearing on early discharge stays the
11 discharge of the patient until the court or mental hygiene commissioner rules upon the
12 appropriateness of medical discharge, but the stay cannot exceed the terms of the assisted
13 outpatient order at issue.

§27-5A-16. Failure to adhere to order.

1 (a) The treatment provider of a patient under an assisted outpatient treatment order must
2 provide notification to the court if the patient fails to adhere to the ordered treatment from that
3 provider. The person or entity providing notice shall give information and state facts as may be
4 required by a form provided for this purpose by the Supreme Court of Appeals. Upon ex parte
5 review of the notice, the court or mental hygiene commissioner may set the matter for hearing on
6 the issue of the individual's failure to adhere to the requirements of the assisted outpatient
7 treatment order. At the request of the patient, a hearing shall be scheduled. A copy of the notice
8 of failure to adhere must be sent to all parties with a copy of the notice of hearing issued by the
9 court or mental hygiene commissioner.

10 (b) Any interested adult may move the court or mental hygiene commissioner for a hearing
11 on a patient's failure to adhere to the requirements of an assisted outpatient treatment order. A
12 copy of the notice of failure to adhere must be sent to all parties with a copy of the notice of
13 hearing issued by the court or mental hygiene commissioner.

14 (c) The court or mental hygiene commissioner may order any of the following upon a
15 finding of failure to adhere to the requirements of an assisted outpatient treatment order:

16 (1) Require the patient to report periodically to status hearing before the court or mental
17 hygiene commissioner;

18 (2) Appoint a responsible entity or individual to assist and monitor the patient's compliance
19 and make status reports to the court;

20 (3) Require the filing of a petition for limited guardianship and/or conservatorship for the
21 patient pursuant to chapter forty-four-a of this code for purposes of the patient's care and
22 treatment for mental health and substance use disorder, if a limited or full guardianship does not
23 currently exist: *Provided*, That the appointed limited guardian and/or conservator is not the
24 individual that filed the initial petition or moved the court or mental hygiene commissioner for a
25 hearing for the patient's failure to adhere to the requirements of the assisted outpatient order;

26 (4) Require the patient's guardian or conservator to appear at status hearings and make
27 status reports to the court or mental hygiene commissioner regarding the ward;

28 (5) Conversion of the case to an involuntary hospitalization case if appropriate, pursuant
29 to section twelve of this article and chapter and article five of this chapter; and

30 (6) Dismiss the case.

NOTE: The purpose of this bill is to provide assisted outpatient treatment to individuals suffering from mental illness to prevent such individuals from decompensating to the point of likelihood to cause serious harm to self or others for safety of the public, to prevent the costs of inpatient involuntary hospitalization, and costs of incarceration due to untreated mental illness. The bill defines terms and requires legal proceedings.

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