

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4013**

BY DELEGATES STEELE, LITTLE, ATKINSON, WESTFALL,

PORTERFIELD, ROWAN AND ROHRBACH

[Introduced January 09, 2020; Referred to the

Committee on Prevention and Treatment of

Substance Abuse then the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-3E-1, §16-3E-2, §16-3E-3, §16-3E-4, §16-3E-5 and §16-3E-6, all relating  
 3 to establishing an intravenous drug user treatment and commitment process; defining  
 4 terms; establishing a commitment procedure; requiring rule-making; and providing that an  
 5 individual’s gun rights are unaffected.

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

**ARTICLE 3E. HABITUAL INTRAVENOUS DRUG USER TREATMENT AND COMMITMENT.**

**§16-3E-1. Purpose and legislative findings.**

1 (a) The purpose of this article is to bring together the state law governing habitual  
 2 intravenous (IV) drug users as well as the statutes pertaining to the treatment, control and  
 3 commitment of those persons at treatment facilities, clinics and other health care facilities  
 4 throughout the state.

5 (b) Diagnosis, proper and complete treatment for people who are habitual IV drug users  
 6 are essential for the well-being of the user, his or her family, and the state as a whole.

**§16-3E-2. Definitions.**

1 As used in this article:

2 “Bureau” means the Bureau for Public Health in the Department of Health and Human  
 3 Resources;

4 “Commissioner” means the Commissioner of the Bureau for Public Health, who is the state  
 5 health officer;

6 “Habitual IV drug user” or “Suspected habitual IV drug user” means a person who is  
 7 suspected of being an intravenous drug user showing either the physical symptoms of such drug  
 8 use, such as scarred or collapsed veins, having a history of such drug use, or exhibiting general  
 9 behavioral cues such as:

- 10 (A) Becoming evasive or upset if you ask about drug use;
- 11 (B) Being unable to stop or limit drug use;
- 12 (C) Going out of their way to find and use the drug;
- 13 (D) Experiencing intense urges or cravings to use the drug;
- 14 (E) Ignoring important responsibilities at work or school;
- 15 (F) Losing interest in their favorite things;
- 16 (G) Needing more of the drug than before to feel good (tolerance);
- 17 (H) Pushing people away and/or suddenly having new “friends” (fellow drug users);
- 18 (I) Spending money he or she cannot afford on the drug;
- 19 (J) Thinking or talking excessively about the substance;
- 20 (K) Hoarding, hiding, or stealing the drug;
- 21 (L) Doctor shopping to procure more of the drug (in the case of prescription medications);
- 22 and
- 23 (M) Wearing long sleeves to cover up track marks even in warm weather.

24 “Local board of health,” “local board” or “board” means a board of health serving one or  
 25 more counties or one or more municipalities or a combination thereof;

26 “Local health department” means the staff of the local board of health; and

27 “Local health officer” means the individual physician with a current West Virginia license  
 28 to practice medicine who supervises and directs the activities of the local health department  
 29 services, staff and facilities and is appointed by the local board of health with approval by the  
 30 commissioner.

**§16-3E-3. Procedure when habitual intravenous drug user is a danger; court ordered treatment; requirements for discharge; appeals.**

1 (a) If the commissioner, local health officer, physician, social worker or law-enforcement  
 2 officer suspects that any habitual IV drug user is a threat to himself or herself, or to others, that  
 3 individual may petition the circuit court of the county in which the person resides, requesting an

4 individualized course of treatment to deal with the person's current or inadequately treated IV  
5 drug use. Refusal to adhere to prescribed treatment may result in an order of the court committing  
6 the person to a health care facility equipped for the treatment of habitual IV drug users: *Provided,*  
7 That if it is determined that an emergency situation exists which warrants the immediate detention  
8 and commitment of an habitual IV drug user, an application for immediate involuntary commitment  
9 may be filed pursuant to §16-3E-5 of this code.

10 (b) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of  
11 the petition and the time and place for hearing shall be served personally, at least seven days  
12 before the hearing, upon the habitual IV drug user alleged to be dangerous to himself or herself,  
13 or others.

14 (c) If, upon a hearing, it appears that the complaint of the bureau is well founded, that  
15 other less restrictive treatment options have been exhausted, that the person is an habitual IV  
16 drug user and that the person is a danger to himself or herself, or to others, the court shall commit  
17 the individual to a health care facility equipped for the care and treatment of habitual IV drug  
18 users. The person shall be deemed to be committed until discharged in the manner authorized in  
19 subsection (d) of this section: *Provided,* That the hearing and notice provisions of this subsection  
20 do not apply to immediate involuntary commitments as provided in §16-3E-5 of this code.

21 (d) The chief medical officer of the institution to which any habitual IV drug user has been  
22 committed may discharge that person when, after consultation with the commissioner and the  
23 local health officer in the patient's county of residence, it is agreed that the person may be  
24 discharged without danger to himself or herself, or others. The chief medical officer shall report  
25 immediately to the commissioner and to the local health officer in the patient's county of residence  
26 each discharge of a habitual IV drug user.

27 (e) Every person committed under the provisions of this section shall observe all the rules  
28 of the institution. Any patient so committed may, by direction of the chief medical officer of the  
29 institution, be placed apart from the others and restrained from leaving the institution so long as

30 he or she continues to be a habitual IV drug user and remains a danger.

31 (f) Nothing in this section may be construed to prohibit any person committed to any  
32 institution under the provisions of this section from applying to the Supreme Court of Appeals for  
33 a review of the evidence on which the commitment was made. Nothing in this section may be  
34 construed or operated to empower or authorize the commissioner or the chief medical officer of  
35 the institution to restrict in any manner the individual's right to select any method of treatment  
36 offered by the institution.

**§16-3E-4. Return of escapees from habitual IV drug treatment facility.**

1 If any person confined in an habitual IV drug treatment facility by virtue of an order of a  
2 circuit court escapes from the habitual IV drug treatment facility, the chief medical officer shall  
3 issue a notice giving the name and description of the person escaping and requesting his or her  
4 apprehension and return to the treatment facility. The chief medical officer shall issue a warrant  
5 directed to the sheriff of the county commanding him or her to arrest and return the escaped  
6 person back to the treatment facility, which warrant may be executed in any part of the state. If  
7 the person flees to another state, the chief medical officer shall notify the appropriate state health  
8 official in the state where the person has fled, and that state health official may take the actions  
9 that are necessary for the return of the person to the treatment facility.

**§16-3E-5. Procedures for immediate involuntary commitment; rules.**

1 (a) An application for immediate involuntary commitment of a habitual IV drug user may  
2 be filed by the commissioner, local health officer, physician, social worker or law-enforcement  
3 officer in the circuit court of the county in which the person resides. The application shall be filed  
4 under oath and shall present information and facts which establish that the habitual IV drug user  
5 has been uncooperative or irresponsible with regard to treatment, quarantine or safety measures,  
6 presents a health menace to others, and is in need of immediate hospitalization.

7 (b) Upon receipt of the application, the circuit court may enter an order for the individual  
8 named in the action to be detained and taken into custody for the purpose of holding a probable

9 cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel  
10 for the individual: *Provided*, That in the event immediate detention is believed to be necessary for  
11 the protection of the individual or others at a time when no circuit court judge is available for  
12 immediate presentation of the application, a magistrate may accept the application and, upon a  
13 finding that immediate detention is necessary, may order the individual to be temporarily  
14 committed until the earliest reasonable time that the application can be presented to the circuit  
15 court, which period of time shall not exceed 24 hours except as provided in subsection (c) of this  
16 section.

17 (c) A probable cause hearing shall be held before a magistrate or circuit judge of the  
18 county in which the individual is a resident or where he or she was found. If requested by the  
19 individual or his or her counsel, the hearing may be postponed for a period not to exceed 48  
20 hours, or as soon thereafter as possible.

21 (d) The individual shall be present at the probable cause hearing and shall have the right  
22 to present evidence, confront all witnesses and other evidence against him or her, and to examine  
23 testimony offered, including testimony by the bureau or its designees.

24 (e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an  
25 order stating whether there is probable cause to believe that the individual is likely to cause  
26 serious harm to himself or herself, or others as a result of his or her disease and actions. If  
27 probable cause is found, the individual shall be immediately committed to a health care facility  
28 equipped for the care and treatment of habitual IV drug users. The person shall remain so  
29 committed until discharged in the manner authorized pursuant to §16-3E-3(d) of this code.

30 (f) The bureau shall propose rules for legislative approval in accordance with the  
31 provisions of §29A-3-1 *et seq.* of this code, to implement the provisions of this article, including,  
32 but not limited to, rules relating to the transport and temporary involuntary commitment of patients.

#### **§16-3E-6. Gun rights.**

1 Notwithstanding any provision in this code to the contrary, nothing in this article may be

2 construed as affecting an individual's right to keep and bear arms.

NOTE: The purpose of this bill is to establish an intravenous drug user treatment and commitment process. The bill defines terms. The bill establishes a commitment procedure. The bill requires rule-making. The bill provides that an individual's gun rights are unaffected.

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