

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 509

BY SENATOR TRUMP

[Introduced March 1, 2021; referred
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §27-5-3 of the Code of West Virginia, 1931, as amended, relating
 2 to involuntary hospitalization; removing a requirement that a determination of medical
 3 stability be found prior to admission to a mental health facility; and providing that a physical
 4 may be provided to the individual upon admission to the mental health facility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§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 admitted
 2 to a mental health facility for examination and treatment upon entry of an order finding probable
 3 cause as provided in §27-5-2 of this code ~~upon a finding by a licensed physician that the individual~~
 4 ~~is medically stable~~, and upon certification by a physician, psychologist, licensed professional
 5 counselor, licensed independent clinical social worker practicing in compliance with the provisions
 6 of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification
 7 practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in
 8 compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that
 9 he or she has examined the individual and is of the opinion that the individual is mentally ill or has
 10 a substance use disorder and, because of the mental illness or substance use disorder, is likely
 11 to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided,*
 12 That the opinions offered by an independent clinical social worker, an advanced nurse practitioner
 13 with psychiatric certification, or a physician's assistant with advanced duties in psychiatric
 14 medicine must be within his or her particular areas of expertise, as recognized by the order of the
 15 authorizing court: *Provided, however, That upon admission to the mental health facility, a physical*
 16 *examination, consistent with the standard of care, may be provided to the individual. This*
 17 *examination may be provided either directly by the mental health facility or by a hospital as defined*
 18 *in §16-5B-1 of this code, with which the mental health facility may have a contractual arrangement,*
 19 *and thereafter treatment may be provided in accordance with the provisions of §27-5-2a of this*

20 code.

21 (b) *Three-day time limitation on examination.* — If the examination does not take place
22 within three days from the date the individual is taken into custody, the individual shall be released.
23 If the examination reveals that the individual is not mentally ill or has a substance use disorder,
24 the individual shall be released.

25 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
26 this code is valid for three days. Any individual with respect to whom the certification has been
27 issued may not be admitted on the basis of the certification at any time after the expiration of three
28 days from the date of the examination.

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

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

42 (f) *Three-day time limitation for examination and certification at mental health facility or*
43 *state hospital.* — After the individual's admission to a mental health facility or state hospital, he or
44 she may not be detained more than three days, excluding Sundays and holidays, unless, within
45 the period, the individual is examined by a staff physician and the physician certifies that in his or

46 her opinion the patient is mentally ill or has a substance use disorder and is likely to injure himself,
47 herself, or others if allowed to be at liberty. In the event the staff physician determines that the
48 individual does not meet the criteria for continued commitment, that the individual can be treated
49 in an available outpatient community-based treatment program and poses no present danger to
50 himself, herself or others, or that the individual has an underlying medical issue or issues that
51 resulted in a determination that the individual should not have been committed, the staff physician
52 shall release and discharge the individual as appropriate as soon as practicable.

53 (g) *Ten-day time limitation for institution of final commitment proceedings.* — If, in the
54 opinion of the examining physician, the patient is mentally ill or has a substance use disorder and
55 because of the mental illness or substance use disorder is likely to injure himself, herself, or others
56 if allowed to be at liberty, the chief medical officer shall, within 10 days from the date of admission,
57 institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are
58 not instituted within the 10-day period, the individual shall be immediately released. After the
59 request for hearing is filed, the hearing may not be canceled on the basis that the individual has
60 become a voluntary patient unless the mental hygiene commissioner concurs in the motion for
61 cancellation of the hearing.

62 (h) *Twenty-day time limitation for conclusion of all proceedings.* — If all proceedings as
63 provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 20 days
64 from the date of institution of the proceedings, the individual shall be immediately released.

NOTE: The purpose of this bill is to remove a requirement that a determination of medical stability be found prior to admission to a mental health facility. The bill provides that a physical may be provided to the individual upon admission to the mental health facility.

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