

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 509

BY SENATOR TRUMP

[Originating in the Committee on Health and Human

Resources; reported on March 17, 2021]

1 A BILL to amend and reenact §27-5-3 and §27-5-10 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new section, designated §27-5-
3 3a, all relating to involuntary hospitalization; requesting the Supreme Court of Appeals to
4 provide training to specified persons on medical conditions mimicking, causing, or
5 contributing to a psychiatric presentation; providing that magistrate or mental hygiene
6 commissioner may determine individual be evaluated for medical condition; removing a
7 requirement that a determination of medical stability be found prior to admission to a
8 mental health facility; providing that a physical may be provided to the individual upon
9 admission to the mental health facility; providing that if after entry of order of involuntary
10 hospitalization is entered the cause is determined to be medical rather than physical this
11 shall not serve to make the person banned from possessing a firearm; and requiring
12 specified persons to transport to a diversion facility as designated by the chief medical
13 officer of the state hospital.

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.* —
2 (1) Any individual may be admitted to a mental health facility for examination and treatment
3 upon entry of an order finding probable cause as provided in §27-5-2 of this code ~~upon a finding~~
4 ~~by a licensed physician that the individual is medically stable~~, and upon certification by a
5 physician, psychologist, licensed professional counselor, licensed independent clinical social
6 worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced
7 nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this
8 code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with
9 advanced duties in psychiatric medicine that he or she has examined the individual and is of the
10 opinion that the individual is mentally ill or has a substance use disorder and, because of the

11 mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to
12 others if not immediately restrained: *Provided*, That the opinions offered by an independent
13 clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician's
14 assistant with advanced duties in psychiatric medicine must be within his or her particular areas
15 of expertise, as recognized by the order of the authorizing court. ~~A magistrate, mental hygiene
16 commissioner, or examiner shall have training regarding medical causation for psychiatric disease
17 with a focus on medical conditions causing or contributing to a psychiatric presentation.~~

18 (2) Upon admission to the mental health facility, a physical examination, consistent with
19 the standard of care, may be provided to the individual. This examination may be provided either
20 directly by the mental health facility or by a hospital as defined in §16-5B-1 of this code, with which
21 the mental health facility may have a contractual arrangement, and thereafter treatment may be
22 provided in accordance with the provisions of §27-5-2a of this code.

23 (3) The magistrate or mental hygiene commissioner may, on his or her own or upon the
24 recommendation of the examiner, order that the individual be evaluated for a medical condition
25 causing or contributing to the psychiatric presentation or which might significantly impair or
26 preclude psychiatric evaluation or treatment.

27 (4) The Supreme Court of Appeals is requested to provide magistrates, mental hygiene
28 commissioners, and examiners training regarding medical conditions mimicking, causing, or
29 contributing to a psychiatric presentation.

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

34 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
35 this code is valid for three days. Any individual with respect to whom the certification has been

36 issued may not be admitted on the basis of the certification at any time after the expiration of three
37 days from the date of the examination.

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

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

51 (f) *Three-day time limitation for examination and certification at mental health facility or*
52 *state hospital.* — After the individual's admission to a mental health facility or state hospital, he or
53 she may not be detained more than three days, excluding Sundays and holidays, unless, within
54 the period, the individual is examined by a staff physician and the physician certifies that in his or
55 her opinion the patient is mentally ill or has a substance use disorder and is likely to injure himself,
56 herself, or others if allowed to be at liberty. In the event the staff physician determines that the
57 individual does not meet the criteria for continued commitment, that the individual can be treated
58 in an available outpatient community-based treatment program and poses no present danger to
59 himself, herself, or others, or that the individual has an underlying medical issue or issues that
60 resulted in a determination that the individual should not have been committed, the staff physician
61 shall release and discharge the individual as appropriate as soon as practicable.

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

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

**§27-5-3a. Legal effect of commitment later determined not to be based on mental illness or
addiction.**

1 In the event that a person is involuntarily hospitalized, and it is determined after the entry
2 of the order that the behavior which led to the entry of the order of involuntary hospitalization was
3 caused by a physical condition or disorder rather than mental illness or addiction, the
4 hospitalization shall not serve to make the person a proscribed person under state laws relating
5 to firearms possession. Furthermore, while it is clear that it is the government of the United States,
6 and not the government of West Virginia, which has the authority under 18 U. S. C. 922 (g) (4) to
7 determine whether a person has been “committed to a mental institution”, the legislature notes
8 that “federal courts often look to state law to help determine whether a commitment has occurred”.
9 *United States v. Vertz*, 40 F. App’x 69 (6th Cir. 2002). Under such principles of interpretation, it is
10 the intent of the Legislature to make clear that in circumstances under which there is an order
11 finding that a person’s involuntarily hospitalization was necessitated and ordered as a result of a
12 physical condition or disorder, the Legislature does not deem this to be a “commitment”, under

13 state law, and the Legislature’s determination that such an involuntary hospitalization is not a
14 “commitment” should be viewed by the government of the United States as consistent with the
15 provisions of the amendments to the NICS Improvement Amendments Act of 2007, Public Law
16 110-180, Tit. I, Sec. 101(c)(1), 121 Stat. 2559, 2562-63 (2008).

§27-5-10. Transportation for the mentally ill or persons with substance use disorder.

1 (a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et*
2 *seq.* and §27-5-1 *et seq.* of this code, the sheriff shall provide immediate transportation to or from
3 the appropriate mental health facility or state hospital: *Provided*, That, where hospitalization
4 occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request
5 of a person having proper interest in the individual’s hospitalization, for the interested person to
6 arrange for the individual’s transportation to the mental health facility or state hospital if the sheriff
7 determines that those means are suitable given the individual’s condition.

8 (b) Upon written agreement between the county commission on behalf of the sheriff and
9 the directors of the local community mental health center and emergency medical services, an
10 alternative transportation program may be arranged. The agreement shall clearly define the
11 responsibilities of each of the parties, the requirements for program participation, and the persons
12 bearing ultimate responsibility for the individual’s safety and well-being.

13 (c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal
14 governments may enter into written agreements by which certified municipal law-enforcement
15 officers may perform the duties of the sheriff as described in this article. The agreement shall
16 determine jurisdiction, responsibility of costs, and all other necessary requirements, including
17 training related to the performance of these duties, and shall be approved by the county
18 commission and circuit court of the county in which the agreement is made. For purposes of this
19 subsection, “certified municipal law-enforcement officer” means any duly authorized member of a
20 municipal law-enforcement agency who is empowered to maintain public peace and order, make
21 arrests, and enforce the laws of this state or any political subdivision thereof, other than parking

22 ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et*
23 *seq.* of this code.

24 (d) In the event an individual requires transportation to a state hospital as defined by §27-
25 1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state
26 hospital in advance of the transportation to determine if the state hospital has suitable bed
27 capacity to place the individual. In the event the sheriff, arresting officer, or certified municipal
28 law-enforcement officer is informed by the state hospital that the state hospital lacks suitable bed
29 capacity to place such individual, the sheriff, arresting officer, or certified municipal law-
30 enforcement officer shall transport such individual to a diversion facility in the state as designated
31 by the chief medical officer of the state hospital.

32 (e) Nothing in this section is intended to alter security responsibilities for the patient by the
33 sheriff unless mutually agreed upon as provided in subsection (c) of this section.