

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2280

BY DELEGATE BATES

(BY REQUEST)

[Introduced February 10, 2021; 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, and §27-5A-7,
 3 all relating to Involuntary treatment for alcohol or another drug abuse; setting forth patients'
 4 rights; establishing criteria for involuntary treatment; providing for petitions for 60-day and
 5 360-day involuntary treatment; establishing financial responsibility; establishing
 6 proceedings for involuntary treatment; authorizing 72-hour emergency involuntary
 7 treatment; setting forth a procedure for failure to attend examination; providing for
 8 transportation to a hospital or other facility; and providing for minors.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5A. INVOLUNTARY TREATMENT FOR ALCOHOL OR ANOTHER DRUG
 ABUSE.**

§27-5A-1. Rights of patient.

1 (a) Involuntary treatment ordered for a person suffering from alcohol or another drug
 2 abuse shall follow the procedures set forth in this article.

3 (b) Except as otherwise provided for in this article, all rights guaranteed by §27-5-1 et seq.
 4 of this code to involuntarily hospitalized mentally ill persons shall be guaranteed.

§27-5A-2. Criteria for involuntary treatment.

5 Criteria for involuntary treatment. No person suffering from alcohol or another drug abuse
 6 may be ordered to undergo treatment unless that person:

7 (1) Suffers from alcohol or another drug abuse;

8 (2) Presents an imminent threat of danger to self, family, or others as a result of alcohol
 9 or another drug abuse, or there exists a substantial likelihood of such a threat in the near future;

10 and

11 (3) Can reasonably benefit from treatment.

§27-5A-3. Petition for 60-day and 360-day involuntary treatment; contents; guarantee for

costs.

1 (a) Proceedings for 60 days or 360 days of treatment for an individual suffering from
2 alcohol or another drug abuse shall be initiated by the filing of a verified petition in circuit court.

3 (b) The petition and all subsequent court documents shall be entitled: "In the interest of
4 (name of respondent)."

5 (c) The petition shall be filed by a spouse, relative, friend, or guardian of the individual
6 concerning whom the petition is filed.

7 (d) The petition shall set forth:

8 (1) Petitioner's relationship to the respondent;

9 (2) Respondent's name, residence, and current location, if known;

10 (3) The name and residence of respondent's parents, if living and if known, or respondent's
11 legal guardian, if any and if known;

12 (4) The name and residence of respondent's husband or wife, if any and if known;

13 (5) The name and residence of the person having custody of the respondent, if any, or if
14 no such person is known, the name and residence of a near relative or that the person is unknown;
15 and

16 (6) Petitioner's belief, including the factual basis therefor, that the respondent is suffering
17 from an alcohol or another drug abuse disorder and presents a danger or threat of danger to self,
18 family, or others if not treated for alcohol or another drug abuse. Any petition filed pursuant to this
19 subsection shall be accompanied by a guarantee, signed by the petitioner or other person
20 authorized under subsection (c) of this section, obligating that person to pay all costs for treatment
21 of the respondent for alcohol or another drug abuse that is ordered by the court.

§27-5A-4. Proceedings for involuntary treatment; duties of court; disposition.

1 (a) Upon receipt of the petition, the court shall examine the petitioner under oath as to the
2 contents of the petition.

3 (b) If, after reviewing the allegations contained in the petition and examining the petitioner

4 under oath, it appears to the court that there is probable cause to believe the respondent should
5 be ordered to undergo treatment, then the court shall:

6 (1) Set a date for a hearing within 14 days to determine if there is probable cause to believe
7 the respondent should be ordered to undergo treatment for alcohol or another drug abuse;

8 (2) Notify the respondent, the legal guardian, if any and if known, and the spouse, parents,
9 or nearest relative or friend of the respondent concerning the allegations and contents of the
10 petition and the date and purpose of the hearing; and the name, address, and telephone number
11 of the attorney appointed to represent the respondent; and

12 (3) Cause the respondent to be examined no later than 24 hours before the hearing date
13 by two qualified health professionals, at least one of whom is a physician. The qualified health
14 professionals shall certify their findings to the court within 24 hours of the examinations.

15 (c) If, upon completion of the hearing, the court finds the respondent should be ordered to
16 undergo treatment, then the court shall order such treatment for a period not to exceed 60
17 consecutive days from the date of the court order or a period not to exceed 360 consecutive days
18 from the date of the court order, whatever was the period of time that was requested in the petition
19 or otherwise agreed to at the hearing. Failure of a respondent to undergo treatment ordered
20 pursuant to this subsection may place the respondent in contempt of court.

21 (d) If, at any time after the petition is filed, the court finds that there is no probable cause
22 to continue treatment or if the petitioner withdraws the petition, then the proceedings against the
23 respondent shall be dismissed.

§27-5A-5. Seventy-two-hour emergency involuntary treatment.

1 (a) Following an examination by a qualified health professional and a certification by that
2 professional that the person meets the criteria specified in §27-5A-2 of this code, the court may
3 order the person hospitalized for a period not to exceed 72 hours if the court finds, by clear and
4 convincing evidence, that the respondent presents an imminent threat of danger to self, family, or
5 others as a result of alcohol or another drug abuse.

6 (b) Any person who has been admitted to a hospital under subsection (a) of this section
7 shall be released from the hospital within 72 hours of admittance.

8 (c) No respondent ordered hospitalized under this section may be held in jail pending
9 transportation to the hospital or evaluation unless the court has previously found the respondent
10 to be in contempt of court for either failure to undergo treatment or failure to appear at the
11 evaluation ordered pursuant to §27-5A-4 of this code.

**§27-5A-6. Failure to attend examination; summons; transportation to hospital or
psychiatric facility.**

1 When the court has issued an order that the respondent be transported to a hospital, the
2 court may, if the respondent fails to attend an examination scheduled before the hearing provided
3 for in §27-5A-4 of this code, issue a summons. A summons so issued shall be directed to the
4 respondent and shall command the respondent to appear at a time and place therein specified. If
5 a respondent who has been summoned fails to appear at the hospital or the examination, then
6 the court may order the sheriff or other peace officer to transport the respondent to a hospital or
7 psychiatric facility designated by the Mental Hygiene Commissioner. The sheriff may authorize
8 the Mental Hygiene Commissioner, a private agency on contract with the Mental Hygiene
9 Commissioner, or an ambulance service designated by the Mental Hygiene Commissioner to
10 transport the respondent to the hospital. The transportation costs of the sheriff, ambulance
11 service, or other private agency on contract with the Mental Hygiene Commissioner shall be
12 included in the costs of treatment for alcohol or another drug abuse to be paid by the petitioner.

**§27-5A-7. Capacity of minor to consent to treatment; petition by minor hospitalized or
treated involuntarily.**

1 (a) Notwithstanding any other law, a minor who suffers from an alcohol or another drug
2 abuse problem or emotional disturbance from the effects of a family member or legal guardian's
3 alcohol or another drug abuse problem or the parent or guardian of the minor may give consent
4 to the furnishing of medical care or counseling related to the assessment or treatment of the

5 conditions. The consent of the minor shall be valid as if the minor had achieved majority. No
6 person or facility shall incur liability by reason of having made a diagnostic examination or
7 rendered treatment as provided in this section, but the immunity may not apply to any negligent
8 acts or omissions.

9 (b) A minor hospitalized or treated without the minor's consent but with the consent of the
10 parent or guardian may petition the circuit court to determine whether the minor is suffering from
11 alcohol or drug abuse or addiction and whether the treatment is necessary for the health and
12 welfare of the minor.

NOTE: The purpose of this bill provides for the involuntary treatment for alcohol or another drug abuse. The bill sets forth patients' rights. The bill establishes criteria for involuntary treatment. The bill provides for petitions for 60-day and 360-day involuntary treatment. The bill establishes financial responsibility. The bill establishes proceedings for involuntary treatment. The bill authorizes a 72-hour emergency involuntary treatment. The bill sets forth a procedure for failure to attend examination. The bill provides for transportation to a hospital or other facility. The bill provides for minors.

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