

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5163**

By Delegates Howell, Adkins, Mallow, Ward, DeVault,

Jeffries, Thorne, Ferrell, and Willis

[Introduced January 25, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §27-5-2a of the Code of West Virginia, 1931, as amended, all  
 2 relating to clarifying that no law enforcement officer is required to remain with an individual  
 3 at the hospital while a staff physician or other authorized person evaluates the individual  
 4 for involuntary hospitalization.

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

**ARTICLE                    5.                    INVOLUNTARY                    HOSPITALIZATION.**  
**§27-5-2a.                    Process                    for                    involuntary                    hospitalization.**

- 1            (a) As used in this section:
- 2            (1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.
- 3            (2) "Authorized staff physician" means a physician, authorized pursuant to the provisions  
 4 of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, who is a bona fide member of the hospital's  
 5 medical staff.
- 6            (3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 *et seq.* of this  
 7 code, and any acute care facility operated by the state government that primarily provides  
 8 inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals  
 9 under the supervision of physicians.
- 10           (4) "Psychiatric emergency" means an incident during which an individual loses control  
 11 and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or  
 12 others.
- 13           (b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or  
 14 unable to be immediately contacted, an authorized staff physician may order the involuntary  
 15 hospitalization of a patient or an individual who is present at, or presented at, a hospital  
 16 emergency department in need of treatment, if the authorized staff physician believes, following an  
 17 examination of the individual, that the individual is addicted or is mentally ill and, because of his or  
 18 her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if  
 19 allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or

20 her decision that the patient presents a harm to himself, herself or others and needs to be held  
21 involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to  
22 generate a form for the statement to be signed by the authorized staff physician or other person  
23 authorized by the hospital and provided to the individual: Provided, That, no law enforcement  
24 officer transporting the patient or individual to the emergency department for treatment shall be  
25 required to remain at the hospital while the authorized staff physician or other authorized person  
26 makes a determination as to involuntary hospitalization.

27 (2) Immediately upon admission, or as soon as practicable thereafter, but in no event later  
28 than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff  
29 physician or designated employee shall file a mental hygiene petition in which the authorized staff  
30 physician certifies that the individual for whom the involuntary hospitalization is sought is addicted  
31 or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious  
32 harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff  
33 physician shall also certify the same in the individual's health records. Upon receipt of this filing,  
34 the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant  
35 to §27-5-2 of this code.

36 (3) An individual who is involuntarily hospitalized pursuant to this section shall be released  
37 from the hospital within 72 hours, unless further detained under the applicable provisions of this  
38 article.

39 (c) During a period of involuntary hospitalization authorized by this section, upon consent  
40 of the individual, or in the event of a medical or psychiatric emergency, the individual may receive  
41 treatment. The hospital or authorized staff physician shall exercise due diligence in determining  
42 the individual's existing medical needs and provide treatment the individual requires, including  
43 previously prescribed medications.

44 (d) Each hospital or authorized staff physician which provides services under this section  
45 shall be paid for the services at the same rate the hospital or authorized staff physician negotiates

46 with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may  
47 file a claim for payment with the West Virginia Legislative Claims Commission in accordance with  
48 §14-2-1 *et seq.* of this code.

49 (e) Authorized staff physicians and hospitals and their employees carrying out duties or  
50 rendering professional opinions as provided in this section shall be free from liability for their  
51 actions, if the actions are performed in good faith and within the scope of their professional duties  
52 and in a manner consistent with the standard of care.

53 (f) The West Virginia Supreme Court of Appeals is requested to provide each hospital with  
54 a list of names and contact information of the mental hygiene commissioners, magistrates, and  
55 circuit judges to address mental hygiene petitions in the county where the hospital is located. The  
56 West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall  
57 reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge  
58 does not respond to the request within 24 hours, a report shall be filed to the West Virginia  
59 Supreme Court of Appeals.

60 (g) An action taken against an individual pursuant to this section may not be construed to  
61 be an adjudication of the individual, nor shall any action taken pursuant to this section be  
62 construed to satisfy the requirements of §61-7-7(a)(4) of this code.

NOTE: The purpose of this bill is to clarify that no law enforcement officer is required to remain with an individual at the hospital while a staff physician or other authorized person evaluates the individual for involuntary hospitalization.

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