

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5543

By Delegate E. Pritt

[Introduced February 09, 2024; 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 §16-67-1, §16-67-2, §16-67-3, §16-67-4, §16-67-5, §16-67-6 relating to
 3 describing the process of involuntary treatment for substance use disorder; the patient's
 4 rights; criteria for involuntary treatment; petitions for treatment; proceedings for involuntary
 5 treatment; emergency treatment; and summons issued by the court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 67. INVOLUNTARY TREATMENT FOR SUBSTANCE USE DISORDER.

§16-67-1. Rights of the Patient.

1 (a) Involuntary treatment ordered for a person suffering from substance use disorder shall
 2 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 to a person
 5 ordered to undergo treatment for substance use disorder.

§16-67-2. Criteria for involuntary treatment.

1 No person suffering from substance use disorder shall be ordered to undergo treatment
 2 unless that person:

- 3 (1) Suffers from substance use disorder;
- 4 (2) Presents an imminent threat of danger to self, family, or others as a result of a
 5 substance use disorder, or there exists a substantial likelihood of such a threat in the near future;
 6 and
- 7 (3) Can reasonably benefit from treatment.

§16-67-3. Petition for 60-day and 360-day involuntary treatment — Contents — Guarantee for costs.

1 (a) Proceedings for sixty (60) days or three hundred sixty (360) days of treatment for an
 2 individual suffering from substance use disorder shall be initiated by the filing of a verified petition
 3 in Circuit Court.

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

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

8 (d) The petition shall set forth:

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

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

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

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

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

16 and

17 (6) Petitioner's belief, including the factual basis therefor, that the respondent is suffering
18 from an alcohol and other drug abuse disorder and presents a danger or threat of danger to self,
19 family, or others if not treated for substance use disorder.

20 Any petition filed pursuant to this subsection shall be accompanied by a guarantee, signed
21 by the petitioner or other person authorized under subsection (c) of this section, obligating that
22 person to pay all costs for treatment of the respondent for substance use disorder that is ordered
23 by the court.

§16-67-4. Proceedings for ordering 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 be
5 ordered to undergo treatment, then the court shall:

6 (1) Set a date for a hearing within fourteen (14) days to determine if the respondent should
7 be ordered to undergo treatment for a substance use disorder;

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 twenty-four (24) hours before the
13 hearing date by two (2) qualified health professionals, at least one (1) of whom is a physician. The
14 qualified health professionals:

15 (A) Shall certify their findings to the court within twenty-four (24) hours of the examinations;

16 (B) May be subject to subpoena for cross-examination at the hearing, either in person, by
17 telephone, or by videoconference; and

18 (C) May conduct the examination required by this paragraph via telehealth.

19 (c) If, upon completion of the hearing, the court finds by proof beyond a reasonable doubt
20 that the respondent should be ordered to undergo treatment, then the court shall order such
21 treatment for a period not to exceed sixty (60) consecutive days from the date of the court order or
22 a period not to exceed three hundred sixty (360) consecutive days from the date of the court order,
23 whatever was the period of time that was requested in the petition or otherwise agreed to at the
24 hearing. Failure of a respondent to undergo treatment ordered pursuant to this subsection may
25 place the respondent in contempt of court.

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

§16-67-5. 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 §16-67-2 of this code, the court may

3 order the person hospitalized for a period not to exceed seventy-two (72) hours if the court finds,
4 by clear and convincing evidence, that the respondent presents an imminent threat of danger to
5 self, family, or others as a result of a substance use disorder.

6 (b) Any person who has been admitted to a hospital under subsection (1) of this section
7 shall be released from the hospital within seventy-two (72) hours of admittance.

8 (c) No respondent ordered hospitalized under this section shall be held in jail pending
9 transportation to the hospital or evaluation unless the court has previously found the respondent to
10 be in contempt of court for either failure to undergo treatment or failure to appear at the evaluation
11 ordered pursuant to §16-67-4 of this code.

**§16-67-6. Failure to attend examination — Summons — Transportation to hospital or
psychiatric facility.**

1 When the court is authorized to issue an order that the respondent be transported to a
2 hospital, the court may, or if the respondent fails to attend an examination scheduled before the
3 hearing provided for in §16-67-4 of this code, then the court shall issue a summons. A summons
4 so issued shall be directed to the respondent and shall command the respondent to appear at a
5 time and place therein specified. If a respondent who has been summoned fails to appear at the
6 hospital or the examination, then the court may order the sheriff or other peace officer to transport
7 the respondent to a hospital or psychiatric facility designated by the cabinet for treatment. The
8 sheriff or other peace officer may, upon agreement of a person authorized by the peace officer,
9 authorize the cabinet, a private agency on contract with the cabinet, or an ambulance service
10 designated by the cabinet to transport the respondent to the hospital. The transportation costs of
11 the sheriff, other peace officer, ambulance service, or other private agency on contract with the
12 cabinet shall be included in the costs of treatment for a substance use disorder to be paid by the
13 petitioner.

NOTE: The purpose of this bill is to describe the process of involuntary treatment for substance use disorder.

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