

SB 551

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2006



**ENROLLED**

SENATE BILL NO. 551

(By Senator Prezioso, et al )



PASSED March 9, 2006

In Effect 90 days from Passage

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## Senate Bill No. 551

(BY SENATORS PREZIOSO, KESSLER AND HUNTER)

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[Passed March 9, 2006; in effect ninety days from passage.]

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AN ACT to amend and reenact §27-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-2, §27-5-3 and §27-5-4 of said code, all relating to institution of proceedings for involuntary custody for examination; addressing procedures regarding custody, probable cause and other hearings; examination of individuals; admission under involuntary hospitalization for examination; release; institution of final commitment proceedings; other hearing requirements; and defining terms.

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

That §27-1-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-2, §27-5-3 and §27-5-4 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-12. Likely to cause serious harm.**

1 (a) "Likely to cause serious harm" means an individual  
2 is exhibiting behaviors consistent with a medically recog-  
3 nized mental disorder or addiction, excluding, however,  
4 disorders that are manifested only through antisocial or  
5 illegal behavior and as a result of the mental disorder or  
6 addiction:

7 (1) The individual has inflicted or attempted to inflict  
8 bodily harm on another;

9 (2) The individual, by threat or action, has placed others  
10 in reasonable fear of physical harm to themselves;

11 (3) The individual, by action or inaction, presents a  
12 danger to himself, herself or others in his or her care;

13 (4) The individual has threatened or attempted suicide or  
14 serious bodily harm to himself or herself; or

15 (5) The individual is behaving in a manner as to indicate  
16 that he or she is unable, without supervision and the  
17 assistance of others, to satisfy his or her need for nourish-  
18 ment, medical care, shelter or self-protection and safety so  
19 that there is a substantial likelihood that death, serious  
20 bodily injury, serious physical debilitation, serious mental  
21 debilitation or life-threatening disease will ensue unless  
22 adequate treatment is afforded.

23 (b) In making the "likely to cause serious harm" determi-  
24 nation, judicial, medical, psychological and other evalua-  
25 tors and decisionmakers should utilize all available  
26 information, including psychosocial, medical, hospitaliza-  
27 tion and psychiatric information and including the cir-  
28 cumstances of any previous commitments or convalescent  
29 or conditional releases that are relevant to a current  
30 situation, in addition to the individual's current overt  
31 behavior. The rules of evidence shall be followed in  
32 making the "likely to cause serious harm" determination  
33 except that hearsay evidence not admissible thereunder  
34 may be admitted, except where precluded by statute, if it

35 is of a type commonly relied upon by reasonably prudent  
36 persons in the conduct of their affairs.

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-2. Institution of proceedings for involuntary custody for  
examination; custody; probable cause hearing;  
examination of individual.**

1 (a) Any adult person may make an application for  
2 involuntary hospitalization for examination of an individ-  
3 ual when the person making the application has reason to  
4 believe that the individual to be examined is addicted, as  
5 defined in section eleven, article one of this chapter, or is  
6 mentally ill and, because of his or her addiction or mental  
7 illness, the individual is likely to cause serious harm to  
8 himself, herself or to others if allowed to remain at liberty  
9 while awaiting an examination and certification by a  
10 physician or psychologist.

11 Notwithstanding any language in this subsection to the  
12 contrary, if the individual to be examined under the  
13 provisions of this section is incarcerated in a jail, prison or  
14 other correctional facility, then only the chief administra-  
15 tive officer of the facility holding the individual may file  
16 the application and the application must include the  
17 additional statement that the correctional facility itself  
18 cannot reasonably provide treatment and other services for  
19 the individual's mental illness or addiction.

20 (b) The person making the application shall make the  
21 application under oath.

22 (c) Application for involuntary custody for examination  
23 may be made to the circuit court or a mental hygiene  
24 commissioner of the county in which the individual resides  
25 or of the county in which he or she may be found. When  
26 no circuit court judge or mental hygiene commissioner is  
27 available for immediate presentation of the application,  
28 the application may be made to a magistrate designated by  
29 the chief judge of the judicial circuit to accept applications

30 and hold probable cause hearings. A designated magis-  
31 trate before whom an application or matter is pending  
32 may, upon the availability of a mental hygiene commis-  
33 sioner or circuit court judge for immediate presentation of  
34 an application or pending matter, transfer the pending  
35 matter or application to the mental hygiene commissioner  
36 or circuit court judge for further proceedings unless  
37 otherwise ordered by the chief judge of the judicial circuit.

38 (d) The person making the application shall give infor-  
39 mation and state facts in the application as may be  
40 required by the form provided for this purpose by the  
41 Supreme Court of Appeals.

42 (e) The circuit court, mental hygiene commissioner or  
43 designated magistrate may enter an order for the individ-  
44 ual named in the application to be detained and taken into  
45 custody for the purpose of holding a probable cause  
46 hearing as provided in subsection (g) of this section for the  
47 purpose of an examination of the individual by a physi-  
48 cian, psychologist, a licensed independent clinical social  
49 worker practicing in compliance with article thirty,  
50 chapter thirty of this code or advanced nurse practitioner  
51 with psychiatric certification practicing in compliance  
52 with article seven of said chapter: *Provided*, That a  
53 licensed independent clinical social worker or an advanced  
54 nurse practitioner with psychiatric certification may only  
55 perform the examination if he or she has previously been  
56 authorized by an order of the circuit court to do so, the  
57 order having found that the licensed independent clinical  
58 social worker or advanced nurse practitioner with psychi-  
59 atric certification has particularized expertise in the areas  
60 of mental health and mental hygiene or addiction suffi-  
61 cient to make the determinations as are required by the  
62 provisions of this section. The examination is to be  
63 provided or arranged by a community mental health center  
64 designated by the Secretary of the Department of Health  
65 and Human Resources to serve the county in which the  
66 action takes place. The order is to specify that the hearing

67 be held forthwith and is to provide for the appointment of  
68 counsel for the individual: *Provided, however,* That the  
69 order may allow the hearing to be held up to twenty-four  
70 hours after the person to be examined is taken into  
71 custody rather than forthwith if the circuit court of the  
72 county in which the person is found has previously entered  
73 a standing order which establishes within that jurisdiction  
74 a program for placement of persons awaiting a hearing  
75 which assures the safety and humane treatment of persons:  
76 *Provided further,* That the time requirements set forth in  
77 this subsection only apply to persons who are not in need  
78 of medical care for a physical condition or disease for  
79 which the need for treatment precludes the ability to  
80 comply with the time requirements. During periods of  
81 holding and detention authorized by this subsection, upon  
82 consent of the individual or in the event of a medical or  
83 psychiatric emergency, the individual may receive treat-  
84 ment. The medical provider shall exercise due diligence in  
85 determining the individual's existing medical needs and  
86 provide treatment the individual requires, including  
87 previously prescribed medications. As used in this section,  
88 "psychiatric emergency" means an incident during which  
89 an individual loses control and behaves in a manner that  
90 poses substantial likelihood of physical harm to himself,  
91 herself or others. Where a physician, psychologist, li-  
92 censed independent clinical social worker or advanced  
93 nurse practitioner with psychiatric certification has within  
94 the preceding seventy-two hours performed the examina-  
95 tion required by the provisions of this subdivision, the  
96 community mental health center may waive the duty to  
97 perform or arrange another examination upon approving  
98 the previously performed examination. Notwithstanding  
99 the provisions of this subsection, subsection (r), section  
100 four of this article applies regarding payment by the  
101 county commission for examinations at hearings. If the  
102 examination reveals that the individual is not mentally ill  
103 or addicted, or is determined to be mentally ill or addicted  
104 but not likely to cause harm to himself, herself or others,

105 the individual shall be immediately released without the  
106 need for a probable cause hearing and absent a finding of  
107 professional negligence the examiner is not civilly liable  
108 for the rendering of the opinion absent a finding of  
109 professional negligence. The examiner shall immediately  
110 provide the mental hygiene commissioner, circuit court or  
111 designated magistrate before whom the matter is pending  
112 the results of the examination on the form provided for  
113 this purpose by the Supreme Court of Appeals for entry of  
114 an order reflecting the lack of probable cause.

115 (f) A probable cause hearing is to be held before a  
116 magistrate designated by the chief judge of the judicial  
117 circuit, the mental hygiene commissioner or circuit judge  
118 of the county of which the individual is a resident or where  
119 he or she was found. If requested by the individual or his  
120 or her counsel, the hearing may be postponed for a period  
121 not to exceed forty-eight hours.

122 The individual must be present at the hearing and has  
123 the right to present evidence, confront all witnesses and  
124 other evidence against him or her and to examine testi-  
125 mony offered, including testimony by representatives of  
126 the community mental health center serving the area.  
127 Expert testimony at the hearing may be taken telephoni-  
128 cally or via videoconferencing. The individual has the  
129 right to remain silent and to be proceeded against in  
130 accordance with the rules of evidence of the Supreme  
131 Court of Appeals, except as provided in section twelve,  
132 article one of this chapter. At the conclusion of the  
133 hearing, the magistrate, mental hygiene commissioner or  
134 circuit court judge shall find and enter an order stating  
135 whether or not there is probable cause to believe that the  
136 individual, as a result of mental illness or addiction, is  
137 likely to cause serious harm to himself or herself or to  
138 others.

139 (g) Probable cause hearings may occur in the county  
140 where a person is hospitalized. The judicial hearing  
141 officer may: Use videoconferencing and telephonic tech-

142 nology; permit persons hospitalized for addiction to be  
143 involuntarily hospitalized only until detoxification is  
144 accomplished; and specify other alternative or modified  
145 procedures that are consistent with the purposes and  
146 provisions of this article. The alternative or modified  
147 procedures shall fully and effectively guarantee to the  
148 person who is the subject of the involuntary commitment  
149 proceeding and other interested parties due process of the  
150 law and access to the least restrictive available treatment  
151 needed to prevent serious harm to self or others.

152 (h) The magistrate, mental hygiene commissioner or  
153 circuit court judge at a probable cause hearing or at a final  
154 commitment hearing held pursuant to the provisions of  
155 section four of this article finds that the individual, as a  
156 result of mental illness or addiction, is likely to cause  
157 serious harm to himself, herself or others and because of  
158 mental illness or addiction requires treatment, the magis-  
159 trate, mental hygiene commissioner or circuit court judge  
160 may consider evidence on the question of whether the  
161 individual's circumstances make him or her amenable to  
162 outpatient treatment in a nonresidential or nonhospital  
163 setting pursuant to a voluntary treatment agreement. The  
164 agreement is to be in writing and approved by the individ-  
165 ual, his or her counsel and the magistrate, mental hygiene  
166 commissioner or circuit court judge. If the magistrate,  
167 mental hygiene commissioner or circuit court judge  
168 determines that appropriate outpatient treatment is  
169 available in a nonresidential or nonhospital setting, the  
170 individual may be released to outpatient treatment upon  
171 the terms and conditions of the voluntary treatment  
172 agreement. The failure of an individual released to  
173 outpatient treatment pursuant to a voluntary treatment  
174 agreement to comply with the terms of the voluntary  
175 treatment agreement constitutes evidence that outpatient  
176 treatment is insufficient and, after a hearing before a  
177 magistrate, mental hygiene commissioner or circuit judge  
178 on the issue of whether or not the individual failed or  
179 refused to comply with the terms and conditions of the



180 voluntary treatment agreement and whether the individual  
181 as a result of mental illness or addiction remains likely to  
182 cause serious harm to himself, herself or others, the entry  
183 of an order requiring admission under involuntary hospi-  
184 talization pursuant to the provisions of section three of  
185 this article may be entered. In the event a person released  
186 pursuant to a voluntary treatment agreement is unable to  
187 pay for the outpatient treatment and has no applicable  
188 insurance coverage, including, but not limited to, private  
189 insurance or Medicaid, the Secretary of the Department of  
190 Health and Human Resources may transfer funds for the  
191 purpose of reimbursing community providers for services  
192 provided on an outpatient basis for individuals for whom  
193 payment for treatment is the responsibility of the depart-  
194 ment: *Provided*, That the department may not authorize  
195 payment of outpatient services for an individual subject to  
196 a voluntary treatment agreement in an amount in excess of  
197 the cost of involuntary hospitalization of the individual.  
198 The secretary shall establish and maintain fee schedules  
199 for outpatient treatment provided in lieu of involuntary  
200 hospitalization. Nothing in the provisions of this article  
201 regarding release pursuant to a voluntary treatment  
202 agreement or convalescent status may be construed as  
203 creating a right to receive outpatient mental health  
204 services or treatment or as obligating any person or agency  
205 to provide outpatient services or treatment. Time limita-  
206 tions set forth in this article relating to periods of involun-  
207 tary commitment to a mental health facility for hospital-  
208 ization do not apply to release pursuant to the terms of a  
209 voluntary treatment agreement: *Provided, however*, That  
210 release pursuant to a voluntary treatment agreement may  
211 not be for a period of more than six months if the individ-  
212 ual has not been found to be involuntarily committed  
213 during the previous two years and for a period of no more  
214 than two years if the individual has been involuntarily  
215 committed during the preceding two years. If in any  
216 proceeding held pursuant to this article the individual  
217 objects to the issuance or conditions and terms of an order  
218 adopting a voluntary treatment agreement, then the circuit

219 judge, magistrate or mental hygiene commissioner may not  
220 enter an order directing treatment pursuant to a voluntary  
221 treatment agreement. If involuntary commitment with  
222 release pursuant to a voluntary treatment agreement is  
223 ordered, the individual subject to the order may, upon  
224 request during the period the order is in effect, have a  
225 hearing before a mental hygiene commissioner or circuit  
226 judge where the individual may seek to have the order  
227 canceled or modified. Nothing in this section affects the  
228 appellate and habeas corpus rights of any individual  
229 subject to any commitment order.

230 (i) If the certifying physician or psychologist determines  
231 that a person requires involuntary hospitalization for an  
232 addiction to a substance which, due to the degree of  
233 addiction, creates a reasonable likelihood that withdrawal  
234 or detoxification from the substance of addiction will  
235 cause significant medical complications, the person  
236 certifying the individual shall recommend that the individ-  
237 ual be closely monitored for possible medical complica-  
238 tions. If the magistrate, mental hygiene commissioner or  
239 circuit court judge presiding orders involuntary hospital-  
240 ization, he or she shall include a recommendation that the  
241 individual be closely monitored in the order of commit-  
242 ment.

243 (j) The Supreme Court of Appeals and the Secretary of  
244 the Department of Health and Human Resources shall  
245 specifically develop and propose a statewide system for  
246 evaluation and adjudication of mental hygiene petitions  
247 which shall include payment schedules and recommenda-  
248 tions regarding funding sources. Additionally, the Secre-  
249 tary of the Department of Health and Human Resources  
250 shall also immediately seek reciprocal agreements with  
251 officials in contiguous states to develop inter-  
252 state/intergovernmental agreements to provide efficient  
253 and efficacious services to out-of-state residents found in  
254 West Virginia and who are in need of mental hygiene  
255 services.

**§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.**

1     (a) *Admission to a mental health facility for examina-*  
2 *tion.* – Any individual may be admitted to a mental health  
3 facility for examination and treatment upon entry of an  
4 order finding probable cause as provided in section two of  
5 this article and upon certification by a physician, psychol-  
6 ogist, licensed independent clinical social worker practic-  
7 ing in compliance with the provisions of article thirty,  
8 chapter thirty of this code or an advanced nurse practitio-  
9 ner with psychiatric certification practicing in compliance  
10 with article seven of said chapter that he or she has  
11 examined the individual and is of the opinion that the  
12 individual is mentally ill or addicted and, because of such  
13 mental illness or addiction, is likely to cause serious harm  
14 to himself, herself or to others if not immediately re-  
15 strained: *Provided*, That the opinions offered by an  
16 independent clinical social worker or an advanced nurse  
17 practitioner with psychiatric certification must be within  
18 their particular areas of expertise, as recognized by the  
19 order of the authorizing court.

20     (b) *Three-day time limitation on examination.* – If the  
21 examination does not take place within three days from  
22 the date the individual is taken into custody, the individ-  
23 ual shall be released. If the examination reveals that the  
24 individual is not mentally ill or addicted, the individual  
25 shall be released.

26     (c) *Three-day time limitation on certification.* – The  
27 certification required in subsection (a) of this section shall  
28 be valid for three days. Any individual with respect to  
29 whom the certification has been issued may not be admit-  
30 ted on the basis of the certification at any time after the  
31 expiration of three days from the date of the examination.

32     (d) *Findings and conclusions required for certification.*  
33 – A certification under this section must include findings  
34 and conclusions of the mental examination, the date, time

35 and place of the examination and the facts upon which the  
36 conclusion that involuntary commitment is necessary is  
37 based.

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

52 (f) *Five-day time limitation for examination and certifi-*  
53 *cation at mental health facility.* – After the individual’s  
54 admission to a mental health facility, he or she may not be  
55 detained more than five days, excluding Sundays and  
56 holidays, unless, within the period, the individual is  
57 examined by a staff physician and the physician certifies  
58 that in his or her opinion the patient is mentally ill or  
59 addicted and is likely to injure himself, herself or others if  
60 allowed to be at liberty.

61 (g) *Fifteen-day time limitation for institution of final*  
62 *commitment proceedings.* – If, in the opinion of the  
63 examining physician, the patient is mentally ill or addicted  
64 and because of the mental illness or addiction is likely to  
65 injure himself, herself or others if allowed to be at liberty,  
66 the chief medical officer shall, within fifteen days from the  
67 date of admission, institute final commitment proceedings  
68 as provided in section four of this article. If the proceed-  
69 ings are not instituted within such fifteen-day period, the  
70 patient shall be immediately released. After the request  
71 for hearing is filed, the hearing may not be canceled on the

72 basis that the individual has become a voluntary patient  
73 unless the mental hygiene commissioner concurs in the  
74 motion for cancellation of the hearing.

75 (h) *Thirty-day time limitation for conclusion of all*  
76 *proceedings.* – If all proceedings as provided in articles  
77 three and four of this chapter are not completed within  
78 thirty days from the date of institution of the proceedings,  
79 the patient shall be immediately released.

**§27-5-4. Institution of final commitment proceedings; hearing requirements; release.**

1 (a) *Involuntary commitment.* – Except as provided in  
2 section three of this article, no individual may be involun-  
3 tarily committed to a mental health facility except by  
4 order entered of record at any time by the circuit court of  
5 the county in which the person resides or was found, or if  
6 the individual is hospitalized in a mental health facility  
7 located in a county other than where he or she resides or  
8 was found, in the county of the mental health facility and  
9 then only after a full hearing on issues relating to the  
10 necessity of committing an individual to a mental health  
11 facility: *Provided, That,* if the individual objects to the  
12 hearing being held in the county where the mental health  
13 facility is located, the hearing shall be conducted in the  
14 county of the individual's residence.

15 (b) *How final commitment proceedings are commenced.*  
16 – Final commitment proceedings for an individual may be  
17 commenced by the filing of a written application under  
18 oath and the certificate or affidavit is hereinafter provided  
19 with the clerk of the circuit court or mental hygiene  
20 commissioner of the county of which the individual is a  
21 resident, or where he or she may be found, or the county of  
22 the mental health facility, if he or she is hospitalized in a  
23 mental health facility located in a county other than where  
24 he or she resides or may be found by an adult person  
25 having personal knowledge of the facts of the case.

26 (c) *Oath; contents of application; who may inspect*  
27 *application; when application cannot be filed. –*

28 (1) The person making the application shall do so under  
29 oath.

30 (2) The application shall contain statements by the  
31 applicant that he or she believes because of symptoms of  
32 mental illness or addiction the individual is likely to cause  
33 serious harm to himself, herself or to others and the  
34 grounds for the belief, stating in detail the recent overt  
35 acts upon which the belief is based.

36 (3) The written application, certificate, affidavit and any  
37 warrants issued pursuant thereto, including any papers  
38 and documents related thereto, filed with any circuit court  
39 or mental hygiene commissioner for the involuntary  
40 hospitalization of any individual are not open to inspec-  
41 tion by any person other than the individual, except upon  
42 authorization of the individual or his or her legal represen-  
43 tative or by order of the circuit court, and the records may  
44 not be published except upon the authorization of the  
45 individual or his or her legal representative.

46 (4) Applications may not be accepted for individuals  
47 who only have epilepsy, a mental deficiency or senility.

48 (d) *Certificate filed with application; contents of certifi-*  
49 *cate; affidavit by applicant in place of certificate. –*

50 (1) The applicant shall file with his or her application  
51 the certificate of a physician or a psychologist stating that  
52 in his or her opinion the individual is mentally ill or  
53 addicted and that because of the mental illness or addic-  
54 tion the individual is likely to cause serious harm to  
55 himself, herself or to others if he or she is allowed to  
56 remain at liberty and therefore he or she should be hospi-  
57 talized, stating in detail the recent overt acts upon which  
58 the conclusion is based.

59 (2) A certificate is not necessary only when an affidavit  
60 is filed by the applicant showing facts and the individual  
61 has refused to submit to examination by a physician or a  
62 psychologist.

63 (e) *Notice requirements; eight days' notice required.* –  
64 Upon receipt of an application, the mental hygiene  
65 commissioner or circuit court shall review the application  
66 and if it is determined that the facts alleged, if any, are  
67 sufficient to warrant involuntary hospitalization, forth-  
68 with fix a date for and have the clerk of the circuit court  
69 give notice of the hearing: (1) To the individual; (2) to the  
70 applicant or applicants; (3) to the individual's spouse, one  
71 of the parents or guardians, or if the individual does not  
72 have a spouse, parents or parent or guardian, to one of the  
73 individual's adult next of kin if the next of kin is not the  
74 applicant; (4) to the mental health authorities serving the  
75 area; (5) to the circuit court in the county of the individ-  
76 ual's residence if the hearing is to be held in a county other  
77 than that of the individual's residence; and (6) to the  
78 prosecuting attorney of the county in which the hearing is  
79 to be held. The notice shall be served on the individual by  
80 personal service of process not less than eight days prior to  
81 the date of the hearing and shall specify the nature of the  
82 charges against the individual; the facts underlying and  
83 supporting the application of involuntary commitment; the  
84 right to have counsel appointed; the right to consult with  
85 and be represented by counsel at every stage of the pro-  
86 ceedings; and the time and place of the hearing. The  
87 notice to the individual's spouse, parents or parent or  
88 guardian, the individual's adult next of kin, or to the  
89 circuit court in the county of the individual's residence  
90 may be by personal service of process or by certified or  
91 registered mail, return receipt requested, and shall state  
92 the time and place of the hearing.

93 (f) *Examination of individual by court-appointed*  
94 *physician or psychologist; custody for examination;*  
95 *dismissal of proceedings.* –

96 (1) Except as provided in subdivision (3) of this subsec-  
97 tion, within a reasonable time after notice of the com-  
98 mencement of final commitment proceedings is given, the  
99 circuit court or mental hygiene commissioner shall appoint  
100 a physician or psychologist to examine the individual and  
101 report to the circuit court or mental hygiene commissioner  
102 his or her findings as to the mental condition or addiction  
103 of the individual and the likelihood of him or her causing  
104 serious harm to himself, herself or to others.

105 (2) If the designated physician or psychologist reports to  
106 the circuit court or mental hygiene commissioner that the  
107 individual has refused to submit to an examination, the  
108 circuit court or mental hygiene commissioner shall order  
109 him or her to submit to the examination. The circuit court  
110 or mental hygiene commissioner may direct that the  
111 individual be detained or taken into custody for the  
112 purpose of an immediate examination by the designated  
113 physician or psychologist. All such orders shall be di-  
114 rected to the sheriff of the county or other appropriate  
115 law-enforcement officer. After the examination has been  
116 completed, the individual shall be released from custody  
117 unless proceedings are instituted pursuant to section three  
118 of this article.

119 (3) If the reports of the appointed physician or psycholo-  
120 gist do not confirm that the individual is mentally ill or  
121 addicted and might be harmful to himself, herself or to  
122 others then the proceedings for involuntary hospitalization  
123 shall be dismissed.

124 (g) *Rights of the individual at the final commitment*  
125 *hearing; seven days' notice to counsel required. -*

126 (1) The individual shall be present at the final commit-  
127 ment hearing and he or she, the applicant and all persons  
128 entitled to notice of the hearing shall be afforded an  
129 opportunity to testify and to present and cross-examine  
130 witnesses.



131 (2) In the event that the individual has not retained  
132 counsel, the court or mental hygiene commissioner at least  
133 six days prior to hearing shall appoint a competent  
134 attorney and shall inform the individual of the name,  
135 address and telephone number of his or her appointed  
136 counsel.

137 (3) The individual has the right to have an examination  
138 by an independent expert of his or her choice and testi-  
139 mony from the expert as a medical witness on his or her  
140 behalf. The cost of the independent expert shall be borne  
141 by the individual unless he or she is indigent.

142 (4) The individual may not be compelled to be a witness  
143 against himself or herself.

144 (h) *Duties of counsel representing individual; payment*  
145 *of counsel representing indigent. -*

146 (1) The counsel representing an individual shall conduct  
147 a timely interview, make investigation and secure appro-  
148 priate witnesses and shall be present at the hearing and  
149 protect the interest of the individual.

150 (2) Any counsel representing an individual is entitled to  
151 copies of all medical reports, psychiatric or otherwise.

152 (3) The circuit court, by order of record, may allow the  
153 attorney a reasonable fee not to exceed the amount  
154 allowed for attorneys in defense of needy persons as  
155 provided in article twenty-one, chapter twenty-nine of this  
156 code.

157 (i) *Conduct of hearing; receipt of evidence; no eviden-*  
158 *tiary privilege; record of hearing. -*

159 (1) The circuit court or mental hygiene commissioner  
160 shall hear evidence from all interested parties in chamber,  
161 including testimony from representatives of the commu-  
162 nity mental health facility.

163 (2) The circuit court or mental hygiene commissioner  
164 shall receive all relevant and material evidence which may  
165 be offered.

166 (3) The circuit court or mental hygiene commissioner is  
167 bound by the rules of evidence promulgated by the Su-  
168 preme Court of Appeals except that statements made to  
169 physicians or psychologists by the individual may be  
170 admitted into evidence by the physician's or psychologist's  
171 testimony, notwithstanding failure to inform the individ-  
172 ual that this statement may be used against him or her.  
173 Any psychologist or physician testifying shall bring all  
174 records pertaining to the individual to the hearing. The  
175 medical evidence obtained pursuant to an examination  
176 under this section, or section two or three of this article, is  
177 not privileged information for purposes of a hearing  
178 pursuant to this section.

179 (4) All final commitment proceedings shall be reported  
180 or recorded, whether before the circuit court or mental  
181 hygiene commissioner, and a transcript shall be made  
182 available to the individual, his or her counsel or the  
183 prosecuting attorney within thirty days, if it is requested  
184 for the purpose of further proceedings. In any case where  
185 an indigent person intends to pursue further proceedings,  
186 the circuit court shall, by order entered of record, autho-  
187 rize and direct the court reporter to furnish a transcript of  
188 the hearings.

189 (j) *Requisite findings by the court.* -

190 (1) Upon completion of the final commitment hearing,  
191 and the evidence presented in the hearing, the circuit court  
192 or mental hygiene commissioner shall make findings as to  
193 whether or not the individual is mentally ill or addicted  
194 and because of illness or addiction is likely to cause  
195 serious harm to himself, herself or to others if allowed to  
196 remain at liberty and is a resident of the county in which  
197 the hearing is held or currently is a patient at a mental  
198 health facility in the county.

199 (2) The circuit court or mental hygiene commissioner  
200 shall also make a finding as to whether or not there is a  
201 less restrictive alternative than commitment appropriate  
202 for the individual. The burden of proof of the lack of a less  
203 restrictive alternative than commitment is on the person or  
204 persons seeking the commitment of the individual.

205 (3) The findings of fact shall be incorporated into the  
206 order entered by the circuit court and must be based upon  
207 clear, cogent and convincing proof.

208 (k) *Orders issued pursuant to final commitment hearing;*  
209 *entry of order; change in order of court; expiration of*  
210 *order. -*

211 (1) Upon the requisite findings, the circuit court may  
212 order the individual to a mental health facility for an  
213 indeterminate period or for a temporary observatory  
214 period not exceeding six months.

215 (2) The individual may not be detained in a mental  
216 health facility for a period in excess of ten days after a  
217 final commitment hearing pursuant to this section unless  
218 an order has been entered and received by the facility.

219 (3) If the order pursuant to a final commitment hearing  
220 is for a temporary observation period, the circuit court or  
221 mental hygiene commissioner may, at any time prior to the  
222 expiration of such period on the basis of a report by the  
223 chief medical officer of the mental health facility in which  
224 the patient is confined, hold another hearing pursuant to  
225 the terms of this section and in the same manner as the  
226 hearing was held as if it were an original petition for  
227 involuntary hospitalization to determine whether the  
228 original order for a temporary observation period should  
229 be modified or changed to an order of indeterminate  
230 hospitalization of the patient. At the conclusion of the  
231 hearing, the circuit court shall order indeterminate  
232 hospitalization of the patient or dismissal of the proceed-  
233 ings.

234 (4) An order for an indeterminate period expires of its  
235 own terms at the expiration of two years from the date of  
236 the last order of commitment unless prior to the expira-  
237 tion, the Department of Health and Human Resources,  
238 upon findings based on an examination of the patient by  
239 a physician or a psychologist, extends the order for  
240 indeterminate hospitalization: *Provided*, That if the  
241 patient or his or her counsel requests a hearing, then a  
242 hearing shall be held by the mental hygiene commissioner  
243 or by the circuit court of the county as provided in subsec-  
244 tion (a) of this section.

245 (l) *Dismissal of proceedings.* – If the circuit court or  
246 mental hygiene commissioner finds that the individual is  
247 not mentally ill or addicted, the proceedings shall be  
248 dismissed. If the circuit court or mental hygiene commis-  
249 sioner finds that the individual is mentally ill or addicted  
250 but is not because of the illness or addiction likely to cause  
251 serious harm to himself, herself or to others if allowed to  
252 remain at liberty, the proceedings shall be dismissed.

253 (m) *Immediate notification of order of hospitalization.*  
254 – The clerk of the circuit court in which an order directing  
255 hospitalization is entered, if not in the county of the  
256 individual's residence, shall immediately upon entry of the  
257 order forward a certified copy of the order to the clerk of  
258 the circuit court of the county of which the individual is a  
259 resident.

260 (n) *Consideration of transcript by circuit court of county*  
261 *of individual's residence; order of hospitalization; execu-*  
262 *tion of order.* –

263 (1) If the circuit court or mental hygiene commissioner  
264 is satisfied that hospitalization should be ordered but finds  
265 that the individual is not a resident of the county in which  
266 the hearing is held and the individual is not currently a  
267 resident of a mental health facility, a transcript of the  
268 evidence adduced at the final commitment hearing of the  
269 individual, certified by the clerk of the circuit court, shall

270 forthwith be forwarded to the clerk of the circuit court of  
271 the county of which the individual is a resident, who shall  
272 immediately present the transcript to the circuit court or  
273 mental hygiene commissioner of the county.

274 (2) If the circuit court or mental hygiene commissioner  
275 of the county of the residence of the individual is satisfied  
276 from the evidence contained in the transcript that the  
277 individual should be hospitalized as determined by the  
278 standard set forth above, the circuit court shall order the  
279 appropriate hospitalization as though the individual had  
280 been brought before the circuit court or its mental hygiene  
281 commissioner in the first instance.

282 (3) This order shall be transmitted forthwith to the clerk  
283 of the circuit court of the county in which the hearing was  
284 held who shall execute the order promptly.

285 (o) *Order of custody to responsible person.* – In lieu of  
286 ordering the patient to a mental health facility, the circuit  
287 court may order the individual delivered to some responsi-  
288 ble person who will agree to take care of the individual  
289 and the circuit court may take from the responsible person  
290 a bond in an amount to be determined by the circuit court  
291 with condition to restrain and take proper care of the  
292 individual until further order of the court.

293 (p) *Individual not a resident of this state.* – If the  
294 individual found to be mentally ill or addicted by the  
295 circuit court or mental hygiene commissioner is a resident  
296 of another state, this information shall be forthwith given  
297 to the Secretary of the Department of Health and Human  
298 Resources, or to his or her designee, who shall make  
299 appropriate arrangements for transfer of the individual to  
300 the state of his or her residence conditioned on the agree-  
301 ment of the individual except as qualified by the interstate  
302 compact on mental health.

303 (q) *Report to the Secretary of the Department of Health*  
304 *and Human Resources.* –

305 (1) The chief medical officer of a mental health facility  
306 admitting a patient pursuant to proceedings under this  
307 section shall forthwith make a report of the admission to  
308 the Secretary of the Department of Health and Human  
309 Resources or to his or her designee.

310 (2) Whenever an individual is released from custody due  
311 to the failure of an employee of a mental health facility to  
312 comply with the time requirements of this article, the chief  
313 medical officer of the mental health facility shall forth-  
314 with after the release of the individual make a report to  
315 the Secretary of the Department of Health and Human  
316 Resources or to his or her designee of the failure to comply.

317 (r) *Payment of some expenses by the state; mental*  
318 *hygiene fund established; expenses paid by the county*  
319 *commission. -*

320 (1) The state shall pay the commissioner's fee and the  
321 court reporter fees that are not paid and reimbursed under  
322 article twenty-one, chapter twenty-nine of this code out of  
323 a special fund to be established within the Supreme Court  
324 of Appeals to be known as the Mental Hygiene Fund.

325 (2) The county commission shall pay out of the county  
326 treasury all other expenses incurred in the hearings  
327 conducted under the provisions of this article whether or  
328 not hospitalization is ordered, including any fee allowed  
329 by the circuit court by order entered of record for any  
330 physician, psychologist and witness called by the indigent  
331 individual.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Randy White*

.....  
Chairman Senate Committee

*W. Burr*

.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*David E. Gibbs*

.....  
Clerk of the Senate

*Gregg D. Sear*

.....  
Clerk of the House of Delegates

*Carl Ray Penellum*

.....  
President of the Senate

*Robert D. [Signature]*

.....  
Speaker House of Delegates

The within is approved ..... this the 23rd .....

Day of March ....., 2006.

*[Signature]*

.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2006

Time 11:15 AM