

1 **H. B. 4321**

2
3 (By Delegates Miley, Frazier, Longstreth
4 and Barill)

5 (By Request of the Supreme Court of Appeals)

6 [Introduced January 26, 2012; referred to the
7 Committee on the Judiciary.]

8
9
10 A BILL to amend and reenact §27-4-1 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §27-5-4 of said code;
12 and to amend and reenact §61-7A-5 of said code, all relating
13 generally to mental health; authorizing parent or guardian to
14 commit a child without his or her consent when child is twelve
15 or older; amending the procedures for petitioning to regain
16 the right to possess firearms so that West Virginia is
17 eligible for federal funding; and stylistic changes.

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

19 That §27-4-1 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted; that §27-5-4 of said code be amended and
21 reenacted; and that §61-7A-5 of said code be amended and reenacted,
22 all to read as follows:

23 **CHAPTER 27. MENTALLY ILL PERSONS.**

24 **ARTICLE 4. VOLUNTARY HOSPITALIZATION.**

1 **§27-4-1. Authority to receive voluntary patients.**

2 The chief medical officer of a mental health facility, subject
3 to the availability of suitable accommodations and to the rules ~~and~~
4 ~~regulations~~ promulgated by the board of health, shall admit for
5 diagnosis, care and treatment any individual:

6 (a) Over eighteen years of age who is mentally ill, mentally
7 retarded or addicted or who has manifested symptoms of mental
8 illness, mental retardation or addiction and who makes application
9 for hospitalization; or

10 (b) Under eighteen years of age who is mentally ill, mentally
11 retarded or addicted or who has manifested symptoms of mental
12 illness, mental retardation or addiction and there is application
13 for hospitalization therefor in his or her behalf:

14 (1) By the parents of such person; ~~or~~

15 (2) If only one parent is living, then by such parent; ~~or~~

16 (3) If the parents are living separate and apart, by the
17 parent who has the legal custody of such person; or

18 (4) If there is a guardian who has legal custody of such
19 person, then by such guardian. ~~Such admission shall be conditioned~~
20 ~~upon the consent of the prospective patient if he is twelve years~~
21 ~~of age or over.~~

22 (c) No person under eighteen years of age ~~shall~~ may be
23 admitted under this section to any state hospital unless ~~said~~ the
24 person has first been reviewed and evaluated by a local mental

1 health facility and recommended for admission.

2 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

3 **§27-5-4. Institution of final commitment proceedings; hearing**
4 **requirements; release.**

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

18 (b) *How final commitment proceedings are commenced.* -- Final
19 commitment proceedings for an individual may be commenced by the
20 filing of a written application under oath by an adult person
21 having personal knowledge of the facts of the case. ~~and~~ The
22 certificate or affidavit is ~~hereinafter provided with~~ filed with
23 the clerk of the circuit court or mental hygiene commissioner of

1 the county ~~of which~~ where the individual is a resident or where he
2 or she may be found or the county of ~~the~~ a mental health facility
3 if he or she is hospitalized in a mental health facility located in
4 a county other than where he or she resides or may be found. ~~by an~~
5 ~~adult person having personal knowledge of the facts of the case.~~

6 (c) *Oath; contents of application; who may inspect*
7 *application; when application cannot be filed. --*

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

9 (2) The application shall contain statements by the applicant
10 ~~that he or she believes because of symptoms of mental illness or~~
11 ~~addiction the individual is likely to cause serious harm to~~
12 ~~himself, herself or to others and the grounds for the belief,~~
13 ~~stating in detail the recent overt acts upon which the belief is~~
14 ~~based.~~ that the individual is likely to cause serious harm to self
15 or others due to what the applicant believes are symptoms of mental
16 illness or addiction. The applicant shall state in detail the
17 recent overt acts upon which the belief is based.

18 (3) The written application, certificate, affidavit and any
19 warrants issued pursuant thereto, including any ~~papers~~ and
20 ~~documents related thereto,~~ related documents, filed with ~~any a~~
21 circuit court, ~~or~~ mental hygiene commissioner or designated
22 magistrate for the involuntary hospitalization of ~~any an~~ individual
23 are not open to inspection by any person other than the individual,
24 ~~except upon authorization of~~ unless authorized by the individual or

1 his or her legal representative or by order of the circuit court.
2 ~~and~~ The records may not be published ~~except upon the authorization~~
3 ~~of~~ unless authorized by the individual or his or her legal
4 representative. Disclosure of these records may, however, be made
5 by the clerk, circuit court, mental hygiene commissioner or
6 designated magistrate to provide notice to the Federal National
7 Instant Criminal Background Check System established pursuant to
8 section 103(d) of the Brady Handgun Violence Prevention Act, 18
9 U.S.C. §922, and the central state mental health registry, in
10 accordance with article seven-a, chapter sixty-one of this code.
11 Disclosure may also be made to the prosecuting attorney and
12 reviewing court in an action brought by the individual pursuant to
13 section five, article seven-a, chapter sixty-one of this code to
14 regain firearm and ammunition rights.

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

17 (d) *Certificate filed with application; contents of*
18 *certificate; affidavit by applicant in place of certificate. --*

19 (1) The applicant shall file with his or her application the
20 certificate of a physician or a psychologist stating that in his or
21 her opinion the individual is mentally ill or addicted and that
22 because of the mental illness or addiction, the individual is
23 likely to cause serious harm to ~~himself, herself or to~~ self or
24 others if ~~he or she is~~ allowed to remain at liberty and, therefore,

1 ~~he or she~~ should be hospitalized. ~~stating.~~ The certificate shall
2 state in detail the recent overt acts ~~upon~~ on which the conclusion
3 is based.

4 (2) A certificate is not necessary ~~only~~ when an affidavit is
5 filed by the applicant showing facts and the individual has refused
6 to submit to examination by a physician or a psychologist.

7 (e) *Notice requirements; eight days notice required.* -- Upon
8 receipt of an application, the mental hygiene commissioner or
9 circuit court shall review the application and if it is determined
10 that the facts alleged, if any, are sufficient to warrant
11 involuntary hospitalization, forthwith fix a date for and have the
12 clerk of the circuit court give notice of the hearing:

13 (1) To the individual;

14 (2) To the applicant or applicants;

15 (3) To the individual's spouse, one of the parents or
16 guardians, or, if the individual does not have a spouse, parents or
17 parent or guardian, to one of the individual's adult next of kin if
18 the next of kin is not the applicant;

19 (4) To the mental health authorities serving the area;

20 (5) To the circuit court in the county of the individual's
21 residence if the hearing is to be held in a county other than that
22 of the individual's residence; and

23 (6) To the prosecuting attorney of the county in which the
24 hearing is to be held.

1 (f) The notice shall be served on the individual by personal
2 service of process not less than eight days prior to the date of
3 the hearing and shall specify:

4 (1) The nature of the charges against the individual;

5 (2) The facts underlying and supporting the application of
6 involuntary commitment;

7 (3) The right to have counsel appointed;

8 (4) The right to consult with and be represented by counsel at
9 every stage of the proceedings; and

10 (5) The time and place of the hearing.

11 The notice to the individual's spouse, parents or parent or
12 guardian, the individual's adult next of kin or to the circuit
13 court in the county of the individual's residence may be by
14 personal service of process or by certified or registered mail,
15 return receipt requested, and shall state the time and place of the
16 hearing.

17 ~~(f)~~ (g) *Examination of individual by court-appointed physician*
18 *or psychologist; custody for examination; dismissal of proceedings.*

19 --

20 (1) Except as provided in subdivision (3) of this subsection,
21 within a reasonable time after notice of the commencement of final
22 commitment proceedings is given, the circuit court or mental
23 hygiene commissioner shall appoint a physician or psychologist to
24 examine the individual and report to the circuit court or mental

1 hygiene commissioner his or her findings as to the mental condition
2 or addiction of the individual and the likelihood of ~~him or her~~
3 causing serious harm to ~~himself, herself or to~~ self or others.

4 (2) If the designated physician or psychologist reports to the
5 circuit court or mental hygiene commissioner that the individual
6 has refused to submit to an examination, the circuit court or
7 mental hygiene commissioner shall order him or her to submit to the
8 examination. The circuit court or mental hygiene commissioner may
9 direct that the individual be detained or taken into custody for
10 the purpose of an immediate examination by the designated physician
11 or psychologist. All such orders shall be directed to the sheriff
12 of the county or other appropriate law-enforcement officer. After
13 the examination has been completed, the individual shall be
14 released from custody unless proceedings are instituted pursuant to
15 section three of this article.

16 (3) If the reports of the appointed physician or psychologist
17 do not confirm that the individual is mentally ill or addicted and
18 might be harmful to ~~himself, herself or to~~ self or others, then the
19 proceedings for involuntary hospitalization shall be dismissed.

20 ~~(g)~~ (h) *Rights of the individual at the final commitment*
21 *hearing; seven days' notice to counsel required. --*

22 (1) The individual shall be present at the final commitment
23 hearing and he or she, the applicant and all persons entitled to
24 notice of the hearing shall be afforded an opportunity to testify

1 and to present and cross-examine witnesses.

2 (2) In the event ~~that~~ the individual has not retained counsel,
3 the court or mental hygiene commissioner, at least six days prior
4 to hearing, shall appoint a competent attorney and shall inform the
5 individual of the name, address and telephone number of his or her
6 appointed counsel.

7 (3) The individual has the right to have an examination by an
8 independent expert of his or her choice and to present testimony
9 from the expert as a medical witness on his or her behalf. The cost
10 of the independent expert ~~shall be borne~~ is paid by the individual
11 unless he or she is indigent.

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

14 ~~(h)~~ (i) *Duties of counsel representing individual; payment of*
15 *counsel representing indigent. -*

16 (1) ~~The~~ Counsel representing an individual shall conduct a
17 timely interview, make investigation and secure appropriate
18 witnesses, ~~and shall~~ be present at the hearing and protect the
19 ~~interest~~ interests of the individual.

20 (2) ~~Any~~ Counsel representing an individual is entitled to
21 copies of all medical reports, psychiatric or otherwise.

22 (3) The circuit court, by order of record, may allow the
23 attorney a reasonable fee not to exceed the amount allowed for
24 attorneys in defense of needy persons as provided in article

1 twenty-one, chapter twenty-nine of this code.

2 ~~(i)~~ (j) *Conduct of hearing; receipt of evidence; no*
3 *evidentiary privilege; record of hearing.* --

4 (1) The circuit court or mental hygiene commissioner shall
5 hear evidence from all interested parties in chamber including
6 testimony from representatives of the community mental health facility.

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

9 (3) The circuit court or mental hygiene commissioner is bound
10 by the rules of evidence promulgated by the Supreme Court of
11 Appeals except that statements made to physicians or psychologists
12 by the individual may be admitted into evidence by the physician's
13 or psychologist's testimony, notwithstanding failure to inform the
14 individual that this statement may be used against him or her. ~~Any~~
15 A psychologist or physician testifying shall bring all records
16 pertaining to the individual to the hearing. The medical evidence
17 obtained pursuant to an examination under this section, or section
18 two or three of this article, is not privileged information for
19 purposes of a hearing pursuant to this section.

20 (4) All final commitment proceedings shall be reported or
21 recorded, whether before the circuit court or mental hygiene
22 commissioner, and a transcript ~~shall be~~ made available to the
23 individual, his or her counsel or the prosecuting attorney within
24 thirty days if ~~it is~~ requested for the purpose of further

1 proceedings. In any case where an indigent person intends to pursue
 2 further proceedings, the circuit court shall, by order entered of
 3 record, authorize and direct the court reporter to furnish a
 4 transcript of the hearings.

5 ~~(j)~~ (k) *Requisite findings by the court.* --

6 (1) Upon completion of the final commitment hearing and the
 7 evidence presented in the hearing, the circuit court or mental
 8 hygiene commissioner shall make findings as to the following:

9 (A) Whether ~~or not~~ the individual is mentally ill or addicted;

10 ~~and,~~ (B) Whether, because of illness or addiction, ~~is the~~
 11 individual is likely to cause serious harm to ~~himself, herself or~~
 12 to self or others if allowed to remain at liberty; ~~and~~

13 (C) Whether the individual is a resident of the county in
 14 which the hearing is held or currently is a patient at a mental
 15 health facility in the county; and

16 ~~(2) The circuit court or mental hygiene commissioner shall~~
 17 ~~also make a finding as to whether or not~~ (D) Whether there is a
 18 less restrictive alternative than commitment appropriate for the
 19 individual. The burden of proof of the lack of a less restrictive
 20 alternative than commitment is on the person or persons seeking the
 21 commitment of the individual.

22 ~~(3)~~ (2) The findings of fact shall be incorporated into the
 23 order entered by the circuit court and must be based upon clear,
 24 cogent and convincing proof.

1 ~~(*)~~ (1) *Orders issued pursuant to final commitment hearing;*
2 *entry of order; change in order of court; expiration of order. --*

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

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

10 (3) If the order pursuant to a final commitment hearing is for
11 a temporary observation period, the circuit court or mental hygiene
12 commissioner may, at any time prior to the expiration of such
13 period on the basis of a report by the chief medical officer of the
14 mental health facility in which the patient is confined, hold
15 another hearing pursuant to the terms of this section and in the
16 same manner as the hearing was held as if it were an original
17 petition for involuntary hospitalization to determine whether the
18 original order for a temporary observation period should be
19 modified or changed to an order of indeterminate hospitalization of
20 the patient. At the conclusion of the hearing, the circuit court
21 shall order indeterminate hospitalization of the patient or
22 dismissal of the proceedings.

23 (4) An order for an indeterminate period expires of its own
24 terms at the expiration of two years from the date of the last

1 order of commitment unless prior to the expiration, the Department
2 of Health and Human Resources, upon findings based on an
3 examination of the patient by a physician or a psychologist,
4 extends the order for indeterminate hospitalization. ~~Provided, That~~
5 If the patient or his or her counsel requests a hearing, ~~then~~ a
6 hearing shall be held by the mental hygiene commissioner or by the
7 circuit court of the county as provided in subsection (a) of this
8 section.

9 ~~(l)~~ (m) *Dismissal of proceedings.* -- If the circuit court or
10 mental hygiene commissioner finds that the individual is not
11 mentally ill or addicted, the proceedings shall be dismissed. If
12 the circuit court or mental hygiene commissioner finds that the
13 individual is mentally ill or addicted but is not, because of the
14 illness or addiction, likely to cause serious harm to ~~himself,~~
15 ~~herself or to~~ self or others if allowed to remain at liberty, the
16 proceedings shall be dismissed.

17 ~~(m)~~ (n) *Immediate notification of order of hospitalization.* --
18 The clerk of the circuit court in which an order directing
19 hospitalization is entered, if not in the county of the
20 individual's residence, shall immediately upon entry of the order
21 forward a certified copy of the order to the clerk of the circuit
22 court of the county of which the individual is a resident.

23 ~~(n)~~ (o) *Consideration of transcript by circuit court of county*
24 *of individual's residence; order of hospitalization; execution of*

1 *order.* --

2 (1) If the circuit court or mental hygiene commissioner is
3 satisfied that hospitalization should be ordered but finds that the
4 individual is not a resident of the county in which the hearing is
5 held and the individual is not currently a resident of a mental
6 health facility, a transcript of the evidence adduced at the final
7 commitment hearing of the individual, certified by the clerk of the
8 circuit court, shall forthwith be forwarded to the clerk of the
9 circuit court of the county of which the individual is a resident.
10 ~~who~~ The clerk shall immediately present the transcript to the
11 circuit court or mental hygiene commissioner of the county.

12 (2) If the circuit court or mental hygiene commissioner of the
13 county of the residence of the individual is satisfied from the
14 evidence contained in the transcript that the individual should be
15 hospitalized as determined by the standard set forth above, the
16 circuit court shall order the appropriate hospitalization as though
17 the individual had been brought before the circuit court or its
18 mental hygiene commissioner in the first instance.

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

22 ~~(o)~~ (p) *Order of custody to responsible person.* -- In lieu of
23 ordering the patient to a mental health facility, the circuit court
24 may order the individual delivered to some responsible person who

1 will agree to take care of the individual and the circuit court may
2 take from the responsible person a bond in an amount to be
3 determined by the circuit court with condition to restrain and take
4 proper care of the individual until further order of the court.

5 ~~(p)~~ (q) *Individual not a resident of this state.* -- If the
6 individual found to be mentally ill or addicted by the circuit
7 court or mental hygiene commissioner is a resident of another
8 state, this information shall be forthwith given to the Secretary
9 of the Department of Health and Human Resources, or to his or her
10 designee, who shall make appropriate arrangements for transfer of
11 the individual to the state of his or her residence conditioned on
12 the agreement of the individual except as qualified by the
13 interstate compact on mental health.

14 ~~(q)~~ (r) *Report to the Secretary of the Department of Health*
15 *and Human Resources.* --

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

20 (2) Whenever an individual is released from custody due to the
21 failure of an employee of a mental health facility to comply with
22 the time requirements of this article, the chief medical officer of
23 the mental health facility shall forthwith, after the release of
24 the individual, make a report to the Secretary of the Department of

1 Health and Human Resources or to his or her designee of the failure
2 to comply.

3 ~~(r)~~ (s) *Payment of some expenses by the state; mental hygiene*
4 *fund established; expenses paid by the county commission. --*

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

10 (2) The county commission shall pay out of the county treasury
11 all other expenses incurred in the hearings conducted under the
12 provisions of this article whether or not hospitalization is
13 ordered, including any fee allowed by the circuit court by order
14 entered of record for any physician, psychologist and witness
15 called by the indigent individual.

16 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

17 **ARTICLE 7A. STATE MENTAL HEALTH REGISTRY; REPORTING OF PERSONS'**
18 **PROSCRIBED FROM FIREARM POSSESSION DUE TO MENTAL**
19 **CONDITION TO THE NATIONAL INSTANT CRIMINAL**
20 **BACKGROUND CHECK SYSTEM; LEGISLATIVE FINDINGS;**
21 **DEFINITIONS; REPORTING REQUIREMENTS; REINSTATEMENT**
22 **OF RIGHTS PROCEDURES.**

23 **§61-7A-5. Petition to regain right to possess firearms.**

1 (a) Any person who is prohibited from possessing a firearm
2 pursuant to the provisions of section seven, article seven of this
3 chapter or by provisions of federal law by virtue solely of having
4 previously been adjudicated to be mentally defective or to having
5 a prior involuntary commitment to a mental institution pursuant to
6 chapter twenty-seven of this code may petition the circuit court of
7 the county of his or her residence to regain the ability to
8 lawfully possess a firearm. Petitioners prohibited from possession
9 of firearms due to a mental health disability, must include the
10 following in the petition for relief from disability:

11 (1) A listing of facilities and location addresses of all
12 prior mental health treatment received by petitioner;

13 (2) An authorization signed by the petitioner for release of
14 mental health records to the prosecuting attorney of the county;
15 and

16 (3) A verified certificate of mental health examination by a
17 licensed psychologist or psychiatrist occurring within thirty days
18 prior to filing of the petition which supports that the petitioner
19 is competent and not likely to act in a manner dangerous to public
20 safety.

21 (b) The court may only consider petitions for relief due to
22 mental health adjudications or commitments that occurred in this
23 state and only give the relief specifically requested in the
24 petition. In determining whether to grant the petition, the court

1 shall receive and consider, at a minimum:

2 (1) Evidence concerning the circumstances regarding the
3 firearms disabilities imposed by 18 U.S.C. § 922(g) (4);

4 (2) The petitioner's record which must include the
5 petitioner's mental health and criminal history records; and

6 (3) The petitioner's reputation developed through character
7 witness statements, testimony, or other character evidence.

8 (c) The court may enter an order allowing the petitioner to
9 possess a firearm if the court finds by clear and convincing
10 evidence that:

11 (1) The person is competent and capable of exercising the
12 responsibilities concomitant with the possession of a firearm;

13 (2) The person will not be likely to act in a manner dangerous
14 to public safety; and

15 (3) Granting the relief will not be contrary to public
16 interest. ~~the court may enter an order allowing the petitioner to~~
17 ~~possess a firearm.~~

18 (d) If the order denies petitioner's ability to possess a
19 firearm, the petitioner may appeal the denial, which appeal is to
20 include the record of the circuit court rendering the decision.

21 (e) All proceedings for relief to regain firearm or ammunition
22 rights shall be reported or recorded and maintained for review.

23 (f) It shall be the duty of the prosecuting attorney or one of
24 his or her assistants to represent the state in all proceedings for

1 relief to regain firearm rights and provide the court the
2 petitioner's criminal history records.

3 (g) The written petition, certificate, mental health or
4 substance abuse treatment records and any papers or documents
5 containing substance abuse or mental health information of the
6 petitioner, filed with the circuit court, are confidential. These
7 are not open to inspection by any person other than by court order,
8 by the individual and his or her counsel, or upon the written
9 authorization of the person or his or her counsel, and the
10 prosecuting attorney for purposes of representing the state in
11 these proceedings exclusively. These records may not be published
12 unless by written authorization of the petitioner or his or her
13 counsel.

14 ~~(b)~~ (h) The circuit clerk of each county shall provide the
15 Superintendent of the West Virginia State Police or his or her
16 designee and the Administrator of the West Virginia Supreme Court
17 of Appeals, or his or her designee, with a certified copy of any
18 order entered pursuant to the provisions of this section which
19 removes a petitioner's prohibition to possess firearms. If the
20 order restores the petitioner's ability to possess a firearm,
21 petitioner's name shall be promptly removed from the central state
22 mental health registry and the superintendent or administrator
23 shall forthwith inform the Federal Bureau of Investigation, the
24 United States Attorney General or other federal entity operating

1 the National Instant Criminal Background Check System of the court
2 action.

NOTE: The purpose of this bill is to amend the code relating to the ability of certain individuals to petition a court to regain the right to possess firearms so that West Virginia can become eligible for federal funding and to authorize parents or guardians to commit children age twelve or older to mental health hospitalization without the child's consent.

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