

Senate Bill No. 433

(By Senators Laird, Miller, Hall, Klempa and Wills)

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[Introduced January 26, 2012; referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.]

10 A BILL to amend and reenact §27-5-1, §27-5-2 and §27-5-4 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 mentally ill persons; involuntary hospitalization; duties of
13 sheriff; including the President of the West Virginia
14 Sheriffs' Association in the development and proposal of a
15 statewide system for evaluation and adjudication of mental
16 hygiene petitions; and providing that the Department of Health
17 and Human Resources shall reimburse the county commission for
18 deposit into the sheriff's budget for expenses incurred in
19 hearings conducted under the article.

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

21 That §27-5-1, §27-5-2 and §27-5-4 of the Code of West
22 Virginia, 1931, as amended, be amended and reenacted, all to read
23 as follows:

1 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

2 **§27-5-1. Appointment of Mental Hygiene Commissioner; duties of**
3 **Mental Hygiene Commissioner; duties of prosecuting**
4 **attorney; duties of sheriff; duties of Supreme Court**
5 **of Appeals; use of certified municipal law-enforcement**
6 **officers.**

7 (a) *Appointment of Mental Hygiene Commissioners.* -- The chief
8 judge in each judicial circuit of this state shall appoint a
9 competent attorney and may, if necessary, appoint additional
10 attorneys to serve as Mental Hygiene Commissioners to preside over
11 involuntary hospitalization hearings. Mental Hygiene Commissioners
12 shall be persons of good moral character and of standing in their
13 profession and they shall, before assuming the duties of ~~such a~~
14 commissioner, take the oath required of other special commissioners
15 as provided in article one, chapter six of this code.

16 All persons newly appointed to serve as Mental Hygiene
17 Commissioners shall attend and complete an orientation course,
18 within one year of their appointment, consisting of at least three
19 days of training provided annually by the Supreme Court of Appeals.
20 In addition, existing Mental Hygiene Commissioners and any
21 magistrates designated by the chief judge of a judicial circuit to
22 hold probable cause and emergency detention hearings involving

1 involuntary hospitalization shall attend and complete a course
2 provided by the Supreme Court of Appeals, which course shall
3 include, but not be limited to, instruction on the manifestations
4 of mental illness and addiction. Persons attending ~~such~~ the
5 courses outside the county of their residence shall be reimbursed
6 out of the budget of the Supreme Court -- general judicial for
7 reasonable expenses incurred. The supreme court shall establish
8 rules for ~~such~~ these courses, including rules providing for the
9 reimbursement of reasonable expenses as authorized herein.

10 (b) *Duties of Mental Hygiene Commissioners.* --

11 (1) Mental Hygiene Commissioners may sign and issue summonses
12 for the attendance, at any hearing held pursuant to section four,
13 article five of this chapter, of the individual sought to be
14 committed; may sign and issue subpoenas for witnesses, including
15 subpoenas duces tecum; may place any witness under oath; may elicit
16 testimony from applicants, respondents and witnesses regarding
17 factual issues raised in the petition; and may make findings of
18 fact on evidence and may make conclusions of law, but such findings
19 and conclusions shall not be binding on the circuit court. The
20 circuit court, by order entered of record, shall allow the
21 commissioner a reasonable fee for services rendered in connection
22 with each case. Mental Hygiene Commissioners shall discharge their
23 duties and hold their offices at the pleasure of the chief judge of

1 the judicial circuit in which he or she is appointed and may be
2 removed at any time by such chief judge. It ~~shall be~~ is the duty
3 of a Mental Hygiene Commissioner to conduct orderly inquiries into
4 the mental health of the individual sought to be committed
5 concerning the advisability of committing the individual to a
6 mental health facility. The Mental Hygiene Commissioner shall
7 safeguard, at all times, the rights and interests of the individual
8 as well as the interests of the state. The Mental Hygiene
9 Commissioner shall make a written report of his or her findings to
10 the circuit court. In any proceedings before any court of record
11 as set forth in this article, the court of record shall appoint an
12 interpreter for any individual who is deaf or cannot speak or who
13 speaks a foreign language and who may be subject to involuntary
14 commitment to a mental health facility.

15 (2) A Mental Hygiene Commissioner appointed by the circuit
16 court of one county or multiple county circuit may serve in ~~such~~
17 that capacity in a jurisdiction other than that of his or her
18 original appointment if ~~such be~~ it is agreed upon by the terms of
19 a cooperative agreement between the circuit courts and county
20 commissions of two or more counties entered into to provide prompt
21 resolution of mental hygiene matters during noncourt hours or on
22 nonjudicial days.

23 (c) *Duties of prosecuting attorney.* -- It ~~shall be~~ is the

1 duty of the prosecuting attorney or one of his or her assistants to
2 represent the applicants in all final commitment proceedings filed
3 pursuant to the provisions of this article. The prosecuting
4 attorney may appear in any proceeding held pursuant to the
5 provisions of this article if he or she ~~deems~~ considers it to be in
6 the public interest.

7 (d) *Duties of sheriff.* -- Upon written order of the circuit
8 court, Mental Hygiene Commissioner or magistrate in the county
9 where the individual formally accused of being mentally ill or
10 addicted is a resident or is found, the sheriff of that county
11 shall take ~~said~~ the individual into custody and transport him or
12 her to and from the place of hearing and the mental health
13 facility. The sheriff shall also maintain custody and control of
14 the accused individual during the period of time in which the
15 individual is waiting for the involuntary commitment hearing to be
16 convened and while ~~such~~ the hearing is being conducted: *Provided,*
17 That an individual who is a resident of a state other than West
18 Virginia shall, upon a finding of probable cause, be transferred to
19 his or her state of residence for treatment pursuant to the
20 provisions of subsection (p), section four of this article:
21 *Provided, however,* That where an individual is a resident of West
22 Virginia but not a resident of the county in which he or she is
23 found and there is a finding of probable cause, the county in which

1 the hearing is held may seek reimbursement from the county of
2 residence for reasonable costs incurred by the county attendant to
3 the mental hygiene proceeding. Notwithstanding any provision of
4 this code to the contrary, sheriffs may enter into cooperative
5 agreements with sheriffs of one or more other counties, with the
6 concurrence of their respective circuit courts and county
7 commissions, whereby transportation and security responsibilities
8 for hearings held pursuant to the provisions of this article during
9 noncourt hours or on nonjudicial days may be shared in order to
10 facilitate prompt hearings and to effectuate transportation of
11 persons found in need of treatment.

12 (e) *Duty of sheriff upon presentment to mental health care*
13 *facility.* -- Where a person is brought to a mental health care
14 facility for purposes of evaluation for commitment under the
15 provisions of this article, if he or she is violent or combative,
16 the sheriff or his or her designee shall maintain custody of the
17 person in the facility until the evaluation is completed. ~~or the~~
18 ~~county commission shall reimburse the mental health care facility~~
19 ~~at a reasonable rate for security services provided by the mental~~
20 ~~health care facility for the period of time the person is at the~~
21 ~~hospital prior to the determination of mental competence or~~
22 ~~incompetence.~~

23 (f) *Duties of Supreme Court of Appeals.* -- The Supreme Court

1 of Appeals shall provide uniform petition, procedure and order
2 forms which shall be used in all involuntary hospitalization
3 proceedings brought in this state.

4 **§27-5-2. Institution of proceedings for involuntary custody for**
5 **examination; custody; probable cause hearing;**
6 **examination of individual.**

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

16 Notwithstanding any language in this subsection to the
17 contrary, if the individual to be examined under the provisions of
18 this section is incarcerated in a jail, prison or other
19 correctional facility, then only the chief administrative officer
20 of the facility holding the individual may file the application and
21 the application ~~must~~ shall include the additional statement that
22 the correctional facility itself cannot reasonably provide
23 treatment and other services for the individual's mental illness or

1 addiction.

2 (b) The person making the application shall make the
3 application under oath.

4 (c) Application for involuntary custody for examination may be
5 made to the circuit court or a Mental Hygiene Commissioner of the
6 county in which the individual resides or of the county in which he
7 or she may be found. When no circuit court judge or Mental Hygiene
8 Commissioner is available for immediate presentation of the
9 application, the application may be made to a magistrate designated
10 by the chief judge of the judicial circuit to accept applications
11 and hold probable cause hearings. A designated magistrate before
12 whom an application or matter is pending may, upon the availability
13 of a Mental Hygiene Commissioner or circuit court judge for
14 immediate presentation of an application or pending matter,
15 transfer the pending matter or application to the Mental Hygiene
16 Commissioner or circuit court judge for further proceedings unless
17 otherwise ordered by the chief judge of the judicial circuit.

18 (d) The person making the application shall give information
19 and state facts in the application as may be required by the form
20 provided for this purpose by the Supreme Court of Appeals.

21 (e) The circuit court, Mental Hygiene Commissioner or
22 designated magistrate may enter an order for the individual named
23 in the application to be detained and taken into custody for the

1 purpose of holding a probable cause hearing as provided in
2 subsection (g) of this section for the purpose of an examination of
3 the individual by a physician, psychologist, a licensed independent
4 clinical social worker practicing in compliance with article
5 thirty, chapter thirty of this code, an advanced nurse practitioner
6 with psychiatric certification practicing in compliance with
7 article seven of said chapter, a physician assistant practicing in
8 compliance with article three of said chapter or a physician
9 assistant practicing in compliance with article fourteen-a of said
10 chapter: *Provided*, That a licensed independent clinical social
11 worker, a physician assistant or an advanced nurse practitioner
12 with psychiatric certification may only perform the examination if
13 he or she has previously been authorized by an order of the circuit
14 court to do so, the order having found that the licensed
15 independent clinical social worker, physician assistant or advanced
16 nurse practitioner with psychiatric certification has
17 particularized expertise in the areas of mental health and mental
18 hygiene or addiction sufficient to make the determinations as are
19 required by the provisions of this section. The examination is to
20 be provided or arranged by a community mental health center
21 designated by the Secretary of the Department of Health and Human
22 Resources to serve the county in which the action takes place. The
23 order is to specify that the hearing be held forthwith and is to

1 provide for the appointment of counsel for the individual:
2 *Provided, however,* That the order may allow the hearing to be held
3 up to twenty-four hours after the person to be examined is taken
4 into custody rather than forthwith if the circuit court of the
5 county in which the person is found has previously entered a
6 standing order which establishes within that jurisdiction a program
7 for placement of persons awaiting a hearing which assures the
8 safety and humane treatment of persons: *Provided further,* That the
9 time requirements set forth in this subsection only apply to
10 persons who are not in need of medical care for a physical
11 condition or disease for which the need for treatment precludes the
12 ability to comply with the time requirements. During periods of
13 holding and detention authorized by this subsection, upon consent
14 of the individual or in the event of a medical or psychiatric
15 emergency, the individual may receive treatment. The medical
16 provider shall exercise due diligence in determining the
17 individual's existing medical needs and provide treatment the
18 individual requires, including previously prescribed medications.
19 As used in this section, "psychiatric emergency" means an incident
20 during which an individual loses control and behaves in a manner
21 that poses substantial likelihood of physical harm to himself,
22 herself or others. Where a physician, psychologist, licensed
23 independent clinical social worker, physician assistant or advanced

1 nurse practitioner with psychiatric certification has within the
2 preceding seventy-two hours performed the examination required by
3 the provisions of this subdivision, the community mental health
4 center may waive the duty to perform or arrange another examination
5 upon approving the previously performed examination.
6 Notwithstanding the provisions of this subsection, subsection (r),
7 section four of this article applies regarding payment by the
8 county commission for examinations at hearings. If the examination
9 reveals that the individual is not mentally ill or addicted or is
10 determined to be mentally ill or addicted but not likely to cause
11 harm to himself, herself or others, the individual shall be
12 immediately released without the need for a probable cause hearing
13 and absent a finding of professional negligence the examiner is not
14 civilly liable for the rendering of the opinion absent a finding of
15 professional negligence. The examiner shall immediately provide
16 the [Mental Hygiene Commissioner](#), circuit court or designated
17 magistrate before whom the matter is pending the results of the
18 examination on the form provided for this purpose by the Supreme
19 Court of Appeals for entry of an order reflecting the lack of
20 probable cause.

21 (f) A probable cause hearing is to be held before a magistrate
22 designated by the chief judge of the judicial circuit, the [Mental](#)
23 [Hygiene Commissioner](#) or circuit judge of the county of which the

1 individual is a resident or where he or she was found. If
2 requested by the individual or his or her counsel, the hearing may
3 be postponed for a period not to exceed forty-eight hours.

4 The individual must be present at the hearing and has the
5 right to present evidence, confront all witnesses and other
6 evidence against him or her and to examine testimony offered,
7 including testimony by representatives of the community mental
8 health center serving the area. Expert testimony at the hearing
9 may be taken telephonically or via videoconferencing. The
10 individual has the right to remain silent and to be proceeded
11 against in accordance with the Rules of Evidence of the Supreme
12 Court of Appeals, except as provided in section twelve, article one
13 of this chapter. At the conclusion of the hearing, the magistrate,
14 Mental Hygiene Commissioner or circuit court judge shall find and
15 enter an order stating whether or not there is probable cause to
16 believe that the individual, as a result of mental illness or
17 addiction, is likely to cause serious harm to himself or herself or
18 to others.

19 (g) Probable cause hearings may occur in the county where a
20 person is hospitalized. The judicial hearing officer may: Use
21 videoconferencing and telephonic technology; permit persons
22 hospitalized for addiction to be involuntarily hospitalized only
23 until detoxification is accomplished; and specify other alternative

1 or modified procedures that are consistent with the purposes and
2 provisions of this article. The alternative or modified procedures
3 shall fully and effectively guarantee to the person who is the
4 subject of the involuntary commitment proceeding and other
5 interested parties due process of the law and access to the least
6 restrictive available treatment needed to prevent serious harm to
7 self or others.

8 (h) If the magistrate, Mental Hygiene Commissioner or circuit
9 court judge at a probable cause hearing or at a final commitment
10 hearing held pursuant to the provisions of section four of this
11 article finds that the individual, as a result of mental illness or
12 addiction, is likely to cause serious harm to himself, herself or
13 others and because of mental illness or addiction requires
14 treatment, the magistrate, Mental Hygiene Commissioner or circuit
15 court judge may consider evidence on the question of whether the
16 individual's circumstances make him or her amenable to outpatient
17 treatment in a nonresidential or nonhospital setting pursuant to a
18 voluntary treatment agreement. The agreement is to be in writing
19 and approved by the individual, his or her counsel and the
20 magistrate, Mental Hygiene Commissioner or circuit court judge. If
21 the magistrate, Mental Hygiene Commissioner or circuit court judge
22 determines that appropriate outpatient treatment is available in a
23 nonresidential or nonhospital setting, the individual may be

1 released to outpatient treatment upon the terms and conditions of
2 the voluntary treatment agreement. The failure of an individual
3 released to outpatient treatment pursuant to a voluntary treatment
4 agreement to comply with the terms of the voluntary treatment
5 agreement constitutes evidence that outpatient treatment is
6 insufficient and, after a hearing before a magistrate, Mental
7 Hygiene Commissioner or circuit judge on the issue of whether or
8 not the individual failed or refused to comply with the terms and
9 conditions of the voluntary treatment agreement and whether the
10 individual as a result of mental illness or addiction remains
11 likely to cause serious harm to himself, herself or others, the
12 entry of an order requiring admission under involuntary
13 hospitalization pursuant to the provisions of section three of this
14 article may be entered. ~~In the event~~ If a person released pursuant
15 to a voluntary treatment agreement is unable to pay for the
16 outpatient treatment and has no applicable insurance coverage,
17 including, but not limited to, private insurance or Medicaid, the
18 Secretary of the Department of Health and Human Resources may
19 transfer funds for the purpose of reimbursing community providers
20 for services provided on an outpatient basis for individuals for
21 whom payment for treatment is the responsibility of the department:
22 *Provided*, That the department may not authorize payment of
23 outpatient services for an individual subject to a voluntary

1 treatment agreement in an amount in excess of the cost of
2 involuntary hospitalization of the individual. The secretary shall
3 establish and maintain fee schedules for outpatient treatment
4 provided in lieu of involuntary hospitalization. Nothing in the
5 provisions of this article regarding release pursuant to a
6 voluntary treatment agreement or convalescent status may be
7 construed as creating a right to receive outpatient mental health
8 services or treatment or as obligating any person or agency to
9 provide outpatient services or treatment. Time limitations set
10 forth in this article relating to periods of involuntary commitment
11 to a mental health facility for hospitalization do not apply to
12 release pursuant to the terms of a voluntary treatment agreement:
13 *Provided, however,* That release pursuant to a voluntary treatment
14 agreement may not be for a period of more than six months if the
15 individual has not been found to be involuntarily committed during
16 the previous two years and for a period of no more than two years
17 if the individual has been involuntarily committed during the
18 preceding two years. If in any proceeding held pursuant to this
19 article the individual objects to the issuance or conditions and
20 terms of an order adopting a voluntary treatment agreement, then
21 the circuit judge, magistrate or Mental Hygiene Commissioner may
22 not enter an order directing treatment pursuant to a voluntary
23 treatment agreement. If involuntary commitment with release

1 pursuant to a voluntary treatment agreement is ordered, the
2 individual subject to the order may, upon request during the period
3 the order is in effect, have a hearing before a Mental Hygiene
4 Commissioner or circuit judge where the individual may seek to have
5 the order canceled or modified. Nothing in this section affects
6 the appellate and habeas corpus rights of any individual subject to
7 any commitment order.

8 (i) If the certifying physician or psychologist determines
9 that a person requires involuntary hospitalization for an addiction
10 to a substance which, due to the degree of addiction, creates a
11 reasonable likelihood that withdrawal or detoxification from the
12 substance of addiction will cause significant medical
13 complications, the person certifying the individual shall recommend
14 that the individual be closely monitored for possible medical
15 complications. If the magistrate, Mental Hygiene Commissioner or
16 circuit court judge presiding orders involuntary hospitalization,
17 he or she shall include a recommendation that the individual be
18 closely monitored in the order of commitment.

19 (j) The Supreme Court of Appeals, ~~and~~ the Secretary of the
20 Department of Health and Human Resources and the President of the
21 West Virginia Sheriffs' Association, or his or her designee, shall
22 specifically develop and propose a statewide system for evaluation
23 and adjudication of mental hygiene petitions which shall include

1 payment schedules and recommendations regarding funding sources.
2 Additionally, the Secretary of the Department of Health and Human
3 Resources shall also immediately seek reciprocal agreements with
4 officials in contiguous states to develop
5 interstate/intergovernmental agreements to provide efficient and
6 efficacious services to out-of-state residents found in West
7 Virginia and who are in need of mental hygiene services.

8 **§27-5-4. Institution of final commitment proceedings; hearing**
9 **requirements; release.**

10 (a) *Involuntary commitment.* -- Except as provided in section
11 three of this article, ~~no~~ an individual may not be involuntarily
12 committed to a mental health facility except by order entered of
13 record at any time by the circuit court of the county in which the
14 person resides or was found, or if the individual is hospitalized
15 in a mental health facility located in a county other than where he
16 or she resides or was found, in the county of the mental health
17 facility and then only after a full hearing on issues relating to
18 the necessity of committing an individual to a mental health
19 facility: *Provided,* That if the individual objects to the hearing
20 being held in the county where the mental health facility is
21 located, the hearing shall be conducted in the county of the
22 individual's residence.

23 (b) *How final commitment proceedings are commenced.* -- Final

1 commitment proceedings for an individual may be commenced by the
2 filing of a written application under oath and the certificate or
3 affidavit is hereinafter provided with the clerk of the circuit
4 court or Mental Hygiene Commissioner of the county of which the
5 individual is a resident, or where he or she may be found, or the
6 county of the mental health facility, if he or she is hospitalized
7 in a mental health facility located in a county other than where he
8 or she resides or may be found by an adult person having personal
9 knowledge of the facts of the case.

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

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

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

19 (3) The written application, certificate, affidavit and any
20 warrants issued pursuant thereto, including any papers and
21 documents related thereto, filed with any circuit court or Mental
22 Hygiene Commissioner for the involuntary hospitalization of any
23 individual are not open to inspection by any person other than the

1 individual, except upon authorization of the individual or his or
2 her legal representative or by order of the circuit court, and the
3 records may not be published except upon the authorization of the
4 individual or his or her legal representative.

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

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

9 (1) The applicant shall file with his or her application the
10 certificate of a physician or a psychologist stating that in his or
11 her opinion the individual is mentally ill or addicted and that
12 because of the mental illness or addiction the individual is likely
13 to cause serious harm to himself, herself or to others if he or she
14 is allowed to remain at liberty and therefore he or she should be
15 hospitalized, stating in detail the recent overt acts upon which
16 the conclusion is based.

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

20 (e) *Notice requirements; eight days' notice required. --* Upon
21 receipt of an application, the mental hygiene commissioner or
22 circuit court shall review the application and if it is determined
23 that the facts alleged, if any, are sufficient to warrant

1 involuntary hospitalization, forthwith fix a date for and have the
2 clerk of the circuit court give notice of the hearing: (1) To the
3 individual; (2) to the applicant or applicants; (3) to the
4 individual's spouse, one of the parents or guardians, or if the
5 individual does not have a spouse, parents or parent or guardian,
6 to one of the individual's adult next of kin if the next of kin is
7 not the applicant; (4) to the mental health authorities serving the
8 area; (5) to the circuit court in the county of the individual's
9 residence if the hearing is to be held in a county other than that
10 of the individual's residence; and (6) to the prosecuting attorney
11 of the county in which the hearing is to be held. The notice shall
12 be served on the individual by personal service of process not less
13 than eight days prior to the date of the hearing and shall specify
14 the nature of the charges against the individual; the facts
15 underlying and supporting the application of involuntary
16 commitment; the right to have counsel appointed; the right to
17 consult with and be represented by counsel at every stage of the
18 proceedings; and the time and place of the hearing. The notice to
19 the individual's spouse, parents or parent or guardian, the
20 individual's adult next of kin, or to the circuit court in the
21 county of the individual's residence may be by personal service of
22 process or by certified or registered mail, return receipt
23 requested, and shall state the time and place of the hearing.

1 (f) *Examination of individual by court-appointed physician or*
2 *psychologist; custody for examination; dismissal of proceedings. --*

3 (1) Except as provided in subdivision (3) of this subsection,
4 within a reasonable time after notice of the commencement of final
5 commitment proceedings is given, the circuit court or Mental
6 Hygiene Commissioner shall appoint a physician or psychologist to
7 examine the individual and report to the circuit court or Mental
8 Hygiene Commissioner his or her findings as to the mental condition
9 or addiction of the individual and the likelihood of him or her
10 causing serious harm to himself, herself or to others.

11 (2) If the designated physician or psychologist reports to the
12 circuit court or Mental Hygiene Commissioner that the individual
13 has refused to submit to an examination, the circuit court or
14 Mental Hygiene Commissioner shall order him or her to submit to the
15 examination. The circuit court or Mental Hygiene Commissioner may
16 direct that the individual be detained or taken into custody for
17 the purpose of an immediate examination by the designated physician
18 or psychologist. All such orders shall be directed to the sheriff
19 of the county or other appropriate law-enforcement officer. After
20 the examination has been completed, the individual shall be
21 released from custody unless proceedings are instituted pursuant to
22 section three of this article.

23 (3) If the reports of the appointed physician or psychologist

1 do not confirm that the individual is mentally ill or addicted and
2 might be harmful to himself, herself or to others then the
3 proceedings for involuntary hospitalization shall be dismissed.

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

6 (1) The individual shall be present at the final commitment
7 hearing and he or she, the applicant and all persons entitled to
8 notice of the hearing shall be afforded an opportunity to testify
9 and to present and cross-examine witnesses.

10 (2) ~~In the event that~~ If the individual has not retained
11 counsel, the court or Mental Hygiene Commissioner at least six days
12 prior to hearing shall appoint a competent attorney and shall
13 inform the individual of the name, address and telephone number of
14 his or her appointed counsel.

15 (3) The individual has the right to have an examination by an
16 independent expert of his or her choice and testimony from the
17 expert as a medical witness on his or her behalf. The cost of the
18 independent expert shall be borne by the individual unless he or
19 she is indigent.

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

22 (h) *Duties of counsel representing individual; payment of*
23 *counsel representing indigent. --*

1 (1) The counsel representing an individual shall conduct a
2 timely interview, make investigation and secure appropriate
3 witnesses and shall be present at the hearing and protect the
4 interest of the individual.

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

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

11 (i) *Conduct of hearing; receipt of evidence; no evidentiary*
12 *privilege; record of hearing. --*

13 (1) The circuit court or Mental Hygiene Commissioner shall
14 hear evidence from all interested parties in chamber, including
15 testimony from representatives of the community mental health
16 facility.

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

19 (3) The circuit court or Mental Hygiene Commissioner is bound
20 by the rules of evidence promulgated by the Supreme Court of
21 Appeals except that statements made to physicians or psychologists
22 by the individual may be admitted into evidence by the physician's
23 or psychologist's testimony, notwithstanding failure to inform the

1 individual that this statement may be used against him or her. Any
2 psychologist or physician testifying shall bring all records
3 pertaining to the individual to the hearing. The medical evidence
4 obtained pursuant to an examination under this section, or section
5 two or three of this article, is not privileged information for
6 purposes of a hearing pursuant to this section.

7 (4) All final commitment proceedings shall be reported or
8 recorded, whether before the circuit court or Mental Hygiene
9 Commissioner, and a transcript shall be made available to the
10 individual, his or her counsel or the prosecuting attorney within
11 thirty days, if it is requested for the purpose of further
12 proceedings. ~~In any case where~~ If an indigent person intends to
13 pursue further proceedings, the circuit court shall, by order
14 entered of record, authorize and direct the court reporter to
15 furnish a transcript of the hearings.

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

17 (1) Upon completion of the final commitment hearing, and the
18 evidence presented in the hearing, the circuit court or mental
19 hygiene commissioner shall make findings as to whether or not the
20 individual is mentally ill or addicted and because of illness or
21 addiction is likely to cause serious harm to himself, herself or to
22 others if allowed to remain at liberty and is a resident of the
23 county in which the hearing is held or currently is a patient at a

1 mental health facility in the county.

2 (2) The circuit court or Mental Hygiene Commissioner shall
3 also make a finding as to whether or not there is a less
4 restrictive alternative than commitment appropriate for the
5 individual. The burden of proof of the lack of a less restrictive
6 alternative than commitment is on the person or persons seeking the
7 commitment of the individual.

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

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

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

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

21 (3) If the order pursuant to a final commitment hearing is for
22 a temporary observation period, the circuit court or mental hygiene
23 commissioner may, at any time prior to the expiration of such

1 period on the basis of a report by the chief medical officer of the
2 mental health facility in which the patient is confined, hold
3 another hearing pursuant to the terms of this section and in the
4 same manner as the hearing was held as if it were an original
5 petition for involuntary hospitalization to determine whether the
6 original order for a temporary observation period should be
7 modified or changed to an order of indeterminate hospitalization of
8 the patient. At the conclusion of the hearing, the circuit court
9 shall order indeterminate hospitalization of the patient or
10 dismissal of the proceedings.

11 (4) An order for an indeterminate period expires of its own
12 terms at the expiration of two years from the date of the last
13 order of commitment unless prior to the expiration, the Department
14 of Health and Human Resources, upon findings based on an
15 examination of the patient by a physician or a psychologist,
16 extends the order for indeterminate hospitalization: *Provided,*
17 That if the patient or his or her counsel requests a hearing, then
18 a hearing shall be held by the Mental Hygiene Commissioner or by
19 the circuit court of the county as provided in subsection (a) of
20 this section.

21 (1) *Dismissal of proceedings.* -- If the circuit court or
22 Mental Hygiene Commissioner finds that the individual is not
23 mentally ill or addicted, the proceedings shall be dismissed. If

1 the circuit court or Mental Hygiene Commissioner finds that the
2 individual is mentally ill or addicted but is not because of the
3 illness or addiction likely to cause serious harm to himself,
4 herself or to others if allowed to remain at liberty, the
5 proceedings shall be dismissed.

6 (m) *Immediate notification of order of hospitalization.* -- The
7 clerk of the circuit court in which an order directing
8 hospitalization is entered, if not in the county of the
9 individual's residence, shall immediately upon entry of the order
10 forward a certified copy of the order to the clerk of the circuit
11 court of the county of which the individual is a resident.

12 (n) *Consideration of transcript by circuit court of county of*
13 *individual's residence; order of hospitalization; execution of*
14 *order.* --

15 (1) If the circuit court or Mental Hygiene Commissioner is
16 satisfied that hospitalization should be ordered but finds that the
17 individual is not a resident of the county in which the hearing is
18 held and the individual is not currently a resident of a mental
19 health facility, a transcript of the evidence adduced at the final
20 commitment hearing of the individual, certified by the clerk of the
21 circuit court, shall forthwith be forwarded to the clerk of the
22 circuit court of the county of which the individual is a resident,
23 who shall immediately present the transcript to the circuit court

1 or Mental Hygiene Commissioner of the county.

2 (2) If the circuit court or Mental Hygiene Commissioner of the
3 county of the residence of the individual is satisfied from the
4 evidence contained in the transcript that the individual should be
5 hospitalized as determined by the standard set forth above, the
6 circuit court shall order the appropriate hospitalization as though
7 the individual had been brought before the circuit court or its
8 Mental Hygiene Commissioner in the first instance.

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

12 (o) *Order of custody to responsible person.* -- In lieu of
13 ordering the patient to a mental health facility, the circuit court
14 may order the individual delivered to some responsible person who
15 will agree to take care of the individual and the circuit court may
16 take from the responsible person a bond in an amount to be
17 determined by the circuit court with condition to restrain and take
18 proper care of the individual until further order of the court.

19 (p) *Individual not a resident of this state.* -- If the
20 individual found to be mentally ill or addicted by the circuit
21 court or Mental Hygiene Commissioner is a resident of another
22 state, this information shall be forthwith given to the Secretary
23 of the Department of Health and Human Resources, or to his or her

1 designee, who shall make appropriate arrangements for transfer of
2 the individual to the state of his or her residence conditioned on
3 the agreement of the individual except as qualified by the
4 interstate compact on mental health.

5 (q) *Report to the Secretary of the Department of Health and*
6 *Human Resources. --*

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

12 (2) Whenever an individual is released from custody due to the
13 failure of an employee of a mental health facility to comply with
14 the time requirements of this article, the chief medical officer of
15 the mental health facility shall forthwith after the release of the
16 individual make a report to the Secretary of the Department of
17 Health and Human Resources or to his or her designee of the failure
18 to comply.

19 (r) *Payment of some expenses by the state; Mental Hygiene Fund*
20 *established; expenses paid by the county commission. --*

21 (1) The state shall pay the commissioner's fee and the court
22 reporter fees that are not paid and reimbursed under article
23 twenty-one, chapter twenty-nine of this code out of a special fund

1 to be established within the Supreme Court of Appeals to be known
2 as the Mental Hygiene Fund.

3 (2) The Department of Health and Human Resources shall
4 reimburse the county commission ~~shall pay out of the county~~
5 ~~treasury~~ for direct and immediate deposit into the sheriff's budget
6 all other expenses incurred, including, but not limited to, mileage
7 expenses and salary expenses of those involved in the
8 transportation process, in the hearings conducted under the
9 provisions of this article whether or not hospitalization is
10 ordered, ~~including~~ and shall reimburse the county commission for
11 any fee allowed by the circuit court by order entered of record for
12 any physician, psychologist and witness called by the indigent
13 individual.

NOTE: The purpose of this bill is to delete language allowing a county commission to reimburse a mental health care facility for security services for the period of time a person is at the hospital prior to the determination of mental competence or incompetence. The bill further provides that the President of the West Virginia Sheriffs' Association, along with the Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions. The bill further provides that the Department of Health and Human Resources shall reimburse the county commission for direct deposit into the Sheriff's budget all other expenses incurred in the hearings conducted under the provisions of the article.

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

be added.