

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 603

SENATORS DRENNAN, BLAIR, GAUNCH, MARONEY,
MAYNARD, PLYMALE, AND TRUMP, *original sponsors*

[Passed March 10, 2018; in effect 90 from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2018 MAR 27 A 10:07

FILED

SB603

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2018 MAR 21 A 10: 08

FILED

1 AN ACT to amend and reenact §27-5-2 and §27-5-3 of the Code of West Virginia, 1931, as
2 amended, all relating to proceedings for involuntary custody for examination; adding
3 licensed professional counselors to the list of professionals that may examine an individual
4 by order of a circuit court, mental hygiene commissioner, or magistrate; providing that a
5 licensed professional counselor may only perform the examination if he or she has been
6 previously authorized by an order of the circuit court to do so; and removing redundant
7 language.

Be it enacted by the Legislature of West Virginia:

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 involuntary hospitalization for
2 examination of an individual when the person making the application has reason to believe that
3 the individual to be examined is addicted, as defined in §27-1-11 of this code, or is mentally ill
4 and, because of his or her addiction or mental illness, the individual is likely to cause serious harm
5 to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and
6 certification by a physician or psychologist.

7 Notwithstanding any language in this subsection to the contrary, if the individual to be
8 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional
9 facility, then only the chief administrative officer of the facility holding the individual may file the
10 application and the application must include the additional statement that the correctional facility
11 itself cannot reasonably provide treatment and other services for the individual's mental illness or
12 addiction.

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

14 (c) Application for involuntary custody for examination may be made to the circuit court or
15 a mental hygiene commissioner of the county in which the individual resides or of the county in

16 which he or she may be found. When no circuit court judge or mental hygiene commissioner is
17 available for immediate presentation of the application, the application may be made to a
18 magistrate designated by the chief judge of the judicial circuit to accept applications and hold
19 probable cause hearings. A designated magistrate before whom an application or matter is
20 pending may, upon the availability of a mental hygiene commissioner or circuit court judge for
21 immediate presentation of an application or pending matter, transfer the pending matter or
22 application to the mental hygiene commissioner or circuit court judge for further proceedings
23 unless otherwise ordered by the chief judge of the judicial circuit.

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

27 (e) The circuit court, mental hygiene commissioner, or designated magistrate may enter
28 an order for the individual named in the application to be detained and taken into custody for the
29 purpose of holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose
30 of an examination of the individual by a physician, psychologist, a licensed professional counselor
31 practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social
32 worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner
33 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician
34 assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician assistant
35 practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional
36 counselor, a licensed independent clinical social worker, a physician assistant or an advanced
37 nurse practitioner with psychiatric certification may only perform the examination if he or she has
38 previously been authorized by an order of the circuit court to do so, the order having found that
39 the licensed professional counselor, the licensed independent clinical social worker, physician
40 assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise
41 in the areas of mental health and mental hygiene or addiction sufficient to make the

42 determinations as are required by the provisions of this section. The examination is to be provided
43 or arranged by a community mental health center designated by the Secretary of the Department
44 of Health and Human Resources to serve the county in which the action takes place. The order
45 is to specify that the hearing be held forthwith and is to provide for the appointment of counsel for
46 the individual: *Provided, however,* That the order may allow the hearing to be held up to 24 hours
47 after the person to be examined is taken into custody rather than forthwith if the circuit court of
48 the county in which the person is found has previously entered a standing order which establishes
49 within that jurisdiction a program for placement of persons awaiting a hearing which assures the
50 safety and humane treatment of persons: *Provided further,* That the time requirements set forth
51 in this subsection only apply to persons who are not in need of medical care for a physical
52 condition or disease for which the need for treatment precludes the ability to comply with the time
53 requirements. During periods of holding and detention authorized by this subsection, upon
54 consent of the individual or in the event of a medical or psychiatric emergency, the individual may
55 receive treatment. The medical provider shall exercise due diligence in determining the
56 individual's existing medical needs and provide treatment the individual requires, including
57 previously prescribed medications. As used in this section, "psychiatric emergency" means an
58 incident during which an individual loses control and behaves in a manner that poses substantial
59 likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed
60 professional counselor, licensed independent clinical social worker, physician assistant, or
61 advanced nurse practitioner with psychiatric certification has within the preceding 72 hours
62 performed the examination required by the provisions of this subsection, the community mental
63 health center may waive the duty to perform or arrange another examination upon approving the
64 previously performed examination. Notwithstanding the provisions of this subsection, §27-5-4(r)
65 of this code applies regarding payment by the county commission for examinations at hearings.
66 If the examination reveals that the individual is not mentally ill or addicted or is determined to be
67 mentally ill or addicted but not likely to cause harm to himself, herself, or others, the individual

68 shall be immediately released without the need for a probable cause hearing and the examiner is
69 not civilly liable for the rendering of the opinion absent a finding of professional negligence. The
70 examiner shall immediately provide the mental hygiene commissioner, circuit court, or designated
71 magistrate before whom the matter is pending the results of the examination on the form provided
72 for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of
73 probable cause.

74 (f) A probable cause hearing is to be held before a magistrate designated by the chief
75 judge of the judicial circuit, the mental hygiene commissioner, or circuit judge of the county of
76 which the individual is a resident or where he or she was found. If requested by the individual or
77 his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

78 The individual must be present at the hearing and has the right to present evidence,
79 confront all witnesses and other evidence against him or her, and to examine testimony offered,
80 including testimony by representatives of the community mental health center serving the area.
81 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
82 individual has the right to remain silent and to be proceeded against in accordance with the Rules
83 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the
84 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge
85 shall find and enter an order stating whether or not there is probable cause to believe that the
86 individual, as a result of mental illness or addiction, is likely to cause serious harm to himself or
87 herself or to others.

88 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
89 judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons
90 hospitalized for addiction to be involuntarily hospitalized only until detoxification is accomplished;
91 and specify other alternative or modified procedures that are consistent with the purposes and
92 provisions of this article. The alternative or modified procedures shall fully and effectively
93 guarantee to the person who is the subject of the involuntary commitment proceeding and other

94 interested parties due process of the law and access to the least restrictive available treatment
95 needed to prevent serious harm to self or others.

96 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
97 cause hearing or at a final commitment hearing held pursuant to the provisions of §27-5-4 of this
98 code finds that the individual, as a result of mental illness or addiction, is likely to cause serious
99 harm to himself, herself, or others and because of mental illness or addiction requires treatment,
100 the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on
101 the question of whether the individual's circumstances make him or her amenable to outpatient
102 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.
103 The agreement is to be in writing and approved by the individual, his or her counsel, and the
104 magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene
105 commissioner, or circuit court judge determines that appropriate outpatient treatment is available
106 in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment
107 upon the terms and conditions of the voluntary treatment agreement. The failure of an individual
108 released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the
109 terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is
110 insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge
111 on the issue of whether or not the individual failed or refused to comply with the terms and
112 conditions of the voluntary treatment agreement and whether the individual as a result of mental
113 illness or addiction remains likely to cause serious harm to himself, herself, or others, the entry of
114 an order requiring admission under involuntary hospitalization pursuant to the provisions of §27-
115 5-3 of this code may be entered. In the event a person released pursuant to a voluntary treatment
116 agreement is unable to pay for the outpatient treatment and has no applicable insurance
117 coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the
118 Department of Health and Human Resources may transfer funds for the purpose of reimbursing
119 community providers for services provided on an outpatient basis for individuals for whom

120 payment for treatment is the responsibility of the department: *Provided*, That the department may
121 not authorize payment of outpatient services for an individual subject to a voluntary treatment
122 agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The
123 secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of
124 involuntary hospitalization. Nothing in the provisions of this article regarding release pursuant to
125 a voluntary treatment agreement or convalescent status may be construed as creating a right to
126 receive outpatient mental health services or treatment or as obligating any person or agency to
127 provide outpatient services or treatment. Time limitations set forth in this article relating to periods
128 of involuntary commitment to a mental health facility for hospitalization do not apply to release
129 pursuant to the terms of a voluntary treatment agreement: *Provided, however*, That release
130 pursuant to a voluntary treatment agreement may not be for a period of more than six months if
131 the individual has not been found to be involuntarily committed during the previous two years and
132 for a period of no more than two years if the individual has been involuntarily committed during
133 the preceding two years. If in any proceeding held pursuant to this article the individual objects to
134 the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then
135 the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing
136 treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release
137 pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may,
138 upon request during the period the order is in effect, have a hearing before a mental hygiene
139 commissioner or circuit judge where the individual may seek to have the order canceled or
140 modified. Nothing in this section affects the appellate and habeas corpus rights of any individual
141 subject to any commitment order.

142 (i) If the certifying physician or psychologist determines that a person requires involuntary
143 hospitalization for an addiction to a substance which, due to the degree of addiction, creates a
144 reasonable likelihood that withdrawal or detoxification from the substance of addiction will cause
145 significant medical complications, the person certifying the individual shall recommend that the

146 individual be closely monitored for possible medical complications. If the magistrate, mental
147 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or
148 she shall include a recommendation that the individual be closely monitored in the order of
149 commitment.

150 (j) The Supreme Court of Appeals and the Secretary of the Department of Health and
151 Human Resources shall specifically develop and propose a statewide system for evaluation and
152 adjudication of mental hygiene petitions which shall include payment schedules and
153 recommendations regarding funding sources. Additionally, the Secretary of the Department of
154 Health and Human Resources shall also immediately seek reciprocal agreements with officials in
155 contiguous states to develop interstate/intergovernmental agreements to provide efficient and
156 efficacious services to out-of-state residents found in West Virginia and who are in need of mental
157 hygiene services.

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

1 (a) *Admission to a mental health facility for examination.* — Any individual may be admitted
2 to a mental health facility for examination and treatment upon entry of an order finding probable
3 cause as provided in §27-5-2 of this code and upon certification by a physician, psychologist,
4 licensed professional counselor, licensed independent clinical social worker practicing in
5 compliance with the provisions of §30-30-1 *et seq.* of this code or an advanced nurse practitioner
6 with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code that he or
7 she has examined the individual and is of the opinion that the individual is mentally ill or addicted
8 and, because of such mental illness or addiction, is likely to cause serious harm to himself, herself,
9 or to others if not immediately restrained: *Provided,* That the opinions offered by an independent
10 clinical social worker or an advanced nurse practitioner with psychiatric certification must be within
11 their particular areas of expertise, as recognized by the order of the authorizing court.

12 (b) *Three-day time limitation on examination.* — If the examination does not take place
13 within three days from the date the individual is taken into custody, the individual shall be released.

14 If the examination reveals that the individual is not mentally ill or addicted, the individual shall be
15 released.

16 (c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of
17 this code shall be valid for three days. Any individual with respect to whom the certification has
18 been issued may not be admitted on the basis of the certification at any time after the expiration
19 of three days from the date of the examination.

20 (d) *Findings and conclusions required for certification.* — A certification under this section
21 must include findings and conclusions of the mental examination, the date, time and place of the
22 examination, and the facts upon which the conclusion that involuntary commitment is necessary
23 is based.

24 (e) *Notice requirements.* — When an individual is admitted to a mental health facility
25 pursuant to the provisions of this section, the chief medical officer of the facility shall immediately
26 give notice of the individual's admission to the individual's spouse, if any, and one of the
27 individual's parents or guardians or if there is no spouse and are no parents or guardians, to one
28 of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given
29 to the community mental health facility, if any, having jurisdiction in the county of the individual's
30 residence. The notices other than to the community mental health facility shall be in writing and
31 shall be transmitted to the person or persons at his, her, or their last known address by certified
32 mail, return receipt requested.

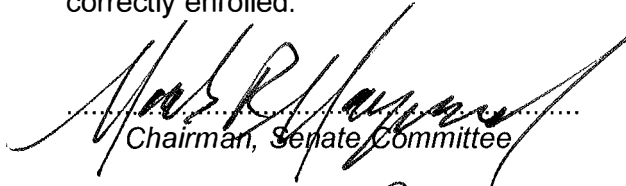
33 (f) *Five-day time limitation for examination and certification at mental health facility.* —
34 After the individual's admission to a mental health facility, he or she may not be detained more
35 than five days, excluding Sundays and holidays, unless, within the period, the individual is
36 examined by a staff physician and the physician certifies that in his or her opinion the patient is
37 mentally ill or addicted and is likely to injure himself, herself, or others if allowed to be at liberty.

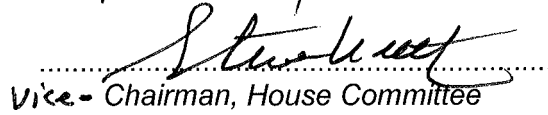
38 (g) *Fifteen-day time limitation for institution of final commitment proceedings.* — If, in the
39 opinion of the examining physician, the patient is mentally ill or addicted and because of the

40 mental illness or addiction is likely to injure himself, herself, or others if allowed to be at liberty,
41 the chief medical officer shall, within 15 days from the date of admission, institute final
42 commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted
43 within such 15-day period, the patient shall be immediately released. After the request for hearing
44 is filed, the hearing may not be canceled on the basis that the individual has become a voluntary
45 patient unless the mental hygiene commissioner concurs in the motion for cancellation of the
46 hearing.

47 (h) *Thirty-day time limitation for conclusion of all proceedings.* — If all proceedings as
48 provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 30 days
49 from the date of institution of the proceedings, the patient shall be immediately released.

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


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Chairman, Senate Committee

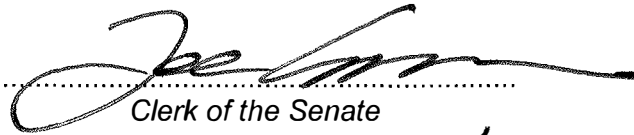

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Vice-Chairman, House Committee

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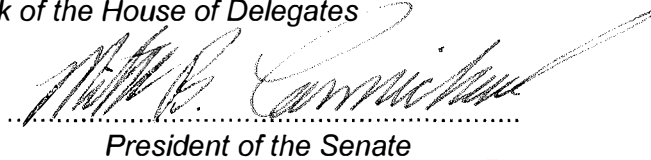
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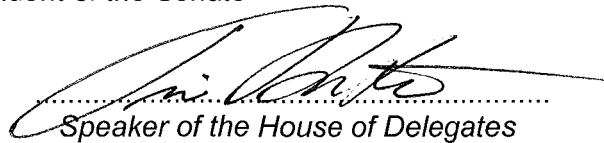
Originated in the Senate.

In effect 90 days from passage.

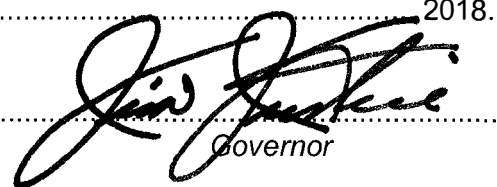

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

The within is approved this the 27th
Day of March 2018.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2018

Time 11:57 am