

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5370

By Delegates Bell and Jordan

[Introduced February 09, 2026; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §27-5-2 the Code of West Virginia, 1931, as amended, relating to
 2 enacting "Caitlyn's Law," requiring a mandatory 24-hour hold in a hospital or other qualified
 3 facility pending an evaluation from a mental hygiene commissioner for all individuals
 4 suspected or known to have an addiction or dependency on pending evaluation from a
 5 mental hygiene commissioner.

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 the
 3 individual to be examined has a substance use disorder as defined by the most recent edition of
 4 the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders,
 5 inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use
 6 disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to
 7 others if allowed to remain at liberty while awaiting an examination and certification by a physician,
 8 psychologist, licensed professional counselor, licensed independent social worker, an advanced
 9 nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided,*
 10 That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be
 11 a basis for involuntary commitment to a state hospital: *Provided, however,* That an application for
 12 involuntary hospitalization may be made where the person making the application has reason to
 13 believe the individual to be examined has a substance use disorder, has lost the power of self-
 14 control with respect to substance use, is in need of substance abuse services and, by reason of
 15 substance abuse impairment, his or her judgment has been so impaired that the individual is
 16 incapable of appreciating his or her need for such services and is further incapable of making a
 17 rational decision in regard thereto: *Provided further,* That an individual's mere refusal to receive

18 substance abuse services does not constitute evidence of lack of judgment with respect to his or
19 her need for substance abuse services.

20 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be
21 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional
22 facility, then only the chief administrative officer of the facility holding the individual may file the
23 application, and the application must include the additional statement that the correctional facility
24 itself cannot reasonably provide treatment and other services necessary to treat the individual's
25 mental illness or substance use.

26 (c) Application for involuntary custody for examination may be made to the circuit court,
27 magistrate court, or a mental hygiene commissioner of the county in which the individual resides,
28 or of the county in which he or she may be found. A magistrate before whom an application or
29 matter is pending may, upon the availability of a mental hygiene commissioner or circuit court
30 judge for immediate presentation of an application or pending matter, transfer the pending matter
31 or application to the mental hygiene commissioner or circuit court judge for further proceedings
32 unless otherwise ordered by the chief judge of the judicial circuit.

33 (d) The person making the application shall give information and state facts in the
34 application required by the form provided for this purpose by the Supreme Court of Appeals.

35 (e) (1) The circuit court, mental hygiene commissioner, or magistrate may enter an order
36 for the individual named in the application to be detained and taken into custody as provided in
37 §27-5-1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided
38 in §27-5-2 of this code. An examination of the individual to determine whether the individual meets
39 involuntary hospitalization criteria shall be conducted in person unless an in person examination
40 would create a substantial delay in the resolution of the matter in which case the examination may
41 be by video conference, and shall be performed by a physician, psychologist, a licensed
42 professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed
43 independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an

44 advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et*
45 *seq.* of this code, a physician assistant practicing in compliance with §30-3-1 *et seq.* of this code,
46 or a physician assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That
47 a licensed professional counselor, a licensed independent clinical social worker, a physician
48 assistant, or an advanced nurse practitioner with psychiatric certification may only perform the
49 examination if he or she has previously been authorized by an order of the circuit court to do so,
50 the order having found that the licensed professional counselor, the licensed independent clinical
51 social worker, physician assistant, or advanced nurse practitioner with psychiatric certification has
52 particularized expertise in the areas of mental health and mental hygiene or substance use
53 disorder sufficient to make the determinations required by the provisions of this section. The
54 examination shall be provided or arranged by a community mental health center designated by the
55 Secretary of the Department of Human Services to serve the county in which the action takes
56 place. The order is to specify that the evaluation be held within a reasonable period of time not to
57 exceed two hours and shall provide for the appointment of counsel for the individual: *Provided*,
58 *however*, That the time requirements set forth in this subsection only apply to persons who are not
59 in need of medical care for a physical condition or disease for which the need for treatment
60 precludes the ability to comply with the time requirements. During periods of holding and detention
61 authorized by this subsection, upon consent of the individual or if there is a medical or psychiatric
62 emergency, the individual may receive treatment. The medical provider shall exercise due
63 diligence in determining the individual's existing medical needs and provide treatment the
64 individual requires, including previously prescribed medications. As used in this section,
65 "psychiatric emergency" means an incident during which an individual loses control and behaves
66 in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where
67 a physician, psychologist, licensed professional counselor, licensed independent clinical social
68 worker, physician assistant, or advanced nurse practitioner with psychiatric certification has, within
69 the preceding 72 hours, performed the examination required by this subsection the community

70 mental health center may waive the duty to perform or arrange another examination upon
71 approving the previously performed examination. Notwithstanding this subsection, §27-5-4(r) of
72 this code applies regarding payment by the county commission for examinations at hearings. If the
73 examination reveals that the individual is not mentally ill or has no substance use disorder, or is
74 determined to be mentally ill or has a substance use disorder but not likely to cause harm to
75 himself, herself, or others, or the individual has a substance use disorder but has not has lost the
76 power of self-control with respect to substance use, is not in need of substance abuse services
77 and, by reason of substance abuse impairment, or his or her judgment has not been so impaired
78 that the individual is incapable of appreciating his or her need for such services and is further
79 incapable of making a rational decision in regard thereto, then the individual shall be immediately
80 released without the need for a probable cause hearing. The examiner shall immediately, but no
81 later than 60 minutes after completion of the examination, provide the mental hygiene
82 commissioner, circuit court, or magistrate before whom the matter is pending, and the state
83 hospital to which the individual may be involuntarily hospitalized, the results of the examination on
84 the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting
85 the lack of probable cause: Provided, further, That §27-5-2(e)(3) of this code shall apply in the
86 event that the individual named in the application to be detained is deemed to be in need of
87 substance abuse services.

88 (2) A mental health service provider authorized under this subsection who performs an
89 involuntary custody examination shall not be civilly liable to any party or non-party to the
90 proceeding regardless of the examination results unless the mental health service provider acted
91 with negligence demonstrated by clear and convincing evidence or in bad faith in performing the
92 examination or rendering his or her opinion.

93 (3) The circuit court, mental hygiene commissioner, or magistrate shall enter an order for
94 the individual named in the application to be detained to be taken to a hospital or other facility
95 qualified to deal with drug addictions and withdrawal for 24 hours when the individual named to be

96 taken into custody is deemed to be addicted to substances prior to the holding of a probable cause
97 hearing as provided in §27-5-2 of this code. After the 24-hour hold, an examination of the
98 individual to determine whether the individual meets involuntary hospitalization criteria shall be
99 conducted in person unless an in person examination would create a substantial delay in the
100 resolution of the matter in which case the examination may be by video conference, and shall be
101 performed by a physician, psychologist, a licensed professional counselor practicing in
102 compliance with §30-31-1 et seq. of this code, a licensed independent clinical social worker
103 practicing in compliance with §30-30-1 et seq. of this code, an advanced nurse practitioner with
104 psychiatric certification practicing in compliance with §30-7-1 et seq. of this code, a physician
105 assistant practicing in compliance with §30-3-1 et seq. of this code, or a physician assistant
106 practicing in compliance with §30-3E-1 et seq. of this code. This subsection shall be known as
107 "Caitlyn's Law."

108 (f) A probable cause hearing shall be held promptly before a magistrate, the mental
109 hygiene commissioner, or circuit judge of the county of which the individual is a resident or where
110 he or she was found. If requested by the individual or his or her counsel, the hearing may be
111 postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing
112 unless the individual or his or her attorney object for good cause or unless the magistrate, mental
113 hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is
114 requested to develop regional mental hygiene collaboratives where mental hygiene
115 commissioners can share on-call responsibilities, thereby reducing the burden on individual
116 circuits and commissioners.

117 The individual shall be present at the hearing and has the right to present evidence,
118 confront all witnesses and other evidence against him or her, and examine testimony offered,
119 including testimony by representatives of the community mental health center serving the area.
120 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
121 individual has the right to remain silent and to be proceeded against in accordance with the Rules

122 of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the
123 conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge
124 shall find and enter an order stating whether or not it is likely that deterioration will occur without
125 clinically necessary treatment, or there is probable cause to believe that the individual, as a result
126 of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or
127 to others. Any such order entered shall be provided to the state hospital to which the individual
128 may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

129 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
130 judicial hearing officer may: use videoconferencing and telephonic technology; permit persons
131 hospitalized for substance use disorder to be involuntarily hospitalized until detoxification is
132 accomplished and the individual agrees to voluntary treatment for substance use disorder; and
133 specify other alternative or modified procedures that are consistent with the purposes and
134 provisions of this article to promote a prompt, orderly, and efficient hearing. The alternative or
135 modified procedures shall fully and effectively guarantee to the person who is the subject of the
136 involuntary commitment proceeding and other interested parties due process of the law and
137 access to the least restrictive available treatment needed to prevent serious harm to self or others
138 or otherwise remedy the substance use disorder.

139 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
140 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing
141 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of
142 mental illness or substance use disorder is likely to cause serious harm to himself, herself, or
143 others and because of mental illness or a substance use disorder requires treatment, the
144 magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the
145 question of whether the individual's circumstances make him or her amenable to outpatient
146 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.

147 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit

148 court judge shall find and enter an order stating whether or not it is likely that deterioration will
149 occur without clinically necessary treatment, or there is probable cause to believe that the
150 individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to
151 himself, herself, or others. The agreement is to be in writing and approved by the individual, his or
152 her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the
153 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate
154 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be
155 released to outpatient treatment upon the terms and conditions of the voluntary treatment
156 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary
157 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes
158 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental
159 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or
160 refused to comply with the terms and conditions of the voluntary treatment agreement and whether
161 the individual as a result of mental illness or substance use disorder remains likely to cause
162 serious harm to himself, herself, or others, the entry of an order requiring admission under
163 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the
164 provisions of this article regarding release pursuant to a voluntary treatment agreement or
165 convalescent status may be construed as creating a right to receive outpatient mental health
166 services or treatment, or as obligating any person or agency to provide outpatient services or
167 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a
168 mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary
169 treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may
170 not be for a period of more than six months if the individual has not been found to be involuntarily
171 committed during the previous two years and for a period of no more than two years if the
172 individual has been involuntarily committed during the preceding two years. If in any proceeding
173 held pursuant to this article the individual objects to the issuance or conditions and terms of an

174 order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental
175 hygiene commissioner may not enter an order directing treatment pursuant to a voluntary
176 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment
177 agreement is ordered, the individual subject to the order may, upon request during the period the
178 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the
179 individual may seek to have the order canceled or modified. Nothing in this section affects the
180 appellate and habeas corpus rights of any individual subject to any commitment order.

181 The commitment of any individual as provided in this article shall be in the least restrictive
182 setting and in an outpatient community-based treatment program to the extent resources and
183 programs are available, unless the clear and convincing evidence of the certifying professional
184 under subsection (e) of this section, who is acting in a manner consistent with the standard of care
185 establishes that the commitment or treatment of that individual requires an inpatient hospital
186 placement. Outpatient treatment will be based upon a plan jointly prepared by the Department of
187 Health Facilities and the comprehensive community mental health center or licensed behavioral
188 health provider.

189 (i) At any hearing held pursuant to subsection (h) of this section, where an individual is
190 found have to have a substance use disorder under but is not found to be likely to cause serious
191 harm to himself, herself, or others, both probable cause and grounds for involuntary hospitalization
192 exist where the individual has lost the power of self-control with respect to substance use, and the
193 individual is in need of substance abuse services and, by reason of substance abuse impairment,
194 his or her judgment has been so impaired that the individual is incapable of appreciating his or her
195 need for such services and is further incapable of making a rational decision in regard thereto:
196 *Provided*, That an individual's mere refusal to receive substance abuse services does not
197 constitute evidence of lack of judgment with respect to his or her need for substance abuse
198 services.

199 (j) If the certifying professional determines that an individual requires involuntary

200 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to
201 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will
202 cause significant medical complications, the person certifying the individual shall recommend that
203 the individual be closely monitored for possible medical complications. If the magistrate, mental
204 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she
205 shall include a recommendation that the individual be closely monitored in the order of
206 commitment.

207 (k) The Supreme Court of Appeals and the Secretaries of the Department of Human
208 Services and Department of Health Facilities shall specifically develop and propose a statewide
209 system for evaluation and adjudication of mental hygiene petitions which shall include payment
210 schedules and recommendations regarding funding sources. Additionally, the Secretaries of the
211 Department of Human Services and Department of Health Facilities shall also immediately seek
212 reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental
213 agreements to provide efficient and efficacious services to out-of-state residents found in West
214 Virginia and who are in need of mental hygiene services.

215 (l) The amendments to this section enacted during the 2025 regular legislative session,
216 shall be known as the known as the Joel Archer Substance Abuse Intervention Act.

217 (m) The Supreme Court of Appeals is requested to promulgate rules to implement the
218 amendments made to this section during the 2025 regular session of the Legislature.

NOTE: The purpose of this bill is to enact "Caitlyn's Law," which will require a mandatory 24-hour hold in a hospital or other qualified facility pending an evaluation from a mental hygiene commissioner for all individuals suspected or known to have an addiction or dependency on pending evaluation from a mental hygiene commissioner.

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