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WEST VIRGINIA LEGISLATURE
STATE HOUSE, CHARLESTON, W. VA.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1970

ENROLLED

SENATE BILL NO. 202

(By Mr. Jackson, Mr. President,
and Mr. Holliday)

PASSED Feb. 12, 1970

In Effect Ninety days from Passage

202

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-18-70

ENROLLED

Senate Bill No. 202

(By MR. JACKSON, Mr. President, and MR. HOLLIDAY)

[Passed February 12, 1970; in effect ninety days from passage.]

AN ACT to amend chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to the entry of the state of West Virginia into an interstate compact on the mentally disturbed offender.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fifteen, to read as follows:

**ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DIS-
ORDERED OFFENDER.**

§27-15-1. Enactment of compact.

1 The interstate compact on the mentally disordered
2 offender, hereinafter called "the compact," is hereby
3 ratified, enacted into law and entered into with all juris-
4 dictions legally joining therein, in the form substantially
5 as follows:

**INTERSTATE COMPACT ON THE MENTALLY
DISORDERED OFFENDER**

Article 1. Purpose and policy.

1 (a) The party states, desiring by common action to
2 improve their programs for the care and treatment of
3 mentally disordered offenders, declare that it is the policy
4 of each of the party states to:

5 (1) Strengthen their own programs and laws for the
6 care and treatment of the mentally disordered offender.

7 (2) Encourage and provide for such care and treat-
8 ment in the most appropriate locations, giving due
9 recognition to the need to achieve adequacy of diagnosis,
10 care, treatment, aftercare and auxiliary services and

11 facilities and, to every extent practicable, to do so in
12 geographic locations convenient for providing a thera-
13 peutic environment.

14 (3) Authorize cooperation among the party states in
15 providing services and facilities, when it is found that
16 cooperative programs can be more effective and efficient
17 than programs separately pursued.

18 (4) Place each mentally disordered offender in a legal
19 status which will facilitate his care, treatment and
20 rehabilitation.

21 (5) Authorize research and training of personnel on
22 a cooperative basis, in order to improve the quality or
23 quantity of personnel available for the proper staffing
24 of programs, services and facilities for mentally disordered
25 offenders.

26 (6) Care for and treat mentally disordered offenders
27 under conditions which will improve the public safety.

28 (b) Within the policies set forth in this article, it is
29 the purpose of this compact to:

30 (1) Authorize negotiation, entry into, and operations
31 under contractual arrangements among any two or more

32 of the party states for the establishment and maintenance
33 of cooperative programs in any one or more of the fields
34 for which specific provision is made in the several articles
35 of this compact.

36 (2) Set the limits within which such contracts may
37 operate, so as to assure protection of the civil rights of
38 mentally disordered offenders and protection of the rights
39 and obligations of the public and of the party states.

40 (3) Facilitate the proper disposition of criminal charges
41 pending against mentally disordered offenders, so that
42 programs for their care, treatment and rehabilitation may
43 be carried on efficiently.

Article II. Definitions.

1 As used in this compact:

2 (a) "Mentally disordered offender" means a person
3 who has been determined, by adjudication or other
4 method legally sufficient for the purpose in the party
5 state where the determination is made, to be mentally
6 ill and:

7 (1) Is under sentence for the commission of crime; or

8 (2) Who is confined or committed on account of the

9 commission of an offense for which, in the absence of
10 mental illness, said person would be subject to incar-
11 ceration in a penal or correctional facility.

12 (b) "Patient" means a mentally disordered offender
13 who is cared for, treated, or transferred pursuant to this
14 compact.

15 (c) "Sending state" means a state party to this compact
16 in which the mentally disordered offender was convicted;
17 or the state in which he would be subject to trial on or
18 conviction of an offense, except for his mental condition;
19 or, within the meaning of Article V of this compact, the
20 state whose authorities have filed a petition in connection
21 with an untried indictment, information or complaint.

22 (d) "Receiving state" means a state party to this com-
23 pact to which a mentally disordered offender is sent for
24 care, aftercare, treatment or rehabilitation, or within the
25 meaning of Article V of this compact, the state in which
26 a petition in connection with an untried indictment, in-
27 formation or complaint has been filed.

Article III. Contracts.

1 (a) Each party state may make one or more contracts

2 with any one or more of the other party states for the care
3 and treatment of mentally disordered offenders on behalf
4 of a sending state in facilities situated in receiving states,
5 or for the participation of such mentally disordered of-
6 fenders in programs of aftercare on conditional release
7 administered by the receiving state. Any such contract
8 shall provide for:

9 (1) Its duration.

10 (2) Payments to be made to the receiving state by the
11 sending state for patient care, treatment and extraordi-
12 nary services, if any.

13 (3) Determination of responsibility for ordering or per-
14 mitting the furnishing of extraordinary services, if any.

15 (4) Participation in compensated activities, if any,
16 available to patients; the disposition or crediting of any
17 payment received by patients on account thereof; and the
18 crediting of proceeds from or disposal of any products
19 resulting therefrom.

20 (5) Delivery and retaking of mentally disordered of-
21 fenders.

22 (6) Such other matters as may be necessary and ap-

23 appropriate to fix the obligations, responsibilities and rights
24 of the sending and receiving states.

25 (b) Prior to the construction or completion of construc-
26 tion of any facility for mentally disordered offenders or
27 addition to such facility by a party state, any other party
28 state or states may contract therewith for the enlarge-
29 ment of the planned capacity of the facility or addition
30 thereto, or for the inclusion therein of particular equip-
31 ment or structures, and for the reservation of a specific
32 percentum of the capacity of the facility to be kept avail-
33 able for use by patients of the sending state or states so
34 contracting. Any sending state so contracting may, to the
35 extent that moneys are legally available therefor, pay to
36 the receiving state, a reasonable sum as considered for
37 such enlargement of capacity, or provision of equipment
38 or structures, and reservation of capacity. Such payment
39 may be in a lump sum or in installments as provided in
40 the contract.

41 (c) A party state may contract with any one or more
42 other party states for the training of professional or other
43 personnel whose services, by reason of such training,

44 would become available for or be improved in respect of
45 ability to participate in the care and treatment of men-
46 tally disordered offenders. Such contracts may provide
47 for such training to take place at any facility being oper-
48 ated or to be operated for the care and treatment of
49 mentally disordered offenders; at any institution or facil-
50 ity having resources suitable for the offering of such
51 training; or may provide for the separate establishment
52 of training facilities, provided that no such separate es-
53 tablishment shall be undertaken, unless it is determined
54 that an appropriate existing facility or institution cannot
55 be found at which to conduct the contemplated program.
56 Any contract entered into pursuant to this paragraph shall
57 provide for:

58 (1) The administration, financing and precise nature of
59 the program.

60 (2) The status and employment or other rights of the
61 trainees.

62 (3) All other necessary matters.

63 (d) No contract entered into pursuant to this compact
64 shall be inconsistent with any provision thereof.

Article IV. Procedures and rights.

1 (a) Whenever the duly constituted judicial or ad-
2 ministrative authorities in a state party to this compact,
3 and which has entered into a contract pursuant to Ar-
4 ticle III, shall decide that custody, care and treatment
5 in, or transfer of a patient to, a facility within the ter-
6 ritory of another party state, or conditional release for
7 aftercare in another party state is necessary in order
8 to provide adequate care and treatment or is desirable in
9 order to provide an appropriate program of therapy or
10 other treatment, or is desirable for clinical reasons, said
11 officials may direct that the custody, care and treatment
12 be within a facility or in a program of aftercare within
13 the territory of said other party state, the receiving state
14 to act in that regard solely as agent for the sending
15 state.

16 (b) The appropriate officials of any state party to
17 this compact shall have access, at all reasonable times,
18 to any facility in which it has a contractual right to
19 secure care or treatment of patients for the purpose
20 of inspection and visiting such of its patients as may
21 be in the facility or served by it.

22 (c) Except as otherwise provided in Article VI, pa-
23 tients in a facility pursuant to the terms of this compact
24 shall at all times be subject to the jurisdiction of the
25 sending state and may at any time be removed for trans-
26 fer to a facility within the sending state, for transfer
27 to another facility in which the sending state may have
28 a contractual or other right to secure care and treat-
29 ment of patients, for release on aftercare or other con-
30 ditional status, for discharge, or for any other purpose
31 permitted by the laws of the sending state: *Provided,*
32 That the sending state shall continue to be obligated to
33 such payments as may be required pursuant to the terms
34 of any contract entered into under the terms of Ar-
35 ticle III.

36 (d) Each receiving state shall provide regular re-
37 ports to each sending state on the patients of that send-
38 ing state in facilities pursuant to this compact including
39 a psychiatric and behavioral record of each patient and
40 certify said record to the official designated by the
41 sending state, in order that each patient may have the
42 benefit of his or her record in determining and altering

43 the disposition of said patient in accordance with the
44 law which may obtain in the sending state and in order
45 that the same may be a source of information for the
46 sending state.

47 (e) All patients who may be in a facility or receiv-
48 ing aftercare from a facility pursuant to the provisions
49 of this compact shall be treated in a reasonable and
50 humane manner and shall be cared for, treated and
51 supervised in accordance with the standards pertaining
52 to the program administered at the facility. The fact
53 of presence in a receiving state shall not deprive any
54 patient of any legal rights which said patient would
55 have had if in custody or receiving care, treatment or
56 supervision as appropriate in the sending state.

57 (f) Any hearing or hearings to which a patient
58 present in a receiving state pursuant to this compact
59 may be entitled by the laws of the sending state shall
60 be had before the appropriate authorities of the sending
61 state, or of the receiving state if authorized by the
62 sending state. The receiving state shall provide adequate
63 facilities for such hearings as may be conducted by the ap-

64 appropriate officials of a sending state. In the event such
65 hearing or hearings are had before officials of the re-
66 ceiving state, the governing law shall be that of the
67 sending state and a record of the hearing or hearings
68 as prescribed by the sending state shall be made. Said
69 record together with any recommendations of the hear-
70 ing officials shall be transmitted forthwith to the offi-
71 cial or officials before whom the hearing would have
72 been had if it had taken place in the sending state.
73 In any and all proceedings had pursuant to the pro-
74 visions of this paragraph, the officials of the receiving
75 state shall act solely as agents of the sending state and
76 no final determination shall be made in any matter
77 except by the appropriate officials of the sending state.
78 Costs of records made pursuant to this paragraph shall
79 be borne by the sending state.

80 (g) Any patient confined pursuant to this compact
81 shall be released within the territory of the sending
82 state unless the patient, and the sending and receiving
83 states, shall agree upon release in some other place.
84 The sending state shall bear the cost of such return to
85 its territory.

86 (h) Any patient pursuant to the terms of this com-
87 pact shall be subject to civil process and shall have any
88 and all rights to sue, be sued and participate in and
89 derive any benefits or incur or be relieved of any obli-
90 gations or have such obligations modified or his status
91 changed on account of any action or proceeding in which
92 he could have participated if in any appropriate facility
93 of the sending state or being supervised therefrom, as
94 the case may be, located within such state.

95 (i) The parent, guardian, trustee, or other person or
96 persons entitled under the laws of the sending state to
97 act for, advise, or otherwise function with respect to
98 any patient shall not be deprived of or restricted in his
99 exercise of any power in respect of any patient pur-
100 suant to the terms of this compact.

Article V. Disposition of charges.

1 (a) Whenever the authorities responsible for the care
2 and treatment of a mentally disordered offender, whether
3 convicted or adjudicated in the state or subject to care,
4 aftercare, treatment or rehabilitation pursuant to a con-
5 tract, are of the opinion that charges based on untried

6 indictments, informations or complaints in another party
7 state present obstacles to the proper care and treatment of
8 a mentally disordered offender or to the planning or
9 execution of a suitable program for him, such authorities
10 may petition the appropriate court in the state where the
11 untried indictment, information or complaint is pending
12 for prompt disposition thereof. If the mentally disordered
13 offender is a patient in a receiving state, the appropriate
14 authorities of the sending state, upon recommendation of
15 the appropriate authorities in the receiving state, shall,
16 if they concur in the recommendation, file the petition
17 contemplated by this paragraph.

18 (b) The court shall hold a hearing on the petition with-
19 in thirty days of the filing thereof. Such hearing shall
20 be only to determine whether the proper safeguarding and
21 advancement of the public interest; the condition of the
22 mentally disordered offender; and the prospects for more
23 satisfactory care, treatment and rehabilitation of him war-
24 rant disposition of the untried indictment, information or
25 complaint prior to termination of the defendant's status
26 as a mentally disordered offender in the sending state. The

27 prosecuting officer of the jurisdiction from which the un-
28 tried indictment, information or complaint is pending, the
29 petitioning authorities, and such other persons as the
30 court may determine shall be entitled to be heard.

31 (c) Upon any hearing pursuant to this Article, the court
32 may order such adjournments or continuances as may be
33 necessary for the examination or observation of the men-
34 tally disordered offender or for the securing of necessary
35 evidence. In granting or denying any such adjournment
36 or continuance, the court shall give primary consideration
37 to the purposes of this compact, and more particularly to
38 the need for expeditious determination of the legal and
39 mental status of a mentally disordered offender so that his
40 care, treatment and discharge to the community only
41 under conditions which will be consonant with the public
42 safety may be implemented.

43 (d) The presence of a mentally disordered offender
44 within a state wherein a petition is pending or being heard
45 pursuant to this Article, or his presence within any other
46 state through which he is being transported in connection
47 with such petition or hearing, shall be only for the pur-

48 poses of this compact, and no court, agency or person shall
49 have or obtain jurisdiction over such mentally disordered
50 offender for any other purpose by reason of his presence
51 pursuant to this Article. The mentally disordered offender
52 shall, at all times, remain in the custody of the sending
53 state. Any acts of officers, employees, or agencies of the
54 receiving state in providing or facilitating detention,
55 housing or transportation for the mentally disordered
56 offender shall be only as agents for the sending state.

57 (e) Promptly upon conclusion of the hearing the court
58 shall dismiss the untried indictment, information or com-
59 plaint, if it finds that the purposes enumerated in para-
60 graph (b) of this Article would be served thereby. Other-
61 wise, the court shall make such order with respect to the
62 petition and the untried indictment, information or com-
63 plaint as may be appropriate in the circumstances and
64 consistent with the status of the defendant as a mentally
65 disordered offender in the custody of and subject to the
66 jurisdiction of the sending state.

67 (f) No fact or other matter established or adjudicated
68 at any hearing pursuant to this Article, or in connection

69 therewith, shall be deemed established or adjudicated,
70 nor shall the same be admissible in evidence, in any sub-
71 sequent prosecution of the untried indictment, informa-
72 tion or complaint concerned in a petition filed pursuant
73 to this Article unless:

74 (1) The defendant or his duly empowered legal repre-
75 sentative requested or expressly acquiesced in the making
76 of the petition, and was afforded an opportunity to parti-
77 cipate in person in the hearing; or

78 (2) The defendant himself offers or consents to the
79 introduction of the determination or adjudication at such
80 subsequent proceedings.

**Article VI. Acts not reviewable in receiving
state; return.**

1 (a) Any decision of the sending state in respect of
2 any matter over which it retains jurisdiction pursuant
3 to this compact shall be conclusive upon and not review-
4 able within the receiving state, but if at the time the
5 sending state seeks to remove a patient from the receiving
6 state there is pending against the patient within such
7 state any criminal charge or if the patient is suspected

8 of having committed within such state a criminal offense,
9 the patient shall not be returned without the consent of the
10 receiving state until discharged from prosecution or other
11 form of proceeding, imprisonment or detention for such
12 offense. The duly accredited officers of the sending state
13 shall be permitted to transport patients pursuant to this
14 compact through any and all states party to this compact
15 without interference.

16 (b) A patient who escapes while receiving care and
17 treatment or who violates provisions of aftercare by
18 leaving the jurisdiction, or while being detained or trans-
19 ported pursuant to this compact shall be deemed an
20 escapee from the sending state and from the state in
21 which the facility is situated or the aftercare was being
22 provided. In the case of an escape to a jurisdiction other
23 than the sending or receiving state, the responsibility for
24 return shall be that of the sending state, but nothing con-
25 tained herein shall be construed to prevent or affect the
26 activities of officers and agencies of any jurisdiction
27 directed toward the apprehension and return of an
28 escapee.

Article VII. Federal aid.

1 Any state party to this compact may accept federal
2 aid for use in connection with any facility or program,
3 the use of which is or may be affected by this compact
4 or any contract pursuant thereto and any patient in a
5 receiving state pursuant to this compact may participate
6 in any such federally aided program or activity for which
7 the sending and receiving states have made contractual
8 provision: *Provided*, That if such program or activity is
9 not part of the customary regimen of the facility or pro-
10 gram the express consent of the appropriate official of
11 the sending state shall be required therefor.

Article VIII. Entry into force.

1 This compact shall enter into force and become effective
2 and binding upon the states so acting when it has been
3 enacted into law by any two states from among the states
4 of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota,
5 Missouri, Nebraska, North Dakota, Ohio, South Dakota
6 and Wisconsin. Thereafter, this compact shall enter into
7 force and become effective and binding as to any other

8 of said states, or any other state upon similar action by
9 such state.

Article IX. Withdrawal and termination.

1 This compact shall continue in force and remain bind-
2 ing upon a party state until it shall have enacted a statute
3 repealing the same and providing for the sending of
4 formal written notice of withdrawal from the compact to
5 the appropriate officials of all other party states. An actual
6 withdrawal shall not take effect until two years after
7 the notices provided in said statute have been sent. Such
8 withdrawal shall not relieve the withdrawing state from
9 its obligations assumed hereunder prior to the effective
10 date of withdrawal. Before the effective date of with-
11 drawal, a withdrawing state shall remove to its territory,
12 at its own expense, such patients as it may have in other
13 party states pursuant to the provisions of this compact.

Article X. Other arrangements unaffected.

1 Nothing contained in this compact shall be construed
2 to abrogate or impair any agreement or other arrange-
3 ment which a party state may have with a nonparty
4 state for the custody, care, treatment, rehabilitation or

5 aftercare of patients nor to repeal any other laws of
6 a party state authorizing the making of cooperative
7 arrangements.

Article XI. Construction and severability.

1 The provisions of this compact shall be liberally con-
2 strued and shall be severable. If any phrase, clause, sen-
3 tence or provision of this compact is declared to be
4 contrary to the constitution of any participating state
5 or of the United States or the applicability thereof to
6 any government, agency, person or circumstance is held
7 invalid, the validity of the remainder of this compact
8 and the applicability thereof to any government, agency,
9 person or circumstance shall not be affected thereby.
10 If this compact shall be held contrary to the constitu-
11 tion of any state participating therein, the compact shall
12 remain in full force and effect as to the remaining states
13 and in full force and effect as to the state affected as to
14 all severable matters.

§27-15-2. Who may enter into contracts under compact.

1 The governor, the state commissioner of public in-
2 stitutions, the department of mental health, the state

3 board of education, the state board of vocational edu-
4 cation, the division of vocational rehabilitation, the state
5 commission on higher education, the West Virginia board
6 of regents, the state department of welfare, the depart-
7 ment of public safety, the state department of health
8 and the West Virginia board of probation and parole may
9 negotiate and enter into contracts on behalf of this state
10 pursuant to Article III of the compact and may perform
11 such contracts: *Provided*, That no funds, personnel, fa-
12 cilities, equipment, supplies, or materials shall be pledged
13 for, committed or used on account of any such contract,
14 unless legally available therefor.

§27-15-3. Effective date.

1 The effective date of this article shall be July one, one
2 thousand nine hundred seventy.

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

William Tompat
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

J. Horna Kelly
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Lucy B. Jackson
President of the Senate

Wm. F. Brisky
Speaker House of Delegates

The within *approved* this the *17th*
day of *February*, 1970.

Arch. A. Moore, Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 2/17/70

Time 2:15 p.m.