WEST VIRGINIA CODE CHAPTER 27 ARTICLE 15

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§27-15-1. Enactment of compact.

The interstate compact on the mentally disordered offender, hereinafter called "the compact," is hereby ratified, enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

Interstate Compact on the Mentally

Disordered Offender

Article I. Purpose and Policy.

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

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

(2) Encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, aftercare and auxiliary services and facilities and, to every extent practicable, to do so in geographic locations convenient for providing a therapeutic environment.

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

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

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

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

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

(1) Authorize negotiation, entry into, and operations under contractual arrangements among any two or more of the party states for the establishment and maintenance of cooperative programs in any one or more of the fields for which specific provision is made in the several articles of this compact.

(2) Set the limits within which such contracts may operate, so as to assure protection of the

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civil rights of mentally disordered offenders and protection of the rights and obligations of the public and of the party states.

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

Article II. Definitions.

As used in this compact:

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

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

(2) Who is confined or committed on account of the commission of an offense for which, in the absence of mental illness, said person would be subject to incarceration in a penal or correctional facility.

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

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

(d) "Receiving state" means a state party to this compact to which a mentally disordered offender is sent for care, aftercare, treatment or rehabilitation, or within the meaning of Article V of this compact, the state in which a petition in connection with an untried indictment, information or complaint has been filed.

Article III. Contracts.

(a) Each party state may make one or more contracts with any one or more of the other party states for the care and treatment of mentally disordered offenders on behalf of a sending state in facilities situated in receiving states, or for the participation of such mentally disordered offenders in programs of aftercare on conditional release administered by the receiving state. Any such contract shall provide for:

(1) Its duration.

(2) Payments to be made to the receiving state by the sending state for patient care,

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treatment and extraordinary services, if any.

(3) Determination of responsibility for ordering or permitting the furnishing of extraordinary services, if any.

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

(5) Delivery and retaking of mentally disordered offenders.

(6) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any facility for mentally disordered offenders or addition to such facility by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the facility or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the facility to be kept available for use by patients of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) A party state may contract with any one or more other party states for the training of professional or other personnel whose services, by reason of such training, would become available for or be improved in respect of ability to participate in the care and treatment of mentally disordered offenders. Such contracts may provide for such training to take place at any facility being operated or to be operated for the care and treatment of mentally disordered offenders; at any institution or facility having resources suitable for the offering of such training; or may provide for the separate establishment of training facilities: Provided, That no such separate establishment shall be undertaken, unless it is determined that an appropriate existing facility or institution cannot be found at which to conduct the contemplated program. Any contract entered into pursuant to this paragraph shall provide for:

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

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

(3) All other necessary matters.

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

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Article IV. Procedures and Rights.

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that custody, care and treatment in, or transfer of a patient to, a facility within the territory of another party state, or conditional release for aftercare in another party state is necessary in order to provide adequate care and treatment or is desirable in order to provide an appropriate program of therapy or other treatment, or is desirable for clinical reasons, said officials may direct that the custody, care and treatment be within a facility or in a program of aftercare within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

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

(c) Except as otherwise provided in Article VI, patients in a facility pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed for transfer to a facility within the sending state, for transfer to another facility in which the sending state may have a contractual or other right to secure care and treatment of patients, for release on aftercare or other conditional status, for discharge, or for any other purpose permitted by the laws of the sending state: Provided, That the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the patients of that sending state in facilities pursuant to this compact including a psychiatric and behavioral record of each patient and certify said record to the official designated by the sending state, in order that each patient may have the benefit of his or her record in determining and altering the disposition of said patient in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

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

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

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by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this paragraph, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this paragraph shall be borne by the sending state.

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

(h) Any patient pursuant to the terms of this compact shall be subject to civil process and shall have any and all rights to sue, be sued and participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if in any appropriate facility of the sending state or being supervised therefrom, as the case may be, located within such state.

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

Article V. Disposition of Charges.

(a) Whenever the authorities responsible for the care and treatment of a mentally disordered offender, whether convicted or adjudicated in the state or subject to care, aftercare, treatment or rehabilitation pursuant to a contract, are of the opinion that charges based on untried indictments, informations or complaints in another party state present obstacles to the proper care and treatment of a mentally disordered offender or to the planning or execution of a suitable program for him such authorities may petition the appropriate court in the state where the untried indictment, information or complaint is pending for prompt disposition thereof. If the mentally disordered offender is a patient in a receiving state, the appropriate authorities of the sending state, upon recommendation of the appropriate authorities in the receiving state, shall, if they concur in the recommendation, file the petition contemplated by this paragraph.

(b) The court shall hold a hearing on the petition within thirty days of the filing thereof. Such hearing shall be only to determine whether the proper safeguarding and advancement of the public interest; the condition of the mentally disordered offender; and the prospects for

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more satisfactory care, treatment and rehabilitation of him warrant disposition of the untried indictment, information or complaint prior to termination of the defendant's status as a mentally disordered offender in the sending state. The prosecuting officer of the jurisdiction from which the untried indictment, information or complaint is pending, the petitioning authorities, and such other persons as the court may determine shall be entitled to be heard.

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

(d) The presence of a mentally disordered offender within a state wherein a petition is pending or being heard pursuant to this article, or his presence within any other state through which he is being transported in connection with such petition or hearing, shall be only for the purposes of this compact, and no court, agency or person shall have or obtain jurisdiction over such mentally disordered offender for any other purpose by reason of his presence pursuant to this article. The mentally disordered offender shall, at all times, remain in the custody of the sending state. Any acts of officers, employees, or agencies of the receiving state in providing or facilitating detention, housing or transportation for the mentally disordered offender shall be only as agents for the sending state.

(e) Promptly upon conclusion of the hearing the court shall dismiss the untried indictment, information or complaint, if it finds that the purposes enumerated in paragraph (b) of this article would be served thereby. Otherwise, the court shall make such order with respect to the petition and the untried indictment, information or complaint as may be appropriate in the circumstances and consistent with the status of the defendant as a mentally disordered offender in the custody of and subject to the jurisdiction of the sending state.

(f) No fact or other matter established or adjudicated at any hearing pursuant to this article, or in connection therewith, shall be deemed established or adjudicated, nor shall the same be admissible in evidence, in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to this article unless:

(1) The defendant or his duly empowered legal representative requested or expressly acquiesced in the making of the petition, and was afforded an opportunity to participate in person in the hearing; or

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

Article VI. Acts Not Reviewable in Receiving

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State; Return.

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove a patient from the receiving state there is pending against the patient within such state any criminal charge or if the patient is suspected of having committed within such state a criminal offense, the patient shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport patients pursuant to this compact through any and all states party to this compact without interference.

(b) A patient who escapes while receiving care and treatment or who violates provisions of aftercare by leaving the jurisdiction, or while being detained or transported pursuant to this compact shall be deemed an escapee from the sending state and from the state in which the facility is situated or the aftercare was being provided. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for return shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VII. Federal Aid.

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

Article VIII. Entry into Force.

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state upon similar action by such state.

Article IX. Withdrawal and Termination.

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice

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of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such patients as it may have in other party states pursuant to the provisions of this compact.

Article X. Other Arrangements Unaffected.

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the custody, care, treatment, rehabilitation or aftercare of patients nor to repeal any other laws of a party state authorizing the making of cooperative arrangements.

Article XI. Construction and Severability.

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

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

The Governor, the state commissioner of public institutions, the state Board of Education, the state board of vocational education, the division of vocational rehabilitation, the state commission on higher education, the West Virginia board of regents, the state department of welfare, the department of public safety, the state department of health and the West Virginia board of probation and parole may negotiate and enter into contracts on behalf of this state pursuant to Article III of the compact and may perform such contracts: Provided, That no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor.

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§27-15-3. Effective date.

The effective date of this article shall be July 1, 1970.

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