# WEST VIRGINIA CODE: §27-5-11

**§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; instituting modified mental hygiene procedures; establishing procedures; providing for forms and reports.**

(a) The Supreme Court of Appeals shall, in consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers, implement throughout the state modified mental hygiene procedures that are consistent with the requirements set forth in this section. The judicial circuits selected for implementing the modified procedures shall be circuits in which the Supreme Court of Appeals determines, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health consumers and service providers, that adequate resources will be available to implement the modified procedures. After July 1, 2012, the Supreme Court of Appeals and the Secretaries of the Department of Human Services and Department of Health Facilities in consultation with local mental health consumers and providers may add programs for modified mental hygiene procedures in any judicial circuit that establishes a need for the same.

(b) The Secretaries of the Department of Human Services and Department of Health Facilities, after consultation with the Supreme Court of Appeals and local mental health services consumers and service providers, shall prescribe appropriate forms to implement the modified procedures and shall annually prepare reports on the efficacy of the modified procedures and transmit the report to the Legislature on or before the first day of the 2013 and 2014 regular sessions of the Legislature.

(c) The Supreme Court of Appeals may, after consultation with the Secretaries of the Department of Human Services and Department of Health Facilities and local mental health services consumers and providers further modify any specific modified procedures that are implemented pursuant to this section. The modified procedures must be consistent with the requirements of this chapter and this section. If the Secretaries of the Department of Human Services and Department of Health Facilities determines that the use of any modified procedure in one or more judicial circuits is placing an unacceptable additional burden upon state mental health resources, the Supreme Court of Appeals shall, in consultation with the secretary, modify the procedures used in such a fashion as will address the concerns of the secretary, consistent with the requirements of this chapter. The provisions of this section and the modified procedures thereby authorized shall cease to have any force and effect on June 30, 2014, unless extended by an act of the Legislature prior to that date.

(1) The modified procedures shall authorize that a verified petition seeking a treatment compliance order may be filed by any person alleging:

(A) That an individual, on two or more occasions within a twenty-four month period prior to

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the filing of the petition, as a result of mental illness or addiction or both, has been hospitalized pursuant to the provisions of this chapter; or that the individual has been convicted of one or more crimes of violence against the person within a twenty-four month period prior to the filing of the petition and the individual's failure to take prescribed medication or follow another prescribed regimen to treat a mental illness or addiction or both was a significant aggravating or contributing factor in the circumstances surrounding the crime;

(B) That the individual's previous hospitalizations due to mental illness or addiction or both or the individual's crime of violence occurred after or as a result of the individual's failure to take medication or other treatment as prescribed by a physician to treat the individual's mental illness or addiction or both; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition's review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the circuit judge or mental hygiene commissioner determines on the basis of the petition that it is necessary to protect the individual or to secure their examination, a detention order may be entered ordering that the individual be taken into custody and examined by a psychiatrist or licensed psychologist. A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to the provisions of section two of this article or a final commitment hearing conducted pursuant to the provisions of section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken into custody and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment compliance order are proved by the evidence adduced at the hearing, which must include expert testimony by a psychiatrist or licensed psychologist, the circuit judge or mental hygiene commissioner may enter a treatment compliance order for a period not to exceed six months upon making the following findings:

(A) That the individual is eighteen years of age or older;

(B) That on two or more occasions within a twenty-four month period prior to the filing of the petition an individual, as a result of mental illness, has been hospitalized pursuant to the provisions of this chapter; or that on at least one occasion within a twenty-four month period

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prior to the filing of the petition has been convicted of a crime of violence against any person;

(C) That the individual's previous hospitalizations due to mental illness or addiction or both occurred as a result of the individual's failure to take prescribed medication or follow a regimen or course of treatment as prescribed by a physician or psychiatrist to treat the individual's mental illness or addiction; or that the individual has been convicted for crimes of violence against any person and the individual's failure to take medication or follow a prescribed regimen or course of treatment of the individual's mental illness or addiction or both was a significant aggravating or contributing factor in the commission of the crime;

(D) That a psychiatrist or licensed psychologist who has personally examined the individual within the preceding twenty-four months has issued a written opinion that the individual, without the aid of the medication or other prescribed treatment, is likely to cause serious harm to himself or herself or to others;

(E) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or other treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against any person;

(F) That, where necessary, a responsible entity or individual is available to assist and monitor the individual's compliance with an order requiring the individual to take the medication or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed medication or follow other prescribed regimen or course of treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to assess the individual within forty-eight hours of the entry of the treatment compliance order.

(4) The order may require an individual to take medication and treatment as prescribed and if appropriate to attend scheduled medication and treatment-related appointments: *Provided*, That a treatment compliance order shall be subject to termination or modification by a circuit judge or mental hygiene commissioner if a petition is filed seeking termination or modification of the order and it is shown in a hearing on the petition that there has been a material change in the circumstances that led to the entry of the original order that justifies the order’s modification or termination: *Provided, however*, That a treatment compliance order may be extended by a circuit judge or mental hygiene commissioner for additional periods of time not to exceed six months, upon the filing of a petition seeking an extension and after a hearing on the petition or upon the agreement of the individual.

(5) After the entry of a treatment compliance order in accordance with the provisions of subdivisions (3) and (4) of this subsection if a verified petition is filed alleging that an

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individual has not complied with the terms of a medication and treatment compliance order and if a circuit judge or mental hygiene commissioner determines from the petition and any supporting evidence that there is probable cause to believe that the allegations in the petition are true, counsel shall be appointed for the individual and a copy of the petition and all supporting evidence shall be furnished to the individual and his or her counsel. If the circuit judge or mental hygiene commissioner considers it necessary to protect the individual or to secure his or her examination, a detention order may be entered to require that the individual be examined by a psychiatrist or psychologist. (A) A hearing on the allegations in the petition, which may be combined with a hearing on a probable cause petition conducted pursuant to section two of this article or a final commitment hearing conducted pursuant to section four of this article, shall be held before a circuit judge or mental hygiene commissioner. If the individual is taken and remains in custody as a result of a detention order, the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(B) At a hearing on any petition filed pursuant to the provisions of paragraph (A) of this subdivision, the circuit judge or mental hygiene commissioner shall determine whether the individual has complied with the terms of the medication and treatment compliance order. If the individual has complied with the order, the petition shall be dismissed. If the evidence presented to the circuit judge or mental hygiene commissioner shows that the individual has complied with the terms of the existing order, but the individual's prescribed medication, dosage or course of treatment needs to be modified, then the newly modified medication and treatment prescribed by a psychiatrist who personally examined the individual may be properly incorporated into a modified order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself or herself, herself or others as a result of the individual’s mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment. Any procedures conducted pursuant to this subsection must comply with and satisfy all applicable due process and hearing requirements of sections two and three of this article.

(d) The modified procedures may authorize that upon the certification of a qualified mental health professional, as described in subsection (e) of this section, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious harm to himself or herself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the

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individual at a mental health facility for immediate examination and treatment.

(e) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or licensed psychologists, whose qualifications and training have been reviewed and approved by the Supreme Court of Appeals, to issue certifications that authorize and direct the involuntary admission of an individual subject to the provisions of this section on a temporary probable cause basis to a mental health facility for examination and treatment. The authorized psychiatrist or licensed psychologist must conclude and certify based on personal observation prior to certification that the individual is mentally ill and, because of such mental illness or addiction or both, is imminently likely to cause serious harm to himself or herself or to others if not immediately restrained and promotion of the best interests of the individual requires immediate hospitalization. Immediately upon certification, the psychiatrist or licensed psychologist shall provide notice of the certification to a circuit judge, mental hygiene commissioner or designated magistrate in the county where the individual resides.

(f) No involuntary hospitalization pursuant to a temporary probable cause determination issued pursuant to the provisions of this section shall continue in effect for more than forty-eight hours without the filing of a petition for involuntary hospitalization and the occurrence of a probable cause hearing before a circuit judge, mental hygiene commissioner or designated magistrate. If at any time the chief medical officer of the mental health facility to which the individual is admitted determines that the individual is not likely to cause serious harm as a result of mental illness or addiction or both, the chief medical officer shall discharge the individual and immediately forward a copy of the individual’s discharge to the circuit judge, mental hygiene commissioner or designated magistrate.

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