WEST VIRGINIA CODE: §27-5-3

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

(a) *Admission to a mental health facility for examination*. — An individual shall be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code. Upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq*. of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq*. of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq*. of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or has a substance use disorder and, because of the mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained and treated: *Provided*, That the opinions offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician assistant with advanced duties in psychiatric medicine shall be within his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination*. — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or has a substance use disorder, the individual shall be released.

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

(d) *Findings and conclusions required for certification*. — A certification under this section shall include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based, including facts that less restrictive interventions and placements were considered but are not appropriate and available and that the risks and benefits were explained as required by §27-5-1(i) of this code.

(e) *Notice requirements*. — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having

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jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Three-day time limitation for examination and certification at mental health facility or state hospital*. — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than three days, excluding Sundays and holidays, unless, within the three-day period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is not suffering from a physical ailment manifesting behaviors which mimic mental illness but is mentally ill or has a substance use disorder and is likely to injure himself, herself, or others and requires continued commitment and treatment. If the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) *Twenty-day time limitation for institution of final commitment proceedings*. — If, in the opinion of the examining physician, the patient is mentally ill or has a substance use disorder and because of the mental illness or substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within 20 calendar days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within the 20-day period absent good cause, the individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) *Thirty-five day time limitation for conclusion of all proceedings*. — If all proceedings as provided in §27-3-1 *et seq*. and §27-4-1 *et seq*. of this code are not completed within 35 days from the date of filing the Application for Involuntary Custody for Mental Health Examination, the individual shall be immediately released.

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