WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1949

ENROLLED
SENATE BILL No. 126

(By Mr. Wylie)

PASSED March 12, 1949

In Effect July 1, 1949... Passage
ENROLLED

Senate Bill No. 126
(By Mr. Wylie)

[Passed March 12, 1949; in effect July 1, 1949.]

AN ACT to amend and reenact chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one and two, article one; by amending and reenacting sections one and two, article two; and by repealing section seven of said article two; by amending the caption to article three and by amending and reenacting sections one, two, three, four, five, six, seven, eight, nine, ten, twelve and thirteen, of said article three; by amending and reenacting sections one, three, three-c, five, six, eight and nine, and by repealing sections three-a and three-b of article four; by amending the caption of article five; by amending the caption of ar-
article six, and by amending and reenacting sections one and two of said article six; by amending and reenacting section one, article seven; by amending and reenacting sections one and three, article eight; by amending and reenacting sections one, two, three and five, of article nine; by amending and reenacting section one, article ten; all relating to mentally diseased persons.

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 and reenacted by amending and reenacting sections one and two, article one; by amending and reenacting sections one and two, article two; and by repealing section seven of said article two; by amending the caption to article three and by amending and reenacting sections one, two, three, four, five, six, seven, eight, nine, ten, twelve and thirteen, of said article three; by amending and reenacting sections three, three-c, five, six, eight and nine, and by repealing sections three-a and three-b of article four; by amending the caption of article five; by amending the caption of article six, and by amending and reenacting sections one and two of said article six; by amending and reenacting
section one, article seven; by amending and reenacting sections one and three, article eight; by amending and reenacting sections one, two, three and five, article nine; by amending and reenacting section one, article ten, all to read as follows:

Article 1. Definitions.

Section 1. What the Words "Mentally Diseased" to Include.—The words "mentally diseased", whenever they occur in this code, shall be construed as referring to any person who is mentally ill, feeble-minded, or epileptic.

Whenever the terms "lunatic", "idiot", "imbecile", "mentally defective", "insane", "moron", "senile dementia", "non compos", "deranged", "dotards", "mentally ill", or words of like import are used throughout this code, they shall be interpreted to mean persons mentally diseased.

Sec. 2. Resident of State and County.—For the purpose of this chapter no person shall be considered a resident of this state unless he is a citizen of the United States and has been a bona fide resident of this state for at least one year, and was not mentally diseased when he came into this State; and no person shall be considered a resident of a county who is not a resident of the state, as above de-
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8 fined, and who has not been a resident of the county for
9 at least sixty days, and was not mentally diseased when
10 he came to the county.

Article 2. State Hospitals.

Section 1. Locations; Continuation; Management.—The
2 state hospitals for the mentally diseased, heretofore es-
3 tablished at Weston, Spencer, Huntington, and Lakin
4 shall be continued and known respectively, as the Weston
5 state hospital, Spencer state hospital, Huntington state
6 hospital, and Lakin state hospital, and there is hereby es-
7 tablished another and new hospital, for the mentally dis-
8 eased at Barboursville, Cabell county, which shall be
9 known as the Barboursville state hospital. Said hospitals
10 shall be managed, directed and controlled as prescribed
11 in article one, chapter twenty-five of the code, and further
12 as provided in this chapter.

Sec. 2. Segregation of Races.—The Weston, Spencer,
2 Huntington, and Barboursville state hospitals shall be
3 used for the care and treatment of white persons, and the
4 Lakin state hospital shall be used for the care and treat-
5 ment of colored persons.
Article 3. Determination of Mental Disease; Commitment.

Section 1. County Mental Hygiene Commission.—There shall be in each county a mental hygiene commission of three members, to be composed of any member of the county court, the prosecuting attorney and/or an assistant prosecuting attorney so designated by the prosecuting attorney and approved by the county court, and the clerk of the county court and/or a deputy clerk so designated by the clerk of the county court and approved by the county court, who shall serve as such without compensation, except for traveling or other necessary expenses incurred in the discharge of their duties as members of the commission, which expenses shall be audited by the county court and paid out of the county treasury. A member of the county court shall be the chairman of the commission. In the absence of a county court member, the prosecuting attorney and/or his designated assistant as herein provided, shall act as such chairman. The clerk of the county court and/or his designated deputy shall be the clerk of the commission and shall keep in a proper book provided for the purpose a full and careful record of all
the acts, orders and resolutions of the commission. Any
two members from different offices represented on the
commission shall be a quorum thereof. The county court
of each county shall at its first term of court of each year
enter an order designating the persons eligible to sit as
members of the county mental hygiene commission.

Sec. 2 Meetings.—All meetings of the commission shall
be held at the county seat, unless it shall be thought best
by the commission to meet at some other place, as in the
case of a mentally diseased person whose condition makes
it advisable to meet at or near his residence.

Sec. 3. How Proceedings Originated; Complaint; War-
rant.—If any resident of the county reasonably suspect
any person therein to be mentally diseased, he may make
complaint under oath to the clerk of the county court,
giving such information and stating such facts therein as
may be required, and deliver the same to the clerk of the
county court, whose duty it shall be to issue a warrant
ordering the person suspected and named in such com-
plaint to be brought before the commission at a time and
place named therein that his mental condition may be in-
quired into. If the clerk of the county court does not deem such suspicion to be reasonable, he may require such complainant to furnish the certificate of a reputable physician showing the suspected person's condition, before issuing a warrant. Any member of the commission without such complaint may have such warrant issued for any person found in his county, whom he shall suspect to be mentally diseased. All such warrants shall be signed by the clerk of the county court and have impressed thereon the seal thereof; and may be addressed to the sheriff of the county or to any constable of any district thereof, or to a special constable appointed for the purpose and named therein; but if any relative or friend of the person so suspected will serve such warrant and cause such suspected person to be brought before the commission, he may be allowed to do so. The officer or person to whom the warrant is addressed shall take the suspected person into custody and bring him before the commission at the time and place named therein.

Whenever a person apparently mentally diseased is so violent as to endanger his own safety or the safety of
32 others, any law-enforcement officer may, with or without
33 a warrant, take such person into protective custody.

Sec. 4. Guardian ad Litem for Suspected Person.—Be-
2 fore proceeding with the hearing of the matter, the com-
3 mission shall appoint a guardian ad litem, who shall be a
4 competent attorney, for such suspected person, and such
5 guardian shall be present at the hearing and manage the
6 case on behalf of the person suspected. Such attorney
7 shall be paid by the county court. Such suspected person
8 and his counsel shall have the right to cross examine any
9 witnesses.

Sec. 5. Witnesses; Physicians; Evidence to be reduced
to writing.—Among the witnesses there shall be included
2 two reputable physicians, duly authorized to practice
3 medicine in this state, who shall separately or together,
4 make a physical and mental examination of the suspected
5 person, and each physician shall make out a certificate of
6 the result of such examination in the form required by
7 the board of control, which certificate shall be signed and
8 sworn to by each physician and shall be considered as
9 evidence by the commission. Not more than one phy-
sician of any firm or association of physicians practicing medicine together, shall sign any such certificate respecting the mental or body condition of any person suspected of being mentally diseased.

Sec. 6. Hearing; Disposition of Mentally Diseased Person.—If the commission finds as a result of the hearing that the person suspected is a mentally diseased person and should be confined in a hospital, and that he is not a resident of another county of this State, it shall order him to be committed to the nearest state hospital unless some relative or friend of such person will agree to take care of him, in which case the commission may deliver him to such person, and take from such relative or friend a bond in the penalty of at least five hundred dollars, with sufficient security, to be approved by the commission, payable to the state of West Virginia, with condition to restrain and take proper care of such mentally diseased person until the cause of confinement shall cease, or until he is delivered to the commission to be proceeded with according to law; but if the person found to be a mentally diseased person is not dangerous to himself or to the lives or
property of others, or is found harmless and incurable, he
may be delivered to any relative or friend who will agree
to take proper care of him, without such bond, if in the
judgment of the commission in any case the same may be
proper.

Sec. 7. Disposition of Mentally Diseased Person Who
is Nonresident of County; Expenses.—If a person found to
be mentally diseased by the commission is a resident of
another county of this state, a transcript of the evidence
adduced at the hearing of such person, properly certified
by the clerk of the county court, shall be forthwith for-
warded to the clerk of the county court of the county of
which such person is a resident, who shall immediately
present such transcript to the mental hygiene commission
of said county. Such commission shall give full faith and
credit to the evidence contained in such transcript, and, if
satisfied that such person is mentally diseased, shall order
the person to be committed to one of the state hospitals
for the mentally diseased, as though the person had been
brought before it in the first instance. This order shall
be transmitted forthwith to the county clerk of the county
in which the examination was held, who shall execute said
order promptly. All expenses incurred in this proceeding,
as well as for the hospitalization of the mentally diseased
person, shall be borne by the county of which he is a
resident.

Sec. 8. Commission to Inquire into Residence.—In the
examination of a person before them, suspected of being
mentally diseased, the county mental hygiene commis-
sion, if it appear that he is not a resident of this State,
shall make diligent inquiry to ascertain his residence,
and if it be ascertained that he is a resident of another
state, the clerk of the mental hygiene commission shall
immediately inform the board of control, which shall
thereupon instruct said clerk what disposition is to be
made of the suspected person.

Sec. 9. Arrangements Preparatory to Transfer of Men-
tally Diseased Person to Hospital; Expenses of Commit-
ment and Transfer.—When a person has been committed
to a hospital as hereinbefore provided, the clerk of the
commission shall immediately communicate with the
superintendent of the proper hospital, and forward to
him the commitment papers. In the meantime the com-
mission may deliver such mentally diseased person into
the custody of the sheriff for safe keeping until he is
taken to the hospital, or may provide for his safe keeping
for such time by any relative or friend who may agree
to do so, upon such terms as may be agreed upon. No
such mentally diseased person shall be confined in any
jail, lockup, or other similar place, unless by reason of
his violent or dangerous condition the same shall be
necessary; and it shall be the duty of the commission
to have all such persons admitted to a hospital where
they can receive proper treatment, as speedily as pos-
sible. In any case the clerk of the county court may
communicate with the superintendent of the hospital
by telegraph or telephone. All expenses incurred in the
arrest, hearing, and transportation of any mentally dis-
eased person to a hospital, including any such telegraph-
ing or telephoning, shall be certified to the county court
by the clerk thereof, and shall be paid out of the county
treasury.

Sec. 10. Compensation of Physicians, Witnesses, and
Others.—The county court of any county may contract with two or more competent physicians respecting the compensation to be paid to them for their services in examining mentally diseased persons and other persons brought before the mental hygiene commission of the county, the county court, or the circuit court, or confined in jail. The compensation of physicians, of all witnesses, and of all other persons and officers whose compensation is not fixed in this chapter or by any other law, employed in examination of such persons, or for their care and maintenance, or for other services in connection therewith, unless the same shall have been agreed upon before or at the time such service was performed, or is fixed by law, shall be such as may be prescribed by the county court of the county, and shall be paid out of the county treasury.

Sec. 12. When Officer Not to be Compensated for Transfer to Hospital.—No officer shall be allowed anything for carrying a mentally diseased person or other person to or from a hospital, whether for himself, his guard, or the mentally diseased person, unless he shall have previ-
6 ously ascertained that there is room therein for such
7 mentally diseased person.

Sec. 13. How and When Circuit Court to Inquire into a
2 Person’s Sanity.—If a person residing in this State be
3 suspected to be mentally diseased but has not been
4 found to be a mentally diseased person by the county
5 mental hygiene commission, the circuit court of the
6 county of which such person is an inhabitant shall, upon
7 the application of any person interested, and after five
8 days’ notice to the person suspected, proceed to examine
9 into his state of mind, and if satisfied that he is a men-
10 tally diseased person, shall so find. If a person residing
11 out of this state, but having property herein, be suspected
12 to be a mentally diseased person, the circuit court of
13 the county wherein the property or a greater part of it is
14 shall, upon like application and being satisfied that he
15 is a mentally diseased person, so find. Such finding, in
16 either case, shall be authority for the appointment of a
17 committee for such person by the county court.

Article 4. Patients In Hospitals; Restoration To Sanity And
Discharge.

   Section 1. Admission to Hospital of Committed Persons.
The superintendent of the hospital to whom application is made as hereinbefore provided, shall, on receipt of such application, carefully consider the same, and if he be of the opinion that the person named is a proper one to be admitted to his institution, and there is room for him therein, he shall, without delay, cause such person to be brought to his hospital by one of the attendants thereof, the actual expenses whereof shall be paid out of the proper fund of the hospital, and repaid to the State by the county as hereinafter provided. If there be no room in the hospital to which the application is made, the superintendent thereof shall immediately communicate the fact to the board of control, which he may do when deemed necessary by telegraph or telephone, and transmit the commitment papers to the board of control, whose duty it shall be to ascertain whether there is room in any one of the other hospitals, and if there is, to cause such person to be admitted thereto, and the superintendent thereof to send an attendant for such person: Provided, That any reputable and trustworthy
relative or friend of such person may be allowed by the
county mental hygiene commission to deliver him to the
hospital, if such relative or friend will do so without
expense to the county or state.

Sec. 5. *Voluntary Admission.*—Any person, a resident
of this State, who desires the benefit of institutional
treatment, may be admitted to one of the State mental
hospitals on his own written application, or upon the
application of a reputable physician, providing such
person is willing to enter the hospital. Such admissions
shall be subject to the rules and regulations of the board
of control. Such a voluntary patient may at any time
request his discharge by giving to the superintendent
notice in writing of his desire to leave. The superin-
tendent shall, within fifteen days after the receipt of
this notice, grant the request unless upon examination,
as provided in section two of this article, the examining
board has determined that the patient is mentally dis-
eased and requires further hospitalization. If such de-
termination is made the examining board shall forthwith
forward to the clerk of the county court of the county
in which such a person is a resident, a detailed report
of their examination, on forms provided by the board
of control, which report shall immediately be presented
to the mental hygiene commission of said county. Such
commission shall give full faith and credit to this report,
and if satisfied that such person is mentally diseased,
shall issue an order legally committing the mentally
diseased person to the hospital making the report, as
though the person had been brought before it. All ex-
penses incurred in this proceeding, as well as the hos-
pitalization of the mentally diseased person, shall be
borne by the county of which he is a resident.

Sec. 3-C Report of Admissions; Registration by the
Board of Control.—The superintendent of each state men-
tal institution shall, within ten days after the admission
of any patient, report the admission to the board of con-
trol together with any other information the board of
control may require. A copy of said report shall be
sent to the state health commissioner. He shall make a
similar report of the discharge or death of any patient.

From such reports and other sources the board shall
prepare and keep current a register of persons in this state who are suffering from mental disease.

The name of a person so registered shall not be made public nor shall the register be accessible to anyone except by order of the board of control or by order of the judge of a court of record.

Sec. 5. Commitment and Admission of Criminal Mentally Diseased Person.—If any person charged with or convicted of crime be found, in the court before which he is so charged or was convicted, to be mentally diseased, and if such report shall order him to be confined in one of the state hospitals, he shall be received and confined in it if there be room therein for him. The sheriff or other officer of the court by which the order is made shall immediately proceed in the manner directed by section seven, article four of this chapter, to ascertain whether such vacancy exists in a state hospital; and until it is ascertained that there is a vacancy, such person shall be kept in the jail of the county of such court.

Sec. 6. Disposition of Mentally Diseased Person Who Is Nonresident of State.—When a person who is a
nonresident of the State is committed to, or detained as an inmate of, a state hospital, the superintendent thereof shall immediately report the fact to the board of control. The board shall take proper steps to cause such person to be deported, if an alien; or, if otherwise a nonresident of this State, to be taken to the state, territory or place of his residence and delivered to the proper authorities thereof.

Sec. 8. Return of Criminal Mentally Diseased Person

Upon Restoration.—When any person confined in a state hospital charged with crime and subject to be tried therefor, or convicted of crime and subject to be punished therefor, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver him to the proper officer upon the order of the court.

Sec. 9. Discharge by Court Proceedings of Persons Unlawfully Detained.—Any person who has been found mentally diseased by a county mental hygiene commission or any other board or tribunal other than a circuit court, and any person who is confined in any hospital
or other place of confinement or otherwise restrained of
his liberty in violation of law, or a patient who has
been restored to sanity and to whom the superintendent
of the hospital refuses to give certificate of restoration
and discharge, may present his petition, or any relative
or friend may present a petition in his behalf, to the
circuit court of the county in which the hospital is lo-
cated in case of a patient denied the certificate of restora-
tion, and in other cases to the circuit court of the county
in which the person is confined or is in custody, stating
facts. The courts shall treat such petition as an appli-
cation for a writ of habeas corpus, so far as applicable
and necessary, and cause such process to issue as the
court may deem proper, and fix a time for the hearing of
the case, which may be heard by the court either with or
without a jury, as the court may order; and if the per-
son is found sane, or it is found that he is held in custody
in violation of law, he shall be discharged. In cases of
patients who have been denied certificates of restoration
and discharge by the superintendent of a hospital, or in
which it is alleged that a patient is held in custody il-
legally in any state hospital, the superintendent shall have at least five days' notice of the time and place of the trial in the circuit court. In all such cases the prosecuting attorney shall represent the sheriff or other county officer or the commission who shall be a defendant in such proceedings; and the attorney general shall represent the superintendent of any hospital who is a defendant. In case the decision shall be against the applicant, he or his bondsman (if any), or the person signing the petition, shall pay the costs of the proceedings. In any case in which a court may find a person sane upon an inquest or trial respecting his sanity, he shall be discharged and be entitled to a certified copy of the order of the court made in the case. Nothing in this section shall be construed as applying to patients charged with or convicted of crime.


Section 1. Report to County Court; Provision for Maintenance; When Not to be Paid to Jailer.—When any person is confined in any jail as a mentally diseased person,
the jailer shall certify the fact to the county court of the county at the next ensuing term, and the court shall then make such provision for the care and maintenance of such person, while in jail as it may deem proper: Provided, however, That the allowance to the jailer for such care and maintenance shall not exceed one dollar per day, except in special and extraordinary cases when the court may allow a larger sum. A reasonable allowance may be made for clothing for such person. No such allowances shall be ordered or paid, unless it appear in the certificate that the jailer proved to the court that, immediately after the commitment of such person, and at least once in each ten days thereafter, application was made to a state hospital for admission, and that such application was refused for want of room, or that applications were not continued because the admission of such person had been refused for some other cause than want of room, and unless it further appears in such certificate that the jailer made report in due time to the county court of the county, as provided, in the first part of this section.

Sec. 2. *How Discharge of Such Mentally Diseased Per-*
son Obtained.—If any reputable person present to the clerk of the county court of a county wherein a person is confined as a mentally diseased person, other than one charged with or convicted of crime, or other than one confined in a state hospital, or a duly licensed private hospital, an application in writing for the discharge of such mentally diseased person on the ground that he has been restored to sanity, the mental hygiene commission for the county shall consider the same and may proceed to make an inquest upon such mentally diseased person as is provided in article three of this chapter. If the commission find that such person has been restored to sanity, they shall set him at liberty, if they have authority to do so; and if they have not such authority, they shall give a certificate of their finding to the person making the application, who may present it to the proper court.

Article 7. Private Hospitals.

Section 1. Permit from Board of Control; Regulations.

—No private hospital for the care and treatment of mentally diseased persons for compensation shall be established unless a permit therefor shall be first obtained from
the board of control. The application for such permit shall be accompanied by the plan of the premises to be occupied, and with such other data and facts as the board may require. The board of control may make such terms and regulations in regard to the conduct of such hospital as it may think proper and necessary. The board of control, or any member thereof, or any person authorized by the board to do so, shall have full authority to investigate and inspect such private hospital; and the board of control may revoke the permit of any such hospital for good cause, after reasonable notice to the superintendent or other person in charge thereof.

Article 8. West Virginia Training School.

Section 1. Management; Superintendent.—For the treatment and training of mentally diseased persons there shall be a state institution to be known as the “West Virginia Training School.” It shall belong to that class of institutions mentioned in section three, article one, chapter twenty-five of this code, and shall be managed and controlled as provided in said chapter, all the provisions whereof shall be applicable to said school except as in this
article provided. The chief executive officer thereof shall
be a superintendent, who shall be a legally qualified phy-
sician, scientifically trained in mental medicine and of not
less than five years' experience in the treatment and care
of mentally diseased persons, and who shall be appointed
by the governor with the advice and consent of the senate.

Sec. 3. Persons Who May Be Admitted.—There shall
be admitted to said school any person mentally diseased
from birth or from an early age, so pronounced that he or
she is unable to care for himself or herself and manage his
or her affairs, with ordinary prudence, and who, because
of such mental disease, is a menace to the happiness and
welfare of himself or herself or of others in the com-
munity, and requires care, training or control for the pro-
tection of himself or herself or of others, and yet who is
not mentally ill. This type of person is classed as feeble-
minded, including idiots, imbeciles or morons. Should
the school at any time not be able to accommodate all per-
sons of such class offered for admission, preference in ad-
mission shall be given to children between the ages of
seven and fourteen years, inclusive, of the moron type
who are capable of being trained and of attending to their own ordinary physical needs. No person suffering from tuberculosis or leprosy shall be admitted, nor shall any deaf or blind person be admitted.

Article 9. Committees; Disposition of Property.

Section 1. To be Appointed by County Court.—When a person is found to be mentally diseased by any court or by the county mental hygiene commission, or is committed to a state hospital by the county court, the county court shall appoint a committee for him.

Sec. 2. Bond; Refusal to Act or Failure to Qualify; Appointment of Another; Committal to Sheriff.—The county court, when making the appointment of such committee, shall take from him a bond in such penalty and with such surety as it shall deem sufficient, with condition that the person so appointed will well and truly account for any (and) pay over to the person entitled thereto all property and moneys which may come into his hands by virtue of such appointment, and with such other conditions as the court may require. If any person so appointed as committee refuse the trust or shall fail for ten days succeeding
his appointment to give bond as aforesaid, the court, on
the motion of any party interested, or at its own instance,
may appoint some other person as committee, taking from
him bond as above provided, or may commit the estate of
such mentally diseased person to the sheriff of the county,
who shall act as such committee without giving any bond
as such, and he and the sureties on his official bond shall
be liable for the faithful performance of the trust.

Sec. 3. Appraisement of Estate.—The county court,
whenever any committee is appointed for a mentally dis-
eased person, shall appoint appraisers and cause to be
made, returned and recorded an appraisement of the
property, both real and personal, of any such person in
the same manner, to the same extent, within the same
time, and subject to the same regulations and conditions
as required by law for the estate of a deceased person.

Sec. 5. Mortgage, Lease or Sale of Realty.—If the per-
sonal estate of such mentally diseased person be insuf-
ficient for the discharge of his debts, or if such estate or
the residue thereof after payment of the debts, and the
rents and profits of his real estate, be insufficient for his
maintenance and that of his family, if any, the commit-

tee of such mentally diseased person may proceed, as pro-
vided in article one, chapter thirty-seven, of this code, to
obtain authority to mortgage, lease or sell so much of the
real estate of such mentally diseased person as may be
necessary for the purposes aforesaid, or any of them; set-
ting forth in the bill or petition the particulars and the
amount of the estate, real and personal, the application
which may have been made of any personal estate, and
an account of the debts and demands existing against the
estate.

Article 10. Offenses.

Section 1. Malicious Making of Medical Certificate or
Complaint as to Sanity.—Any physician who shall sign
a certificate respecting the sanity of any person without
having made the examination as provided for by this
chapter, or shall make any statement in any such certifi-
cate maliciously for the purpose of having such person
declared mentally diseased, and any person who shall
maliciously make application to any mental hygiene com-
mision or other tribunal for the purpose of having an-
other person declared mentally diseased, shall be fined not exceeding five hundred dollars, or imprisoned not exceeding one year, or both fined and imprisoned at the discretion of the court.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect July 1, 1949

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within APPROVED this the 18TH

day of MARCH, 1949.

Governor.

Filed in the Office of the Secretary of State of West Virginia — MAR 18, 1949

D. Pitt O'Brien,
Secretary of State