WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED
SENATE BILL NO. 202

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

PASSED
Feb. 12, 1970

In Effect

FILED IN THE OFFICE
JOHN G. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-19-70
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 DISORDERED OFFENDER.


1 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 1. Purpose and policy.

1 (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:

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

7 (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 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 of-
fenders 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, treatment and extraordi-
ary services, if any.

(3) Determination of responsibility for ordering or per-
mitting 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 of-
fenders.

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

(b) Prior to the construction or completion of construc-
tion 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 enlarge-
ment of the planned capacity of the facility or addition
thereto, or for the inclusion therein of particular equip-
ment or structures, and for the reservation of a specific
percentum of the capacity of the facility to be kept avail-
able 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 considered 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 men-
tally disordered offenders. Such contracts may provide
for such training to take place at any facility being oper-
ated or to be operated for the care and treatment of
mentally disordered offenders; at any institution or facil-
ity having resources suitable for the offering of such
training; or may provide for the separate establishment
of training facilities, provided that no such separate es-
tablishment 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.
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 receiv-
ing 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 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.
(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 with-
in 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 more
satisfactory care, treatment and rehabilitation of him war-
rant 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 un-
tried 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 men-
tally 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 pur-
poses 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 com-
plaint, if it finds that the purposes enumerated in para-
graph (b) of this Article would be served thereby. Other-
wise, the court shall make such order with respect to the
petition and the untried indictment, information or com-
plaint 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
thoroughly, shall be deemed established or adjudicated,
or shall the same be admissible in evidence, in any sub-
sequent prosecution of the untried indictment, informa-
tion or complaint concerned in a petition filed pursuant
to this Article unless:

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

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

**Article VI. Acts not reviewable in receiving**

**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 review-able 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 trans-
ported 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 con-
tained 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.

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
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 bind-
ing upon a party state until it shall have enacted a statute
repealing the same and providing for the sending of
formal written notice 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 with-
drawal, 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 arrange-
ment 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 con-
strued and shall be severable. If any phrase, clause, sen-
tence 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 constitu-
tion 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.

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

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


The effective date of this article shall be July one, one thousand nine hundred seventy.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William T. Samp
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Joseph H. Harper
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Lloyd B. Jackson
President of the Senate

Ivan J. Buisky
Speaker House of Delegates

The within approved this the 11th day of February, 1970.

Arch. Moore, Jr.
Governor