

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

HOUSE BILL No. 558

(By Mr. SEIBERT)

PASSED FEBRUARY 14, 1972

In Effect 90 Days FROM Passage



FILED IN THE OFFICE
JAMES H. LOUGHEED, IV
SECRETARY OF STATE

THIS DATE 2-17-72

858

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House Bill No. 558
(By MR. SEIBERT)

[Passed February 14, 1972; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and four, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the transportation to and from state hospitals of persons involuntarily hospitalized.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Hospitalization upon written application or medical certification—Emergency procedure; report; notice of admission to certain persons.

1 Any individual may be admitted to a state hospital
2 upon:

3 (a) Written application to the state hospital by a
4 health officer or police officer stating his belief that the
5 individual, because of symptoms of mental illness, may
6 cause injury to himself or others if not immediately re-
7 strained, and the grounds for such belief, and

8 (b) A certification by at least one physician that he

9 has examined the individual and is of the opinion that
10 the individual is mentally ill, and because of his ill-
11 ness, may injure himself or others if not immediately
12 restrained.

13 Any individual with respect to whom such certifica-
14 tion has been issued may not be admitted on the basis
15 thereof at any time after the expiration of three days
16 from the date of such examination. The superintendent
17 of the state hospital admitting the individual shall
18 forthwith make a report thereof to the director of mental
19 health.

20 When an individual is admitted to a state hospital
21 pursuant to the provisions of this section, the superinten-
22 dent thereof shall immediately give notice of the indi-
23 vidual's admission to such hospital to the following
24 persons: His or her spouse and his or her parents or
25 parent or guardian, or if there be no such spouse, par-
26 ents, parent or guardian, to two of the individual's next
27 of kin. Such notice shall be in writing and shall be
28 transmitted to such person or persons at his, her or
29 their last-known address by registered or certified mail,
30 return receipt requested.

31 It shall be the duty of the sheriff to provide immedi-
32 ate transportation to and from the state hospital for
33 all persons hospitalized under the provisions of this sec-
34 tion or the preceding section.

§27-5-4. Legal proceedings for involuntary hospitalization.

1 Proceedings for the involuntary hospitalization of an
2 individual may be commenced by the filing of a written
3 application and the certificate or statement hereinafter
4 provided with the clerk of the county court of the county
5 of which the individual is a resident or where he may
6 be found, by his parents or parent, guardian, spouse,
7 adult next of kin or friend, or by a physician, a health
8 officer or public welfare caseworker familiar with the
9 case of the individual, or the head of any institution in
10 which such individual may be. Such applicant shall file
11 with his application the certificate of a physician stating
12 that in his opinion the individual is mentally ill or
13 mentally retarded and should be hospitalized or a

14 statement by the applicant that the individual has
15 refused to submit to examination by a physician.

16 Upon receipt of an application, the clerk shall give
17 notice thereof to the individual and to the individual's
18 spouse, parents or parent or guardian, or if the individ-
19 ual does not have a spouse, parents or parent or guar-
20 dian, to the individual's adult next of kin. Such notice
21 shall be given within fifteen days after receipt of the
22 application by the clerk and shall be transmitted to
23 such person or persons at his or their last-known ad-
24 dress by registered or certified mail, return receipt
25 requested.

26 As soon as practicable after notice of the commence-
27 ment of proceedings is given, the mental hygiene com-
28 mission shall appoint two physicians to examine the
29 individual and report to the mental hygiene commission
30 their findings as to the mental condition of the indi-
31 vidual and his need for custody, care or treatment in a
32 hospital.

33 If the designated physicians report to the mental
34 hygiene commission that the individual has refused to
35 submit to an examination, the mental hygiene com-
36 mission shall order him to submit to such examination.
37 Such an order may be enforced by the issuance of a
38 warrant ordering the individual to be taken into custody
39 pending examination by the designated physicians. All
40 such warrants shall be signed by the clerk on order of
41 the mental hygiene commission and directed to the
42 sheriff of the county or to any constable of any district
43 thereof, or to a special constable appointed for the pur-
44 pose and named therein.

45 If the report of one or both of the designated physi-
46 cians is to the effect that the individual is mentally ill
47 or mentally retarded, the mental hygiene commission
48 shall forthwith fix a date for and have the clerk of
49 the county court give notice of the hearing to the indi-
50 vidual, the applicant or applicants, and to the individual's
51 spouse, parents or parent or guardian, or if the individual
52 does not have a spouse, parents or parent or guardian,
53 to the individual's adult next of kin. Such notice shall
54 be transmitted to such person or persons at his or their

55 last-known address by registered or certified mail, re-
56 turn receipt requested, and shall be received by such
57 person or persons not less than five days prior to the date
58 of the hearing.

59 The individual, the applicant, and all persons entitled
60 to notice of such hearing, shall be afforded an oppor-
61 tunity to appear at the hearing, to testify, and to present
62 and cross-examine witnesses, and the mental hygiene
63 commission may in its discretion receive the testimony
64 of any other person. The individual shall not be re-
65 quired to be present, and all persons not necessary for
66 the conduct of the proceedings shall be excluded, except
67 that the mental hygiene commission shall admit and
68 hear persons having a legitimate interest in the pro-
69 ceedings. The hearings shall be conducted in as informal
70 a manner as may be consistent with orderly procedure.
71 The mental hygiene commission shall receive all relevant
72 and material evidence which may be offered and shall
73 not be bound by the rules of evidence. The mental
74 hygiene commission shall appoint a guardian ad litem
75 who shall be a competent attorney, for the individual
76 and said guardian shall be present at the hearing and
77 protect the interests of the individual. The mental hy-
78 giene commission may allow such guardian ad litem a
79 reasonable fee for his services which shall be paid by
80 the county court to the extent that funds are made avail-
81 able in the county budget.

82 If, upon completion of the hearing and consideration
83 of the record, the mental hygiene commission finds that
84 the individual is mentally ill or mentally retarded,
85 and:

86 (1) Because of his illness or retardation is likely to
87 injure himself or others if allowed to remain at liberty,
88 or

89 (2) Is in need of custody, care or treatment in a
90 hospital and, because of his illness or retardation lacks
91 sufficient insight or capacity to make responsible deci-
92 sions with respect to his hospitalization, and

93 (3) Is a resident of the county in which the hearing
94 is held, the mental hygiene commission may order his
95 hospitalization for an indeterminate period or for a

96 temporary observation period not exceeding six months.

97 If the order is for a temporary period the mental hy-
98 giene commission may at any time prior to the expira-
99 tion of such period, on the basis of report by the super-
100 intendent of the state hospital in which the patient is
101 confined and such further inquiry as may seem appro-
102 priate, order indeterminate hospitalization of the patient
103 or dismissal of the proceeding.

104 If the mental hygiene commission finds that the indi-
105 vidual is not mentally ill or mentally retarded, the
106 proceeding shall be dismissed. If the commission finds
107 that the individual is mentally ill or mentally retarded
108 but because of such illness or retardation is not likely
109 to injure himself or others if allowed to remain at liberty,
110 the proceedings shall be dismissed. If the commission
111 finds that the individual is mentally ill or mentally re-
112 tardated and that because of such illness or retardation is
113 not likely to injure himself or others if allowed to remain
114 at liberty and that such individual has sufficient insight
115 or capacity to make responsible decisions with respect
116 to his hospitalization, the proceeding shall be dis-
117 missed.

118 If the mental hygiene commission is satisfied that hos-
119 pitalization should be ordered but finds that the indi-
120 vidual is not a resident of the county in which the hearing
121 is held, a transcript of the evidence adduced at the
122 hearing of such person, properly certified by the clerk
123 of the county court, shall forthwith be forwarded to
124 the clerk of the county court of the county of which
125 such person is a resident, who shall immediately pre-
126 sent such transcript to the mental hygiene commission
127 of said county. If the mental hygiene commission of
128 the county of the residence of the individual is satisfied
129 from the evidence contained in such transcript that such
130 individual should be hospitalized as determined by the
131 standards set forth above, the mental hygiene commis-
132 sion shall order the appropriate hospitalization as though
133 the person had been brought before the mental hygiene
134 commission in the first instance. This order shall be
135 transmitted forthwith to the clerk of the county court
136 of the county in which the hearing was held, who shall
137 execute said order promptly.

138 In lieu of ordering the patient to a state hospital, the
139 mental hygiene commission may order him delivered to
140 some responsible person who will agree to take care of
141 him, and take from such responsible person a bond in
142 the penalty of at least five hundred dollars, with sufficient
143 security to be approved by the mental hygiene com-
144 mission, payable to the state of West Virginia, with
145 condition to restrain and take proper care of such person
146 until the further order of the court or judge. But if
147 the person found to be a mentally ill or mentally re-
148 tarded person is not dangerous to himself or to others,
149 or is found harmless, he may be delivered to any re-
150 sponsible person who will agree to take proper care
151 of him without such bond, if in the judgment of the
152 commission the same may be proper.

153 If the person found to be mentally ill or mentally
154 retarded by the mental hygiene commission is a resi-
155 dent of another state, this information shall be forthwith
156 given to the director of mental health, who shall make
157 appropriate arrangements for his transfer to the state
158 of his residence, except as qualified by the interstate
159 compact on mental health.

160 Any order necessitating the transportation of a patient
161 to or from a state hospital shall be carried out immedi-
162 ately by the sheriff of the county in which such order
163 is entered.

164 The superintendent of the state hospital admitting a
165 patient pursuant to proceedings under this section shall
166 forthwith make a report of such admission to the director
167 of mental health.

168 All expenses incurred in this proceeding, including
169 the fees of the designated physicians, shall be borne by
170 the county of which the patient is a resident.

171 The entry of an order ordering hospitalization for an
172 indeterminate period shall relieve the patient of legal
173 capacity.

174 The clerk of the county court in which an order direct-
175 ing hospitalization is entered shall immediately upon
176 entry thereof forward a certified copy of same to the
177 clerk of the county court of the county of which the
178 patient is a resident.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell H. Bane

Chairman Senate Committee

Phyllis Rutledge

Chairman House Committee

Originated in the House.

In effect ninety days from passage.

Howard W. Hanson

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

E. Spivey

President of the Senate

Lewis H. McManus

Speaker House of Delegates

The within *approved* this the *17th*
day of *February*, 1972.

Rich A. Shaver, Jr.

Governor



PRESENTED TO THE
GOVERNOR

Date 2/15/72

Time 2:25 p.m.