

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974

— ● —

ENROLLED

Committee Substitute for

HOUSE BILL No. 910

(By *Mrs. Withrow* *of* *Mr. Green*)

— ● —

PASSED March 9 1974

In Effect July 1, 1974 Passage



C 641

FILED IN THE OFFICE
EUGENE F. NEISKELL III
SECRETARY OF STATE
THIS DATE 3-27-74

910

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 910
(By MRS. WITHROW and MR. GREER)

[Passed March 9, 1974; in effect July 1, 1974.]

AN ACT to repeal articles three and six, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nine, article three, chapter sixty-two of said code; to amend and reenact sections two, three and six, article one, chapter twenty-seven of said code; to further amend said article one by adding thereto five new sections, designated sections nine through thirteen; and to amend and reenact section three, article two; articles four, five, six-a and eleven, all of chapter twenty-seven of said code, all relating to mentally ill, mentally retarded and addicted persons; modifying procedures for admission of persons to mental health facilities; amending procedures relative to commitment; defining words and phrases; relating to rules as to patients; authority of mental health facilities to receive patients; confinement of minors; voluntary patients; release of voluntary patients; right of patient to be released on application; involuntary commitment; hearing; appointment of mental hygiene commissioner; payment by county court; duties of prosecuting attorney; involuntary hospitalization; admission by medical certification; emergency procedures; applications; examinations; hearings; release; legal proceedings for involuntary hospitalization; notice procedures; right to counsel; rules of evidence; transcript of

all proceedings; order of findings; judicial review for persons adversely affected by order of commitment; examination of patients newly admitted to mental health facilities; disposition of patients after examination; procedures upon patient's demand for release, hospitalization by agency of United States; periodic examination and review of committed patients' hospitalization and their right to appeal; rights of patients; fees; expenses of proceedings; transportation for mentally ill, commitment of persons charged or convicted of a crime; determination of competency of defendant to stand trial; hospitalization of defendants found incompetent to stand trial or not guilty by reason of mental illness, mental retardation or addiction; periodic review of person found incompetent to stand trial; judicial hearing of defendant's defense of not guilty; release of defendant during course of criminal proceedings; dismissal of criminal charge; appointment of committee for incompetent persons; bond of committee; appraisal of estate of incompetent person; powers and duties of committee generally; and authority of committee to mortgage, lease or sell realty of incompetent person.

Be it enacted by the Legislature of West Virginia:

That articles three and six, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nine, article three, chapter sixty-two of said code be repealed; that sections two, three and six, article one, chapter twenty-seven of said code be amended and reenacted; that said article one be further amended by adding thereto five new sections, designated sections nine through thirteen; and that section three, article two; articles four, five, six-a and eleven, all of chapter twenty-seven of said code, be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-2. Mental illness.

- 1 "Mental illness" means a manifestation in a person of
- 2 significantly impaired capacity to maintain acceptable levels
- 3 of functioning in the areas of intellect, emotion and physical
- 4 well-being.

§27-1-3. Mental retardation.

- 1 "Mental retardation" means significantly subaverage intel-

2 lectual functioning which manifests itself in a person during
3 his developmental period and which is characterized by his
4 inadequacy in adaptive behavior.

§27-1-6. State hospital.

1 “State hospital” means any hospital, center or institution,
2 or part thereof, established, maintained and operated by the
3 department of mental health or by the department of mental
4 health in conjunction with a political subdivision of the state
5 to provide inpatient or outpatient care and treatment for the
6 mentally ill, mentally retarded or addicted.

§27-1-9. Mental health facility.

1 “Mental health facility” means any inpatient, residential or
2 outpatient facility for the care and treatment of the mentally
3 ill, mentally retarded or addicted which is operated, or licensed
4 to operate, by the department of mental health and shall
5 include state hospitals as defined in section six of this article.
6 The term shall also include a veterans administration hospital.

§27-1-10. Psychologist.

1 “Psychologist” means any person licensed under the laws
2 of this state to engage in the practice of psychology.

§27-1-11. Addiction.

1 “Addiction” means the frequent or constant use of alcohol,
2 narcotic or other intoxicating or stupefying substance which
3 renders the person using such substance incapable of exer-
4 cising reasonable judgment in the conduct of his affairs or
5 which causes such person to be dangerous to himself or others.

§27-1-12. Likely to cause serious harm.

1 “Likely to cause serious harm” refers to a person who
2 has:

3 (1) A substantial tendency to physically harm himself
4 which is manifested by threats of or attempts at suicide or
5 serious bodily harm or other conduct, either active or passive,
6 which demonstrates that he is dangerous to himself; or

7 (2) A substantial tendency to physically harm other per-
8 sons which is manifested by homicidal or other violent be-

9 havior which place others in reasonable fear of serious physical
10 harm.

§27-1-13. Chief medical officer.

1 “Chief medical officer” means the physican responsible for
2 medical programs within a mental health facility and shall
3 include the clinical director of a state hospital.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-3. Rules as to patients.

1 The director of mental health shall make rules, not
2 contrary to law, regulating the admission of patients to
3 mental health facilities, the care, maintenance and treatment
4 of inpatients, residents and outpatients of such facil-
5 ities and the release, trial visit and discharge of pa-
6 tients therefrom. No patient under eighteen years
7 of age in any state hospital shall be housed in any area
8 also occupied by any patient over eighteen years of age. Any
9 patient adjudged by the chief medical officer to have a likeli-
10 hood of seriously harming others shall be confined in a secure
11 area of a mental health facility.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

1 The chief medical officer of a mental health facility,
2 subject to the availability of suitable accommodations and
3 to the rules and regulations promulgated by the director of
4 mental health, shall admit for diagnosis, care and treatment
5 any individual:

6 (a) Over eighteen years of age who is mentally ill, men-
7 tally retarded or addicted or who has manifested symptoms
8 of mental illness, mental retardation or addiction and who
9 makes application for hospitalization; or

10 (b) Under eighteen years of age who is mentally ill, men-
11 tally retarded or addicted or who has manifested symptoms of
12 mental illness, mental retardation or addiction and there is
13 application for hospitalization therefor in his behalf (1)
14 by the parents of such person, or (2) if only one parent
15 is living, then by such parent, or (3) if the parents are living

16 separate and apart, by the one who has the custody of such
 17 person, or (4) if there is a guardian who has custody of such
 18 person, then by such guardian. Such admission shall be con-
 19 ditioned upon the consent of the prospective patient if the
 20 patient is sixteen years of age or over.

21 (c) No person under eighteen years of age shall be ad-
 22 mitted under this section to any state hospital unless said
 23 person has first been reviewed and evaluated by a local
 24 mental health facility and recommended for admission.

§27-4-2. Release of voluntary patients.

1 The chief medical officer of a mental health facility shall
 2 release any voluntary patient who, in his opinion, has recov-
 3 ered or whose hospitalization is no longer advisable but he
 4 shall make every effort to assure that any further supportive
 5 services required to meet the patient's need upon his re-
 6 lease will be provided.

§27-4-3. Right to release on application.

1 A voluntary patient who requests his release or whose
 2 release is requested in writing, by his parents, parent, guardian,
 4 spouse or adult next of kin shall be released forthwith except
 5 that:

6 (a) If the patient was admitted on his own application, and
 7 request for release is made by a person other than the patient,
 8 release shall be conditioned upon the agreement of the patient
 9 thereto;

10 (b) If the patient is under eighteen years of age, his release
 11 prior to becoming eighteen years of age may be conditioned
 12 upon the consent of the person or persons who applied for
 13 his admission; or

14 (c) If, within ninety-six hours of the receipt of the request,
 15 the chief medical officer of the mental health facility in
 16 which the patient is hospitalized files with the clerk of the
 17 circuit court or mental hygiene commissioner of the county
 18 where the facility is situated, an application for involuntary
 19 hospitalization as provided in section four, article five of this
 20 chapter, release may be postponed for twenty days pending

21 a finding in accordance with the legal proceedings prescribed
22 therein.

23 Legal proceedings for involuntary hospitalization shall not
24 be commenced with respect to a voluntary patient unless re-
25 lease of the patient has been requested by him or the individual
26 or individuals who applied for his admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

**§27-5-1. Involuntary commitment; hearing; appointment of mental
hygiene commissioner; caseworker defined.**

1 No individual shall be involuntarily committed to a mental
2 health facility except by order of the circuit court of the
3 county wherein such person resides or was found and then
4 only after a full hearing on the issues relating to the neces-
5 sity of committing an individual to a mental health facility.
6 The circuit court of each county may appoint a competent at-
7 torney in each county to preside over such hearings, who shall
8 be designated "mental hygiene commissioner." He shall be a
9 person of good moral character, of standing in his profession
10 and a resident of the county for which he is appointed, and
11 he shall, before assuming the duties of such commissioner,
12 take the oath required of other special commissioners as
13 provided in article one, chapter six of this code. The county
14 court shall pay the commissioner a reasonable sum com-
15 mensurate with his services. He shall discharge his duties and
16 hold his office at the pleasure of the circuit court by which
17 he is appointed and may be removed at any time by the court.
18 It shall be the duty of the mental hygiene commissioner to
19 conduct orderly inquiries into the mental health of any indi-
20 vidual brought before him concerning the advisability of com-
21 mitting the individual to a mental health facility. The mental
22 hygiene commissioner shall safeguard, at all times, the rights
23 and interests of the individual as well as the interests of the
24 state. The mental hygiene commissioner shall make a written
25 report of his findings to the circuit court. In any proceed-
26 ings before any court of record as set forth in this article,
27 the court of record shall appoint an interpreter for any in-
28 dividual who is deaf or cannot speak or who speaks a for-
29 eign language and who may be subject to involuntary commit-
30 ment to a mental health facility.

31 In all proceedings under this article, it shall be the duty
32 of the prosecuting attorney to represent the applicants.

33 As used in this article, the term "caseworker" means a person
34 employed by a mental health facility, state hospital, county
35 health department, or the state department of welfare, as an
36 agent for the providing of the social or medical services, or
37 both, of such facility, hospital or department.

**§27-5-2. Involuntary hospitalization; admission by medical cer-
tification; emergency procedure; examination; hear-
ing; release.**

1 (a) Any individual may be admitted to a mental health
2 facility upon:

3 (1) Written application under oath to the facility by his
4 parents or parent, guardian, spouse, adult next of kin or
5 friend, a health officer or caseworker familiar with the case
6 of the individual, or the head of any institution where such
7 individual may be and certification by two physicians that
8 they have examined the individual and that they are of the
9 opinion that he is mentally ill, mentally retarded or addicted
10 and because of his mental illness, mental retardation or addic-
11 tion he is likely to cause serious harm to himself or others
12 if he is allowed to remain at liberty; admission to a mental
13 health facility in accordance with the procedure set forth in
14 this subdivision shall be referred to as a medical certification
15 admission, or

16 (2) Written application under oath to the facility by a
17 health officer, caseworker or law enforcement officer stating
18 his belief that the individual, because of symptoms of mental
19 illness, mental retardation or addiction, is likely to cause
20 serious harm to himself or others if not immediately restrained
21 and the grounds for such belief and certification by at least
22 one physician that he has examined the individual and that
23 he is of the opinion the individual is mentally ill, mentally
24 retarded or addicted and because of his mental illness, mental
25 retardation or addiction he is likely to cause serious harm
26 to himself or others if not immediately restrained. Admission
27 to a mental health facility in accordance with the procedures
28 set forth in this subdivision (2) shall be referred to as an
29 emergency admission.

30 (b) Any individual with respect to whom such certification
31 has been issued may not be admitted on the basis thereof
32 at any time after the expiration of three days from the date
33 of such examination in the case of emergency admission with
34 one physician's certificate in accordance with subdivision (2)
35 of this section or fifteen days from the first examination in
36 the case of medical certification admission in accordance with
37 subdivision (1) of this section. A certification under this
38 section must include findings and conclusions of the mental
39 examination, the date, time and place thereof, and the facts
40 upon which the conclusion of likelihood of causing serious
41 harm is based. The chief medical officer may, with the ap-
42 proval of the director of mental health, transfer such individual
43 to a state hospital or to another similar type of mental health
44 facility after determining that no less restrictive treatment
45 alternative is suitable or available. The chief medical officer
46 of the mental health facility admitting the individual shall
47 forthwith make a report thereof to the director of mental
48 health.

49 When an individual is admitted to a mental health facility
50 pursuant to the provisions of this section, the chief medical
51 officer thereof shall immediately give notice of the individual's
52 admission to the individual's spouse, if any and the individual's
53 parents or parent, guardian, or if there be no such spouse,
54 parents, parent or guardian, to two of the individual's adult
55 next of kin. The notice shall be in writing and shall be trans-
56 mitted to such person or persons at his, her or their last
57 known address by certified or registered mail, return receipt
58 requested.

59 (c) After the individual's admission to a mental health
60 facility, he shall not be detained more than three days unless,
61 within such period, the individual is examined by two staff
62 physicians and the likelihood that the individual will cause
63 serious harm to himself or others is confirmed by such phy-
64 sicians. The physicians may jointly examine the individual
65 but must make separate, independent and signed evaluations
66 of his condition.

67 (d) If, on the basis of the examination by the two staff
68 physicians, the chief medical officer determines that the in-

69 individual should continue to be hospitalized, a written request
70 for a hearing shall be sent to the clerk of the circuit court of
71 the county of the individual's residence or to the clerk of the
72 circuit court of the county where he was found within five days
73 after the person's admission. Within a reasonable time after
74 receipt of the request, the circuit court or mental hygiene
75 commissioner shall conduct a hearing pursuant to section four
76 of this article on the question of the individual's mental health
77 and the need for his further hospitalization, but in no event
78 shall such hearing be held later than twenty days after the
79 admission of the individual to a mental health facility.

80 (e) Unless he chooses to change his status to that of volun-
81 tary hospitalization, an individual hospitalized pursuant to
82 this section shall be released without fail:

83 (1) Within three days after his admittance to a mental
84 health facility, unless he has been examined by two staff
85 physicians both of whom confirm in writing that the individual
86 is likely to cause serious harm to himself or others if not
87 immediately restrained; or

88 (2) Within five days after his admittance to a mental
89 health facility, unless the chief medical officer has sent a
90 written request within such time, to the circuit clerk of the
91 circuit court of the county of which the individual is a
92 resident or where he was found for a hearing on the question
93 of the individual's mental condition and the need for further
94 hospitalization; or

95 (3) Within twenty days after his admittance to a mental
96 health facility, unless a hearing has been conducted pursuant
97 to the provisions regarding legal proceedings for involuntary
98 hospitalization and a determination and order made as pre-
99 scribed therein on the question of the individual's mental
100 condition.

§27-5-3. Custody for medical examination.

1 When any person, health officer, caseworker or law en-
2 forcement officer has reason to believe that an individual is
3 mentally ill, mentally retarded or addicted and because of his
4 mental illness, mental retardation or addiction is likely to cause
5 serious harm to himself or others if allowed to remain at liberty

6 while awaiting an examination and certification by a physician,
7 or physicians, as the case may be, pursuant to section two
8 of this article, such person, health officer, caseworker or law
9 enforcement officer may make application under oath, to the
10 circuit court or mental hygiene commissioner of the county
11 of which the individual is a resident or to the circuit court
12 or mental hygiene commissioner of the county where he may
13 be found, giving such information and stating such facts there-
14 in as may be required, upon the form provided by the depart-
15 ment of mental health and the circuit court or mental hy-
16 giene commissioner shall thereupon enter an order for the
17 individual named in such application to be taken into custody
18 and detained, but not incarcerated in a jail or penal institu-
19 tion, for the purpose of an examination by at least one phy-
20 sician to take place within fourteen hours after the individual
21 is taken into custody. Not later than fourteen hours after the
22 individual is taken into custody, the individual shall be released
23 from custody, unless proceedings have been instituted pur-
24 suant to section two of this article.

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

1 (a) Proceedings for the involuntary hospitalization of an
2 individual may be commenced by the filing of a written appli-
3 cation under oath and the certificate or affidavit as herein-
4 after provided with the clerk of the circuit court or mental
5 hygiene commissioner of the county of which the individual is
6 a resident or with the clerk of the circuit court or mental
7 hygiene commissioner of the county where he may be found,
8 by his parents or parent, guardian, spouse, adult next of kin
9 or friend, or by a physician, a health officer or caseworker
10 familiar with the case of the individual, or the head of any
11 institution in which such individual may be.

12 Such application shall be made under oath and shall state
13 the belief of the applicant that because of symptoms of mental
14 illness, mental retardation or addiction, the individual is likely
15 to cause serious harm to himself or others and the grounds for
16 such belief. The written application, certificate, affidavit and
17 any warrants issued pursuant thereto, including any papers and
18 documents related thereto, filed with any circuit court or men-
19 tal hygiene commissioner for the involuntary hospitalization of

20 any individual shall not be open to inspection by any person
21 other than the individual, except upon authorization of the
22 individual or his legal representative or by order of the cir-
23 cuit court and such records shall not be published except upon
24 the authorization of the individual or his legal representative.
25 Such applicant shall file with his application the certificate of
26 a physician stating that in his opinion the individual is men-
27 tally ill, mentally retarded or addicted and that because of his
28 mental illness, mental retardation or addiction, the individual
29 is likely to cause serious harm to himself or others if he is al-
30 lowed to remain at liberty and therefore he should be hos-
31 pitalized or, in lieu of said certificate, an affidavit by the appli-
32 cant showing facts that the individual has refused to submit to
33 examination by a physician.

34 (b) Upon receipt of an application, the clerk of the circuit
35 court shall give notice thereof to the individual and to the indi-
36 vidual's spouse, parents or parent or guardian, or, if the indivi-
37 dual does not have a spouse, parents or parent or guardian, to
38 the individual's adult next of kin. Such notice shall be given
39 within ten days after receipt of the application by the clerk of
40 the circuit court and shall be served on such person or persons
41 at his or their last known address by certified or registered mail,
42 return receipt requested.

43 The notice served on the individual shall specify the nature
44 of the charges against him, the facts underlying and support-
45 ing the application for his involuntary commitment, and shall
46 advise him of his right to have counsel appointed for him and
47 to consult with counsel at every stage of the proceedings.

48 Within a reasonable time after notice of the commencement
49 of proceedings is given, the circuit court or mental hygiene com-
50 missioner shall appoint two physicians or a physician and psy-
51 chologist, other than the physician whose certification
52 may have accompanied the application to the circuit
53 court or mental hygiene commissioner, to examine the indi-
54 vidual and report to the circuit court or mental hygiene com-
55 missioner their findings as to the mental condition of the in-
56 dividual and the likelihood of his causing serious harm to him-
57 self or others. The physicians or physician and psychologist
58 may jointly examine the individual, but must make separate, in-

59 dependent and signed evaluations of his condition stating the
60 facts upon which the conclusions therein are based.

61 If the designated physicians or physician and psychologist
62 report to the circuit court or mental hygiene commissioner that
63 the individual has refused to submit to an examination, the
64 circuit court or mental hygiene commissioner shall order him
65 to submit to such examination. The circuit court may enter an
66 order directing the individual to be taken into custody, but not
67 incarcerated in a jail or penal institution, for the purpose of an
68 immediate examination by the designated physicians or phy-
69 sician and psychologist. All such orders shall be directed to
70 the sheriff of the county or other appropriate law enforcement
71 officer. After such examination has been completed, the in-
72 dividual shall be released from custody unless such custody is
73 in a mental health facility pursuant to an emergency hospitali-
74 zation as provided for in section two of this article. If the re-
75 ports of the appointed physicians or physician and psycholo-
76 gist do not confirm that the individual is mentally ill, men-
77 tally retarded or addicted and might be harmful to himself or
78 others, then the proceedings for his involuntary hospitalization
79 shall be dismissed.

80 The circuit court or mental hygiene commissioner shall
81 forthwith fix a date for and have the clerk of the circuit court
82 give notice of the hearing to (1) the individual, (2) to the appli-
83 cant or applicants, and (3) to the individual's spouse, parents
84 or parent or guardian, or if the individual does not have a
85 spouse, parents or parent or guardian, to the individual's
86 adult next of kin, and (4) to the mental health facility serving
87 the area. Such notice shall be served on such persons as process
88 in civil actions not less than ten days prior to the date of the
89 hearing. Such notice shall specify the nature of the charges
90 against him; the facts underlying and supporting the appli-
91 cation of his involuntary commitment; his right to have coun-
92 sel appointed for him; his right to consult with counsel at
93 every stage of the proceedings and the time and place of the
94 hearing.

95 (c) The individual shall be present at the hearing and he,
96 the applicant and all persons entitled to notice of such hear-
97 ing shall be afforded an opportunity to testify and to present

98 and cross-examine witnesses. In the event that the individual
99 has not retained counsel, the court or mental hygiene
100 commissioner at least seven days prior to hearing shall
101 appoint a competent attorney, who shall be present at
102 the hearing~~g~~ and protect the interest of the individual,
103 and the circuit court, by order of record, shall allow
104 the attorney a fee not to exceed two hundred dollars.
105 Any counsel representing an individual shall be entitled
106 to copies of all medical reports, psychiatric or other-
107 wise. The individual shall have the right to have an
108 examination by an independent expert of his choice and
109 testimony from such expert as a medical witness on his
110 behalf. The circuit court or mental hygiene commissioner
111 shall hear evidence from all interested parties in cham-
112 bers, including testimony from representatives of the com-
113 munity mental health facility. The individual shall not be
114 compelled to be a witness against himself. The circuit court
115 or mental hygiene commissioner shall receive all relevant
116 and material evidence which may be offered. The circuit
117 court or mental hygiene commissioner shall be bound by the
118 rules of evidence except that statements made to physicians
119 by the individual may be admitted into evidence by the phy-
120 sician's testimony notwithstanding failure to inform the indi-
121 vidual that this statement may be used against him. A trans-
122 cript shall be made of all proceedings, whether before the
123 circuit court or mental hygiene commissioner, and made avail-
124 able to the individual or his counsel within thirty days, if the
125 same is requested for purposes of an appeal. In any case where-
126 in an indigent person seeks an appeal, the circuit court shall,
127 by order entered of record, authorize and direct the court re-
128 porter to furnish a transcript of the hearing and the costs of
129 such transcript shall be paid by the county wherein the hearing
130 was held.

131 (d) Upon completion of the hearing, and the evidence pre-
132 sented therein, the circuit court or mental hygiene commission-
133 er shall make findings as to whether or not (1) the individual
134 is mentally ill, mentally retarded or addicted and because of
135 his illness, retardation or addiction is likely to cause serious
136 harm to himself or to others if allowed to remain at liberty
137 and (2) is a resident of the county in which the hearing is held

138 or currently is a patient at a mental health facility in such
139 county. The circuit court or mental hygiene commissioner shall
140 also make a finding as to whether or not there is a less re-
141 strictive alternative than commitment appropriate for the in-
142 dividual. The burden of proof of the lack of a less restrictive
143 alternative than commitment shall be on the person or persons
144 seeking the commitment of the individual.

145 The findings of fact shall be incorporated into the order en-
146 tered by the circuit court and must be based upon clear, cogent
147 and convincing proof. Upon the requisite findings, the circuit
148 court may order the individual to a mental health facility for
149 an indeterminate period or for a temporary observatory period
150 not exceeding six months. If the order is for a temporary ob-
151 servation period, the circuit court or mental hygiene commis-
152 sioner may, at any time prior to the expiration of such per-
153 iod on the basis of a report by the chief medical officer of the
154 mental health facility in which the patient is confined and
155 such further inquiry as may seem appropriate, order indeter-
156 minate hospitalization of the patient or dismissal of the pro-
157 ceedings. An order for an indeterminate period shall expire
158 of its own terms at the expiration of two years from the date
159 of the last order of commitment.

160 If the circuit court or mental hygiene commissioner finds
161 that the individual is not mentally ill, mentally retarded or
162 addicted, the proceeding shall be dismissed. If the circuit court
163 or mental hygiene commissioner finds that the individual is
164 mentally ill, mentally retarded or addicted but is not because
165 of such illness, retardation or addiction likely to cause serious
166 harm to himself or others if allowed to remain at liberty, the
167 proceedings shall be dismissed.

168 (e) The clerk of the circuit court in which an order directing
169 hospitalization is entered, if not in the county of the indi-
170 vidual's residence, shall immediately upon entry thereof for-
171 ward a certified copy of same to the clerk of the circuit court
172 of the county of which the individual is a resident.

173 If the circuit court or mental hygiene commissioner is
174 satisfied that hospitalization should be ordered but finds that
175 the individual is not a resident of the county in which the hear-

176 ing is held, and the individual is not currently a resident of a
177 mental health facility, a transcript of the evidence adduced at
178 the hearing of such individual, certified by the clerk of the
179 circuit court, shall forthwith be forwarded to the clerk of the
180 circuit court of the county of which such individual is a resi-
181 dent, who shall immediately present such transcript to the cir-
182 cuit court or mental hygiene commissioner of said county.
183 If the circuit court or mental hygiene commissioner of the
184 county of the residence of the individual is satisfied from the
185 evidence contained in such transcript that such individual
186 should be hospitalized as determined by the standards set forth
187 above, the circuit court shall order the appropriate hospitali-
188 zation as though the individual had been brought before the
189 circuit court or its mental hygiene commissioner in the first
190 instance. This order shall be transmitted forthwith to the clerk
191 of the circuit court of the county in which the hearing was held
192 who shall execute said order promptly.

193 (f) In lieu of ordering the patient to a mental health facil-
194 ity, the circuit court may order the individual delivered to
195 some responsible person who will agree to take care of the
196 individual and the circuit court may take from such responsible
197 person a bond in an amount to be determined by the circuit
198 court, with condition to restrain and take proper care of such
199 individual until further order of the court.

200 (g) If the individual found to be mentally ill, mentally re-
201 tardated or addicted by the circuit court or mental hygiene com-
202 missioner is a resident of another state, this information shall
203 be forthwith given to the director of mental health, who shall
204 make appropriate arrangements for his transfer to the state
205 of his residence conditioned on the agreement of the individual
206 except as qualified by the interstate compact on mental health.

207 (h) The chief medical officer of a mental health facility ad-
208 mitting a patient pursuant to proceedings under this section
209 shall forthwith make a report of such admission to the direc-
210 tor of mental health.

211 (i) All expenses incurred in a hearing conducted under the
212 provisions of this article, whether or not hospitalization is
213 ordered, including any fee awarded for the individual's
214 attorney and the fees of the physicians and psychologists

215 and other witnesses, shall be borne by the county of which the
216 individual is a resident. The amount of the fees, other than
217 any fee awarded to the individual's attorney, shall be pre-
218 scribed by the county court and all such fees, including any
219 fee awarded to the individual's attorney, shall be paid out of
220 the country treasury.

§27-5-5. Judicial review.

1 Any individual adversely affected by any order of commit-
2 ment entered by the circuit court under this article may seek
3 review thereof by appeal to the state supreme court of appeals
4 and jurisdiction is hereby conferred upon such court to hear
5 and entertain such appeals upon application made therefor in
6 the manner and within the time provided by law for civil ap-
7 peals generally.

8 This section shall not be construed to in any way limit or
9 precondition the right to seek release of such individual by
10 habeas corpus.

**§27-5-6. Examination of newly admitted patients; failure to exam-
ine; disposition of patients after examination; demands
for release.**

1 The chief medical officer of the mental health facility
2 shall arrange for psychiatric examination of every patient
3 hospitalized pursuant to the provisions of section two of
4 this article. If such examination is not completed within
5 three days after the date of admission, or if the physician
6 designated by the chief medical officer cannot certify that
7 in his opinion the patient is mentally ill, mentally retarded
8 or addicted and is likely to injure himself or others if allowed
9 to be at liberty, the patient shall be discharged immediately
10 or permitted to change his status to that of voluntary hospitali-
11 zation and be thereafter treated according to the provisions
12 of article four of this chapter.

13 If, in the opinion of the designated examining physician,
14 the patient is mentally ill, mentally retarded or addicted
15 and because of such mental illness, mental retardation or
16 addiction he is likely to injure himself or others if allowed
17 to be at liberty, the chief medical officer shall, within

18 five days from the date of such determination by the designated
 19 examining physician, institute legal proceedings as provided
 20 in section four of this article. If such proceedings are not in-
 21 stituted within such five day period, the patient shall be im-
 22 mediately released or permitted to change his status to that of
 23 voluntary hospitalization and thereafter treated according
 24 to the provisions of article four of this chapter. If such
 25 proceedings are not completed within twenty days from the
 26 date of admittance, the patient shall be immediately released,
 27 unless he chooses to change his status to that of voluntary
 28 hospitalization and thereafter treated according to the pro-
 29 visions of article four of this chapter.

30 Notwithstanding any other provisions of this article, when
 31 any individual is hospitalized pursuant to the provisions of
 32 section two of this article, such person or his spouse, relative,
 33 guardian or friend may demand in writing that such person
 34 be released from the mental health facility. Upon receipt of
 35 such demand, the chief medical officer shall either release
 36 such person or forthwith institute legal proceedings as specified
 37 in section four of this article. The chief medical officer of the
 38 facility shall make arrangements for informing each person
 39 hospitalized therein, under the provisions of section two of
 40 this article, of his rights under this section. The chief medical
 41 officer shall also assist any such person in making such written
 42 demand.

27
 §28-5-7. **Hospitalization by agency of the United States.**

1 If an individual ordered to be hospitalized pursuant to sec-
 2 tion four of this article is eligible for hospital care or treat-
 3 ment by any agency of the United States, then, upon receipt
 4 of a certificate from such agency showing that facilities are
 5 available and that the individual is eligible for care or treat-
 6 ment therein, the circuit court or mental hygiene commis-
 7 sioner may order him to be placed in the custody of such
 8 agency for hospitalization. When any such individual is ad-
 9 mitted pursuant to the order of such circuit court or mental
 10 hygiene commissioner to any hospital or institution estab-
 11 lished, maintained or operated by any agency of the United
 12 States within or without the state, he shall be subject to the
 13 rules and regulations of such agency. The chief officer of any

14 hospital or institution operated by such agency and in which
15 the individual is so hospitalized shall, with respect to such
16 individual, be vested with the same powers as the chief medi-
17 cal officers of mental health facilities or the director of mental
18 health within this state with respect to detention, custody,
19 transfer, conditional release or discharge of patients. Jurisdic-
20 tion is retained in the appropriate circuit court or mental hy-
21 giene commissioner of this state at any time to inquire into
22 the mental condition of an individual so hospitalized, and to
23 determine the necessity for continuance of his hospitaliza-
24 tion, and every order of hospitalization issued pursuant to this
25 section is so conditioned.

**§27-5-8. Periodic examination and review of patient's hospitaliza-
tion; appeal procedures for release of patient from
hospitalization.**

1 (a) The chief medical officer of each mental health facility
2 shall cause periodic psychiatric examinations to be made
3 of each individual committed to a facility pursuant to section
4 four of this article as frequently as the chief medical officer
5 considers desirable, but intervals between examinations shall
6 not exceed three months. A report of the conclusions from
7 each examination shall be given promptly to the chief medical
8 officer. A copy of each report shall be placed in the patient's
9 clinical record and the chief medical officer shall notify the
10 patient as to his continued hospitalization or release based
11 upon the report. If the patient is not released he may appeal
12 and demand his discharge.

13 (b) Appeal shall be made to the chief medical officer of
14 the mental health facility wherein the patient is confined. The
15 chief medical officer shall review the report of the examination
16 and the conclusions resulting therefrom and he shall either af-
17 firm the patient's continued hospitalization or discharge the
18 patient from confinement within three days from the date
19 of his appeal.

20 If, within three days from the date of the patient's appeal,
21 the chief medical officer has not taken action or has taken
22 action unfavorable to the patient, the patient may appeal to a
23 review board of appeal which shall be appointed by the direc-

24 tor of mental health. The review board shall consist of three
25 members, one of whom shall be a psychiatrist. The review
26 board shall consider the patient's clinical record, the report
27 of the examination and conclusions therefrom and any evidence
28 offered by the patient and by the chief medical officer of
29 such facility. The review board shall either order the pa-
30 tient's continued hospitalization or shall order the chief medi-
31 cal officer to discharge the patient within seven days from the
32 date of the patient's appeal to the review board.

33 If, within seven days from the date of the patient's appeal
34 to the review board, the review board has taken no action
35 or has taken action unfavorable to the patient, the patient
36 may appeal to the circuit court of the county of the patient's
37 residence or to the circuit court of the county where the pa-
38 tient is hospitalized. The circuit court or its mental hygiene
39 commissioner shall hold a hearing to review the hospitalization
40 of the patient. If the patient has appealed to the circuit court
41 within one year prior to the present appeal, it shall be within
42 the circuit court's discretion to deny the appeal. A hearing
43 under this section shall be conducted in the matter prescribed
44 in subsections (c) and (d), section four of this article.

45 The administrative and appeal remedies available by vir-
46 tue of this section shall not be construed to in any way limit
47 or precondition the right to seek release of the patient by
48 habeas corpus.

§27-5-9. Rights of patients.

1 (a) No person shall be deprived of any civil right solely
2 by reason of his receipt of services for mental illness, mental
3 retardation or addiction, nor shall the receipt of such services
4 modify or vary any civil right of such person, including but not
5 limited to civil service status and appointment, the right to
6 register for and to vote at elections, the right to acquire and
7 to dispose of property, the right to execute instruments or
8 rights relating to the granting, forfeiture or denial of a license,
9 permit, privilege or benefit pursuant to any law, but a person
10 who has been adjudged incompetent pursuant to article eleven
11 of this chapter and who has not been restored to legal com-
12 petency may be deprived of such rights. Involuntary commit-

13 ment pursuant to this article shall not of itself relieve the
14 patient of legal capacity.

15 (b) Each patient of a mental health facility receiving
16 services therefrom shall receive care and treatment that is
17 suited to his needs and administered in a skillful, safe and
18 humane manner with full respect for his dignity and personal
19 integrity.

20 (c) Every patient shall have the following rights regardless
21 of adjudication of incompetency:

22 (1) Treatment by trained personnel;

23 (2) Careful and periodic psychiatric reevaluation no less
24 frequently than once every three months;

25 (3) Periodic physical examination by a physician no less
26 frequently than once every six months; and

27 (4) Treatment based on appropriate examination and diag-
28 nosis by a staff member operating within the scope of his
29 professional license.

30 (d) The chief medical officer shall cause to be developed
31 within the clinical record of each patient a written treatment
32 plan based on initial medical and psychiatric examination not
33 later than seven days after he is admitted for treatment. The
34 treatment plan shall be updated periodically, consistent with
35 reevaluation of the patient. Failure to accord the patient the
36 requisite periodic examinations or treatment plan and re-
37 evaluations shall entitle the patient to release.

38 (e) A clinical record shall be maintained at a mental
39 health facility for each patient treated by the facility. The
40 record shall contain information on all matters relating to
41 the admission, legal status, care and treatment of the patient
42 and shall include all pertinent documents relating to the patient.
43 Specifically, the record shall contain results of periodic ex-
44 aminations, individualized treatment programs, evaluations and
45 reevaluations, orders for treatment, orders for application for
46 mechanical restraint and accident reports, all signed by the
47 personnel involved.

48 A patient's clinical record shall be confidential and shall

49 not be released by the department of mental health or its
50 facilities or employees to any person or agency outside of
51 the department except as follows:

52 (1) Pursuant to an order of a court of record.

53 (2) To the attorney of the patient, whether or not in
54 connection with pending judicial proceedings.

55 (3) With the written consent of the patient or of someone
56 authorized to act on the patient's behalf and of the director to:

57 (i) Physicians and providers of health, social or welfare
58 services involved in caring for or rehabilitating the patient, such
59 information to be kept confidential and used solely for the
60 benefit of the patient.

61 (ii) Agencies requiring information necessary to make pay-
62 ments to or on behalf of the patient pursuant to contract or
63 in accordance with law. Only such information shall be
64 released to third party payers as is required to certify that
65 covered services have been provided.

66 (iii) Other persons who have obtained such consent.

67 No patient record, or part thereof, obtained by any agent or
68 individual shall be released in whole or in part to any other
69 individual or agency, unless authorized by the written consent
70 of the patient or his legal representative.

71 (f) Every patient, upon his admission to a hospital and
72 at any other reasonable time, shall be given a copy of the
73 rights afforded by this section.

74 (g) The department of mental health shall promulgate
75 rules and regulations to protect the personal rights of patients
76 not inconsistent with this section.

**§27-5-10. Transportation for the mentally ill, mentally retarded
or addicted.**

1 Whenever transportation of an individual is required under
2 the provisions of article four or article five of this chapter, it
3 shall be the duty of the sheriff to provide immediate transpor-
4 tation to or from the appropriate mental health facility or state
5 hospital: *Provided*, That upon the written request of a person

6 having a proper interest in the individual's hospitalization, the
7 sheriff may permit such person to arrange for the individual's
8 transportation to the mental health facility or state hospital by
9 such means as may be suitable for his mental condition.

**ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CON-
VICTED OF A CRIME.**

**§27-6A-1. Determination of competency of defendant to stand
trial; examination; commitment.**

1 (a) Whenever a court of record believes that a defendant
2 in a criminal case may be incompetent to stand trial or is
3 not criminally responsible by reason of mental illness, mental
4 retardation or addiction, it may at any state of the proceedings
5 after the return of an indictment or the issuance of a warrant
6 against the defendant, order an examination of such defendant
7 to be conducted by one or more psychiatrists, or a psychiatrist
8 and a psychologist.

9 (b) After the examination described in subsection (a) of
10 this section, the court of record may order that the person
11 be admitted to a mental health facility designated by the
12 director of mental health for a period not to exceed twenty
13 days for observation and further examination if the court
14 has reason to believe that such further observation and
15 examination are necessary in order to determine whether
16 mental illness, mental retardation or addiction have so af-
17 fected a person that he is not competent to stand trial or
18 not criminally responsible for the crime or crimes with which
19 he has been charged. If, before the expiration of such twenty-
20 day period, the examining physician believes that observation
21 for more than twenty days is necessary, he shall make a
22 written request to the court of record for an extension of the
23 twenty-day period specifying the reason or reasons for which
24 such further observation is necessary. Upon the receipt of
25 such request, the court of record may by order extend said
26 observation period, but in no event shall the period exceed
27 forty days from the date of the initial court order of ob-
28 servation.

29 (c) At the conclusion of each examination or observa-
30 tion period provided for herein, the examining psychiatrist,

31 or psychiatrist and psychologist, shall forthwith give to the
32 court of record a written signed report of their findings on the
33 issue of competence to stand trial or criminal responsibility.
34 Such reports shall contain an opinion, supported by clinical
35 findings, as to whether or not the defendant is in need of care
36 and treatment.

37 (d) Within five days after the receipt of the report on
38 the issue of competency to stand trial, or if no observation
39 pursuant to subsection (b) of this section has been ordered,
40 within five days after the report on said issue following an
41 examination under subsection (a) of this section, the court
42 of record shall make a finding on the issue of whether the
43 defendant is competent for trial. A finding of incompetence
44 for trial shall require proof by a preponderance of the
45 evidence. Notice of such findings shall be sent to the
46 prosecuting attorney, the defendant and his counsel. If the
47 court of record orders or if the defendant or his counsel on
48 his behalf within a reasonable time requests a hearing on
49 such findings, a hearing in accordance with section two of
50 this article shall be held by the court of record within ten
51 days of the date such finding or such request has been made.

52 (e) After a conviction and prior to sentencing, the court
53 of record may order a psychiatric or other clinical examina-
54 tion and, after such examination, may further order a period
55 of observation in a mental health facility designated by the
56 director of mental health. Such period of observation or
57 examination shall not exceed forty days.

58 If after hearing conducted pursuant to the procedures
59 prescribed in subsection (c), section four, article five of this
60 chapter, the court of record makes the findings specified in sec-
61 tion four, article five of this chapter or finds that the convicted
62 individual would benefit from treatment in a mental health
63 facility, the court may enter an order of commitment in ac-
64 cord with section four, article five for treatment in a mental
65 health facility designated by the director of mental health.

66 (f) In like manner, in accordance with procedures set
67 forth in subsections (a), (b) and (c) of this section, a
68 juvenile court may order a psychiatric examination or a period
69 of observation for an alleged delinquent or neglected juvenile

70 in a mental health facility to aid the court in its disposition.
71 The period of observation shall not exceed forty days.

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's competency
2 to stand trial, the defendant shall be present and he shall have
3 the right to be represented by counsel and introduce evidence
4 and cross-examine witnesses. The defendant shall be afforded
5 timely and adequate notice of the issues of the hearing and
6 shall have access to a summary of the medical evidence to be
7 presented by the state. The defendant shall have the right to
8 an examination by an independent expert of his choice and
9 testimony from such expert as a medical witness on his be-
10 half. All rights generally afforded a defendant in criminal pro-
11 ceedings shall be afforded to a defendant in such competency
12 proceedings.

13 (b) At the termination of such hearing the court of record
14 shall make a finding of fact upon a preponderance of the evi-
15 dence as to the individual's competency to stand trial based on
16 whether or not the individual is capable of participating sub-
17 stantially in his defense and understanding the nature and con-
18 sequences of a criminal trial. If the individual is found com-
19 petent, the court of record shall forthwith proceed with the
20 criminal proceedings. If the individual is found incompetent
21 to stand trial, the court of record shall upon the evidence make
22 further findings as to whether or not there is a substantial lik-
23 elihood that the individual will attain competency within the
24 next ensuing six months, and if the court of record so finds,
25 the individual may be committed to a mental health facility
26 for an improvement period not to exceed six months. If re-
27 quested by the chief medical officer of the mental health fac-
28 ility on the grounds that additional time is necessary for the
29 individual to attain competency, the court of record may, prior
30 to the termination of the six-month period, extend the period
31 for an additional three months. Within ten days of the termi-
32 nation of such period, the court of record shall ascertain by
33 hearing in accordance with subsection (a) of this section wheth-
34 er or not the individual has attained competency to stand
35 trial.

36 (c) If the individual is found initially to be incompetent to
 37 stand trial with no substantial likelihood of obtaining compe-
 38 tency, or if after such improvement period the individual is
 39 found to be incompetent to stand trial, the criminal charges
 40 shall be dismissed. The dismissal order may be stayed for
 41 ten days to allow civil commitment proceedings to be in-
 42 stituted pursuant to article five of this chapter.

**§27-6A-3. Hospitalization of defendants found not guilty by rea-
 son of mental illness; notice to prosecuting attorney.**

1 (a) The court of record may order that a person who has
 2 been found not guilty by reason of mental illness, mental re-
 3 tardation or addition be hospitalized in a mental health facility
 4 for a period not to exceed forty days for observation and
 5 examination.

6 (b) During the observation period of a person found not
 7 guilty of any crime by reason of mental illness, mental re-
 8 tardation or addiction, procedures for civil commitment may
 9 be initiated before the court having jurisdiction pursuant to
 10 article five of this chapter.

11 (c) The prosecuting attorney of the county within which
 12 the alleged crime or crimes occurred shall be notified of any
 13 hearing conducted for a person under the provisions of this
 14 section or any subsequent hearing for such person within five
 15 years of the alleged crime conducted under the provisions of
 16 this chapter relating to the commitment of the mentally ill;
 17 mentally retarded or addicted and shall have a right to be
 18 heard at such hearings.

§27-6A-4. Discharge.

1 No person initially committed to a mental health facility
 2 under this article shall be discharged from a mental health
 3 facility unless the physician in charge communicates his in-
 4 tention to discharge such person to the committing court and
 5 to the prosecuting attorney of the county within which the al-
 6 leged crime occurred. If within twenty days after the receipt of
 7 such communication the committing court makes no written
 8 objection to such discharge, the physician in charge may dis-
 9 charge such person. In the event of a written objection by the

10 committing court, a hearing shall be held by a court of record
11 within ten days thereafter and the person shall be discharged
12 unless the court of record conducts a hearing and makes the
13 findings required by section four, article five of this chapter.

§27-6A-5. Periodic review of person found incompetent to stand trial.

1 The periodic review of a person who has been found incom-
2 petent to stand trial shall include a clinical opinion with re-
3 gard to the person's competence to stand trial, which opinion
4 shall be made a part of the patient's medical record. If any
5 person previously found incompetent to stand trial is later
6 determined to be competent, the director of mental health
7 shall notify the court of record, which shall promptly hold
8 a hearing on the person's competency to stand trial. Any per-
9 son found incompetent to stand trial may at any time petition
10 the court of record for a hearing on his competency. Whenever
11 a hearing is held and the court of record finds that the per-
12 son is competent to stand trial, his commitment, if any, to
13 a mental health facility shall be terminated and the court of
14 record shall order his return to the custody of the sheriff for
15 trial. However, if the person requests continued care and
16 treatment during the pendency of the criminal proceedings
17 against him and the mental health facility agrees to provide
18 such care and treatment, the court of record may order the
19 further hospitalization of such person.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

1 If a defendant who has been found to be incompetent
2 to stand trial believes that he can establish a defense of not
3 guilty to the charges pending against him, other than the
4 defense of not guilty by reason of mental illness, mental
5 retardation or addiction, he may request an opportunity to
6 offer a defense thereto on the merits before the court which
7 has criminal jurisdiction. If the person is unable to obtain
8 legal counsel, the court of record shall appoint counsel for
9 the defendant to assist him in supporting the request by
10 affidavit or other evidence. If the court of record in its discre-
11 tion grants such a request, the evidence of the defendant and of

12 the state shall be heard by the court of record sitting without
 13 a jury. If after hearing such petition the court of record finds
 14 insufficient evidence to support a conviction, it shall dismiss
 15 the indictment and order the release of the defendant from
 16 criminal custody. The order may be stayed for ten days to
 17 allow institution of civil proceedings pursuant to article five
 18 of this chapter.

§27-6A-7. Release of defendant during course of criminal proceedings.

1 Notwithstanding any finding of incompetence to stand trial
 2 under the provisions of this article, the court of record may
 3 at any stage of the criminal proceedings allow a defendant
 4 to be released with or without bail.

§27-6A-8. Credit for time; expenses.

1 (a) If a person is convicted of a crime, any time spent
 2 in involuntary confinement in a mental health facility as a
 3 result of being charged with such crimes, shall be credited to
 4 this sentence.

5 (b) All medical and psychological expenses attendant upon
 6 these proceedings shall be paid by the county court of the
 7 county of the individual's residence.

ARTICLE 11. COMMITTEE: DISPOSITION OF PROPERTY

§27-11-1. Committees; appointment.

1 (a) The county court of a person's residence may appoint
 2 a committee for a person found to be incompetent. Any find-
 3 ing of incompetency under this article shall be made separately
 4 and at a different proceeding from any finding of mental
 5 illness, mental retardation or addiction under article four or
 6 five of this chapter.

7 (b) Proceedings for the appointment of a committee for an
 8 alleged incompetent may be commenced by the filing of a veri-
 9 fied petition of a person setting forth the facts showing the
 10 incompetency of an individual with the county court. Upon
 11 receipt of the petition, the clerk of the county court shall give
 12 notice of the hearing thereon to the individual and to the in-
 13 dividual's spouse, or if the individual does not have a spouse,

14 to the individual's adult next of kin. Such notice and petition
15 shall be served upon the individual at least ten days prior to
16 hearing thereon and shall state the purpose of the hearing and
17 advice the individual of his rights with respect thereto. The
18 individual shall appear at the hearing, to testify, to present
19 and cross-examine witnesses. In the event that the individual
20 cannot retain counsel, the county court shall appoint a com-
21 petent attorney for the individual. The individual shall have
22 the right to an examination by an independent expert of his
23 choice and testimony from such expert as a medical witness on
24 his behalf. A transcript shall be made of all proceedings and
25 made available to the individual or his counsel within thirty
26 days, if the same is requested for purposes of appeal. In any
27 case wherein an indigent person seeks an appeal, the circuit
28 court shall, by order entered of record, authorize and direct
29 the court reporter to furnish a transcript of the hearing and the
30 costs of such transcript shall be paid by the county wherein
31 the hearing was held.

32 (c) Upon completion of the hearing and upon the evidence
33 presented therein the county court may find that (i) the indi-
34 vidual is unable to manage his business affairs, or (ii) the in-
35 dividual is unable to care for his physical well-being, or (iii)
36 both, and is therefore incompetent; or (iv) that the person is
37 competent. Evidence of mere poor judgment or of a different
38 life style shall not be competent evidence upon which to base
39 a finding of incompetency.

40 (1) "Unable to manage one's business affairs" means the
41 inability to know and appreciate the nature and effect of his
42 business transactions, notwithstanding the fact that he may
43 display poor judgment.

44 (2) "Unable to care for one's physical well-being" means
45 the substantial risk of physical harm to himself as evidenced
46 by conduct demonstrating that he is dangerous to himself,
47 notwithstanding the fact that he may display poor judgment.

48 If the county court finds the person to be competent, the
49 proceedings shall be dismissed. No appointment of a commit-
50 tee shall be made on evidence which is uncorroborated by the
51 testimony of a medical expert.

52 (d) The extent of the committee's authority shall be speci-
 53 fied in the order of the county court. No authority of a com-
 54 mittee shall extend beyond what is necessary for the protec-
 55 tion of the individual. A finding of inability to care for one's
 56 physical well-being shall entitle the committee to custody of
 57 the individual, except when the individual is under a commit-
 58 ment order to a mental health facility, but only to the extent
 59 as is necessary for the protection of the individual.

60 (e) An individual found incompetent pursuant to subsection
 61 (c) of this section shall have the right to an appeal and hear-
 62 ing thereon in the circuit court of the county. The judge shall
 63 hear the matter on appeal as provided in article three, chapter
 64 fifty-eight of this code or order a hearing de novo on the
 65 matter.

66 (f) The individual or any person may apply to the county
 67 court in the manner provided by subsection (b) of this section
 68 for termination of his committee at any time and appeal from
 69 a determination thereon in the manner provided by this sub-
 70 section; or in the alternative, the individual may seek such
 71 termination by habeas corpus.

**§27-11-2. Bond; refusal to act or failure to qualify; appointment of
 another; committal to sheriff.**

1 The county court, when making an appointment of such
 2 committee, shall take from the appointee a bond in such
 3 penalty and with such surety as it shall deem sufficient, with
 4 condition that the person so appointed will well and truly
 5 account for and pay over to the person entitled thereto
 6 all property and moneys which may come into his hands by
 7 virtue of such appointment and with such other conditions as
 8 the county court may require. The committee shall be entitled
 9 to reasonable compensation for all services performed on
 10 behalf of the individual. If any person so appointed as a
 11 committee refuses the trust or shall fail for ten days succeeding
 12 his appointment to give bond, as aforesaid, the county court
 13 on the motion of any party interested, or at its own instance,
 14 may appoint some other person as committee, taking from him
 15 bond as above provided, or may commit the estate of the per-
 16 son to the sheriff of the county, who shall act as committee

17 without giving any bond as such and he and the sureties on
18 his official bond shall be liable for the faithful performance
19 of the trust.

§27-11-3. Appraisement of estate.

1 The county court, whenever any committee is appointed
2 for a person unable to manage his business affairs, shall
3 appoint appraisers and cause to be made, returned and re-
4 corded, an appraisement of the property, both real and per-
5 sonal, of any such person in the same manner, to the same
6 extent, within the same time, and subject to the same regula-
7 tions and conditions as required by law for the estate of a
8 deceased person.

§27-11-4. Powers and duties of committee generally.

1 The committee appointed for any such person unable to
2 manage his business affairs shall take possession of his
3 estate, and may sue or be sued in respect thereto, and for
4 the recovery of debts due to and from such person. The
5 committee shall preserve such estate and manage it to the
6 best advantage, shall apply the personal estate, or so much
7 thereof as may be necessary to the payment of the debts of
8 such person, and the rents and profits of the residue of his
9 estate, real and personal, and the residue of the personal
10 estate, or so much as may be necessary, to the maintenance of
11 such person, and of his family, if any, and shall make due
12 accounting as required by law, and surrender the estate, or
13 as much as he may be accountable for, to such person in case
14 he shall be deemed competent, or, in case of his death,
15 without having been restored to competence, the real estate
16 to his heirs or devisees, and the personal estate to his execu-
17 tors or administrators.

§27-11-5. Authority of committee to mortgage, lease or sell realty.

1 If the personal estate of such person be insufficient for
2 the discharge of his debts, or if such estate or the residue
3 thereof after payment of the debts, and the rents and profits
4 of his real estate, be insufficient for his maintenance and
5 that of his family, if any, the committee of such person may
6 proceed, as provided in article one, chapter thirty-seven

7 of this code, to obtain authority to mortgage, lease or sell
 8 so much of the real estate of such person as may be
 9 necessary for the purposes aforesaid, or any of them, setting
 10 forth in the petition the particulars and the amount of
 11 the estate, real and personal, the application which may have
 12 been made of any personal estate, and an account of the
 13 debts and demands existing against the estate.

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

H. Darrel Hart
Chairman Senate Committee

Clarence C. Christensen Jr.
Chairman House Committee

Originated in the House.

Takes effect July 1, 1974.

Howard W. Carlson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. T. Brotherton, Jr.
President of the Senate

Leah T. W. Mann
Speaker House of Delegates

The within Approved this the 26th
March day of _____, 1974.

Arch A. Shaver Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/15/74
Time 2:50 p.m.