WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975

ENROLLED

HOUSE BILL No. 1316

Originating in the House Committee on the Judiciary
(BY )

PASSED _________________________ 1975

In Effect ____________ from Passage
AN ACT to amend and reenact sections one and three, article four; sections one, two and four, article five; section one, article six-a; sections one, two, three, four and five, article seven; and section one, article eleven, all of chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to mentally ill, mentally retarded and addicted persons; providing detailed procedures as to the voluntary hospitalization of any such person; relating to consents required; providing procedures concerning the release of any such person voluntarily hospitalized; providing detailed procedures for the involuntary hospitalization of any such person; providing for hearings; relating to the appointment of a mental hygiene commissioner; requiring examination and notice following involuntary hospitalization; relating to hearings and release from involuntary hospitalization; relating to legal proceedings for involuntary hospitalization; relating to continuances; providing that medical evidence be not deemed privileged information; relating to the dividing of expenses between county commission and the state; creating a special fund in the state auditor's office; relating to determination of competency of defendant to stand trial and providing detailed procedures in connection therewith; relating to discharge, release on convalescent status and release as unimproved; relating to readmission of patient; relating to return of escapees; and relating to proceedings for appointment of a committee and rule to show cause if person refuses medical examination.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

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

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

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

(b) Under eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and there is application for hospitalization therefor in his behalf (1) by the parents of such person, or (2) if only one parent is living, then by such parent, or (3) if the parents are living separate and apart, by the one who has the custody of such person, or (4) if there is a guardian who has custody of such person, then by such guardian. Such admission shall be conditioned upon the consent of the prospective patient if the patient is twelve years of age or over.

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

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

1 A voluntary patient who requests his release or whose release is requested in writing, by his parents, parent, guardian, spouse or adult next of kin shall be released forthwith except that:
(a) If the patient was admitted on his own application, and request for release is made by a person other than the patient, release shall be conditioned upon the agreement of the patient thereto;

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

(c) If, within ninety-six hours of the receipt of the request, the chief medical officer of the mental health facility in which the patient is hospitalized files with the clerk of the circuit court or mental hygiene commissioner of the county where the facility is situated, an application for involuntary hospitalization as provided in section four, article five of this chapter, release may be postponed for twenty days pending a finding in accordance with the legal proceedings prescribed therein.

Legal proceedings for involuntary hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by him or the individual or individuals who applied for his admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

No individual shall be involuntarily committed to a mental health facility except by order entered of record at any time by the circuit court of the county wherein such person resides or was found and then only after a full hearing on the issues relating to the necessity of committing an individual to a mental health facility. The circuit court of each county may appoint a competent attorney in each county to preside over such hearings, who shall be designated “mental hygiene commissioner.” He shall be a person of good moral character, of standing in his profession and a resident of the county for which he is appointed, and he shall, before assuming the duties of such commissioner, take the oath required of other special commissioners as provided in article one, chapter six of this code. The mental hygiene commissioner may sign and issue summons for the attendance, at any hearing held pursuant to
section four, article five, of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; and may make findings of fact on evidence and may make conclusions of law, but such findings and conclusions shall not be binding on the circuit court. The circuit court by order entered of record shall allow the commissioner a reasonable fee for each case heard. The mental hygiene commissioner shall discharge his duties and hold his office at the pleasure of the circuit court by which he is appointed and may be removed at any time by the court. It shall be the duty of the mental hygiene commissioner to conduct orderly inquiries into the mental health of any individual brought before him concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak or who speaks a foreign language and who may be subject to involuntary commitment to a mental health facility.

In all proceedings under this article, it shall be the duty of the prosecuting attorney or one of his assistants to represent the applicants.

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

§27-5-2. Involuntary hospitalization; admission by medical certification; emergency procedure; examination; hearing; release.

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

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

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

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

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

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

(d) If, on the basis of the examination by the two staff physicians, or one staff psychologist and one staff physician the chief medical officer determines that the individual should continue to be hospitalized, a written request for a hearing shall be sent to the clerk of the circuit court of the county of the individual's residence or to the clerk of the circuit court of the county where he was found within five days after the person's admission. Within a reasonable time after receipt of the request, the circuit court or mental hygiene commissioner shall conduct a hearing pursuant to section four of this article on the question of the individual's mental health and the need for his further hospitalization, but in no event shall such hearing be held later than twenty days after the admission of the individual to a mental health facility: Provided, That on
the verified motion of the individual, the hearing may be con-
tinued for a period of time not to exceed ten days.

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

(1) Within three days after his admittance to a mental
health facility, unless he has been examined by two staff phy-
sicians or one staff psychologist and one staff physician both
of whom confirm in writing that the individual is likely to
cause serious harm to himself or others if not immediately re-
strained; or

(2) Within five days after his admittance to a mental health
facility, unless the chief medical officer has sent a written re-
quest within such time, to the clerk of the circuit court
of the county of which the individual is a resident or where
he was found for a hearing on the question of the indi-
vidual's mental condition and the need for further hospitaliza-
tion; or

(3) Within twenty days after his admittance to a mental
health facility, unless a hearing has been conducted pursuant
to the provisions regarding legal proceedings for involuntary
hospitalization and a determination and order made as pre-
scribed therein on the question of the individual's mental con-
dition or unless the individual has moved for a continuance for
a reasonable amount of time.

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

(a) Proceedings for the involuntary hospitalization of an
individual may be commenced by the filing of a written
application under oath and the certificate or affidavit as
hereinafter provided with the clerk of the circuit court or
mental hygiene commissioner of the county of which the
individual is a resident or with the clerk of the circuit court
or mental hygiene commissioner of the county where he may
be found, by his parents or parent, guardian, spouse, adult
next of kin or friend, or by a physician, psychologist, a
health officer or caseworker familiar with the case of the
individual, or the head of any institution in which such
individual may be.
Such application shall be made under oath and shall state the belief of the applicant that because of symptoms of mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others and the grounds for such belief. The written application, certificate, affidavit and any warrants issued pursuant thereto, including any papers and documents related thereto filed with any circuit court or mental hygiene commissioner for the involuntary hospitalization of any individual shall not be open to inspection by any person other than the individual, except upon authorization of the individual or his legal representative or by order of the circuit court and such records shall not be published except upon the authorization of the individual or his legal representative. Such applicant shall file with his application the certificate of a physician or a psychologist stating that in his opinion the individual is mentally ill, mentally retarded or addicted and that because of his mental illness, mental retardation or addiction, the individual is likely to cause serious harm to himself or others if he is allowed to remain at liberty and therefore he should be hospitalized or, in lieu of said certificate, an affidavit by the applicant showing facts that the individual has refused to submit to examination by a physician or a psychologist.

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

The notice served on the individual shall specify the nature of the charges against him, the facts underlying and supporting the application for his involuntary commitment, and shall advise him of his right to have counsel appointed for him and to consult with counsel at every stage of the proceedings.

Within a reasonable time after notice of the commencement of proceedings is given, the circuit court or mental hygiene
commissioner shall appoint two physicians or a physician and
psychologist, other than the physician or psychologist whose
certification may have accompanied the application under this
section to the circuit court or mental hygiene commissioner,
to examine the individual and report to the circuit court or
mental hygiene commissioner their findings as to the mental
condition of the individual and the likelihood of his causing
serious harm to himself or others. The physicians or physician
and psychologist may jointly examine the individual, but must
make separate, independent and signed evaluations of this
condition stating the facts upon which the conclusions therein
are based.

If the designated physicians or physician and psychologist
report to the circuit court or mental hygiene commissioner that
the individual has refused to submit to an examination, the
circuit court or mental hygiene commissioner shall order him
to submit to such examination. The circuit court may enter an
order directing the individual to be taken into custody, but
not incarcerated in a jail or penal institution, for the purpose
of an immediate examination by the designated physicians or
physician and psychologist. All such orders shall be directed
to the sheriff of the county or other appropriate law-enforce-
ment officer. After such examination has been completed, the
individual shall be released from custody unless such custody is
in a mental health facility pursuant to an emergency hospitali-
zation as provided for in section two of this article. If the re-
ports of the appointed physician or physicians and psycholo-
gists do not confirm that the individual is mentally ill, men-
tally retarded or addicted and might be harmful to himself
or others, then the proceedings for his involuntary hospitali-
ization shall be dismissed.

The circuit court or mental hygiene commissioner shall
forthwith fix a date for and have the clerk of the circuit court
give notice of the hearing to (1) the individual, (2) to the ap-
plicant or applicants, and (3) to the individual's spouse,
parents or parent or guardian, or if the individual does not have
a spouse, parents or parent or guardian, to the individual's
adult next of kin, and (4) to the mental health facility serving
the area. Such notice shall be served on the individual by per-
sonal or substitutive service of process not less than ten days
prior to the date of the hearing. The notice to the individual's
spouse, parents or parent or guardian, or the individual's
adult next of kin may be by personal or substitutive service of
process or by certified or registered mail, return receipt re-
quested. Such notice shall specify the nature of the charges
against the individual; the facts underlying and supporting the
application of his involuntary commitment; his right to have
counsel appointed for him; his right to consult with counsel
at every stage of the proceedings and the time and place of the
hearing.

(c) The individual shall be present at the hearing and he,
the applicant and all persons entitled to notice of such hear-
ing shall be afforded an opportunity to testify and to present
and cross-examine witnesses. In the event that the individual
has not retained counsel, the court or mental hygiene commis-
ssioner at least seven days prior to hearing shall appoint a
competent attorney, who shall be present at the hearing and
protect the interests of the individual, and the circuit court,
by order of record, may allow the attorney a reasonable fee
not to exceed the amount allowed for attorneys in felony cases
by section one, article two, chapter sixty-two of this code. Any
counsel representing an individual shall be entitled to copies of
all medical reports, psychiatric or otherwise. The individual
shall have the right to have an examination by an independent
expert of his choice and testimony from such expert as a medi-
cal witness on his behalf. The cost of such independent expert
shall be borne by the patient unless he is indigent. The circuit
court or mental hygiene commissioner shall hear evidence from
all interested parties in chambers, including testimony from
representatives of the community mental health facility. The
individual shall not be compelled to be a witness against him-
self. The circuit court or mental hygiene commissioner shall
receive all relevant and material evidence which may be offer-
ed. The circuit court or mental hygiene commissioner shall be
bound by the rules of evidence except that statements made to
physicians or psychologists by the individual may be admitted
into evidence by the physician's or psychologist's testimony
notwithstanding failure to inform the individual that this state-
ment may be used against him. Any psychologist or physician
testifying shall bring all records pertaining to said individual
to said hearing. Such medical evidence obtained pursuant to
an examination under this section, or section two, or section
three of this article, is not privileged information for purposes
of a hearing pursuant to this section. A transcript or recording
shall be made of all proceedings, whether before the circuit
court or mental hygiene commissioner, and a transcript made
available to the individual or his counsel within thirty days, if
the same is requested for the purpose of an appeal. In any
case wherein an indigent person seeks an appeal, the circuit
court shall, by order entered of record, authorize and direct
the court reporter to furnish a transcript of the hearing and
the costs of such transcript shall be paid by the county wherein
the hearing was held.

(d) Upon completion of the hearing, and the evidence pre-
sented therein, the circuit court or mental hygiene commis-
sioner shall make findings as to whether or not (1) the indi-
vidual is mentally ill, mentally retarded or addicted and be-
cause of his illness, retardation or addiction is likely to cause
serious harm to himself or to others if allowed to remain at
liberty and (2) is a resident of the county in which the hearing
is held or currently is a patient at a mental health facility in
such county. The circuit court or mental hygiene commissioner
shall also make a finding as to whether or not there is a less
restrictive alternative than commitment appropriate for the
individual. The burden of proof of the lack of a less restric-
tive alternative than commitment shall be on the person or
persons seeking the commitment of the individual.

The findings of fact shall be incorporated into the order
entered by the circuit court and must be based upon clear,
cogent and convincing proof. Upon the requisite findings, the
circuit court may order the individual to a mental health fac-
ility for an indeterminate period or for a temporary observa-
tory period not exceeding six months. If the order is for a
temporary observation period, the circuit court or mental hy-
giene commissioner may, at any time prior to the expiration
of such period on the basis of a report by the chief medical
officer of the mental health facility in which the patient is con-
finned and such further inquiry as may seem appropriate, order
indeterminate hospitalization of the patient or dismissal of the
proceedings. An order for an indeterminate period shall ex-
pire of its own terms at the expiration of two years from the
date of the last order of commitment.

If the circuit court or mental hygiene commissioner finds
that the individual is not mentally ill, mentally retarded or
addicted, the proceeding shall be dismissed. If the circuit
court or mental hygiene commissioner finds that the individ-
ual is mentally ill, mentally retarded or addicted but is not
because of such illness, retardation or addiction likely to
cause serious harm to himself or others if allowed to remain
at liberty, the proceedings shall be dismissed.

(e) The clerk of the circuit court in which an order direct-
ing hospitalization is entered, if not in the county of the in-
dividual's residence, shall immediately upon entry thereof for-
ward a certified copy of same to the clerk of the circuit court
of the county of which the individual is a resident.

If the circuit court or mental hygiene commissioner is satis-
fied that hospitalization should be ordered but finds that the
individual is not a resident of the county in which the hearing
is held, and the individual is not currently a resident of a
mental health facility, a transcript of the evidence adduced at
the hearing of such individual, certified by the clerk of the
circuit court, shall forthwith be forwarded to the clerk of the
circuit court of the county of which such individual is a resi-
dent, who shall immediately present such transcript to the cir-
cuit court or mental hygiene commissioner of said county. If
the circuit court or mental hygiene commissioner of the county
of the residence of the individual is satisfied from the evidence
contained in such transcript that such individual should be
hospitalized as determined by the standards set forth above, the
circuit court shall order the appropriate hospitalization as
though the individual had been brought before the circuit
court or its mental hygiene commissioner in the first instance.
This order shall be transmitted forthwith to the clerk of the
circuit court of the county in which the hearing was held
who shall execute said order promptly.

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

(g) If the individual found to be mentally ill, mentally retarded or addicted by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be forthwith given to the director of mental health, who shall make appropriate arrangements for his transfer to the state of his residence conditioned on the agreement of the individual except as qualified by the interstate compact on mental health.

(h) The chief medical officer of a mental health facility admitting a patient pursuant to proceedings under this section shall forthwith make a report of such admission to the director of mental health.

(i) The state shall pay the attorney fees and commissioner fees out of a special fund to be established within the office of the state auditor to be known as the "mental hygiene fund." The county court shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article, whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist and other witnesses.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

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

(a) Whenever a court of record believes that a defendant in a felony case or a defendant in a misdemeanor case in which an indictment has been returned may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any stage of the proceedings after the return of an indictment or the issuance of a warrant against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist.
(b) After the examination described in subsection (a) of this section, the court of record may order that the person be admitted to a mental health facility designated by the director of mental health for a period not to exceed twenty days for observation and further examination if the court has reason to believe that such further observation and examination are necessary in order to determine whether mental illness, mental retardation or addiction have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. If, before the expiration of such twenty-day period, the examining physician believes that observation for more than twenty days is necessary, he shall make a written request to the court of record for an extension of the twenty-day period specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court of record may by order extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of observation.

(c) At the conclusion of each examination or observation period provided for herein, the examining psychiatrist, or psychiatrist and psychologist, shall forthwith give to the court of record a written signed report of their findings on the issue of competence to stand trial or criminal responsibility. Such report shall contain an opinion, supported by clinical findings, as to whether or not the defendant is in need of care and treatment.

(d) Within five days after the receipt of the report on the issue of competency to stand trial, or if no observation pursuant to subsection (b) of this section has been ordered, within five days after the report on said issue following an examination under subsection (a) of this section, the court of record shall make a finding on the issue of whether the defendant is competent for trial. A finding of incompetence for trial shall require proof by a preponderance of the evidence. Notice of such findings shall be sent to the prosecuting attorney, the defendant and his counsel. If the court of record orders or if the defendant or his counsel
on his behalf within a reasonable time requests a hearing on
such findings, a hearing in accordance with section two of
this article shall be held by the court of record within ten
days of the date such finding or such request has been made.
(e) After a conviction and prior to sentencing, the court of
record may order a psychiatric or other clinical examination
and, after such examination, may further order a period of
observation in a mental health facility designated by the
director of mental health. Such period of observation or
examination shall not exceed forty days.

If after hearing conducted pursuant to the procedures
prescribed in subsection (c), section four, article five of this
chapter, the court of record makes the findings specified in
section four, article five of this chapter or finds that the
convicted individual would benefit from treatment in a mental
health facility, the court may enter an order of commitment
in accord with section four, article five for treatment in a
mental health facility designated by the director of mental
health.

(f) In like manner, in accordance with procedures set
forth in subsections (a), (b) and (c) of this section, a juvenile
court may order a psychiatric examination or a period of
observation for an alleged delinquent or neglected juvenile
in a mental health facility to aid the court in its disposition.
The period of observation shall not exceed forty days.

ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PA-
IENTS; ESCAPEES.

§27-7-1. Discharge.

The chief medical officer of the mental health facility shall
continually review the case of each individual who is an
involuntary patient at the facility pursuant to article five of this
chapter and shall as frequently as practicable, in any event at
least once every three months, cause a complete psychiatric
examination of each patient, and whenever it is determined
that the conditions justifying involuntary hospitalization no
longer exist or that the individual can no longer benefit from
hospitalization, the chief medical officer shall discharge the
patient, and forward a copy of the patient’s discharge to the
clerk of the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident. In the event that the individual was relieved of legal capacity pursuant to article eleven of this chapter, the discharge restores the individual to legal capacity.

§27-7-2. Release of patients on convalescent status.

The chief medical officer of a mental health facility may release an involuntary patient on convalescent status (trial visit) when the chief medical officer believes such release is in the best interest of the patient. Release on convalescent status shall include provisions for continuing responsibility to and by a mental health facility, not necessarily the facility in which the patient was previously hospitalized, including a plan of treatment on an outpatient basis to insure that the patient receives whatever care and treatment he might require. At the end of six months on convalescent status, the patient must be discharged from any involuntary commitment order that might have been entered against him and he cannot be involuntarily returned to any mental health facility unless a new commitment proceeding has been instituted against him. When a patient released on convalescent status is discharged from his involuntary commitment, it shall be the responsibility of the chief medical officer of the mental health facility of which the individual was a patient prior to being placed on convalescent status to immediately make a report of the discharge of the patient to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

§27-7-3. Release as unimproved.

The chief medical officer of a mental health facility may release an involuntary patient as unimproved when any person requests the patient’s release and is willing and able to take proper care of the patient outside the mental health facility. In the event that a patient is released to a responsible person, a report shall be made by such person at least once every
six months to the chief medical officer of the mental health facility. No discharge shall be given to said patient until he has returned to the mental health facility for examination by the chief medical officer and he has determined that said patient is no longer in need of hospitalization.

When a patient is released from a mental health facility as unimproved, it shall be the responsibility of the chief medical officer of the mental health facility of which the individual was a patient prior to being released as unimproved to immediately make a report of the discharge of the patient to the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

§27-7-4. Readmission of patients.

While any involuntary patient is out of the mental health facility under the provisions of section two or section three of this article, he may be readmitted to the mental health facility on the basis of the original commitment. If there is reason to believe that it is in the best interest of the patient to be hospitalized, the chief medical officer of the mental health facility may issue a sworn notice for the immediate re-hospitalization of the patient which notice shall contain facts concerning the condition of the patient. This notice shall be sent to the circuit court or mental hygiene commissioner or to the clerk of the circuit court which ordered his admission as the case may be, and to the clerk of the circuit court of the county of the patient's residence. Upon receipt of such notice, the circuit court may, if satisfied that the condition of the patient warrants his return, authorize any health officer or police officer to take the patient into custody and transport him to a mental health facility where the notice originated.

§27-7-5. Return of escapees; veterans.

If any person confined in a mental health facility, pursuant to articles five or six-a of this chapter, escapes therefrom, the chief medical officer thereof may issue a notice, giving the name and description of the person escaping and requesting the patient's apprehension and return to the mental health facility. The chief medical officer may issue an order directed
to the sheriff of the county in which the patient is a resident, commanding him to take into custody and transport such escaped person back to the mental health facility, which order the sheriff may execute in any part of the state. If such person goes to another state, the chief medical officer may notify the director of mental health and the director may take such action as he may deem proper for the return of such person to the mental health facility.

If any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and any person makes complaint, under oath, to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving such information and stating such facts therein as may be required, or if any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and the chief medical officer of such hospital or institution issues a notice to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving the name and description of such veteran and requesting his apprehension and return to such hospital or institution, the circuit court upon receipt of such complaint or of such notice, may issue an order directed to the sheriff of the county from which the veteran was so committed commanding him to take into custody and transport such veteran back to such hospital or institution, which order the sheriff may execute in any part of the state.

The sheriff or other person taking any person into custody under this section shall be paid such compensation as is provided for like services in other cases.

A person who is taken into custody under this section may be detained, but not incarcerated in a jail or penal institution, for a period not in excess of fourteen hours, pending return to the appropriate mental health facility.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

(a) The county commission of a person's residence may ap-
point a committee for a person found to be incompetent. Any finding of incompetency under this article shall be made separately and at a different proceeding from any finding of mental illness, mental retardation or addiction under article four or five of this chapter.

(b) Proceedings for the appointment of a committee for an alleged incompetent may be commenced by the filing of a verified petition of a person setting forth the facts showing the incompetency of an individual with the county commission. Upon receipt of a petition, the clerk of the county commission shall give notice of the hearing thereon to the individual and to the individual's spouse, or if the individual does not have a spouse, to the individual's adult next of kin. Such notice and petition shall be served upon the individual at least ten days prior to hearing thereon and shall state the purpose of the hearing and advise the individual of his rights with respect thereto. The individual shall appear at the hearing, to testify, to present and cross-examine witnesses. In the event that the individual cannot retain counsel, the county commission shall appoint a competent attorney for the individual. The individual shall have the right to an examination by an independent expert of his choice and testimony from such expert as a medical witness on his behalf. A transcript or recording shall be made of all proceedings. A transcript shall be made available to the individual or his counsel within thirty days, if the same is requested for purposes of appeal. In any case wherein an indigent person seeks an appeal, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearing and the costs of such transcript shall be paid by the county wherein the hearing was held.

(c) Upon completion of the hearing and upon the evidence presented therein the county commission may find that (i) the individual is unable to manage his business affairs, or (ii) the individual is unable to care for his physical well-being, or (iii) both, and is therefore incompetent; or (iv) that the person is competent. Evidence of mere poor judgment or of different life style shall not be competent evidence upon which to base a finding of incompetency.

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

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

If the county commission finds the person to be competent, the proceedings shall be dismissed. No appointment of a committee shall be made on evidence which is uncorroborated by the testimony of a medical expert. If the individual refuses to submit to an examination by a physician, the circuit court may upon petition, issue a rule against the individual to show cause why the individual should not submit to an examination. A copy of the petition shall accompany service of the rule and such rule shall be returnable at a time to be fixed by the court.

(d) The extent of the committee's authority shall be specified in the order of the county commission. No authority of a committee shall extend beyond what is necessary for the protection of the individual. A finding of inability to care for one's physical well-being shall entitle the committee to custody of the individual, except when the individual is under a commitment order to a mental health facility, but only to the extent as is necessary for the protection of the individual.

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

(f) The individual or any person may apply to the county commission in the manner provided by subsection (b) of this section for termination of his committee at any time and appeal from a determination thereon in the manner provided by this section; or in the alternative, the individual may seek such termination by habeas corpus.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence C. Christmas Jr.  
Chairman House Committee

Originated in the House.
Takes effect ninety days from passage.

J. W. Dillion Jr.  
Clerk of the Senate

C. A. Buchanan Jr.  
Clerk of the House of Delegates

W. J. Breeden Jr.  
President of the Senate

Lewis M. Mann  
Speaker House of Delegates

The within    approved    this the 26th    day of    March, 1975.

Andrew P. Stovall  
Governor
PRESENTED TO THE
GOVERNOR

Date 3/21/75
Time 2:50 p.m.