

OFFICE OF
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STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1975



ENROLLED

HOUSE BILL No. 1316

(Originating in the House Committee on the Judiciary)
~~(By Mr. _____)~~



PASSED March 9, 1975

In Effect ninety days from Passage



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H. B. 1316

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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
2 to the availability of suitable accommodations and to the rules
3 and regulations promulgated by the director of mental health,
4 shall admit for diagnosis, care and treatment any individual:

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

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

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

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

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

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

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

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

20 Legal proceedings for involuntary hospitalization shall not be
21 commenced with respect to a voluntary patient unless release
22 of the patient has been requested by him or the individual or
23 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 entered of record at any time by
3 the circuit court of the county wherein such person resides or
4 was found and then only after a full hearing on the issues re-
5 lating to the necessity of committing an individual to a men-
6 tal health facility. The circuit court of each county may appoint
7 a competent attorney in each county to preside over such
8 hearings, who shall be designated "mental hygiene commis-
9 sioner." He shall be a person of good moral character, of
10 standing in his profession and a resident of the county for
11 which he is appointed, and he shall, before assuming the duties
12 of such commissioner, take the oath required of other special
13 commissioners as provided in article one, chapter six of this
14 code. The mental hygiene commissioner may sign and issue
15 summons for the attendance, at any hearing held pursuant to

16 section four, article five, of this code, of the individual sought
17 to be committed; may sign and issue subpoenas for witnesses,
18 including subpoenas duces tecum; may place any witness un-
19 der oath; and may make findings of fact on evidence and may
20 make conclusions of law, but such findings and conclusions
21 shall not be binding on the circuit court. The circuit court by
22 order entered of record shall allow the commissioner a reason-
23 able fee for each case heard. The mental hygiene commissioner
24 shall discharge his duties and hold his office at the pleasure of
25 the circuit court by which he is appointed and may be re-
26 moved at any time by the court. It shall be the duty of the
27 mental hygiene commissioner to conduct orderly inquiries into
28 the mental health of any individual brought before him con-
29 cerning the advisability of committing the individual to a men-
30 tal health facility. The mental hygiene commissioner shall safe-
31 guard, at all times, the rights and interests of the individual as
32 well as the interests of the state. The mental hygiene commis-
33 sioner shall make a written report of his findings to the cir-
34 cuit court. In any proceedings before any court of record as set
35 forth in this article, the court of record shall appoint an in-
36 terpreter for any individual who is deaf or cannot speak or
37 who speaks a foreign language and who may be subject to
38 involuntary commitment to a mental health facility.

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

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

**§27-5-2. Involuntary hospitalization; admission by medical cer-
tification; emergency procedure; examination; hearing;
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 or a
8 physician and a psychologist that they have examined the
9 individual and that they are of the opinion that he is
10 mentally ill, mentally retarded or addicted and because of
11 his mental illness, mental retardation or addiction he is likely
12 to cause serious harm to himself or others if he is allowed
13 to remain at liberty; admission to a mental health facility in
14 accordance with the procedure set forth in this subdivision
15 shall be referred to as a medical certification 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 or one psychologist that he has examined the in-
23 dividual and that he is of the opinion the individual is mentally
24 ill, mentally retarded or addicted and because of his mental
25 illness, mental retardation or addiction he is likely to cause
26 serious harm to himself or others if not immediately restrained.
27 Admission to a mental health facility in accordance with the
28 procedures set forth in this subdivision (2) shall be referred to
29 as an emergency admission.

30 (b) Any individual with respect to whom such certification
31 has been issued may not be admitted on the basis thereof at
32 any time after the expiration of three days from the date of
33 such examination in the case of emergency admission with one
34 physician's or psychologist's certificate in accordance with sub-
35 division (2), subsection (a) of this section or fifteen days from
36 the first examination in the case of medical certification ad-
37 mission in accordance with subdivision (1) of subsection (a)
38 of this section. A certification under this section must include
39 findings and conclusions of the mental examination, the date,
40 time and place thereof, and the facts upon which the con-
41 clusion of likelihood of causing serious harm is based. The
42 chief medical officer may, with the approval of the director
43 of mental health, transfer such individual to a state hospital

44 or to another similar type of mental health facility after deter-
45 mining that no less restrictive treatment alternative is suit-
46 able or available. The chief medical officer of the mental health
47 facility admitting the individual shall forthwith make a report
48 thereof to the director of mental 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 individ-
52 ual's admission to the individual's spouse, if any, and the in-
53 dividual's parents or parent or guardian, or if there be no such
54 spouse, parents, parent or guardian, to two of the individual's
55 adult next of kin. The notice shall be in writing and shall be
56 transmitted to such person or persons at his, her or their
57 last known address by certified or registered mail, return
58 receipt 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 or one staff psychologist and one staff physician and
63 the likelihood that the individual will cause serious harm to
64 himself or others is confirmed by such physicians, or psycholo-
65 gist and physician. The physicians, or psychologists and phy-
66 sician may jointly examine the individual but must make
67 separate, independent and signed evaluations of his condition.

68 (d) If, on the basis of the examination by the two staff
69 physicians, or one staff psychologist and one staff physician
70 the chief medical officer determines that the individual should
71 continue to be hospitalized, a written request for a hearing shall
72 be sent to the clerk of the circuit court of the county of the
73 individual's residence or to the clerk of the circuit court of the
74 county where he was found within five days after the person's
75 admission. Within a reasonable time after receipt of the re-
76 quest, the circuit court or mental hygiene commissioner
77 shall conduct a hearing pursuant to section four of this article
78 on the question of the individual's mental health and the need
79 for his further hospitalization, but in no event shall such
80 hearing be held later than twenty days after the admission of
81 the individual to a mental health facility: *Provided*, That on

82 the verified motion of the individual, the hearing may be con-
83 tinued for a period of time not to exceed ten days.

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

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

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

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

§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
3 application under oath and the certificate or affidavit as
4 hereinafter provided with the clerk of the circuit court or
5 mental hygiene commissioner of the county of which the
6 individual is a resident or with the clerk of the circuit court
7 or mental hygiene commissioner of the county where he may
8 be found, by his parents or parent, guardian, spouse, adult
9 next of kin or friend, or by a physician, psychologist, a
10 health officer or caseworker familiar with the case of the
11 individual, or the head of any institution in which such
12 individual may be.

13 Such application shall be made under oath and shall state
14 the belief of the applicant that because of symptoms of mental
15 illness, mental retardation or addiction, the individual is
16 likely to cause serious harm to himself or others and the
17 grounds for such belief. The written application, certificate,
18 affidavit and any warrants issued pursuant thereto, including
19 any papers and documents related thereto filed with any
20 circuit court or mental hygiene commissioner for the involun-
21 tary hospitalization of any individual shall not be open to
22 inspection by any person other than the individual, except upon
23 authorization of the individual or his legal representative or
24 by order of the circuit court and such records shall not be
25 published except upon the authorization of the individual or
26 his legal representative. Such applicant shall file with his
27 application the certificate of a physician or a psychologist
28 stating that in his opinion the individual is mentally ill,
29 mentally retarded or addicted and that because of his mental
30 illness, mental retardation or addiction, the individual is likely
31 to cause serious harm to himself or others if he is allowed to
32 remain at liberty and therefore he should be hospitalized or,
33 in lieu of said certificate, an affidavit by the applicant
34 showing facts that the individual has refused to submit to
35 examination by a physician or a psychologist.

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

45 The notice served on the individual shall specify the nature
46 of the charges against him, the facts underlying and supporting
47 the application for his involuntary commitment, and shall ad-
48 vise him of his right to have counsel appointed for him and to
49 consult with counsel at every stage of the proceedings.

50 Within a reasonable time after notice of the commencement
51 of proceedings is given, the circuit court or mental hygiene

52 commissioner shall appoint two physicians or a physician and
53 psychologist, other than the physician or psychologist whose
54 certification may have accompanied the application under this
55 section to the circuit court or mental hygiene commissioner,
56 to examine the individual and report to the circuit court or
57 mental hygiene commissioner their findings as to the mental
58 condition of the individual and the likelihood of his causing
59 serious harm to himself or others. The physicians or physician
60 and psychologist may jointly examine the individual, but must
61 make separate, independent and signed evaluations of this
62 condition stating the facts upon which the conclusions therein
63 are based.

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

83 The circuit court or mental hygiene commissioner shall
84 forthwith fix a date for and have the clerk of the circuit court
85 give notice of the hearing to (1) the individual, (2) to the ap-
86 plicant or applicants, and (3) to the individual's spouse,
87 parents or parent or guardian, or if the individual does not have
88 a spouse, parents or parent or guardian, to the individual's
89 adult next of kin, and (4) to the mental health facility serving
90 the area. Such notice shall be served on the individual by per-

91 sonal or substitutive service of process not less than ten days
92 prior to the date of the hearing. The notice to the individual's
93 spouse, parents or parent or guardian, or the individual's
94 adult next of kin may be by personal or substitutive service of
95 process or by certified or registered mail, return receipt re-
96 quested. Such notice shall specify the nature of the charges
97 against the individual; the facts underlying and supporting the
98 application of his involuntary commitment; his right to have
99 counsel appointed for him; his right to consult with counsel
100 at every stage of the proceedings and the time and place of the
101 hearing.

102 (c) The individual shall be present at the hearing and he,
103 the applicant and all persons entitled to notice of such hear-
104 ing shall be afforded an opportunity to testify and to present
105 and cross-examine witnesses. In the event that the individual
106 has not retained counsel, the court or mental hygiene commis-
107 sioner at least seven days prior to hearing shall appoint a
108 competent attorney, who shall be present at the hearing and
109 protect the interests of the individual, and the circuit court,
110 by order of record, may allow the attorney a reasonable fee
111 not to exceed the amount allowed for attorneys in felony cases
112 by section one, article two, chapter sixty-two of this code. Any
113 counsel representing an individual shall be entitled to copies of
114 all medical reports, psychiatric or otherwise. The individual
115 shall have the right to have an examination by an independent
116 expert of his choice and testimony from such expert as a medi-
117 cal witness on his behalf. The cost of such independent expert
118 shall be borne by the patient unless he is indigent. The circuit
119 court or mental hygiene commissioner shall hear evidence from
120 all interested parties in chambers, including testimony from
121 representatives of the community mental health facility. The
122 individual shall not be compelled to be a witness against him-
123 self. The circuit court or mental hygiene commissioner shall
124 receive all relevant and material evidence which may be offer-
125 ed. The circuit court or mental hygiene commissioner shall be
126 bound by the rules of evidence except that statements made to
127 physicians or psychologists by the individual may be admitted
128 into evidence by the physician's or psychologist's testimony
129 notwithstanding failure to inform the individual that this state-
130 ment may be used against him. Any psychologist or physician

131 testifying shall bring all records pertaining to said individual
132 to said hearing. Such medical evidence obtained pursuant to
133 an examination under this section, or section two, or section
134 three of this article, is not privileged information for purposes
135 of a hearing pursuant to this section. A transcript or recording
136 shall be made of all proceedings, whether before the circuit
137 court or mental hygiene commissioner, and a transcript made
138 available to the individual or his counsel within thirty days, if
139 the same is requested for the purpose of an appeal. In any
140 case wherein an indigent person seeks an appeal, the circuit
141 court shall, by order entered of record, authorize and direct
142 the court reporter to furnish a transcript of the hearing and
143 the costs of such transcript shall be paid by the county wherein
144 the hearing was held.

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

159 The findings of fact shall be incorporated into the order
160 entered by the circuit court and must be based upon clear,
161 cogent and convincing proof. Upon the requisite findings, the
162 circuit court may order the individual to a mental health fac-
163 ility for an indeterminate period or for a temporary observa-
164 tory period not exceeding six months. If the order is for a
165 temporary observation period, the circuit court or mental hy-
166 giene commissioner may, at any time prior to the expiration
167 of such period on the basis of a report by the chief medical
168 officer of the mental health facility in which the patient is con-
169 fined and such further inquiry as may seem appropriate, order

170 indeterminate hospitalization of the patient or dismissal of the
171 proceedings. An order for an indeterminate period shall ex-
172 pire of its own terms at the expiration of two years from the
173 date of the last order of commitment.

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

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

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

207 (f) In lieu of ordering the patient to a mental health facil-
208 ity, the circuit court may order the individual delivered to

209 some responsible person who will agree to take care of the
 210 individual and the circuit court may take from such responsi-
 211 ble person a bond in an amount to be determined by the cir-
 212 cuit court, with condition to restrain and take proper care of
 213 such individual until further order of the court.

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

222 (h) The chief medical officer of a mental health facility
 223 admitting a patient pursuant to proceedings under this sec-
 224 tion shall forthwith make a report of such admission to the
 225 director of mental health.

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

**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 felony case or a defendant in a misdemeanor case in which
 3 an indictment has been returned may be incompetent to
 4 stand trial or is not criminally responsible by reason of
 5 mental illness, mental retardation or addiction, it may at any
 6 stage of the proceedings after the return of an indictment
 7 or the issuance of a warrant against the defendant, order an
 8 examination of such defendant to be conducted by one or more
 9 psychiatrists, or a psychiatrist and a psychologist.

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

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

38 (d) Within five days after the receipt of the report on the
39 issue of competency to stand trial, or if no observation pur-
40 suant to subsection (b) of this section has been ordered,
41 within five days after the report on said issue following an
42 examination under subsection (a) of this section, the court
43 of record shall make a finding on the issue of whether the
44 defendant is competent for trial. A finding of incompetence
45 for trial shall require proof by a preponderance of the
46 evidence. Notice of such findings shall be sent to the
47 prosecuting attorney, the defendant and his counsel. If the
48 court of record orders or if the defendant or his counsel

49 on his behalf within a reasonable time requests a hearing on
50 such findings, a hearing in accordance with section two of
51 this article shall be held by the court of record within ten
52 days of the date such finding or such request has been made.

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

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

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

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

§27-7-1. Discharge.

1 The chief medical officer of the mental health facility shall
2 continually review the case of each individual who is an
3 involuntary patient at the facility pursuant to article five of this
4 chapter and shall as frequently as practicable, in any event at
5 least once every three months, cause a complete psychiatric
6 examination of each patient, and whenever it is determined
7 that the conditions justifying involuntary hospitalization no
8 longer exist or that the individual can no longer benefit from
9 hospitalization, the chief medical officer shall discharge the
10 patient, and forward a copy of the patient's discharge to the

11 clerk of the circuit court or mental hygiene commissioner of
12 the county in which the involuntary hospitalization was
13 ordered and to the circuit court or mental hygiene commissioner
14 of the county wherein the individual is a resident. In the event
15 that the individual was relieved of legal capacity pursuant to
16 article eleven of this chapter, the discharge restores the in-
17 dividual to legal capacity.

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

1 The chief medical officer of a mental health facility may
2 release an involuntary patient on convalescent status (trial
3 visit) when the chief medical officer believes such release is
4 in the best interest of the patient. Release on convalescent
5 status shall include provisions for continuing responsibility
6 to and by a mental health facility, not necessarily the
7 facility in which the patient was previously hospitalized, in-
8 cluding a plan of treatment on an outpatient basis to insure
9 that the patient receives whatever care and treatment he might
10 require. At the end of six months on convalescent status, the
11 patient must be discharged from any involuntary commitment
12 order that might have been entered against him and he cannot
13 be involuntarily returned to any mental health facility unless
14 a new commitment proceeding has been instituted against
15 him. When a patient released on convalescent status is
16 discharged from his involuntary commitment, it shall be the
17 responsibility of the chief medical officer of the mental health
18 facility of which the individual was a patient prior to being
19 placed on convalescent status to immediately make a report of
20 the discharge of the patient to the circuit court or mental
21 hygiene commissioner of the county in which the involuntary
22 hospitalization was ordered and to the circuit court or mental
23 hygiene commissioner of the county wherein the individual is
24 a resident.

§27-7-3. Release as unimproved.

1 The chief medical officer of a mental health facility may
2 release an involuntary patient as unimproved when any person
3 requests the patient's release and is willing and able to take
4 proper care of the patient outside the mental health facility.
5 In the event that a patient is released to a responsible person,
6 a report shall be made by such person at least once every

7 six months to the chief medical officer of the mental health
8 facility. No discharge shall be given to said patient until he
9 has returned to the mental health facility for examination by
10 the chief medical officer and he has determined that said
11 patient is no longer in need of hospitalization.

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

§27-7-4. Readmission of patients.

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

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

1 If any person confined in a mental health facility, pursuant
2 to articles five or six-a of this chapter, escapes therefrom, the
3 chief medical officer thereof may issue a notice, giving the
4 name and description of the person escaping and requesting
5 the patient's apprehension and return to the mental health
6 facility. The chief medical officer may issue an order directed

7 to the sheriff of the county in which the patient is a resident,
8 commanding him to take into custody and transport such
9 escaped person back to the mental health facility, which
10 order the sheriff may execute in any part of the state. If
11 such person goes to another state, the chief medical officer
12 may notify the director of mental health and the director
13 may take such action as he may deem proper for the return
14 of such person to the mental health facility.

15 If any veteran duly committed to a veterans' hospital or
16 other veterans' institution, either within or without the state,
17 escapes therefrom and any person makes complaint, under
18 oath, to the clerk of the circuit court of the county from which
19 such veteran was so committed upon the order of the circuit
20 court, giving such information and stating such facts therein
21 as may be required, or if any veteran duly committed to a
22 veterans' hospital or other veterans' institution, either within
23 or without the state, escapes therefrom and the chief medical
24 officer of such hospital or institution issues a notice to the
25 clerk of the circuit court of the county from which such
26 veteran was so committed upon the order of the circuit court,
27 giving the name and description of such veteran and re-
28 questing his apprehension and return to such hospital or
29 institution, the circuit court upon receipt of such complaint
30 or of such notice, may issue an order directed to the sheriff
31 of the county from which the veteran was so committed
32 commanding him to take into custody and transport such
33 veteran back to such hospital or institution, which order the
34 sheriff may execute in any part of the state.

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

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

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

1 (a) The county commission of a person's residence may ap-

2 point a committee for a person found to be incompetent. Any
3 finding of incompetency under this article shall be made
4 separately and at a different proceeding from any finding of
5 mental illness, mental retardation or addiction under article four
6 or 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
9 verified petition of a person setting forth the facts showing the
10 incompetency of an individual with the county commission. Up-
11 on receipt of a petition, the clerk of the county commission shall
12 give notice of the hearing thereon to the individual and to the
13 individual'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
17 and advise the individual of his rights with respect thereto.
18 The individual shall appear at the hearing, to testify, to pre-
19 sent and cross-examine witnesses. In the event that the indi-
20 vidual cannot retain counsel, the county commission shall ap-
21 point a competent attorney for the individual. The individual
22 shall have the right to an examination by an independent expert
23 of his choice and testimony from such expert as a medical wit-
24 ness on his behalf. A transcript or recording shall be made of
25 all proceedings. A transcript shall be made available to the
26 individual or his counsel within thirty days, if the same is
27 requested for purposes of appeal. In any case wherein an indi-
28 gent person seeks an appeal, the circuit court shall, by order
29 entered of record, authorize and direct the court reporter to
30 furnish a transcript of the hearing and the costs of such trans-
31 cript shall be paid by the county wherein the hearing was held.

32 (c) Upon completion of the hearing and upon the evidence
33 presented therein the county commission may find that (i) the
34 individual is unable to manage his business affairs, or (ii) the
35 individual is unable to care for his physical well-being, or
36 (iii) both, and is therefore incompetent; or (iv) that the
37 person is competent. Evidence of mere poor judgment or of
38 different life style shall not be competent evidence upon which
39 to base 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 by
46 conduct demonstrating that he is dangerous to himself, notwith-
47 standing the fact that he may display poor judgment.

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

57 (d) The extent of the committee’s authority shall be speci-
58 fied in the order of the county commission. No authority of a
59 committee shall extend beyond what is necessary for the protec-
60 tion of the individual. A finding of inability to care for one’s
61 physical well-being shall entitle the committee to custody of the
62 individual, except when the individual is under a commitment
63 order to a mental health facility, but only to the extent as is
64 necessary for the protection of the individual.

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

70 (f) The individual or any person may apply to the county
71 commission in the manner provided by subsection (b) of this
72 section for termination of his committee at any time and appeal
73 from a determination thereon in the manner provided by this
74 section; or in the alternative, the individual may seek such
75 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. Chestnut Jr
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Scillon Jr
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. J. Bretherton Jr
President of the Senate

Lewis N. McManus
Speaker House of Delegates

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

Arthur A. Shaffer Jr
Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/75

Time 2:50 p.m.