WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

ENROLLED

SENATE BILL NO. 167

(By Mr. Hamilton)

PASSED March 11, 1978

In Effect from Passage
ENROLLED

Senate Bill No. 167
(By MR. HAMILTON)

[Passed March 11, 1971; in effect from passage.]

AN ACT to amend and reenact sections nine and twelve, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three of said chapter by adding thereto a new section, designated section two; to amend article four by adding thereto a new section, designated section four; to amend and reenact sections one, two, three, four, six and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section one, article eleven of said chapter; and to amend and reenact section thirty-one, article five, chapter twenty-eight of said code, all relating to commitment and treatment of the mentally ill, mentally retarded and addicted; redefining the term "mental health facility"; definitions; authorization of disclosure of confidential information; right to release from voluntary hospitalization upon application therefor; admission and treatment of voluntary patients; statement of rights; consent for treatment; involuntary commitment; involuntary hospitalization; probable cause hearings; custody for medical examination; legal proceedings for involuntary hospitalization; examination of newly admitted patients; examination by a psychologist; periodic examination and review of patient's hospitalization; consideration of evidence in habeas corpus proceeding; appeal procedures; appointment of committees; appointment of guardian ad litem; not requiring presence of individual under certain conditions; treatment of mentally diseased convicts; transfer between penal and mental health facilities and penal facility procedures; and hearing procedures required.
Be it enacted by the Legislature of West Virginia:

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

CHAPTER 27. MENTALLY ILL PERSON.

ARTICLE 1. WORDS AND PHRASES DEFINED.


"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, mentally retarded or addicted which is operated, or licensed to operate, by the department of health and shall include state hospitals as defined in section six of this article. The term shall also include veterans administration hospitals.

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

"Likely to cause serious harm" refers to a person who has:

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

2. A substantial tendency to physically harm other persons which is manifested by homicidal or other violent behavior which places others in reasonable fear of serious physical harm; or

3. A complete inability to care for himself by reason of mental retardation.
ARTICLE 3. CONFIDENTIALITY.

1 No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the patient or client by his legal guardian. Every person signing an authorization shall be given a copy.

2 Every person requesting such authorization shall inform the patient, client, or authorized representative that refusal to give such authorization will in no way jeopardize his right to obtain present or future treatment except where and to the extent disclosure is necessary for treatment of said patient or client or for the substantiation of a claim for payment from a person other than the patient or client.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

(a) No person shall be admitted as an inpatient into a mental health facility as a voluntary patient until such person has been told and has received a written statement containing in bold print a statement that once he voluntarily admits himself into such facility, his release may not be voluntary, that the facility may seek to involuntarily commit him and may hold him against his will for thirty days pending a hearing and indefinitely after the hearing if he is committed, and that such statement shall inform the individual that he may request release at any time. Further, the individual shall be advised in writing of his rights upon admission as an inpatient to a mental health facility, including, but not limited to, those rights afforded pursuant to section nine, article five of this chapter. A copy of the statement shall be filed in the individual's permanent records and shall contain the name of the person who made the oral and written disclosure.

(b) No voluntary inpatient shall be subjected to any course of treatment without such patient's written consent. Such consent shall be revocable at any time and shall not be valid for a period exceeding six months.
(c) One person in every mental health facility shall be designated as the voluntary patient coordinator. Such coordinator, or his designee while the coordinator is not on duty, shall be responsible for the disclosures required by this section and for any and all discussions with voluntary patients relative to release.

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 shall appoint a competent attorney and, if necessary, one additional attorney to serve as an alternate in each county to preside over such hearings, who shall be designated "mental hygiene commissioner". He shall be a person of good moral character and of standing in his profession 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 chapter, 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 his services in connection with each case. 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.

Upon written order of the circuit court or the mental hygiene commissioner of the county where the individual formally accused of being mentally incompetent, mentally retarded or addicted is a resident or is found, the sheriff of that county shall take said individual into custody and transport him to and from the place of hearing and the mental health facility.

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; hearings; release.

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

(1) Written application under oath to the facility by any adult person 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 psy-
chologist 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 sub-
division (2) shall be referred to as an emergency admis-

(b) Any individual with respect to whom such certifi-
cation 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 emer-
gency 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 examina-
tion in the case of medical certification admission in
accordance with subdivision (1), 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 health, transfer such individual to a
state hospital or to another similar type of mental health
facility after determining that no less restrictive treat-
ment alternative is suitable or available. The chief medi-
cal officer of the mental health facility admitting the
individual shall forthwith make a report thereof to the
director of 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 one of the individual's parents or parent
or guardian, or if there be no such spouse, parents or
guardians to one of the individual's adult next of kin:
Provided, That such next of kin shall not be the applicant.
Notice shall also be given to the community mental health
facility, if any, having jurisdiction in the county of
the individual's residence. Such notices other than to
the community mental health facilities 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,
excluding Sundays and holidays, 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. No physician or psychologist
shall confirm likelihood of serious harm unless recent
overt acts alleged in detail in the application clearly
demonstrate such likelihood: Provided, That no such
statement of recent overt acts need be made when the
applicant alleges the individual is likely to cause serious
harm as a result of having a complete inability to care
for himself by reason of mental retardation. The physi-
cians, or psychologist 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 physi-
cian the chief medical officer determines that the indi-
vidual should continue to be hospitalized, a written re-
quest 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.
After the request for hearing is filed, the hearing shall
not be canceled on the basis that the individual has be-
come a voluntary patient unless the mental hygiene commis-
missioner concurs in the motion for cancellation of the
hearing. 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 continued for a period
of time not to exceed ten days.

(e) Unless he chooses to change his status to that of
voluntary hospitalization, an individual hospitalized pur-
suant 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
physicians or one staff psychologist and one staff physi-
cian, both of whom confirm in writing that the individual
is likely to cause serious harm to himself or others if not
immediately restrained; or

(2) Within the time prescribed by section two-a of
this article, unless the individual has been afforded a
probable cause hearing and a determination and order
made as prescribed therein;

(3) Within three days after a probable cause hearing,
unless the chief medical officer has sent a written request
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 individual’s
mental condition and the need for further hospitalization;
or

(4) Within twenty days after his admittance to a
mental health facility, unless a hearing has been con-
ducted pursuant to the provisions regarding legal pro-
ceedings for involuntary hospitalization and a determina-
tion and order have been made as prescribed therein on
the question of the individual’s mental condition or unless
the individual has obtained a continuance not to exceed
ten days. If the individual has been afforded a timely
probable cause hearing in accordance with section two-a
of this article, such period shall be thirty days after admit-tance.


1. The individual may not be detained pursuant to section two of this article for a period exceeding seventy-two hours, excluding Sundays and holidays, unless within such period a probable cause hearing is held before the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he was found, or if the individual is hospitalized in a mental health facility located in a county other than where he resides or was found, in the county of the mental health facility. If requested by the detained individual or his counsel, the hearing may be postponed for a period not to exceed forty-eight hours. The individual must be present at the hearing and has the right to present evidence and to examine testimony offered. The individual has the right to remain silent and to be proceeded against by the rules of evidence. The individual must be appointed counsel, if unable to afford counsel, at least twelve hours prior to the hearing.

At the conclusion of the hearing, if the mental hygiene commissioner or circuit court finds that there is probable cause to believe that such individual as a result of mental illness, mental retardation or addiction is likely to cause serious harm to self or others, and further that the individual could not be treated in a less restrictive alternative than in a state hospital or mental health facility, the commissioner or court may order that such individual be detained in a state hospital or other mental health facility pending a hearing pursuant to section four of this article.


1. When any person, health officer, caseworker or law-enforcement officer has reason to believe that an individual is mentally ill, mentally retarded or addicted and because of his mental illness, mental retardation or addiction is likely to cause serious harm to himself or others if allowed to remain at liberty while awaiting...
an examination and certification by a physician, or
psychologist, physicians, or physician and psychologist,
as the case may be, pursuant to section two of this
article, such person, health officer, caseworker or law-
enforcement officer may make application under oath,
to the circuit court or mental hygiene commissioner
of the county of which the individual is a resident or
to the circuit court or mental hygiene commissioner
of the county where he may be found, giving such
information and stating such facts therein as may be
required, upon the form provided by the department
of health and the circuit court or mental hygiene com-
missioner shall thereupon enter an order for the in-
dividual named in such application to be taken into
custody and detained, but not incarcerated in a jail or
penal institution, for the purpose of an examination
by at least one physician or psychologist to take place
within fourteen hours after the individual is taken into
custody. Not later than fourteen hours after the indi-
vidual is taken into custody, the individual shall be
released from custody, unless proceedings have been
instituted pursuant to section two of this article.

§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 any adult person having personal knowledge of the
facts of the case.
Such application shall be made under oath and shall
state the belief of the applicant that because of symp-
toms of mental illness, mental retardation or addiction,
the individual is likely to cause serious harm to him-
self or others and the grounds for such belief, stating
in detail the recent overt acts upon which such belief
is based: Provided, That no such statement of recent
overt acts need be made when the applicant alleges
the individual is likely to cause serious harm as a result
of having a complete inability to care for himself by
reason of mental retardation. Applications shall not
be filed with regard to individuals who are merely
epileptics, mentally deficient or senile. 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 hospitaliza-
tion 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 representa-
tive 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 re-
tarded or addicted and that because of his mental ill-
ness, 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, stating in detail the recent overt
acts upon which such conclusion is based: Provided,
That no such statement of recent overt acts need be
made when the applicant alleges the individual is likely
to cause serious harm as a result of having a complete
inability to care for himself by reason of mental re-
tardation. In lieu of said certificate, an affidavit shall
be filed by the applicant showing facts that the indi-
gual has refused to submit to examination by a phy-
sician or a psychologist.

(b) Upon receipt of an application, the mental
hygiene commissioner or circuit court shall review the
application and if it is determined that the facts alleged,
if any, are sufficient to warrant involuntary hospitaliza-
tion, forthwith fix a date for and have the clerk of the
circuit court give notice of the hearing (1) to the indi-
vidual, (2) to the applicant or applicants, (3) to the
individual’s spouse, one of the parents or guardians,
or if the individual does not have a spouse, parents or
parent or guardian, to one of the individual's adult next
of kin: Provided, That such person is not the applicant,
(4) to the mental health authorities serving the area,
(5) to the circuit court in the county of the individual's
residence if the hearing is to be held in a county other
than that of such individual's residence, and (6) to the
prosecuting attorney of the county in which the hearing
is to be held. Such notice shall be served on the individ-
ual by personal service of process not less than eight
days prior to the date of the hearing, and 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 ap-
pointed for him if he is an indigent; his right to consult
with and be represented by counsel at every stage of
the proceedings; and the time and place of the hearing.
The notice to the individual's spouse, parents or parent
or guardian, the individual's adult next of kin, or to
the circuit court in the county of the individual's
residence may be by personal service of process or
by certified or registered mail, return receipt re-
quested, and shall state the time and place of the
hearing.

Within a reasonable time after notice of the com-
mencement of proceedings is given, the circuit court or
mental hygiene commissioner shall appoint two phy-
sicians 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 ex-
amine 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, inde-
pendent 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 or mental hygiene commissioner may direct that the individual 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-enforcement 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 hospitalization as provided for in section two of this article. If the reports of the appointed physician or physicians and psychologists do not confirm that the individual is mentally ill, mentally retarded or addicted and might be harmful to himself or others, then the proceedings for his involuntary hospitalization shall be dismissed.

(c) The individual shall be present at the hearing and he, the applicant and all persons entitled to notice of such hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses. In the event that the individual is an indigent person and has not retained counsel, the court or mental hygiene commissioner at least seven days prior to hearing shall appoint a competent attorney, and shall inform the individual of the name, address and telephone number of his appointed counsel. Such counsel shall conduct a timely interview, make investigation and secure appropriate witnesses, and shall be present at the hearing and protect the interest of the individual. 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 medical witness on his behalf. The cost of such independent expert shall be borne by the individual unless he is indigent. The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility. The individual shall not be compelled to be a witness against himself. The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered. 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 statement 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 shall be made available to the individual or his counsel within thirty days, if the same is requested for the purpose of further proceedings. In any case wherein an indigent person intends to pursue further proceedings the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings 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 presented therein, the circuit court or mental hygiene commissioner shall make findings as to whether or not (1) the individual is mentally ill, mentally retarded or addicted and because 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 restrictive 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 facility for an indeterminate period or for a temporary observatory period not exceeding six months. The individual shall not be detained in a mental health facility for a period in excess of five days after a hearing pursuant to this section unless an order has been entered and received by the facility. If the order is for a temporary observation period, the circuit court or mental hygiene 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 confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization, to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings. An order for an indeterminate period shall expire 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 individual 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 directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry thereof forward 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 satisfied that hospitalization should be ordered but find 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 resident, who shall immediately present such transcript to the circuit 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 standard 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 facility, 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 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 health.

(i) The state shall pay the attorney fees, court reporter 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 commission 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.

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

The chief medical officer of the mental health facility shall arrange for psychiatric examinations of every patient hospitalized pursuant to the provisions of section two of this article. If such examination is not completed within three days after the date of admission, or if the physician designated by the chief medical officer cannot certify that in his opinion the patient is mentally ill, mentally retarded or addicted and is likely to injure himself or others if allowed to be at liberty, the patient shall be discharged immediately.

If, in the opinion of the designated examining physician, the patient is mentally ill, mentally retarded or addicted and because of such mental illness, mental retardation or addiction he is likely to injure himself or others if allowed to be at liberty, the chief medical officer shall, within five
days from the date of admission, institute legal proceedings as provided in section four of this article. If such proceedings are not instituted within such five-day period, the patient shall be immediately released. If such proceedings are not completed within twenty days from the date of admittance, the patient shall be immediately released.

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


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

(b) Appeal shall be made to the chief medical officer of the mental health facility wherein the patient is confined. The chief medical officer shall review the report
of the examination and the conclusions resulting there-
from and he shall either affirm the patient's continued
hospitalization or discharge the patient from confine-
ment within three days from the date of his appeal.

If, within three days from the date of the patient's
appeal, the chief medical officer has not taken action or
has taken action unfavorable to the patient, the patient
may appeal to a review board of appeal which shall be
appointed by the director of health. The review board
shall consist of three members, one of whom shall be
a psychiatrist. The review board shall consider the
patient's clinical record, the report of the examination
and conclusions therefrom and any evidence offered by
the patient and by the chief medical officer of such
facility. The review board shall either order the patient's
continued hospitalization or shall order the chief medical
officer to discharge the patient within seven days from
the date of the patient's appeal to the review board.

If, within seven days from the date of the patient's
appeal to the review board, the review board has taken
no action or has taken action unfavorable to the patient,
the patient may appeal to the circuit court of the county
of the patient's residence or to the circuit court of the
county where the patient is hospitalized. The circuit
court or its mental hygiene commissioner shall hold a
hearing to review the hospitalization of the patient. If
the patient has appealed to the circuit court within one
year prior to the present appeal it shall be within the
circuit court's discretion to affirm or deny such appeal.
A hearing under this section shall be conducted in the
manner prescribed in subsections (c) and (d), section
four of this article. At such hearing the burden of proof
shall be on the person proposing the involuntary hos-
pitalization.

The administrative and appeal remedies available by
virtue of this section shall not be construed to in any
way limit or precondition the right to seek release of
the patient by habeas corpus. At a habeas corpus hear-
ing, the fact that release was obtained on a previous
habeas corpus petition shall not bar the consideration of
evidence presented at the original commitment proceeding.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

(a) The county commission of a person’s residence may appoint 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: Provided, That such person shall not be the petitioner: Provided further, That such individual shall be served with notice of such hearing by delivering unto such individual in person written notice thereof together with a true copy of such verified petition, which notice shall be served upon the individual alleged to be incompetent at least ten days before the time of such hearing within the county in which such hearing is to be held.

Such individual alleged to be incompetent shall be accorded the right to subpoena witnesses, to be confronted with witnesses and the right to cross-examine witnesses which may be offered against him, and the county commission on or before the commencement of such hearing shall appoint a competent attorney practicing before the bar of the circuit court of the county wherein such hearing is to be held as guardian ad litem for the purpose of representing the interest of such individual throughout such proceedings under this section. Notwithstanding any requirement hereof to the contrary such hearing may proceed without the presence of the individual alleged to be incompetent if (1) proper notice
has been served upon the party alleged to be incompetent as required herein, and (2) a duly licensed physician shall have certified in writing and upon affidavit that he or she has examined such individual and that such individual is physically unable to appear at such hearing or that such an appearance would likely impair or endanger the health of such individual, or (3) such individual refuses to appear, and (4) upon the specific written findings by such commission of facts as will justify a hearing without the presence of such individual as provided in this subparagraph.

(c) A record 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. If 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 cost of such transcript shall be paid by the county wherein the hearing was held.

(d) 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 lifestyle 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.

(e) 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.

(f) An individual found incompetent pursuant to subsection (d) 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.

(g) The individual or any person may apply to the county commission in the matter 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.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

(a) No person who is, or was considered to be, mentally ill, mentally retarded or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person
is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to section four, article five, chapter twenty-seven of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, mentally retarded or addicted and in need of treatment, training or other services therefor, which cannot be most effectively provided at such penal facility, proceedings for the transfer of such individual may be initiated by the filing of an application by a correctional officer, warden, member of a penal institution medical staff, relative, friend, or the convicted person stating that the individual is mentally ill, mentally retarded or addicted and is in need of treatment, training, or other services therefor; and further if the application is made by a member of the staff of a penal facility it shall state the nature of the treatment, training, or services which the person's condition warrants and the facility to which transfer is sought. The application shall be filed with the clerk of the circuit court of the county of location of the facility to which transfer is sought or the county wherein the individual was convicted. The mental hygiene commissioner or circuit judge shall forthwith appoint counsel for the convicted person in no event later than ten days following the receipt of the application by the clerk unless the person has retained counsel.

If the application was filed by the warden or other staff member of a penal facility, the clerk of the circuit court shall forthwith notify the respondent convicted person, by certified mail, return receipt requested, delivered only to the addressee, that such application has been filed, enclosing therewith a copy of the application.
with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of the appointed counsel. The person shall be afforded unrestricted telephone access to his counsel. If the application was filed by the convicted person or a relative or friend on such person's behalf, the clerk shall by adequate means notify the respondent or the officer of the penal facility where the individual is incarcerated. Within fifteen days after the receipt of the application, the respondent shall file a verified return admitting or denying the allegations in the application and informing the mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. If the convicted person is the respondent, counsel shall file the return after personal consultation with such person. If the respondent in such verified return does not oppose the transfer, the mental hygiene commissioner shall order the transfer of the convicted person to the facility designated in the petition.

If the transfer is opposed, the matter shall forthwith be set for hearing, in no event to exceed twenty days, and the clerk shall provide to the convicted person at least ten days' written notice by certified mail, return receipt requested, of the purpose and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from such expert as a medical witness on the person's behalf. The cost of such medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within
thirty days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of fact. If the petitioner is the convicted person, findings shall be made as to whether the person is mentally ill, mentally retarded or addicted, and with a positive finding the circuit court shall order transfer to the appropriate facility for treatment or training. If the petitioner is other than the convicted person and the convicted person opposes the transfer, the findings shall be made as to whether or not (1) the individual is mentally ill, or mentally retarded or addicted; (2) the individual because of mental illness, mental retardation or addiction is likely to cause serious harm to self or others; and (3) the individual would not obtain the requisite treatment or training at the penal facility or another appropriate facility; and if all of such findings are in the affirmative, the circuit court may order the transfer of such person to the designated facility. The findings of fact shall be incorporated into the order entered by the circuit court.

In all proceedings hereunder proof of mental condition and of likelihood of serious harm must be established by clear, cogent and convicting evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts: Provided, That no such evidence of recent overt acts need be introduced when the applicant alleges the individual is likely to cause serious harm as a result of having a complete inability to care for himself by reason of mental retardation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James S. Davis
Chairman Senate Committee

Clarence E. Chastain
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J.C. Wesson Jr.
Clerk of the Senate

B. Blankenship
Clerk of the House of Delegates

W. T. Smith
President of the Senate

Donald L. Hoop
Speaker House of Delegates

The within ________ approved ________ this the ________ day of ________, ________.

John D. Blair
Governor
The image contains a receipt or notification from the Office of the Governor, dated March 30, 1978, at 2:30 PM. The receipt is signed by the Governor and includes the time of receipt.