

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1978



ENROLLED

SENATE BILL NO. 167

(By Mr. Hamilton)



PASSED March 11 1978

In Effect from Passage



110.101

ENROLLED

Senate Bill No. 167

(By MR. HAMILTON)

[Passed March 11, 1978; 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.

§27-1-9. Mental health facility.

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

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

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

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

8 (2) A substantial tendency to physically harm other
9 persons which is manifested by homicidal or other violent
10 behavior which places others in reasonable fear of serious
11 physical harm; or

12 (3) A complete inability to care for himself by reason
13 of mental retardation.

ARTICLE 3. CONFIDENTIALITY.**§27-3-2. Authorization of disclosure of confidential information.**

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

6 Every person requesting such authorization shall inform
7 the patient, client, or authorized representative that re-
8 fusals to give such authorization will in no way jeopardize
9 his right to obtain present or future treatment except
10 where and to the extent disclosure is necessary for treat-
11 ment of said patient or client or for the substantiation
12 of a claim for payment from a person other than the
13 patient or client.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.**§27-4-4. Admission and treatment of voluntary patients; statement of rights; consent for treatment.**

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

19 (b) No voluntary inpatient shall be subjected to any
20 course of treatment without such patient's written con-
21 sent. Such consent shall be revocable at any time and
22 shall not be valid for a period exceeding six months.

23 (c) One person in every mental health facility shall be
24 designated as the voluntary patient coordinator. Such
25 coordinator, or his designee while the coordinator is not
26 on duty, shall be responsible for the disclosures required
27 by this section and for any and all discussions with volun-
28 tary patients relative to release.

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
2 mental health facility except by order entered of record
3 at any time by the circuit court of the county wherein
4 such person resides or was found and then only after a
5 full hearing on the issues relating to the necessity of com-
6 mitting an individual to a mental health facility. The
7 circuit court of each county shall appoint a competent
8 attorney and, if necessary, one additional attorney to
9 serve as an alternate in each county to preside over such
10 hearings, who shall be designated "mental hygiene com-
11 missioner". He shall be a person of good moral character
12 and of standing in his profession and he shall, before as-
13 suming the duties of such commissioner, take the oath
14 required of other special commissioners as provided in
15 article one, chapter six of this code. The mental hygiene
16 commissioner may sign and issue summons for the at-
17 tendance, at any hearing held pursuant to section four,
18 article five of this chapter, of the individual sought to be
19 committed; may sign and issue subpoenas for witnesses,
20 including subpoenas duces tecum; may place any witness
21 under oath; and may make findings of fact on evidence
22 and may make conclusions of law, but such findings and
23 conclusions shall not be binding on the circuit court. The
24 circuit court by order entered of record shall allow the
25 commissioner a reasonable fee for his services in connec-
26 tion with each case. The mental hygiene commissioner
27 shall discharge his duties and hold his office at the pleasure
28 of the circuit court by which he is appointed and may
29 be removed at any time by the court. It shall be the duty
30 of the mental hygiene commissioner to conduct orderly
31 inquiries into the mental health of any individual brought
32 before him concerning the advisability of committing the

33 individual to a mental health facility. The mental hygiene
34 commissioner shall safeguard, at all times, the rights and
35 interests of the individual as well as the interests of the
36 state. The mental hygiene commissioner shall make a
37 written report of his findings to the circuit court. In any
38 proceedings before any court of record as set forth in
39 this article, the court of record shall appoint an inter-
40 preter for any individual who is deaf or cannot speak
41 or who speaks a foreign language and who may be subject
42 to involuntary commitment to a mental health facility.

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

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

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

**§27-5-2. Involuntary hospitalization; admission by medical
certification; emergency procedure, examination;
hearings; 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
4 any adult person and certification by two physicians or
5 a physician and a psychologist that they have examined
6 the individual and that they are of the opinion that he
7 is mentally ill, mentally retarded or addicted and be-
8 cause of his mental illness, mental retardation or addiction
9 he is likely to cause serious harm to himself or others if
10 he is allowed to remain at liberty. Admission to a mental
11 health facility in accordance with the procedure set

12 forth in this subdivision shall be referred to as a medical
13 certification admission; or

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

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

51 When an individual is admitted to a mental health
52 facility pursuant to the provisions of this section, the

53 chief medical officer thereof shall immediately give notice
54 of the individual's admission to the individual's spouse,
55 if any, and one of the individual's parents or parent
56 or guardian, or if there be no such spouse, parents or
57 guardians to one of the individual's adult next of kin:
58 *Provided*, That such next of kin shall not be the applicant.
59 Notice shall also be given to the community mental health
60 facility, if any, having jurisdiction in the county of
61 the individual's residence. Such notices other than to
62 the community mental health facilities shall be in writing
63 and shall be transmitted to such person or persons at his,
64 her or their last-known address by certified or registered
65 mail, return receipt requested.

66 (c) After the individual's admission to a mental health
67 facility, he shall not be detained more than three days,
68 excluding Sundays and holidays, unless, within such
69 period, the individual is examined by two staff physicians
70 or one staff psychologist and one staff physician and the
71 likelihood that the individual will cause serious harm to
72 himself or others is confirmed by such physicians, or
73 psychologist and physician. No physician or psychologist
74 shall confirm likelihood of serious harm unless recent
75 overt acts alleged in detail in the application clearly
76 demonstrate such likelihood: *Provided*, That no such
77 statement of recent overt acts need be made when the
78 applicant alleges the individual is likely to cause serious
79 harm as a result of having a complete inability to care
80 for himself by reason of mental retardation. The physi-
81 cians, or psychologist and physician may jointly examine
82 the individual but must make separate, independent and
83 signed evaluations of his condition.

84 (d) If, on the basis of the examination by the two staff
85 physicians, or one staff psychologist and one staff physi-
86 cian the chief medical officer determines that the indi-
87 vidual should continue to be hospitalized, a written re-
88 quest for a hearing shall be sent to the clerk of the
89 circuit court of the county of the individual's residence
90 or to the clerk of the circuit court of the county where
91 he was found within five days after the person's admission.
92 After the request for hearing is filed, the hearing shall
93 not be canceled on the basis that the individual has be

94 come a voluntary patient unless the mental hygiene com-
95 missioner concurs in the motion for cancellation of the
96 hearing. Within a reasonable time after receipt of the
97 request, the circuit court or mental hygiene commissioner
98 shall conduct a hearing pursuant to section four of this
99 article on the question of the individual's mental health
100 and the need for his further hospitalization, but in no
101 event shall such hearing be held later than twenty days
102 after the admission of the individual to a mental health
103 facility: *Provided*, That on the verified motion of the
104 individual, the hearing may be continued for a period
105 of time not to exceed ten days.

106 (e) Unless he chooses to change his status to that of
107 voluntary hospitalization, an individual hospitalized pur-
108 suant to this section shall be released without fail:

109 (1) Within three days after his admittance to a mental
110 health facility, unless he has been examined by two staff
111 physicians or one staff psychologist and one staff physi-
112 cian, both of whom confirm in writing that the individual
113 is likely to cause serious harm to himself or others^{if} not
114 immediately restrained; or

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

119 (3) Within three days after a probable cause hearing,
120 unless the chief medical officer has sent a written request
121 within such time to the clerk of the circuit court of the
122 county of which the individual is a resident or where he
123 was found for a hearing on the question of the individual's
124 mental condition and the need for further hospitalization;
125 or

126 (4) Within twenty days after his admittance to a
127 mental health facility, unless a hearing has been con-
128 ducted pursuant to the provisions regarding legal pro-
129 ceedings for involuntary hospitalization and a determina-
130 tion and order have been made as prescribed therein on
131 the question of the individual's mental condition or unless
132 the individual has obtained a continuance not to exceed
133 ten days. If the individual has been afforded a timely
134 probable cause hearing in accordance with section two-a

135 of this article, such period shall be thirty days after
136 admittance.

§27-5-2a. Probable cause hearing.

1 The individual may not be detained pursuant to sec-
2 tion two of this article for a period exceeding seventy-
3 two hours, excluding Sundays and holidays, unless
4 within such period a probable cause hearing is held
5 before the mental hygiene commissioner or circuit judge
6 of the county of which the individual is a resident
7 or where he was found, or if the individual is hos-
8 pitalized in a mental health facility located in a
9 county other than where he resides or was found, in
10 the county of the mental health facility. If requested
11 by the detained individual or his counsel, the hearing
12 may be postponed for a period not to exceed forty-
13 eight hours. The individual must be present at the
14 hearing and has the right to present evidence and to
15 examine testimony offered. The individual has the right
16 to remain silent and to be proceeded against by the
17 rules of evidence. The individual must be appointed
18 counsel, if unable to afford counsel, at least twelve hours
19 prior to the hearing.

20 At the conclusion of the hearing, if the mental hygiene
21 commissioner or circuit court finds that there is probable
22 cause to believe that such individual as a result of
23 mental illness, mental retardation or addiction is likely
24 to cause serious harm to self or others, and further
25 that the individual could not be treated in a less restric-
26 tive alternative than in a state hospital or mental health
27 facility, the commissioner or court may order that such
28 individual be detained in a state hospital or other men-
29 tal health facility pending a hearing pursuant to section
30 four of this article.

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

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

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

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

1 (a) Proceedings for the involuntary hospitalization
2 of an individual may be commenced by the filing of
3 a written application under oath and the certificate
4 or affidavit as hereinafter provided with the clerk of
5 the circuit court or mental hygiene commissioner of
6 the county of which the individual is a resident or
7 with the clerk of the circuit court or mental hygiene
8 commissioner of the county where he may be found,
9 by any adult person having personal knowledge of the
10 facts of the case.

11 Such application shall be made under oath and shall
12 state the belief of the applicant that because of symp-
13 toms of mental illness, mental retardation or addiction,
14 the individual is likely to cause serious harm to him-
15 self or others and the grounds for such belief, stating
16 in detail the recent overt acts upon which such belief
17 is based: *Provided*, That no such statement of recent

18 overt acts need be made when the applicant alleges
19 the individual is likely to cause serious harm as a result
20 of having a complete inability to care for himself by
21 reason of mental retardation. Applications shall not
22 be filed with regard to individuals who are merely
23 epileptics, mentally deficient or senile. The written
24 application, certificate, affidavit and any warrants issued
25 pursuant thereto, including any papers and documents
26 related thereto filed with any circuit court or mental
27 hygiene commissioner for the involuntary hospitaliza-
28 tion of any individual shall not be open to inspection
29 by any person other than the individual, except upon
30 authorization of the individual or his legal representa-
31 tive or by order of the circuit court and such records
32 shall not be published except upon the authorization
33 of the individual or his legal representative. Such
34 applicant shall file with his application the certificate
35 of a physician or a psychologist stating that in his
36 opinion the individual is mentally ill, mentally re-
37 tardated or addicted and that because of his mental ill-
38 ness, mental retardation or addiction, the individual
39 is likely to cause serious harm to himself or others
40 if he is allowed to remain at liberty and therefore he
41 should be hospitalized, stating in detail the recent overt
42 acts upon which such conclusion is based: *Provided*,
43 That no such statement of recent overt acts need be
44 made when the applicant alleges the individual is likely
45 to cause serious harm as a result of having a complete
46 inability to care for himself by reason of mental re-
47 tardation. In lieu of said certificate, an affidavit shall
48 be filed by the applicant showing facts that the indi-
49 vidual has refused to submit to examination by a phy-
50 sician or a psychologist.

51 (b) Upon receipt of an application, the mental
52 hygiene commissioner or circuit court shall review the
53 application and if it is determined that the facts alleged,
54 if any, are sufficient to warrant involuntary hospitaliza-
55 tion, forthwith fix a date for and have the clerk of the
56 circuit court give notice of the hearing (1) to the indi-
57 vidual, (2) to the applicant or applicants, (3) to the
58 individual's spouse, one of the parents or guardians,

59 or if the individual does not have a spouse, parents or
60 parent or guardian, to one of the individual's adult next
61 of kin: *Provided*, That such person is not the applicant,
62 (4) to the mental health authorities serving the area,
63 (5) to the circuit court in the county of the individual's
64 residence if the hearing is to be held in a county other
65 than that of such individual's residence, and (6) to the
66 prosecuting attorney of the county in which the hearing
67 is to be held. Such notice shall be served on the individ-
68 ual by personal service of process not less than eight
69 days prior to the date of the hearing, and shall specify
70 the nature of the charges against the individual; the
71 facts underlying and supporting the application of his
72 involuntary commitment; his right to have counsel ap-
73 pointed for him if he is an indigent; his right to consult
74 with and be represented by counsel at every stage of
75 the proceedings; and the time and place of the hearing.
76 The notice to the individual's spouse, parents or parent
77 or guardian, the individual's adult next of kin, or to
78 the circuit court in the county of the individual's
79 residence may be by personal service of process or
80 by certified or registered mail, return receipt re-
81 quested, and shall state the time and place of the
82 hearing.

83 Within a reasonable time after notice of the com-
84 mencement of proceedings is given, the circuit court or
85 mental hygiene commissioner shall appoint two phy-
86 sicians or a physician and psychologist, other than the
87 physician or psychologist whose certification may have
88 accompanied the application under this section to the
89 circuit court or mental hygiene commissioner, to ex-
90 amine the individual and report to the circuit court
91 or mental hygiene commissioner their findings as to the
92 mental condition of the individual and the likelihood
93 of his causing serious harm to himself or others. The
94 physicians or physician and psychologist may jointly
95 examine the individual, but must make separate, inde-
96 pendent and signed evaluations of this condition stating
97 the facts upon which the conclusions therein are
98 based.

99 If the designated physicians or physician and psy-
100 chologist report to the circuit court or mental hygiene
101 commissioner that the individual has refused to submit
102 to an examination, the circuit court or mental hygiene
103 commissioner shall order him to submit to such exam-
104 ination. The circuit court or mental hygiene commis-
105 sioner may direct that the individual be taken into
106 custody, but not incarcerated in a jail or penal institu-
107 tion, for the purpose of an immediate examination by
108 the designated physicians or physician and psychologist.
109 All such orders shall be directed to the sheriff of the
110 county or other appropriate law-enforcement officer.
111 After such examination has been completed, the indi-
112 vidual shall be released from custody unless such cus-
113 tody is in a mental health facility pursuant to an emer-
114 gency hospitalization as provided for in section two of
115 this article. If the reports of the appointed physician
116 or physicians and psychologists do not confirm that
117 the individual is mentally ill, mentally retarded or
118 addicted and might be harmful to himself or others,
119 then the proceedings for his involuntary hospitalization
120 shall be dismissed.

121 (c) The individual shall be present at the hearing
122 and he, the applicant and all persons entitled to notice
123 of such hearing shall be afforded an opportunity to
124 testify and to present and cross-examine witnesses. In
125 the event that the individual is an indigent person and
126 has not retained counsel, the court or mental hygiene
127 commissioner at least seven days prior to hearing shall
128 appoint a competent attorney, and shall inform the
129 individual of the name, address and telephone number
130 of his appointed counsel. Such counsel shall conduct
131 a timely interview, make investigation and secure ap-
132 propriate witnesses, and shall be present at the hearing
133 and protect the interest of the individual. The circuit
134 court, by order of record, may allow the attorney a
135 reasonable fee not to exceed the amount allowed for
136 attorneys in felony cases by section one, article two,
137 chapter sixty-two of this code. Any counsel representing
138 an individual shall be entitled to copies of all medical
139 reports, psychiatric or otherwise. The individual shall

140 have the right to have an examination by an indepen-
141 dent expert of his choice and testimony from such
142 expert as a medical witness on his behalf. The cost
143 of such independent expert shall be borne by the indi-
144 vidual unless he is indigent. The circuit court or mental
145 hygiene commissioner shall hear evidence from all in-
146 terested parties in chamber, including testimony from
147 representatives of the community mental health facility.
148 The individual shall not be compelled to be a witness
149 against himself. The circuit court or mental hygiene
150 commissioner shall receive all relevant and material
151 evidence which may be offered. The circuit court or
152 mental hygiene commissioner shall be bound by the
153 rules of evidence except that statements made to phy-
154 sicians or psychologists by the individual may be ad-
155 mitted into evidence by the physician's or psychologist's
156 testimony notwithstanding failure to inform the indi-
157 vidual that this statement may be used against him.
158 Any psychologist or physician testifying shall bring all
159 records pertaining to said individual to said hearing.
160 Such medical evidence obtained pursuant to an exam-
161 ination under this section, or section two, or section
162 three of this article, is not privileged information for
163 purposes of a hearing pursuant to this section. A trans-
164 cript or recording shall be made of all proceedings,
165 whether before the circuit court or mental hygiene
166 commissioner, and a transcript shall be made available
167 to the individual or his counsel within thirty days, if
168 the same is requested for the purpose of further pro-
169 ceedings. In any case wherein an indigent person intends
170 to pursue further proceedings the circuit court shall, by
171 order entered of record, authorize and direct the court
172 reporter to furnish a transcript of the hearings and
173 the costs of such transcript shall be paid by the county
174 wherein the hearing was held.

175 (d) Upon completion of the hearing, and the evi-
176 dence presented therein, the circuit court or mental
177 hygiene commissioner shall make findings as to whether
178 or not (1) the individual is mentally ill, mentally re-
179 tardated or addicted and because of his illness, retarda-
180 tion or addiction is likely to cause serious harm to

181 himself or to others if allowed to remain at liberty
182 and (2) is a resident of the county in which the hearing
183 is held or currently is a patient at a mental health
184 facility in such county. The circuit court or mental
185 hygiene commissioner shall also make a finding as to
186 whether or not there is a less restrictive alternative
187 than commitment appropriate for the individual. The
188 burden of proof of the lack of a less restrictive alterna-
189 tive than commitment shall be on the person or
190 persons seeking the commitment of the individual.

191 The findings of fact shall be incorporated into the
192 order entered by the circuit court and must be based
193 upon clear, cogent and convincing proof. Upon the
194 requisite findings, the circuit court may order the indi-
195 vidual to a mental health facility for an indeterminate
196 period or for a temporary observatory period not ex-
197 ceeding six months. The individual shall not be de-
198 tained in a mental health facility for a period in excess
199 of five days after a hearing pursuant to this section
200 unless an order has been entered and received by the
201 facility. If the order is for a temporary observation
202 period, the circuit court or mental hygiene commissioner
203 may, at any time prior to the expiration of such period
204 on the basis of a report by the chief medical officer of
205 the mental health facility in which the patient is con-
206 fined, hold another hearing pursuant to the terms of
207 this section and in the same manner as the hearing
208 was held as if it were an original petition for involun-
209 tary hospitalization, to determine whether the original
210 order for a temporary observation period should be
211 modified or changed to an order of indeterminate hos-
212 pitalization of the patient. At the conclusion of the
213 hearing, the circuit court shall order indeterminate hos-
214 pitalization of the patient or dismissal of the proceed-
215 ings. An order for an indeterminate period shall expire
216 of its own terms at the expiration of two years from
217 the date of the last order of commitment.

218 If the circuit court or mental hygiene commissioner
219 finds that the individual is not mentally ill, mentally
220 retarded or addicted, the proceeding shall be dismissed.
221 If the circuit court or mental hygiene commissioner

222 finds that the individual is mentally ill, mentally re-
223 tarded or addicted but is not because of such illness,
224 retardation or addiction likely to cause serious harm to
225 himself or others if allowed to remain at liberty, the
226 proceedings shall be dismissed.

227 (e) The clerk of the circuit court in which an order
228 directing hospitalization is entered, if not in the county
229 of the individual's residence, shall immediately upon
230 entry thereof forward a certified copy of same to the
231 clerk of the circuit court of the county of which
232 the individual is a resident.

233 If the circuit court or mental hygiene commissioner
234 is satisfied that hospitalization should be ordered but
235 find that the individual is not a resident of the county
236 in which the hearing is held, and the individual is
237 not currently a resident of a mental health facility, a
238 transcript of the evidence adduced at the hearing of
239 such individual, certified by the clerk of the circuit
240 court, shall forthwith be forwarded to the clerk of
241 the circuit court of the county of which such individual
242 is a resident, who shall immediately present such trans-
243 cript to the circuit court or mental hygiene commis-
244 sioner of said county. If the circuit court or mental
245 hygiene commissioner of the county of the residence of
246 the individual is satisfied from the evidence contained in
247 such transcript that such individual should be hospitalized
248 as determined by the standard set forth above, the circuit
249 court shall order the appropriate hospitalization as though
250 the individual had been brought before the circuit court or
251 its mental hygiene commissioner in the first instance.
252 This order shall be transmitted forthwith to the clerk of
253 the circuit court of the county in which the hearing was
254 held who shall execute said order promptly.

255 (f) In lieu of ordering the patient to a mental health
256 facility, the circuit court may order the individual deliv-
257 ered to some responsible person who will agree to
258 take care of the individual and the circuit court may
259 take from such responsible person a bond in an amount
260 to be determined by the circuit court with condition
261 to restrain and take proper care of such individual until
262 further order of the court.

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

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

275 (i) The state shall pay the attorney fees, court re-
276 porter fees and commissioner fees out of a special fund
277 to be established within the office of the state auditor
278 to be known as the "mental hygiene fund". The county
279 commission shall pay out of the county treasury all
280 other expenses incurred in the hearings conducted under
281 the provisions of this article, whether or not hospitaliza-
282 tion is ordered, including any fee allowed by the circuit
283 court by order entered of record for any physician,
284 psychologist and other witnesses.

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

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

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

16 days from the date of admission, institute legal proceed-
17 ings as provided in section four of this article. If such
18 proceedings are not instituted within such five-day period,
19 the patient shall be immediately released. If such pro-
20 ceedings are not completed within twenty days from the
21 date of admittance, the patient shall be immediately
22 released.

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

**§27-5-8. Periodic examination and review of patient's hos-
pitalization; appeal procedures for release of pa-
tient from hospitalization.**

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

14 (b) Appeal shall be made to the chief medical officer
15 of the mental health facility wherein the patient is
16 confined. The chief medical officer shall review the report

17 of the examination and the conclusions resulting there-
18 from and he shall either affirm the patient's continued
19 hospitalization or discharge the patient from confine-
20 ment within three days from the date of his appeal.

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

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

51 The administrative and appeal remedies available by
52 virtue of this section shall not be construed to in any
53 way limit or precondition the right to seek release of
54 the patient by habeas corpus. At a habeas corpus hear-
55 ing, the fact that release was obtained on a previous
56 habeas corpus petition shall not bar the consideration of

57 evidence presented at the original commitment pro-
58 ceeding.

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-1. Committees; appointment.

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

7 (b) Proceedings for the appointment of a committee
8 for an alleged incompetent may be commenced by the
9 filing of a verified petition of a person setting forth the
10 facts showing the incompetency of an individual with
11 the county commission. Upon receipt of a petition, the
12 clerk of the county commission shall give notice of the
13 hearing thereon to the individual and to the individual's
14 spouse, or if the individual does not have a spouse, to
15 the individual's adult next of kin: *Provided*, That such
16 person shall not be the petitioner: *Provided further*,
17 That such individual shall be served with notice of such
18 hearing by delivering unto such individual in person
19 written notice thereof together with a true copy of such
20 verified petition, which notice shall be served upon the
21 individual alleged to be incompetent at least ten days
22 before the time of such hearing within the county in
23 which such hearing is to be held.

24 Such individual alleged to be incompetent shall be
25 accorded the right to subpoena witnesses, to be confronted
26 with witnesses and the right to cross-examine witnesses
27 which may be offered against him, and the county
28 commission on or before the commencement of such
29 hearing shall appoint a competent attorney practicing
30 before the bar of the circuit court of the county wherein
31 such hearing is to be held as guardian ad litem for the
32 purpose of representing the interest of such individual
33 throughout such proceedings under this section. Not-
34 withstanding any requirement hereof to the contrary
35 such hearing may proceed without the presence of the
36 individual alleged to be incompetent if (1) proper notice

37 has been served upon the party alleged to be incompetent
38 as required herein, and (2) a duly licensed physician
39 shall have certified in writing and upon affidavit that
40 he or she has examined such individual and that such
41 individual is physically unable to appear at such hearing
42 or that such an appearance would likely impair or
43 endanger the health of such individual, or (3) such indi-
44 vidual refuses to appear, and (4) upon the specific written
45 findings by such commission of facts as will justify a
46 hearing without the presence of such individual as pro-
47 vided in this subparagraph.

48 (c) A record shall be made of all proceedings. A
49 transcript shall be made available to the individual or
50 his counsel within thirty days, if the same is requested
51 for purposes of appeal. If any case wherein an indigent
52 person seeks an appeal, the circuit court shall, by order
53 entered of record, authorize and direct the court reporter
54 to furnish a transcript of the hearing and the cost of
55 such transcript shall be paid by the county wherein the
56 hearing was held.

57 (d) Upon completion of the hearing and upon the
58 evidence presented therein the county commission may
59 find that (i) the individual is unable to manage his busi-
60 ness affairs, or (ii) the individual is unable to care for
61 his physical well-being, or (iii) both, and is therefore
62 incompetent, or ~~(iv)~~ that the person is competent. Evi-
63 dence of mere poor judgment or of different life style
64 shall not be competent evidence upon which to base a
65 finding of incompetency.

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

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

75 If the county commission finds the person to be com-
76 petent, the proceedings shall be dismissed. No appoint-
77 ment of a committee shall be made on evidence which is

*or
J.C. J.*

78 uncorroborated by the testimony of a medical expert.
79 If the individual refuses to submit to an examination by
80 a physician, the circuit court may, upon petition, issue
81 a rule against the individual to show cause why the
82 individual should not submit to an examination. A copy
83 of the petition shall accompany service of the rule and
84 such rule shall be returnable at a time to be fixed by
85 the court.

86 (e) The extent of the committee's authority shall be
87 specified in the order of the county commission. No
88 authority of a committee shall extend beyond what is
89 necessary for the protection of the individual. A finding
90 of inability to care for one's physical well-being shall
91 entitle the committee to custody of the individual, except
92 when the individual is under a commitment order to a
93 mental health facility, but only to the extent as is neces-
94 sary for the protection of the individual.

95 (f) An individual found incompetent pursuant to sub-
96 section (d) of this section shall have the right to an
97 appeal and hearing thereon in the circuit court of the
98 county. The judge shall hear the matter on appeal as
99 provided in article three, chapter fifty-eight of this code
100 or order a hearing de novo on the matter.

101 (g) The individual or any person may apply to the
102 county commission in the matter provided by subsection
103 (b) of this section for termination of his committee at
104 any time and appeal from a determination thereon in
105 the manner provided by this section or in the alternative,
106 the individual may seek such termination by habeas
107 corpus.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

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

1 (a) No person who is, or was considered to be, men-
2 tally ill, mentally retarded or addicted shall be denied
3 parole or a parole hearing based upon such past or
4 present condition. In the event a convicted person

5 is deemed to be an appropriate candidate for parole,
6 but for a condition warranting involuntary hospitaliza-
7 tion such person shall be paroled and proceedings insti-
8 tuted pursuant to section four, article five, chapter
9 twenty-seven of this code. Any time spent in such fa-
10 cility shall be considered part of the term, and any
11 person whose sentence expires while receiving treat-
12 ment for a mental condition shall be discharged unless
13 proceedings have been instituted and a determination
14 made pursuant to section four, article five, chapter
15 twenty-seven of this code.

16 (b) When a convicted person in a jail, prison, or
17 other facility is believed to be mentally ill, mentally
18 retarded or addicted and in need of treatment, training
19 or other services therefor, which cannot be most effec-
20 tively provided at such penal facility, proceedings for
21 the transfer of such individual may be initiated by
22 the filing of an application by a correctional officer,
23 warden, member of a penal institution medical staff,
24 relative, friend, or the convicted person stating that the
25 individual is mentally ill, mentally retarded or addicted
26 and is in need of treatment, training, or other services
27 therefor; and further if the application is made by a
28 member of the staff of a penal facility it shall state
29 the nature of the treatment, training, or services which
30 the person's condition warrants and the facility to which
31 transfer is sought. The application shall be filed with
32 the clerk of the circuit court of the county of location
33 of the facility to which transfer is sought or the county
34 wherein the individual was convicted. The mental hy-
35 giene commissioner or circuit judge shall forthwith
36 appoint counsel for the convicted person in no event
37 later than ten days following the receipt of the applica-
38 tion by the clerk unless the person has retained
39 counsel.

40 If the application was filed by the warden or other
41 staff member of a penal facility, the clerk of the circuit
42 court shall forthwith notify the respondent convicted
43 person, by certified mail, return receipt requested, de-
44 livered only to the addressee, that such application has
45 been filed, enclosing therewith a copy of the application

46 with an explanation of the place and purpose of the
47 transfer and the type of treatment to be afforded, to-
48 gether with the name, address, and telephone number
49 of the appointed counsel. The person shall be afforded
50 unrestricted telephone access to his counsel. If the
51 application was filed by the convicted person or a rela-
52 tive or friend on such person's behalf, the clerk shall
53 by adequate means notify the respondent or the officer
54 of the penal facility where the individual is incarcerated.
55 Within fifteen days after the receipt of the application,
56 the respondent shall file a verified return admitting or
57 denying the allegations in the application and informing
58 the mental hygiene commissioner as to whether the
59 respondent wishes to oppose the transfer. If the con-
60 victed person is the respondent, counsel shall file the
61 return after personal consultation with such person.
62 If the respondent in such verified return does not oppose
63 the transfer, the mental hygiene commissioner shall
64 order the transfer of the convicted person to the facility
65 designated in the petition.

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

72 The convicted person shall be present at the hearing,
73 and be afforded an opportunity to testify and to present
74 and cross-examine witnesses. Counsel for the convicted
75 person shall be entitled to copies of all medical reports
76 upon request. The person shall have the right to an
77 examination by an independent expert of the person's
78 choice and testimony from such expert as a medical
79 witness on the person's behalf. The cost of such medical
80 expert shall be borne by the state if the person is in-
81 digent. The person shall not be required to give testi-
82 mony which is self-incriminating. The circuit court
83 or mental hygiene commissioner shall hear evidence
84 from all parties, in accord with the rules of evidence.
85 A transcript or recording shall be made of all proceed-
86 ings, and transcript made available to the person within

87 thirty days, if the same is requested for the purpose
88 of further proceedings, and without cost if the person
89 is indigent.

90 Upon completion of the hearing, and the evidence
91 presented therein, the circuit court or mental hygiene
92 commissioner shall make findings of fact. If the peti-
93 tioner is the convicted person, findings shall be made
94 as to whether the person is mentally ill, mentally re-
95 tardated or addicted, and with a positive finding the cir-
96 cuit court shall order transfer to the appropriate facility
97 for treatment or training. If the petitioner is other than
98 the convicted person and the convicted person opposes
99 the transfer, the findings shall be made as to whether
100 or not (1) the individual is mentally ill, or mentally
101 retarded or addicted; (2) the individual because of men-
102 tal illness, mental retardation or addiction is likely to
103 cause serious harm to self or others; and (3) the indi-
104 vidual would not obtain the requisite treatment or train-
105 ing at the penal facility or another appropriate facility;
106 and if all of such findings are in the affirmative, the
107 circuit court may order the transfer of such person
108 to the designated facility. The findings of fact shall be
109 incorporated into the order entered by the circuit court.
110 In all proceedings hereunder proof of mental condition
111 and of likelihood of serious harm must be established
112 by clear, cogent and convicting evidence, and the likeli-
113 hood of serious harm must be based upon evidence of
114 recent overt acts: *Provided*, That no such evidence of
115 recent overt acts need be introduced when the applicant
116 alleges the individual is likely to cause serious harm
117 as a result of having a complete inability to care for
118 himself by reason of mental retardation.

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

James L. Davis
Chairman Senate Committee

Laurence C. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. C. Willou. Jr.
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

W. T. Sutherland Jr.
President of the Senate

Donald L. Topp
Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Rhyne
Governor



RECEIVED
MAR 23 3 56 PM '78
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date Mar. 30, 1978
Time 6:30 p.m.

RECEIVED

78 MAR 30 P 9:32

OFFICE
SECY. OF STATE