

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

Time 8:00 A.M.

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1979**

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**ENROLLED**

*Revised Committee Substitute*  
**for SENATE BILL NO. 2**

(By Mr. Palumbo)

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PASSED March 10, 1979

In Effect ninety days from Passage



No. 2

**ENROLLED**  
REVISED COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 2**  
(MR. PALUMBO, *original sponsor*)

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[Passed March 10, 1979; in effect ninety days from passage.]

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AN ACT to repeal sections two-a, six and eight, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article one of said chapter by adding thereto two new sections, designated sections fourteen and fifteen; to amend article five of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections one, two, three and four of said article; and to amend and reenact section two, article six-a of said chapter, all relating to legal proceedings for involuntary hospitalization of the mentally ill; defining detained or taken into custody; defining computation of time; providing for the appointment of a mental hygiene commissioner; setting forth the duties of the mental hygiene commissioner, prosecuting attorney and sheriff; providing for the appointment of attorneys to aid prosecutors in involuntary commitment hearings in counties wherein a state mental health facility is located; providing a procedure for involuntary custody for examination; providing for a probable cause hearing and medical examination; repeal of the probable cause hearing; providing for admission to a mental health facility for examination upon entry of an order finding probable cause and upon certification by one physician or one psychologist; providing for release of the individual

if examination does not take place within three days of detention for custody; setting forth notice requirements of admission of an individual to a mental health facility for examination; providing for examination after admission to a mental health facility; providing a thirty-day time limit for conclusion of all proceedings; providing generally for involuntary commitment to a mental health facility by order of the circuit court of the county wherein the person resides or was found or in the county of the mental health facility in which he is hospitalized, after a full hearing; setting forth the notice requirements and hearing requirements for involuntary commitment; providing the right to have counsel appointed for the indigent individual; removing the requirement that the court-appointed physician or psychologist be other than the one whose certification accompanied the application; setting forth the rights of the individual at the final commitment hearing; providing for payment of attorneys appointed for individuals; providing for a record of the hearing; providing that a transcript be made available to the individual, his counsel, or the prosecuting attorney when requested for further proceedings; increasing to ten days the time which an individual may be detained until an order is received by the mental health facility; requiring that an order for an indeterminate period shall expire automatically after two years unless the department of health extends the order; providing a hearing on the extension of an order for an indeterminate period upon request of the individual or his counsel; requiring a report to the director of health; providing for the payment of some costs of the proceedings from the "mental hygiene fund"; establishing the "mental hygiene fund" within the office of the supreme court of appeals of this state; payment of some costs of the proceedings by the county commission; repeal of examination of newly admitted patients; repeal of periodic examination and review of patient's hospitalization; requiring the institution of civil commitment proceedings against defendants in felony cases who are found incompetent to stand trial with no substantial likelihood of obtaining competency; requiring review of the individual's competency to stand trial every six months; and requiring trial of the defendant if he is found competent to stand trial.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-14. Detained or taken into custody.**

- 1 "Detained or taken into custody" where used in this
- 2 chapter shall permit detention for custody in a county
- 3 facility which may be in the same building as the county
- 4 jail if the said county facility:
- 5 (a) meets the standards which the department of
- 6 health shall prescribe; and
- 7 (b) is approved for such use by the department of
- 8 health; and
- 9 (c) is inspected annually by the department of health.

**§27-1-15. Computation of time.**

- 1 The provisions of section one, article two, chapter two
- 2 of this code shall apply to the time fixed for doing any
- 3 act under this chapter.

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff.**

- 1 (a) *Appointment of mental hygiene commissioner.*
- 2 The circuit court of each county shall appoint a competent
- 3 attorney and, if necessary, one additional attorney to
- 4 serve as an alternate, in each county to preside over such
- 5 involuntary hospitalization hearings, who shall be desig-
- 6 nated "mental hygiene commissioner." He shall be a
- 7 person of good moral character and of standing in his
- 8 profession and he shall, before assuming the duties of

9 such commissioner, take the oath required of other special  
10 commissioners as provided in article one, chapter six  
11 of this code.

12 (b) *Duties of mental hygiene commissioner.* The  
13 mental hygiene commissioner may sign and issue sum-  
14 mons for the attendance, at any hearing held pursuant to  
15 section four, article five of this chapter, of the individual  
16 sought to be committed; may sign and issue subpoenas  
17 for witnesses, including subpoenas duces tecum; may  
18 place any witness under oath; and may make findings  
19 of fact on evidence and may make conclusions of law,  
20 but such findings and conclusions shall not be binding on  
21 the circuit court. The circuit court by order entered  
22 of record shall allow the commissioner a reasonable fee  
23 for his services in connection with each case. The mental  
24 hygiene commissioner shall discharge his duties and hold  
25 his office at the pleasure of the circuit court by which  
26 he is appointed and may be removed at any time by the  
27 court. It shall be the duty of the mental hygiene com-  
28 missioner to conduct orderly inquiries into the mental  
29 health of any individual brought before him concerning  
30 the advisability of committing the individual to a mental  
31 health facility. The mental hygiene commissioner shall  
32 safeguard, at all times, the rights and interests of the  
33 individual as well as the interests of the state. The mental  
34 hygiene commissioner shall make a written report of his  
35 findings to the circuit court. In any proceedings before  
36 any court of record as set forth in this article, the court  
37 of record shall appoint an interpreter for any individual  
38 who is deaf or cannot speak or who speaks a foreign  
39 language and who may be subject to involuntary com-  
40 mitment to a mental health facility.

41 (c) *Duties of prosecuting attorney.* In all proceedings  
42 under this article, it shall be the duty of the prosecuting  
43 attorney or one of his assistants to represent the ap-  
44 plicants.

45 (d) *Duties of sheriff.* Upon written order of the circuit  
46 court or the mental hygiene commissioner of the county  
47 where the individual formally accused of being mentally  
48 incompetent, mentally retarded or addicted is a resident  
49 or is found, the sheriff of that county shall take said

50 individual into custody and transport him to and from  
51 the place of hearing and the mental health facility.

**§27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee.**

1 If, in any case, the prosecuting attorney and his as-  
2 sistants in a county in which there is a state mental  
3 health hospital are unable to act due to a burdensome  
4 number of cases brought under this article, the circuit  
5 court shall appoint some competent practicing attorney  
6 to act in that case. The court shall certify to the director  
7 of the administrative office of the supreme court of ap-  
8 peals the performance of that service when completed  
9 and may allow the attorney a reasonable fee not to exceed  
10 the amount allowed for attorneys in defense of needy  
11 persons as provided in article eleven, chapter fifty-one  
12 of this code. Compensation shall be paid out of the  
13 "mental hygiene fund" provided for in section four of  
14 this article.

**§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.**

1 (a) *When application for involuntary custody for ex-*  
2 *amination may be made.* Any adult person may make  
3 application for involuntary hospitalization for examina-  
4 tion of an individual when said person has reason to  
5 believe that:

6 (1) The individual is mentally ill, mentally retarded  
7 or addicted, and

8 (2) That because of his mental illness, mental re-  
9 tardation or addiction, the individual is likely to cause  
10 serious harm to himself or others if allowed to remain  
11 at liberty while awaiting an examination and certification  
12 by a physician or psychologist.

13 (b) *Oath; to whom application for involuntary custody*  
14 *for examination is made; contents of application; custody;*  
15 *probable cause hearing; examination.*

16 (1) The person making such application shall do so  
17 under oath.

18 (2) Application for involuntary custody for examina-

19 tion may be made to the circuit court or mental hygiene  
20 commissioner of the county in which the individual re-  
21 sides, or of the county in which he may be found.

22 (3) The person making such application shall give  
23 such information and state such facts therein as may be  
24 required, upon the form provided for this purpose by the  
25 department of health.

26 (4) The circuit court or mental hygiene commissioner  
27 may thereupon enter an order for the individual named  
28 in such action to be detained and taken into custody, for  
29 the purpose of holding a probable cause hearing described  
30 in subdivision five of this subsection and for the purpose  
31 of an examination of the individual by one physician or  
32 one psychologist. The said order shall specify the se-  
33 quence in which such hearing and examination shall  
34 occur, shall require that such hearing be held forthwith,  
35 and shall appoint counsel for the individual.

36 (5) A probable cause hearing shall be held before a  
37 magistrate, the mental hygiene commissioner or circuit  
38 judge of the county of which the individual is a resident  
39 or where he was found. If requested by the individual  
40 or his counsel, the hearing may be postponed for a  
41 period not to exceed forty-eight hours.

42 The individual must be present at the hearing and  
43 shall have the right to present evidence, confront all  
44 witnesses and other evidence against him, and to ex-  
45 amine testimony offered. The individual shall have the  
46 right to remain silent and to be proceeded against by the  
47 rules of evidence. At the conclusion of the hearing the  
48 magistrate, mental hygiene commissioner or circuit court  
49 shall find and enter an order stating whether or not  
50 there is probable cause to believe that such individual  
51 as a result of mental illness, mental retardation or addic-  
52 tion is likely to cause serious harm to himself or others.

**§27-5-3. Admission under involuntary hospitalization for ex-  
amination; hearing; release.**

1 (a) *Admission to a mental health facility for examina-*  
2 *tion.* Any individual may be admitted to a mental health  
3 facility for examination upon entry of an order finding  
4 probable cause as provided in section two of this article

5 and upon certification by one physician or one psycholo-  
6 gist that he has examined the individual and that he is of  
7 the opinion the individual is mentally ill, mentally retard-  
8 ed, or addicted and because of his mental illness, mental  
9 retardation or addiction is likely to serious cause harm to <sup>the</sup>  
10 himself or others if not immediately restrained. The chief  
11 medical officer of said mental health facility may, with the  
12 approval of the director of health, transfer such individ-  
13 ual to a state hospital or to another similar type of mental  
14 health facility after determining that no less restrictive  
15 treatment alternative is suitable or available. The chief  
16 medical officer of the mental health facility admitting the  
17 individual shall forthwith make a report thereof to the  
18 director of health.

19 (b) *Three-day time limitation on examination.* If said  
20 examination does not take place within three days from  
21 the date the individual is taken into custody, the individ-  
22 ual shall be released. If the examination reveals that the  
23 individual is not mentally ill, mentally retarded or addic-  
24 ted, the individual shall be released.

25 (c) *Three-day time limitation on certification.* The cer-  
26 tification required in subsection (a) of this section shall  
27 be valid for three days. Any individual with respect to  
28 whom such certification has been issued may not be ad-  
29 mitted on the basis thereof at anytime after the expira-  
30 tion of three days from the date of such examination.

31 (d) *Findings and conclusions required for certification.*  
32 A certification under this section must include findings  
33 and conclusions of the mental examination, the date,  
34 time and place thereof, and the facts upon which the con-  
35 clusion of likelihood of causing serious harm is based.

36 (e) *Notice requirements.* When an individual is ad-  
37 mitted to a mental health facility pursuant to the pro-  
38 visions of this section, the chief medical officer thereof  
39 shall immediately give notice of the individual's admis-  
40 sion to the individual's spouse, if any, and one of the  
41 individual's parents or parent or guardian, or if there be  
42 no such spouse, parents or guardians to one of the indi-  
43 vidual's adult next of kin: *Provided*, That such next of  
44 kin shall not be the applicant. Notice shall also be given



45 to the community mental health facility, if any, having  
46 jurisdiction in the county of the individual's residence.  
47 Such notices other than to the community mental health  
48 facilities shall be in writing and shall be transmitted to  
49 such person or persons at his, her or their last-known  
50 address by certified or registered mail, return receipt  
51 requested.

52 (f) *Five-day time limitation for examination and cer-*  
53 *tification at mental health facility.* After the individual's  
54 admission to a mental health facility, he shall not be de-  
55 tained more than five days excluding Sundays and holi-  
56 days, unless, within such period, the individual is ex-  
57 amined by a staff physician and such physician certifies  
58 that in his opinion the patient is mentally ill, mentally  
59 retarded or addicted and is likely to injure himself or  
60 others if allowed to be at liberty.

61 (g) *Ten-day time limitation for institution of final*  
62 *commitment proceedings.* If, in the opinion of the exam-  
63 ining physician, the patient is mentally ill, mentally re-  
64 tarded or addicted and because of such mental illness,  
65 mental retardation or addiction he is likely to injure  
66 himself or others if allowed to be at liberty, the chief  
67 medical officer shall, within ten days from the date of  
68 admission, institute final commitment proceedings as pro-  
69 vided in section four of this article. If such proceedings  
70 are not instituted within such ten-day period, the patient  
71 shall be immediately released. After the request for hear-  
72 ing is filed, the hearing shall not be cancelled on the basis  
73 that the individual has become a voluntary patient unless  
74 the mental hygiene commissioner concurs in the motion  
75 for cancellation of the hearing.

76 (h) *Thirty-day time limitation for conclusion of all*  
77 *proceedings.* If all proceedings as provided in article three  
78 and article four of this chapter are not completed within  
79 thirty days from the date of institution of such proceed-  
80 ings, the patient shall be immediately released.

**§27-5-4. Institution of final commitment proceedings; hearing requirements; release.**

1 (a) *Involuntary commitment.* Except as provided in  
2 section three of this article, no individual shall be in-

3 voluntarily committed to a mental health facility except  
4 by order entered of record at any time by the circuit  
5 court of the county wherein such person resides or was  
6 found, or if the individual is hospitalized in a mental  
7 health facility located in a county other than where he  
8 resides or was found, in the county of the mental health  
9 facility, and then only after a full hearing on issues  
10 relating to the necessity of committing an individual to  
11 a mental health facility: *Provided*, That if said individual  
12 objects to the hearing being held in the county where  
13 the mental health facility is located, the hearing shall  
14 be conducted in the county of the individual's residence.

15 (b) *How final commitment proceedings are com-*  
16 *menced.* Final commitment proceedings for an individual  
17 may be commenced by the filing of a written application  
18 under oath and the certificate or affidavit is hereinafter  
19 provided with the clerk of the circuit court or mental  
20 hygiene commissioner of the county of which the indi-  
21 vidual is a resident, or where he may be found, or the  
22 county of the mental health facility, if he is hospitalized  
23 in a mental health facility located in a county other  
24 than where he resides or may be found, by an adult  
25 person having personal knowledge of the facts of the  
26 case.

27 (c) *Oath; contents of application; who may inspect*  
28 *application; when application cannot be filed.*

29 (1) The person making such application shall do so  
30 under oath.

31 (2) The application shall contain statements by the  
32 applicant that he believes because of symptoms of mental  
33 illness, mental retardation or addiction, the individual is  
34 likely to cause serious harm to himself or others and the  
35 grounds for such belief, stating in detail the recent overt  
36 acts upon which such belief is based: *Provided*, That no  
37 such statement of recent overt acts need be made when  
38 the applicant alleges the individual is likely to cause  
39 serious harm as a result of having a complete inability  
40 to care for himself by reason of mental retardation.

41 (3) The written application, certificate, affidavit and  
42 any warrants issued pursuant thereto, including any  
43 papers and documents related thereto filed with any

44 circuit court or mental hygiene commissioner for the  
45 involuntary hospitalization of any individual shall not be  
46 open to inspection by any person other than the indi-  
47 vidual, except upon authorization of the individual or  
48 his legal representative or by order of the circuit court  
49 and such records shall not be published except upon the  
50 authorization of the individual or his legal representa-  
51 tive.

52 (4) Applications shall not be filed with regard to  
53 individuals who are merely epileptics, mentally deficient  
54 or senile.

55 (d) *Certificate filed with application; contents of cer-*  
56 *tificate; affidavit by applicant in place of certificate.*

57 (1) The applicant shall file with his application the  
58 certificate of a physician or a psychologist stating that in  
59 his opinion the individual is mentally ill, mentally re-  
60 tardated or addicted and that because of his mental illness,  
61 mental retardation or addiction, the individual is likely  
62 to cause serious harm to himself or others if he is allowed  
63 to remain at liberty and therefore he should be hos-  
64 pitalized, stating in detail the recent overt acts upon  
65 which such conclusion is based: *Provided*, That no such  
66 statement of recent overt acts need be made when the  
67 applicant alleges the individual is likely to cause serious  
68 harm as a result of having a complete inability to care  
69 for himself by reason of mental retardation.

70 (2) A certificate is not necessary only when an affidavit  
71 is filed by the applicant showing facts that the individual  
72 has refused to submit to examination by a physician or  
73 a psychologist.

74 (e) *Notice requirements; eight days' notice required.*  
75 Upon receipt of an application, the mental hygiene com-  
76 missioner or circuit court shall review the application  
77 and if it is determined that the facts alleged, if any, are  
78 sufficient to warrant involuntary hospitalization, forth-  
79 with fix a date for and have the clerk of the circuit court  
80 give notice of the hearing (1) to the individual, (2) to  
81 the applicant or applicants, (3) to the individual's spouse,  
82 one of the parents or guardians, or if the individual does  
83 not have a spouse, parents or parent or guardian, to one  
84 of the individual's adult next of kin: *Provided*, That such

85 person is not the applicant, (4) to the mental health  
86 authorities serving the area, (5) to the circuit court in  
87 the county of the individual's residence if the hearing  
88 is to be held in a county other than that of such indi-  
89 vidual's residence, and (6) to the prosecuting attorney  
90 of the county in which the hearing is to be held. Such  
91 notice shall be served on the individual by personal  
92 service of process not less than eight days prior to the  
93 date of the hearing, and shall specify the nature of the  
94 charges against the individual; the facts underlying and  
95 supporting the application of his involuntary commit-  
96 ment; his right to have counsel appointed for him; his  
97 right to consult with and be represented by counsel at  
98 every stage of the proceedings; and the time and place  
99 of the hearing. The notice to the individual's spouse,  
100 parents or parent or guardian, the individual's adult next  
101 of kin, or to the circuit court in the county of the indi-  
102 vidual's residence may be by personal service of process  
103 or by certified or registered mail, return receipt re-  
104 quested, and shall state the time and place of the  
105 hearing.

106 (f) *Examination of individual by court-appointed phy-*  
107 *sician or psychologist; custody for examination; dismissal*  
108 *of proceedings.*

109 (1) Except as provided in subsection three of this  
110 section, within a reasonable time after notice of the  
111 commencement of final commitment proceedings is given,  
112 the circuit court or mental hygiene commissioner shall  
113 appoint a physician or psychologist to examine the indi-  
114 vidual and report to the circuit court or mental hygiene  
115 commissioner his findings as to the mental condition of  
116 the individual and the likelihood of his causing serious  
117 harm to himself or others.

118 (2) If the designated physician or psychologist reports  
119 to the circuit court or mental hygiene commissioner that  
120 the individual has refused to submit to an examination,  
121 the circuit court or mental hygiene commissioner shall  
122 order him to submit to such examination. The circuit  
123 court or mental hygiene commissioner may direct that  
124 the individual be detained or taken into custody for the  
125 purpose of an immediate examination by the designated

126 physician or psychologist. All such orders shall be di-  
127 rected to the sheriff of the county or other appropriate  
128 law-enforcement officer. After such examination has  
129 been completed, the individual shall be released from  
130 custody unless proceedings are instituted pursuant to  
131 section three of this article.

132 (3) If the reports of the appointed physician or psy-  
133 chologist do not confirm that the individual is mentally  
134 ill, mentally retarded or addicted and might be harmful  
135 to himself or others, then the proceedings for his in-  
136 voluntary hospitalization shall be dismissed.

137 (g) *Rights of the individual at the final commitment*  
138 *hearing; seven days' notice to counsel required.*

139 (1) The individual shall be present at the final commit-  
140 ment hearing and he, the applicant and all persons  
141 entitled to notice of such hearing shall be afforded an  
142 opportunity to testify and to present and cross-examine  
143 witnesses.

144 (2) In the event that the individual has not retained  
145 counsel, the court or mental hygiene commissioner at  
146 least six days prior to hearing shall appoint a competent  
147 attorney, and shall inform the individual of the name,  
148 address and telephone number of his appointed counsel.

149 (3) The individual shall have the right to have an  
150 examination by an independent expert of his choice and  
151 testimony from such expert as a medical witness on his  
152 behalf. The cost of such independent expert shall be  
153 borne by the individual unless he is indigent.

154 (4) The individual shall not be compelled to be a  
155 witness against himself.

156 (h) *Duties of counsel representing individual; pay-*  
157 *ment of counsel representing indigent.*

158 (1) The counsel representing an individual shall con-  
159 duct a timely interview, make investigation and secure  
160 appropriate witnesses, and shall be present at the hearing  
161 and protect the interest of the individual.

162 (2) Any counsel representing an individual shall be  
163 entitled to copies of all medical reports, psychiatric or  
164 otherwise.

165 (3) The circuit court, by order of record, may allow  
166 the attorney a reasonable fee not to exceed the amount  
167 allowed for attorneys in defense of needy persons as  
168 provided in article eleven, chapter fifty-one of this  
169 code.

170 (i) *Conduct of hearing; receipt of evidence; no evi-*  
171 *dentiary privilege; record of hearing.*

172 (1) The circuit court or mental hygiene commissioner  
173 shall hear evidence from all interested parties in chamber,  
174 including testimony from representatives of the com-  
175 munity mental health facility.

176 (2) The circuit court or mental hygiene commissioner  
177 shall receive all relevant and material evidence which  
178 may be offered.

179 (3) The circuit court or mental hygiene commissioner  
180 shall be bound by the rules of evidence except that  
181 statements made to physicians or psychologists by the  
182 individual may be admitted into evidence by the physi-  
183 cian's or psychologist's testimony notwithstanding failure  
184 to inform the individual that this statement may be used  
185 against him. Any psychologist or physician testifying  
186 shall bring all records pertaining to said individual to  
187 said hearing. Such medical evidence obtained pursuant  
188 to an examination under this section, or section two or  
189 section three of this article, is not privileged information  
190 for purposes of a hearing pursuant to this section.

191 (4) All final commitment proceedings shall be reported  
192 or recorded, whether before the circuit court or mental  
193 hygiene commissioner, and a transcript shall be made  
194 available to the individual, his counsel or the prosecuting  
195 attorney within thirty days, if the same is requested for  
196 the purpose of further proceedings. In any case wherein  
197 an indigent person intends to pursue further proceedings  
198 the circuit court shall, by order entered of record,  
199 authorize and direct the court reporter to furnish a tran-  
200 script of the hearings.

201 (j) *Requisite findings by the court.*

202 (1) Upon completion of the final commitment hearing,  
203 and the evidence presented therein, the circuit court or  
204 mental hygiene commissioner shall make findings as to

205 whether or not the individual is mentally ill, retarded  
206 or addicted and because of his illness, retardation or  
207 addiction is likely to cause serious harm to himself or  
208 to others if allowed to remain at liberty and is a resident  
209 of the county in which the hearing is held or currently is  
210 a patient at a mental health facility in such county.

211 (2) The circuit court or mental hygiene commissioner  
212 shall also make a finding as to whether or not there is  
213 a less restrictive alternative than commitment appro-  
214 priate for the individual. The burden of proof of the  
215 lack of a less restrictive alternative than commitment  
216 shall be on the person or persons seeking the commit-  
217 ment of the individual.

218 (3) The findings of fact shall be incorporated into the  
219 order entered by the circuit court and must be based  
220 upon clear, cogent and convincing proof.

221 (k) *Orders issued pursuant to final commitment hear-*  
222 *ing; entry of order; change in order of court; expiration*  
223 *of order.*

224 (1) Upon the requisite findings, the circuit court may  
225 order the individual to a mental health facility for an  
226 indeterminate period or for a temporary observatory  
227 period not exceeding six months.

228 (2) The individual shall not be detained in a mental  
229 health facility for a period in excess of ten days after a  
230 final commitment hearing pursuant to this section unless  
231 an order has been entered and received by the facility.

232 (3) If the order pursuant to a final commitment hear-  
233 ing is for a temporary observation period, the circuit  
234 court or mental hygiene commissioner may, at any time  
235 prior to the expiration of such period on the basis of  
236 a report by the chief medical officer of the mental health  
237 facility in which the patient is confined, hold another  
238 hearing pursuant to the terms of this section and in the  
239 same manner as the hearing was held as if it were an  
240 original petition for involuntary hospitalization, to de-  
241 termine whether the original order for a temporary obser-  
242 vation period should be modified or changed to an order  
243 of indeterminate hospitalization of the patient. At the  
244 conclusion of the hearing, the circuit court shall order

245 indeterminate hospitalization of the patient or dismissal  
246 of the proceedings.

247 (4) An order for an indeterminate period shall expire  
248 of its own terms at the expiration of two years from the  
249 date of the last order of commitment unless prior to  
250 the expiration, the department of health, upon findings  
251 based on an examination of the patient by a physician  
252 or a psychologist, extends the order for indeterminate  
253 hospitalization: *Provided*, That if the patient or his  
254 counsel requests a hearing, then a hearing shall be held  
255 by the mental hygiene commissioner; or by the circuit  
256 court of the county as provided in subsection (a) of  
257 this section.

258 (l) *Dismissal of proceedings.* If the circuit court or  
259 mental hygiene commissioner finds that the individual  
260 is not mentally ill, mentally retarded or addicted, the  
261 proceedings shall be dismissed. If the circuit court or  
262 mental hygiene commissioner finds that the individual  
263 is mentally ill, mentally retarded or addicted but is not  
264 because of such illness, retardation or addiction likely  
265 to cause serious harm to himself or others if allowed  
266 to remain at liberty, the proceedings shall be dismissed.

267 (m) *Immediate notification of order of hospitalization.*  
268 The clerk of the circuit court in which an order directing  
269 hospitalization is entered, if not in the county of the  
270 individual's residence, shall immediately upon entry  
271 thereof forward a certified copy of same to the clerk of  
272 the circuit court of the county of which the individual is a  
273 resident.

274 (n) *Consideration of transcript by circuit court of*  
275 *county of individual's residence; order of hospitalization;*  
276 *execution of order.*

277 (1) If the circuit court or mental hygiene commis-  
278 sioner is satisfied that hospitalization should be ordered  
279 but finds that the individual is not a resident of the  
280 county in which the hearing is held, and the individual  
281 is not currently a resident of a mental health facility,  
282 a transcript of the evidence adduced at the final com-  
283 mitment hearing of such individual, certified by the clerk  
284 of the circuit court, shall forthwith be forwarded to the  
285 clerk of the circuit court of the county of which such



286 individual is a resident, who shall immediately present  
287 such transcript to the circuit court or mental hygiene  
288 commissioner of said county.

289 (2) If the circuit court or mental hygiene commis-  
290 sioner of the county of the residence of the individual  
291 is satisfied from the evidence contained in such transcript  
292 that such individual should be hospitalized as determined  
293 by the standard set forth above, the circuit court shall  
294 order the appropriate hospitalization as though the indi-  
295 vidual had been brought before the circuit court or its  
296 mental hygiene commissioner in the first instance.

297 (3) This order shall be transmitted forthwith to the  
298 clerk of the circuit court of the county in which the  
299 hearing was held who shall execute said order promptly.

300 (o) *Order of custody to responsible person.* In lieu  
301 of ordering the patient to a mental health facility, the  
302 circuit court may order the individual delivered to some  
303 responsible person who will agree to take care of the  
304 individual and the circuit court may take from such  
305 responsible person a bond in an amount to be determined  
306 by the circuit court with condition to restrain and take  
307 proper care of such individual until further order of the  
308 court.

309 (p) *Individual not a resident of this state.* If the indi-  
310 vidual found to be mentally ill, mentally retarded or  
311 addicted by the circuit court or mental hygiene com-  
312 missioner is a resident of another state, this information  
313 shall be forthwith given to the director of health, who  
314 shall make appropriate arrangements for his transfer to  
315 the state of his residence conditioned on the agreement  
316 of the individual except as qualified by the interstate  
317 compact on mental health.

318 (q) *Report to the director of health.*

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

323 (2) Whenever an individual is released from custody  
324 due to the failure of an employee of a mental health  
325 facility to comply with the time requirements of this

326 article, the chief medical officer of such mental health  
327 facility shall forthwith after the release of the individual  
328 make a report to the director of health of the failure to  
329 comply.

330 (r) *Payment of some expenses by the state; mental*  
331 *hygiene fund established; expenses paid by the county*  
332 *commission.*

333 (1) The state shall pay the attorney fees, court re-  
334 porter fees and commissioner fees out of a special fund  
335 to be established within the supreme court of appeals  
336 of this state, to be known as the "mental hygiene fund."

337 (2) The county commission shall pay out of the county  
338 treasury all other expenses incurred in the hearings  
339 conducted under the provisions of this article whether  
340 or not hospitalization is ordered, including any fee  
341 allowed by the circuit court by order entered of record  
342 for any physician, psychologist and witness called by the  
343 indigent individual.

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

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

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

14 (b) At the termination of such hearing the court of  
15 record shall make a finding of fact upon a preponderance  
16 of the evidence as to the individual's competency to stand  
17 trial based on whether or not the individual is capable of  
18 participating substantially in his defense and understand-  
19 ing the nature and consequences of a criminal trial. If the

20 individual is found competent, the court of record shall  
21 forthwith proceed with the criminal proceedings. If the  
22 individual is found incompetent to stand trial, the court of  
23 record shall upon the evidence make further findings as  
24 to whether or not there is a substantial likelihood that the  
25 individual will attain competency within the next ensuing  
26 six months, and if the court of record so finds, the indi-  
27 vidual may be committed to a mental health facility for  
28 an improvement period not to exceed six months. If re-  
29 quested by the chief medical officer of the mental health  
30 facility on the grounds that additional time is necessary  
31 for the individual to attain competency, the court of rec-  
32 ord may, prior to the termination of the six-month period,  
33 extend the period for an additional <sup>or</sup> three months. Within  
34 ten days of the termination of such period, the court of  
35 record shall ascertain by hearing in accordance with sub-  
36 section (a) of this section whether or not the individual  
37 has attained competency to stand trial.

38 (c) If the individual is indicted for a misdemeanor and  
39 is found to be incompetent to stand trial with no substan-  
40 tial likelihood of obtaining competency, or if after such  
41 improvement period the individual is found to be incom-  
42 petent to stand trial, the criminal charges shall be dis-  
43 missed. The dismissal order may be stayed for ten days  
44 to allow civil commitment proceedings to be instituted  
45 pursuant to article five of this chapter.

46 (d) If the individual is a defendant in a felony case  
47 and is found initially to be incompetent to stand trial  
48 with no substantial likelihood of obtaining competency,  
49 or if after such improvement period the individual is  
50 found to be incompetent to stand trial, then the director  
51 of health shall institute against the individual civil com-  
52 mitment proceedings pursuant to article five of this chap-  
53 ter and the criminal charges shall be dismissed. If the  
54 individual is committed pursuant to article five of this  
55 chapter, then the director of health shall cause the indi-  
56 vidual's competency to stand trial to be reviewed every six  
57 months during the period of his civil commitment, and  
58 shall report his findings to the court of record after every  
59 such review. If the director of health finds that the indi-  
60 vidual is competent to stand trial, then a hearing shall

61 be held by the court of record in accordance with subsec-  
62 tion (a) of this section. If, after such hearing, the indi-  
63 vidual is found competent to stand trial, he shall be tried;  
64 if, after such hearing, the individual is found incompetent  
65 to stand trial, he shall be recommitted for the period of  
66 his commitment as ordered pursuant to article five of  
67 this chapter, with mandatory review of his competency to  
68 stand trial every six months in accordance with this sub-  
69 section. If said individual becomes competent to stand  
70 trial, the director of health shall notify the prosecuting  
71 attorney of the county where the criminal charges were  
72 brought against the individual.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Johnston Jr.*  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*J. C. Willson Jr.*  
Clerk of the Senate

*V. A. Blankenship*  
Clerk of the House of Delegates

*W. T. Bullock*  
President of the Senate

*Wm. B. Lee Jr.*  
Speaker House of Delegates

The within *is approved* this the *18*

day of *March*, 1979.

*John T. Radgall*  
Governor

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