

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-24-80

Time 3:45 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

ENROLLED

Committee Substitute for
SENATE BILL NO. 603

(By Mr. Nelson)

PASSED March 8, 1980

In Effect from Passage

No: 603

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 603
(MR. NELSON, *original sponsor*)

[Passed March 8, 1980; in effect from passage.]

AN ACT to amend and reenact section two, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article seven, chapter twenty-seven of said code; and to amend and reenact section thirty-one, article five, chapter twenty-eight of said code, relating to involuntary commitment of mentally ill persons; providing for magistrates to order temporary detention, not to exceed twenty-four hours, or persons needing immediate protective detention pending presentation of application for involuntary commitment to circuit court or mental hygiene commissioner; relating to discharges from orders of commitment to mental health facilities and removing therefrom provisions for restoration of legal capacity as a result of such discharge; relating to the transfer of convicted persons from jails, prisons and other facilities to treatment facilities; providing for filing of application for transfer in certain circuit courts by chief correctional officer; providing for notice to the person and to the chief administrative officer of the facility to which transfer is sought and for the filing of objections; providing for appointment of counsel for indigent convicted persons; requiring certain procedures; requiring hearings when application is opposed; and providing for transfer upon finding by circuit court that needed treatment of convicted person is not available in penal facility but can be provided with necessary security at another facility.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article seven, chapter twenty-seven of said code 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 PERSONS.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§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*
2 *examination 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 be-
5 lieve that:

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

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

18 (2) Application for involuntary custody for examnia-
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 such
23 information and state such facts therein as may be re-
24 quired, 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 (5) 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 In the event immediate detention is believed to be
37 necessary for the protection of the individual or others at
38 a time when no circuit court judge or mental hygiene
39 commissioner is available for immediate presentation of
40 the application, a magistrate may accept the application
41 and, upon a finding that such immediate detention is
42 necessary pending presentation of the application to the
43 ~~circuit~~ or mental hygiene commissioner, may order the
44 individual to be temporarily detained in custody until
45 the earliest reasonable time that the application can be
46 presented to the circuit court or mental hygiene commis-
47 sioner, which temporary period of detention shall not
48 exceed twenty-four hours.

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

55 The individual must be present at the hearing and shall
56 have the right to present evidence, confront all witnesses
57 and other evidence against him, and to examine testi-
58 mony offered. The individual shall have the right to re-
59 main silent and to be proceeded against in accord with
60 the rules of evidence. At the conclusion of the hearing the
61 magistrate, mental hygiene commissioner or circuit court
62 shall find and enter an order stating whether or not there
63 is probable cause to believe that such individual as a
64 result of mental illness, mental retardation or addiction
65 is likely to cause serious harm to himself or others.

cf.
Court

**ARTICLE 7. RELEASE, DISCHARGE, AND READMISSION OF
PATIENTS; ESCAPEES.**

§27-7-1. Discharge.

1 The chief medical officer of the mental health facility
2 shall continually review the case of each individual who
3 is an involuntary patient at the facility pursuant to article
4 five of this chapter and shall as frequently as practicable,
5 in any event at least once every three months, cause a
6 complete psychiatric examination of each patient, and
7 whenever it is determined that the conditions justifying
8 involuntary hospitalization no longer exists or that the
9 individual can no longer benefit from hospitalization, the
10 chief medical officer shall discharge the patient, and for-
11 ward a copy of the patient's discharge to the clerk of the
12 circuit court or mental hygiene commissioner of the
13 county in which the involuntary hospitalization was
14 ordered and to the circuit court or mental hygiene com-
15 missioner of the county wherein the individual is a
16 resident.

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,
2 mentally 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 is
5 deemed to be an appropriate candidate for parole, but
6 for a condition warranting involuntary hospitalization
7 such person shall be paroled and proceedings instituted
8 pursuant to section four, article five, chapter twenty-
9 seven of this code. Any time spent in such
10 facility shall be considered part of the term, and any
11 person whose sentence expires while receiving treatment
12 for a mental condition shall be discharged unless pro-
13 ceedings have been instituted and a determination made
14 pursuant to section four, article five, chapter twenty-
15 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 re-
18 tardated or addicted, as those terms are defined in article
19 one, chapter twenty-seven of this code, and in need of
20 treatment, training or other services, the facts relating
21 to such illness, shall be presented to the chief administra-
22 tive officer of the facility. Such facts may be presented
23 by a correctional officer, member of a correctional insti-
24 tution medical staff, relative, or the convicted person.
25 Immediately upon receipt of such facts, the chief ad-
26 ministrative officer shall arrange for psychiatric or
27 psychological examination of the person alleged to be
28 so afflicted. If the report of the examination is to the
29 effect that the individual is mentally ill, mentally re-
30 tardated, or addicted and that treatment, training or other
31 services are required which cannot reasonably be pro-
32 vided at the correctional facility, the chief administrative
33 officer shall file within twenty days after presentation
34 of the facts an application for transfer with the clerk of
35 the circuit court of the county of location of the cor-
36 rectional facility. Such application for transfer shall in-
37 clude a statement of the nature of the treatment which
38 the person's condition warrants and the facility to which
39 transfer is sought.

40 Within ten days of receipt of the application from the
41 chief administrative officer, the mental hygiene commis-
42 sioner or circuit judge shall appoint counsel for the con-
43 victed person if the person is indigent.

44 The clerk of the circuit court shall forthwith notify
45 the convicted person, by certified mail, return receipt
46 requested, delivered only to addressee, that such appli-
47 cation has been filed, enclosing therewith a copy of the
48 application with an explanation of the place and purpose
49 of the transfer and the type of treatment to be afforded,
50 together with the name, address, and telephone number
51 of any appointed counsel. The person shall be afforded
52 reasonable telephone access to his counsel. The clerk
53 shall also notify the superintendent or other chief ad-
54 ministrative officer of the facility to which transfer is
55 sought. Within fifteen days after receipt of notice, the
56 convicted person, through counsel, shall file a verified

57 return admitting or denying the allegations and inform-
58 ing the court or mental hygiene commissioner as to
59 whether the respondent wishes to oppose the transfer.
60 Counsel shall file the return only after personal consulta-
61 tion with the convicted person. The superintendent of
62 the facility to which transfer is sought shall also file a
63 return within fifteen days of the receipt of notice, in-
64 forming the court or mental hygiene commissioner as
65 to whether the needed treatment or other services can
66 be provided within that facility. If said superintendent
67 objects to receiving the convicted person for treatment
68 or services, the reasons for such objection shall be speci-
69 fied in detail.

70 If the transfer is opposed by either the convicted person
71 or by the superintendent of the facility to which trans-
72 fer is sought, the matter shall forthwith be set for hear-
73 ing, in no event to exceed thirty days from the date of
74 the return opposing such transfer, and the clerk shall
75 provide to the convicted person, the superintendent of
76 the facility to which transfer is sought, and the super-
77 intendent of the correctional facility, at least ten days'
78 written notice, by certified mail, return receipt requested,
79 of the purpose, time and place of the hearing.

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

97 Upon completion of the hearing, and consideration of

98 the evidence presented therein, the circuit court or
99 mental hygiene commissioner shall make findings of
100 facts as to whether or not (1) the individual is mentally
101 ill, mentally retarded or addicted; (2) the individual be-
102 cause of mental illness, mental retardation or addiction
103 is likely to cause serious harm to self or others; (3) the
104 individual could not obtain the requisite treatment or
105 training at the correctional facility or another appropri-
106 ate correctional facility; and (4) the designated facility
107 to which transfer is sought could provide such treat-
108 ment or training with such security as the court finds
109 appropriate; and, if all such findings are in the affirmative,
110 the circuit court may order the transfer of such person
111 to the appropriate facility. The findings of fact shall be
112 incorporated into the order entered by the circuit court.
113 In all proceedings hereunder, proof of mental condition
114 and of likelihood of serious harm must be established
115 by clear, cogent and convincing evidence, and the likeli-
116 hood of serious harm must be based upon evidence of
117 recent overt acts.

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

James L. Davis
Chairman Senate Committee

Clarence C. Cepustia Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Joel C. Welch
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

W. T. Brothman
President of the Senate

Clifford M. Lee, Jr.
Speaker House of Delegates

The within is approved this the 24
day of March, 1980.

John D. R. [Signature]
Governor



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