

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*)

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

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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 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 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 *of* circuit or mental hygiene commissioner, may order the  
*of* court  
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.

**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 between 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. Cepustro Jr.  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Joel C. Wickes  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

W. T. Prothro Jr.  
President of the Senate

Clayton M. Lee Jr.  
Speaker House of Delegates

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

John D. R. Reynolds  
Governor



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