WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

Com. Sub. for
HOUSE BILL No. 1540

(By Mr. Williams & Mr. Springston)

Passed March 12, 1983
In Effect Ninety Days From Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1540

(By Mr. Williams and Mr. Springston)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact section ten, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one as amended; to amend and reenact sections eleven and twelve, article one, chapter twenty-seven of said code; to further amend said article one by adding thereto two new sections, designated sections sixteen and seventeen; to amend and reenact section eleven, article one-a, section two, article five, and section one, article six-a, all of said chapter twenty-seven; to amend and reenact section five, article one, chapter sixty of said code; to amend and reenact section nine, article six of said chapter sixty all relating to alternatives to incarceration or criminal penalties for persons charged with the crime of public intoxication; providing for the establishment of a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers by the director of the department of health and educating the public in regard thereto; definitions provided; providing for acceptance, by the director of persons voluntarily seeking hospitalization, treatment or rehabilitation and for persons committed by mental hygiene commissioners or judicial officers for such purposes to the director; authorizing the director to contract with public or private entities or persons to implement or administer this
comprehensive program; providing for the involuntary hospitalization of individuals believed to be or determined to be addicted without allegations or findings of the likelihood to cause harm; to provide for all examinations relative to involuntary custody for examination to be provided or arranged by a community mental health center designated by the director of health to serve the area in which the application is filed; exception; testimony by community mental health center representative in probable cause hearing providing for a determination of competency of a person charged with the crime of public intoxication and the detention of such person in the appropriate facility for such purposes; authorizing the transportation of such person by a sheriff to another facility in the event that such person is in need of acute medical care or additional security which cannot be provided by the facility in which he was originally detained; providing immunity from criminal liability or civil liability in damages to any incapacitated person for a person who is carrying out certain responsibilities or procedures related to the commitment of persons charged with the crime of public intoxication and providing exceptions to that immunity in the event of gross negligence or wilful or wanton injury; providing for liability in implied contract for costs incurred by such incapacitated persons and prohibitions concerning methods of collection; establishing that for the crime of public intoxication only, a diagnosis of alcoholism shall be proof of lack of criminal responsibility and shall result in a finding of not guilty by reason of addiction and the initiation of involuntary commitment proceedings; providing prohibitions regarding intoxication or drinking in public places and illegal possession of alcoholic liquors; providing for the crime of public intoxication; various actions by a law enforcement officer after an arrest without a warrant, presentment before a judicial officer, options available to such officer concerning detention of incapacitated persons; and providing for minimum fines, imprisonment or counseling for various offenses.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-10. Powers and duties of the director of health.

The director shall be the chief executive, administrative, and fiscal officer of the department of health and shall have the following powers and duties:

1. To supervise and control the business, fiscal, administrative and health affairs of the department of health, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the laws of this state relating to health and mental health, and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the director by law; to that end the director may promulgate such written rules as are necessary and proper to delegate functions, establish divisions, specify duties and responsibilities, prescribe qualifications of division directors and otherwise administer or supervise the department, subject to the safeguards of the state civil service system as it now exists;

2. To enforce all laws of this state concerning public health, health and mental health; to that end, the director shall make, or cause to be made, sanitary investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression or control of such conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The director shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for
(3) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any health law before any court or agency, without being required to give security for costs; such action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(4) To supervise and coordinate the administration and operation of the state hospitals named in article two, chapter twenty-seven of this code, and any other state facility hereafter created for the mentally ill, mentally retarded or addicted;

(5) To supervise and coordinate the administration and operation of the health and other facilities named in chapter twenty-six of this code, except as otherwise therein provided, and any other state facility hereafter created relating to health, not otherwise provided for;

(6) To supervise and coordinate the administration and operation of the county and municipal boards of health and health officers;

(7) To develop and maintain a state plan of operation which sets forth the needs of the state in the areas of health and mental health; goals and objectives for meeting those needs; methods for achieving the stated goals and objectives; and needed personnel, funds and authority for achieving the goals and objectives;

(8) To collect data as may be required to foster knowledge on the citizenry's health status, the health system and costs of health care;

(9) To delegate to any appointee, assistant or employee any and all powers and duties vested in the director, including, but not limited to, the power to execute contracts and agreements in the name of the department: Provided, That the director
shall be responsible for the acts of such appointees, assistants
and employees;

(10) To transfer any patient or resident between hospitals
and facilities under the control of the director and, by agree-
ment with the state commissioner of public institutions or his
successor and otherwise in accord with law, accept a transfer
of a resident of a facility under the jurisdiction of the state
commissioner of public institutions or his successor;

(11) To make periodic reports to the governor and to the
Legislature relative to specific subject areas of public health
or mental health, the state facilities under the supervision of
the director, or other matters affecting the health or mental
health of the people of the state;

(12) To accept and use for the benefit of the state, for the
benefit of the health of the people of this state, any gift or
device of any property or thing which is lawfully given:
Provided, That if any gift is for a specific purpose or for a
particular state hospital or facility, it shall be used as specified.
Any profit which may arise from any such gift or devise of
any property or thing shall be deposited in a special revenue
fund with the state treasurer and shall be used only as speci-
fied by the donor or donors;

(13) To acquire by condemnation or otherwise any interest,
right, privilege, land or improvement and hold title thereto, for
the use or benefit of the state or a state hospital or facility,
and, by and with the consent of the governor, to sell, exchange,
or otherwise convey any interest, right, privilege, land or im-
provement acquired or held by the state, state hospital or
state facility; which condemnation proceedings shall be con-
ducted pursuant to chapter fifty-four of this code;

(14) To inspect and enforce rules and regulations to con-
trol the sanitary conditions of and license all institutions and
health care facilities as set forth in this chapter, including, but
not limited to, schools, whether public or private, public con-
veyances, dairies, slaughterhouses, workshops, factories, labor
camps, places of entertainment, hotels, motels, tourist camps,
all other places open to the general public and inviting public
patronage or public assembly, or tendering to the public any
item for human consumption and places where trades or
industries are conducted;

(15) To make inspections, conduct hearings, and to enforce
the rules and regulations of the board concerning occupational
and industrial health hazards, the sanitary condition of streams,
sources of water supply, sewerage facilities and plumbing sys-
tems, and the qualifications of personnel connected with such
supplies, facilities or systems without regard to whether they
are publicly or privately owned; and to make inspections, con-
duct hearings and enforce the rules and regulations of the
board concerning the design of chlorination and filtration fa-
cilities and swimming pools;

(16) To reorganize the functions and divisions of the de-
partment of health, structuring all functions previously assign-
ed to the board of health, department of health, department
of mental health, and otherwise assigned to the department of
health by this chapter, to the end of establishing the most
efficient and economic delivery of health services in accord
with the purposes of this chapter; to achieve such goal the
director shall establish such divisions and delegate and assign
such responsibilities and functions as he deems necessary to
accomplish such reorganization. On or before the first day of
February, one thousand nine hundred seventy-eight, the direc-
tor shall submit to the Legislature a report on the reorganiza-
tion of such department and the effect thereof, including, but
not limited to, the cost, the administrative results and the effect
on the delivery of health services;

(17) To direct and supervise the provision of dental services
in all state institutions;

(18) To provide for, except as otherwise specified herein,
a comprehensive system of community mental health and
mental retardation supportive services to the end of preventing
the unnecessary institutionalization of persons and promoting
the community placement of persons presently residing in
mental health and mental retardation facilities and other in-
stitutions and for the planning of the provisions of comprehen-
sive mental health and mental retardation services throughout the state;

(19) To provide in accordance with this subdivision and the definitions and other provisions of article one-a, chapter twenty-seven of the code, for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse; and

(20) To exercise all other powers delegated to the department by this chapter or otherwise in this code, to enforce all health laws and the rules and regulations promulgated by the board, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the department or director.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.


“Addiction" means the periodic, frequent or constant use of alcohol, narcotic or other intoxicating or stupefying substance to the point of being incapacitated.

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

“Likely to cause serious harm” refers to a person who has:

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

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

(3) A complete inability to care for himself by reason of mental retardation; or
(4) Become incapacitated as defined in section sixteen of this article.

§27-1-16. Incapacitated.

"Incapacitated" means a level of intoxication at which an individual is incapable of physical or mental control of himself, thus rendering him dangerous to himself or others or unable to protect himself from hazard.

§27-1-17. Judicial officer.

"Judicial officer" in the context of the provisions of this and other chapters of this code dealing with disposition of a charge of public intoxication, means a municipal judge, a magistrate or any judge of a court of record in this state.

ARTICLE 1A. DEPARTMENT OF MENTAL HEALTH.

§27-1A-11. Division on alcoholism and drug abuse; powers and duties; definitions.

(a) The division on alcoholism, heretofore established in the department of mental health, shall continue and be known as the division on alcoholism and drug abuse.

(1) The supervisor and personnel of this division shall assist the director of the department of health in the establishment of a program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the causes, prevention, and treatment of alcoholism and drug abuse; for the training of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public concerning alcoholism and drug abuse.

(2) The department's program for the care, treatment and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of one or more of the state hospitals under the control of the department of mental health; the acquisition in the name of the department of real and personal property and the construction of buildings and other facilities; the leasing of suitable clinics, hospitals or other facilities; and the utilization, through contracts or otherwise, of the available services and
22 assistance of any professional or nonprofessional persons,
23 groups, organizations or institutions in the development, pro-
24 motion and conduct of the department's program.
25
26 (3) Neither the department of mental health nor the divi-
27 sion on alcoholism and drug abuse shall be required to accept
28 any alcoholic or drug abuser voluntarily seeking hospitalization
29 for clinical or hospital care, treatment or rehabilitation; but the department may accept, pursuant to its adopted and
30 promulgated rules and regulations, responsibility for clinical
31 or hospital care, treatment or rehabilitation of any alcoholic
32 or drug abuser through arrangements made voluntarily with
33 the department by him or some person acting in his behalf:
34 Provided, That any such person accepted by the department
35 on a voluntary basis shall be charged a minimum fee unless
36 he shows, to the satisfaction of the department, that he is
37 unable to pay the fee: Provided, however, That the depart-
38 ment shall accept all alcoholics and drug abusers committed
39 by a mental hygiene commissioner or judicial officer in ac-
40 cordance with the procedures established by article six-a of
41 this chapter: Provided further, That notwithstanding any
42 provision in article five of this chapter which may be to the
43 contrary, the supervisor of the division on alcoholism and
44 drug abuse may specify the clinic or hospital to which the
45 alcoholic or drug abuser shall be committed after a final
46 commitment hearing provided in section four, article five
47 of this chapter.
48
49 (4) The department's program of research into the causes,
50 prevention and treatment of alcoholism and drug abuse may
51 include the utilization, through contracts or otherwise, of
52 the available services and assistance of any private and public
53 professional or nonprofessional persons, groups, organizations
54 or institutions, as well as cooperation with private and public
55 agencies engaged in research in alcoholism or drug abuse or
56 rehabilitation of alcoholics or drug abusers.
57
58 (5) The department's programs shall also provide for the
59 training of personnel to work with alcoholics and drug abusers
60 and the informing of the public as well as interested groups
61 and persons concerning alcoholism and drug abuse and the
62 prevention and treatment thereof.
(6) The department may employ such medical, psychiatric, psychological, secretarial and other assistance as may be necessary to carry out the provisions of this section.

(b) As used in this chapter or in section ten, article one, chapter sixteen of the code:

(1) "Alcoholic" means a person who suffers from alcoholism as defined in subdivision (2) of this subsection.

(2) "Alcoholism" means a disease or illness characterized by psychological or physiological addiction to alcoholic beverages as manifested by: (A) The inability to control one's consumption of alcoholic beverages except through total abstinence, or (B) the inability to control one's behavior when consuming alcoholic beverages, or (C) both.

(3) "Alcoholic abuser" means a person whose use of alcohol has produced any of the effects described in subdivision (4) of this subsection.

(4) "Alcohol abuse" means the periodic, frequent or constant consumption of alcoholic beverages to the extent that one's health is substantially impaired or endangered or one's social or economic functioning is substantially disrupted.

(5) "Drug abuser" means a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(6) "Drug abuse" means the use of any controlled substance as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

(a) When application for involuntary custody for examination may be made.
Any adult person may make application for involuntary hospitalization for examination of an individual when said person has reason to believe that:

(1) The individual is addicted as defined by section eleven, article one of this chapter: Provided, That for purposes of this subdivision and the involuntary commitment procedures specified in this article, the sole issue to be determined is whether the individual is addicted, which by definition includes the notion of being incapacitated; causing harm to others or being unable to prevent harm to himself: Provided, however, That whenever a provision of this article refers to or requires a finding of likelihood to cause serious harm, a finding that an individual is addicted shall be deemed to satisfy such reference or requirement; or

(2) The individual is mentally ill or mentally retarded and, because of his mental illness or mental retardation, the individual is likely to cause serious harm to himself or others if allowed to remain at liberty while awaiting an examination and certification by a physician or psychologist.

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

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

(2) Application for involuntary custody for examination may be made to the circuit court or mental hygiene commissioner of the county in which the individual resides, or of the county in which he may be found.

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

(4) The circuit court or mental hygiene commissioner may thereupon enter an order for the individual named in such action to be detained and taken into custody, for the purpose of holding a probable cause hearing described in subdivision (5) of this subsection and for the purpose of an examination of
the individual by a physician or a psychologist. Such examina-
tion shall be provided or arranged by a community mental
health center designated by the director of health to
serve the county in which the action takes place. The said
order shall specify such hearing be held forthwith and shall ap-
point counsel for the individual: Provided, That where a physi-
cian or psychologist has performed such examination, the com-
munity mental health center may waive this requirement upon
approving such examination. Notwithstanding the provisions
of this subsection, section four of this article shall apply
regarding payment by the county commission for examinations
at hearings.

In the event immediate detention is believed to be neces-
S5 for the protection of the individual or others at a time
when no circuit court judge or mental hygiene commissioner is
available for immediate presentation of the application, a
magistrate may accept the application and, upon a finding that
such immediate detention is necessary pending presentation of
the application to the circuit court or mental hygiene com-
missioner, may order the individual to be temporarily de-
tained in custody until the earliest reasonable time that the
application can be presented to the circuit court or mental
hygiene commissioner, which temporary period of detention
shall not exceed twenty-four hours.

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

The individual must be present at the hearing and shall
have the right to present evidence, confront all witnesses and
other evidence against him, and to examine testimony offered,
including testimony by representatives of the community mental
health center serving the area. The individual shall have the
right to remain silent and to be proceeded against in accord
with the rules of evidence. At the conclusion of the hearing the
magistrate, mental hygiene commissioner or circuit court shall
find and enter an order stating whether or not there is probable
cause to believe that such individual as a result of mental
illness, mental retardation or addiction is likely to cause serious
harm to himself or others.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Determination of competency of defendant to stand trial and of criminal responsibility; examination; commitment.

(a) Whenever a court of record, or in the instance of a
defendant charged with public intoxication a magistrate or
other judicial officer, believes that a defendant in a felony
case or a defendant in a misdemeanor case in which an indi-
cment has been returned, or a warrant or summons issued,
may be incompetent to stand trial or is not criminally
responsible by reason of mental illness, mental retardation
or addiction, it may at any stage of the proceedings after
the return of an indictment or the issuance of a warrant or
summons against the defendant, order an examination of such
defendant to be conducted by one or more psychiatrists, or a
psychiatrist and a psychologist, or in the instance of an in-
dividual charged with public intoxication, an alcoholism coun-
selor: Provided, That with the exception of subsections (a)
and (g) of this section, no other subsection in this section nor
any other provision of this article shall apply to individuals
charged with public intoxication pursuant to section nine,
article six, chapter sixty of this code.

(b) After the examination described in subsection (a) of
this section, the court of record may order that the person be
admitted to a mental health facility designated by the director
of health for a period not to exceed twenty days for observation
and further examination if the court has reason to believe that
such further observation and examination are necessary in
order to determine whether mental illness, mental retarda-
tion or addiction have so affected a person that he is not
competent to stand trial or not criminally responsible for the
crime or crimes with which he has been charged. If, before
the expiration of such twenty-day period, the examining phy-
sicians believes that observation for more than twenty days is
necessary, he shall make a written request to the court of record for an extension of the twenty-day period specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court of record may by order extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of observation.

(c) At the conclusion of each examination or observation period provided for herein, the examining psychiatrists, or psychiatrist and psychologist, shall forthwith give to the court of record a written signed report of their findings on the issue of competence to stand trial or criminal responsibility. Such report shall contain an opinion, supported by clinical findings, as to whether the defendant is in need of care and treatment.

(d) Within five days after the receipt of the report on the issue of competency to stand trial, or if no observation pursuant to subsection (b) of this section has been ordered, within five days after the report on said issue following an examination under subsection (a) of this section, the court of record shall make a finding on the issue of whether the defendant is competent for trial. A finding of incompetence for trial shall require proof by a preponderance of the evidence. Notice of such findings shall be sent to the prosecuting attorney, the defendant and his counsel. If the court of record orders or if the defendant or his counsel on his behalf within a reasonable time requests a hearing on such findings, a hearing in accordance with section two of this article shall be held by the court of record within ten days of the date such finding or such request has been made.

(e) After a conviction and prior to sentencing, the court of record may order a psychiatric or other clinical examination and, after such examination, may further order a period of observation in a mental health facility designated by the director of health. Such a period of observation or examination shall not exceed forty days.

If after hearing conducted pursuant to the procedures prescribed in subsection (c), section four, article five of this
chapter, the court of record makes the findings specified in section four, article five of this chapter or finds that the convicted individual would benefit from treatment in a mental health facility, the court may enter an order of commitment in accord with section four, article five for treatment in a mental health facility designated by the director of health.

(f) In like manner, in accordance with procedures set forth in subsections (a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent or neglected juvenile in a mental health facility to aid the court in its disposition. The period of observation shall not exceed forty days.

(g) On and after midnight on the last day of June, one thousand nine hundred eighty-three, if a person charged with public intoxication is incapacitated at the time a warrant or summons is issued, the court, magistrate or other judicial officer may as provided by article six, chapter sixty of this code, order the individual detained in the nearest mental health facility providing appropriate care, or other detention facility as defined in section fourteen, article one of this chapter, to determine the individual's competence to stand trial and criminal responsibility and require the preparation and submission by that facility of a report which shall in addition to determining the individual's competence and criminal responsibility shall also describe any suggested or proposed methods of care or treatment which may be appropriate. Such order shall stipulate the return of the individual to the court, magistrate or other judicial officer or his release if bond has been posted or a summons issued in lieu of a warrant, when the individual is no longer incapacitated. But in no case may the individual be kept longer than forty-eight hours unless during the forty-eight hours, civil commitment proceedings pursuant to article five of this chapter are initiated by qualified personnel at the mental health facility or other facility in which the individual is detained and detention is ordered pursuant to article five of this chapter:

Provided, That whenever the director of the facility initiates civil proceedings within forty-eight hours, he shall immediately notify the judicial officer who ordered the individual detained
that such proceedings have commenced: Provided, however,
That the judicial officer may then modify his order and may
continue the criminal proceedings in his court until a diagnosis
of alcoholism has been made: Provided further, That once a
diagnosis is made, the judicial officer shall find the individual
not guilty by reason of addiction as provided by section nine,
article six, chapter sixty of the code and shall immediately
initiate civil commitment proceedings unless such proceedings
have already begun and are proceeding.

(1) If at any time during the forty-eight hours the in-
dividual requires acute medical care or because of overtly
dangerous behavior needs security beyond the capability of the
mental health facility where he is being detained, the sheriff
of the county in which the facility is located shall at the
request of the facility director transport the individual to a
more appropriate facility such as a general hospital, or a state
hospital or detention facility selected by said director.

(2) No law-enforcement officer, physician, mobile inten-
sive care paramedic, emergency medical service attendant or
staff member or employee of any mental health facility, hos-
pital or detention facility may be held criminally liable for
carrying out any provision set forth in this subsection or any
procedure specified therein or be held civilly liable in damages
to an incapacitated person because of carrying out any pro-
vision set forth in this subsection or any procedure specified
herein for dealing with an individual charged with public in-
toxication unless for gross negligence or willful or wanton
injury.

(3) Any person who is given transportation to or from,
or who is examined or treated at, a mental health facility,
hospital or detention facility in accordance with, and because
of, the provisions of this section, whether such person was
incapacitated or not or whether he gave his consent or not,
shall be liable in implied contract to the person who, or men-
tal health facility, hospital or detention facility or other ap-
propriate agency which, provided such transportation, examin-
ation or treatment, for the reasonable cost thereof. No person
may be denied such services because of inability or failure
to pay such costs nor shall any effort be made to obtain pre-
payment of such costs or any portion thereof.

CHAPTER 60.
STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

For the purposes of this chapter:

"Alcohol" shall mean ethyl alcohol whatever its origin and
shall include synthetic ethyl alcohol but not denatured alcohol.

"Beer" shall mean any beverage obtained by the fermenta-
tion of barley, malt, hops, or any other similar product or
substitute, and containing more alcohol than that of non-
intoxicating beer.

"Nonintoxicating beer" shall mean any beverage obtained
by the fermentation of barley, malt, hops, or similar products
or substitute, and containing not more alcohol than that
specified by section two, article sixteen, chapter eleven.

"Wine" shall mean any alcoholic beverage obtained by the
fermentation of the natural content of fruits, or other agricul-
tural products, containing sugar.

"Spirits" shall mean any alcoholic beverage obtained by
distillation and mixed with potable water and other sub-
stances in solution, and includes brandy, rum, whiskey, cor-
dials and gin.

"Alcoholic liquor" shall include alcohol, beer, wine and
spirits, and any liquid or solid capable of being used as a
beverage, but shall not include nonintoxicating beer.

"Original package" shall mean any closed or sealed con-
tainer or receptacle used for holding alcoholic liquor.

"Sale" shall mean any transfer, exchange or barter in
any manner or by any means, for a consideration, and shall
include all sales made by principal, proprietor, agent or
employee.
“Selling” shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

“Person” shall mean an individual, firm, partnership, corporation or voluntary association.

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle or fill an original package with any alcoholic liquor.

“Manufacturer” shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker and a brewer.

“Brewery” shall mean an establishment where beer is manufactured or in any way prepared.

“Winery” shall mean an establishment where wine is manufactured or in any way prepared.

“Distillery” shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

“Public place” shall mean any place, building or conveyance to which the public has or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies and corridors of hotels and any highway, street, lane, park or place of public resort or amusement.

“State liquor store” shall mean a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

“An agency” shall mean a drugstore, grocery store or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia alcohol beverage control commissioner.

“Department” shall mean the organization through which the commission exercises powers imposed upon it by this chapter.

“Commission” shall mean the West Virginia alcohol beverage control commissioner.
“Intoxicated” shall mean having one's faculties impaired by alcohol or other drugs to the point where physical or mental control or both are markedly diminished.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

(a) A person shall not:

1. (1) Appear in a public place in an intoxicated condition;
2. (2) Drink alcoholic liquor in a public place;
3. (3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
4. (4) Tender a drink of alcoholic liquor to another person in a public place;
5. (5) Possess alcoholic liquor in the amount in excess of one gallon, in containers not bearing stamps or seals of the commission, without having first obtained written authority from the said commission therefor;
6. (6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his presence, violates subdivision (1), subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer he may, after issuance of such a citation transport the individual, to the individual's present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined
by section seventeen, article eleven, chapter twenty-seven of the code; or (4) if the individual is incapacitated and, in the law-enforcement officer's judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he is discharged from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him, he may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of articles five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a)
of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of an alcohol education program of not more than six hours' duration at the nearest community mental health-mental retardation center. If the individual, prior to conviction, agrees to voluntarily attend the alcohol education program, the judicial officer may delay sentencing until the program is completed and upon completion may dismiss the charges; (2) upon conviction for a second offense, a fine of not less than five dollars nor more than one hundred dollars and not more than sixty days in jail or completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center; (3) upon third and subsequent convictions, a fine of not less than five dollars nor more than one hundred dollars and not less than five nor more than sixty days in jail or a fine of not less than five dollars nor more than one hundred dollars and completion of not less than five hours of alcoholism counseling at the nearest community mental health-mental retardation center: Provided, That three convictions for public intoxication within the preceding six months shall be considered evidence of alcoholism: Provided, however, That for the educational counseling programs described in this subsection the community mental health-mental retardation center may charge each participant its usual and customary fee and shall certify in writing to the referring judicial officer the completion or failure to complete the prescribed program for each individual.

(f) A person charged with a violation of subdivision (1), subsection (a) of this section who is an alcoholic shall be found not guilty by reason of addiction and proper disposition made pursuant to articles five and six-a, chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), (3) or (4), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five nor more than one hundred dollars, or confined in jail not more than
sixty days, or both such fine and imprisonment. Any person who violates subdivision (5) or (6), subsection (a) of this subdivision shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than five hundred dollars, or confined in jail not less than sixty days nor more than twelve months, or both such fine and imprisonment, and upon conviction of a second or subsequent offense he shall be guilty of a felony and shall be confined in the penitentiary of this state for a period of not less than one year nor more than three years.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 29th day of March, 1983.

Governor