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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.

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

4 (1) To supervise and control the business, fiscal, adminis-
5 trative and health affairs of the department of health, and in
6 that regard and in accordance with law, employ, fix the com-
7 pensation of, and discharge all persons necessary for the
8 proper execution of the laws of this state relating to health
9 and mental health, and the efficient and proper discharge of
10 the duties imposed upon, and execution of powers vested in
11 the director by law; to that end the director may promulgate
12 such written rules as are necessary and proper to delegate
13 functions, establish divisions, specify duties and responsibilities,
14 prescribe qualifications of division directors and otherwise ad-
15 minister or supervise the department, subject to the safe-
16 guards of the state civil service system as it now exists;

17 (2) To enforce all laws of this state concerning public
18 health, health and mental health; to that end, the director
19 shall make, or cause to be made, sanitary investigations and
20 inquiries respecting the cause of disease, especially of epi-
21 demics and endemic conditions, and the means of prevention,
22 suppression or control of such conditions; the source of sick-
23 ness and mortality, and the effects of environment, employ-
24 ment, habits and circumstances of life on the public health.
25 The director shall further make, or cause to be made, inspec-
26 tions and examinations of food, drink and drugs offered for

27 sale or public consumption; in such manner as he shall deem
28 necessary to protect the public health and shall report all
29 violations of laws and regulations relating thereto to the prose-
30 cuting attorney of the county in which such violations occur;

31 (3) To make complaint or cause proceedings to be institut-
32 ed against any person, corporation or other entity for the
33 violation of any health law before any court or agency, with-
34 out being required to give security for costs; such action may
35 be taken without the sanction of the prosecuting attorney of
36 the county in which the proceedings are instituted or to which
37 the proceedings relate;

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

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

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

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

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

59 (9) To delegate to any appointee, assistant or employee any
60 and all powers and duties vested in the director, including, but
61 not limited to, the power to execute contracts and agreements
62 in the name of the department: *Provided*, That the director

63 shall be responsible for the acts of such appointees, assistants
64 and employees;

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

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

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

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

93 (14) To inspect and enforce rules and regulations to con-
94 trol the sanitary conditions of and license all institutions and
95 health care facilities as set forth in this chapter, including, but
96 not limited to, schools, whether public or private, public con-
97 veyances, dairies, slaughterhouses, workshops, factories, labor
98 camps, places of entertainment, hotels, motels, tourist camps,
99 all other places open to the general public and inviting public

100 patronage or public assembly, or tendering to the public any
101 item for human consumption and places where trades or
102 industries are conducted;

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

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

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

130 (18) To provide for, except as otherwise specified herein,
131 a comprehensive system of community mental health and
132 mental retardation supportive services to the end of preventing
133 the unnecessary institutionalization of persons and promoting
134 the community placement of persons presently residing in
135 mental health and mental retardation facilities and other in-
136 stitutions and for the planning of the provisions of comprehen-

137 sive mental health and mental retardation services throughout
138 the state;

139 (19) To provide in accordance with this subdivision and
140 the definitions and other provisions of article one-a, chapter
141 twenty-seven of the code, for a comprehensive program for the
142 care, treatment and rehabilitation of alcoholics and drug
143 abusers; for research into the cause and prevention of alco-
144 holism and drug abuse; for the training and employment of
145 personnel to provide the requisite rehabilitation of alcoholics
146 and drug abusers; and for the education of the public con-
147 cerning alcoholism and drug abuse; and

148 (20) To exercise all other powers delegated to the depart-
149 ment by this chapter or otherwise in this code, to enforce all
150 health laws and the rules and regulations promulgated by the
151 board, and to pursue all other activities necessary and incident
152 to the authority and area of concern entrusted to the depart-
153 ment or director.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

1 "Addiction" means the periodic, frequent or constant use
2 of alcohol, narcotic or other intoxicating or stupefying sub-
3 stance to the point of being incapacitated.

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

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

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

6 (2) A substantial tendency to physically harm other per-
7 sons which is manifested by homicidal or other violent be-
8 havior which places others in reasonable fear of serious phy-
9 sical harm; or

10 (3) A complete inability to care for himself by reason of
11 mental retardation; or

12 (4) Become incapacitated as defined in section sixteen of
13 this article.

§27-1-16. Incapacitated.

1 "Incapacitated" means a level of intoxication at which an
2 individual is incapable of physical or mental control of him-
3 self, thus rendering him dangerous to himself or others or un-
4 able to protect himself from hazard.

§27-1-17. Judicial officer.

1 "Judicial officer" in the context of the provisions of this
2 and other chapters of this code dealing with disposition of a
3 charge of public intoxication, means a municipal judge, a
4 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.**

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

4 (1) The supervisor and personnel of this division shall
5 assist the director of the department of health in the establish-
6 ment of a program for the care, treatment and rehabilitation
7 of alcoholics and drug abusers; for research into the causes,
8 prevention, and treatment of alcoholism and drug abuse; for
9 the training of personnel to provide the requisite rehabilita-
10 tion of alcoholics and drug abusers; and for the education of
11 the public concerning alcoholism and drug abuse.

12 (2) The department's program for the care, treatment and
13 rehabilitation of alcoholics and drug abusers may include,
14 when intended for such purposes, the establishment of special
15 clinics or wards within, attached to, or upon the grounds of
16 one or more of the state hospitals under the control of the
17 department of mental health; the acquisition in the name of
18 the department of real and personal property and the construc-
19 tion of buildings and other facilities; the leasing of suitable
20 clinics, hospitals or other facilities; and the utilization,
21 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 (3) Neither the department of mental health nor the divis-
26 ion on alcoholism and drug abuse shall be required to accept
27 any alcoholic or drug abuser voluntarily seeking hospitalization
28 for clinical or hospital care, treatment or rehabilitation;
29 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 (4) The department's program of research into the causes,
49 prevention and treatment of alcoholism and drug abuse may
50 include the utilization, through contracts or otherwise, of
51 the available services and assistance of any private and public
52 professional or nonprofessional persons, groups, organizations
53 or institutions, as well as cooperation with private and public
54 agencies engaged in research in alcoholism or drug abuse or
55 rehabilitation of alcoholics or drug abusers.

56 (5) The department's programs shall also provide for the
57 training of personnel to work with alcoholics and drug abusers
58 and the informing of the public as well as interested groups
59 and persons concerning alcoholism and drug abuse and the
60 prevention and treatment thereof.

61 (6) The department may employ such medical, psychiatric,
62 psychological, secretarial and other assistance as may be
63 necessary to carry out the provisions of this section.

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

66 (1) "Alcoholic" means a person who suffers from
67 alcoholism as defined in subdivision (2) of this sub-
68 section.

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

75 (3) "Alcoholic abuser" means a person whose use of alco-
76 hol has produced any of the effects described in subdivision
77 (4) of this subsection.

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

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

86 (6) "Drug abuse" means the use of any controlled sub-
87 stance as that term is defined in said chapter sixty-a, until
88 such time as the user has become dependent upon or addicted
89 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.

1 (a) *When application for involuntary custody for examina-*
2 *tion may be made.*

3 Any adult person may make application for involuntary
4 hospitalization for examination of an individual when said
5 person has reason to believe that:

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

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

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

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

27 (2) Application for involuntary custody for examination
28 may be made to the circuit court or mental hygiene commis-
29 sioner of the county in which the individual resides, or of the
30 county in which he may be found.

31 (3) The person making such application shall give such in-
32 formation and state such facts therein as may be required, up-
33 on the form provided for this purpose by the department of
34 health.

35 (4) The circuit court or mental hygiene commissioner may
36 thereupon enter an order for the individual named in such
37 action to be detained and taken into custody, for the purpose
38 of holding a probable cause hearing described in subdivision
39 (5) of this subsection and for the purpose of an examination of

40 the individual by a physician or a psychologist. Such examina-
41 tion shall be provided or arranged by a community mental
42 health center designated by the director of health to
43 serve the county in which the action takes place. The said
44 order shall specify such hearing be held forthwith and shall ap-
45 point counsel for the individual: *Provided*, That where a physi-
46 cian or psychologist has performed such examination, the com-
47 munity mental health center may waive this requirement upon
48 approving such examination. Notwithstanding the provisions
49 of this subsection, (r), section four, of this article shall apply
50 regarding payment by the county commission for examinations
51 at hearings.

subsection

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

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

70 The individual must be present at the hearing and shall
71 have the right to present evidence, confront all witnesses and
72 other evidence against him, and to examine testimony offered,
73 including testimony by representatives of the community mental
74 health center serving the area. The individual shall have the
75 right to remain silent and to be proceeded against in accord
76 with the rules of evidence. At the conclusion of the hearing the
77 magistrate, mental hygiene commissioner or circuit court shall
78 find and enter an order stating whether or not there is probable

79 cause to believe that such individual as a result of mental
80 illness, mental retardation or addiction is likely to cause serious
81 harm to himself or others.

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

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

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

19 (b) After the examination described in subsection (a) of
20 this section, the court of record may order that the person be
21 admitted to a mental health facility designated by the director
22 of health for a period not to exceed twenty days for observation
23 and further examination if the court has reason to believe that
24 such further observation and examination are necessary in
25 order to determine whether mental illness, mental retarda-
26 tion or addiction have so affected a person that he is not
27 competent to stand trial or not criminally responsible for the
28 crime or crimes with which he has been charged. If, before
29 the expiration of such twenty-day period, the examining phy-
30 sicians believes that observation for more than twenty days is

31 necessary, he shall make a written request to the court of
32 record for an extension of the twenty-day period specifying
33 the reason or reasons for which such further observation is
34 necessary. Upon the receipt of such request, the court of record
35 may by order extend said observation period, but in no event
36 shall the period exceed forty days from the date of the initial
37 court order of observation.

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

46 (d) Within five days after the receipt of the report on
47 the issue of competency to stand trial, or if no observation
48 pursuant to subsection (b) of this section has been ordered,
49 within five days after the report on said issue following an
50 examination under subsection (a) of this section, the court
51 of record shall make a finding on the issue of whether the
52 defendant is competent for trial. A finding of incompetence
53 for trial shall require proof by a preponderance of the evi-
54 dence. Notice of such findings shall be sent to the prosecut-
55 ing attorney, the defendant and his counsel. If the court
56 of record orders or if the defendant or his counsel on his
57 behalf within a reasonable time requests a hearing on such
58 findings, a hearing in accordance with section two of this
59 article shall be held by the court of record within ten days
60 of the date such finding or such request has been made.

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

67 If after hearing conducted pursuant to the procedures
68 prescribed in subsection (c), section four, article five of this

69 chapter, the court of record makes the findings specified in
70 section four, article five of this chapter or finds that the con-
71 victed individual would benefit from treatment in a mental
72 health facility, the court may enter an order of commitment
73 in accord with section four, article five for treatment in a
74 mental health facility designated by the director of health.

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

81 (g) On and after midnight on the last day of June, one
82 thousand nine hundred eighty-three, if a person charged with
83 public intoxication is incapacitated at the time a warrant or
84 summons is issued, the court, magistrate or other judicial
85 officer may as provided by article six, chapter sixty of this
86 code, order the individual detained in the nearest mental
87 health facility providing appropriate care, or other detention
88 facility as defined in section fourteen, article one of this
89 chapter, to determine the individual's competence to stand
90 trial and criminal responsibility and require the preparation
91 and submission by that facility of a report which shall in
92 addition to determining the individual's competence and crim-
93 inal responsibility shall also describe any suggested or pro-
94 posed methods of care or treatment which may be appro-
95 priate. Such order shall stipulate the return of the individual
96 to the court, magistrate or other judicial officer or his release
97 if bond has been posted or a summons issued in lieu of a
98 warrant, when the individual is no longer incapacitated. But
99 in no case may the individual be kept longer than forty-eight
100 hours unless during the forty-eight hours, civil commitment
101 proceedings pursuant to article five of this chapter are ini-
102 tiated by qualified personnel at the mental health facility
103 or other facility in which the individual is detained and
104 detention is ordered pursuant to article five of this chapter:
105 *Provided*, That whenever the director of the facility initiates
106 civil proceedings within forty-eight hours, he shall immediately
107 notify the judicial officer who ordered the individual detained

108 that such proceedings have commenced: *Provided, however,*
109 That the judicial officer may then modify his order and may
110 continue the criminal proceedings in his court until a diagnosis
111 of alcoholism has been made: *Provided further,* That once a
112 diagnosis is made, the judicial officer shall find the individual
113 not guilty by reason of addiction as provided by section nine,
114 article six, chapter sixty of the code and shall immediately
115 initiate civil commitment proceedings unless such proceedings
116 have already begun and are proceeding.

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

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

136 (3) Any person who is given transportation to or from,
137 or who is examined or treated at, a mental health facility,
138 hospital or detention facility in accordance with, and because
139 of, the provisions of this section, whether such person was
140 incapacitated or not or whether he gave his consent or not,
141 shall be liable in implied contract to the person who, or men-
142 tal health facility, hospital or detention facility or other ap-
143 propriate agency which, provided such transportation, examin-
144 ation or treatment, for the reasonable cost thereof. No person
145 may be denied such services because of inability or failure

146 to pay such costs nor shall any effort be made to obtain pre-
147 payment of such costs or any portion thereof.

CHAPTER 60.
STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

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

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

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

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

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

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

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

24 "Sale" shall mean any transfer, exchange or barter in
25 any manner or by any means, for a consideration, and shall
26 include all sales made by principal, proprietor, agent or
27 employee.

28 "Selling" shall include solicitation or receipt of orders; pos-
29 session for sale; and possession with intent to sell.

30 "Person" shall mean an individual, firm, partnership, cor-
31 poration or voluntary association.

32 "Manufacture" means to distill, rectify, ferment, brew, make,
33 mix, concoct, process, blend, bottle or fill an original pack-
34 age with any alcoholic liquor.

35 "Manufacturer" shall mean any person engaged in the
36 manufacture of any alcoholic liquor, and among others in-
37 cludes a distiller, a rectifier, a wine maker and a brewer.

38 "Brewery" shall mean an establishment where beer is man-
39 ufactured or in any way prepared.

40 "Winery" shall mean an establishment where wine is manu-
41 factured or in any way prepared.

42 "Distillery" shall mean an establishment where alcoholic
43 liquor other than wine or beer is manufactured or in any way
44 prepared.

45 "Public place" shall mean any place, building or con-
46 veyance to which the public has or is permitted to have
47 access, including restaurants, soda fountains, hotel dining
48 rooms, lobbies and corridors of hotels and any highway,
49 street, lane, park or place of public resort or amusement.

50 "State liquor store" shall mean a store established and
51 operated by the commission under this chapter for the sale
52 of alcoholic liquor in the original package for consumption off
53 the premises.

54 "An agency" shall mean a drugstore, grocery store or gen-
55 eral store designated by the commission as a retail distributor
56 of alcoholic liquor for the West Virginia alcohol beverage
57 control commissioner.

58 "Department" shall mean the organization through which
59 the commission exercises powers imposed upon it by this
60 chapter.

61 "Commission" shall mean the West Virginia alcohol bever-
62 age control commissioner.

63 "Intoxicated" shall mean having one's faculties impaired
64 by alcohol or other drugs to the point where physical or
65 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.**

1 (a) A person shall not:

2 (1) Appear in a public place in an intoxicated condition;

3 (2) Drink alcoholic liquor in a public place;

4 (3) Drink alcoholic liquor in a motor vehicle on any high-
5 way, street, alley or in a public garage;

6 (4) Tender a drink of alcoholic liquor to another person in
7 a public place;

8 (5) Possess alcoholic liquor in the amount in excess of
9 one gallon, in containers not bearing stamps or seals of the
10 commission, without having first obtained written authority
11 from the said commission therefor;

12 (6) Possess any alcoholic liquor which was manufactured
13 or acquired in violation of the provisions of this chapter.

14 (b) Any law-enforcement officer may arrest without a war-
15 rant and take the following actions against a person who, in
16 his presence, violates subdivision (1), subsection (a) of this
17 section: (1) If there is some nonintoxicated person who will
18 accept responsibility for the intoxicated person, the officer
19 may issue the intoxicated person a citation specifying a date
20 for appearance before a judicial officer and release him to
21 the custody of the individual accepting responsibility: *Pro-*
22 *vided*, That the issuance of a citation shall be used whenever
23 feasible; (2) if it does not impose an undue burden on the
24 officer he may, after issuance of such a citation transport the
25 individual, to the individual's present residence or arrange for
26 such transportation; (3) if the individual is incapacitated or
27 the alternatives provided in subdivisions (1) and (2) of this sub-
28 section are not possible, the officer shall transport or arrange
29 for transportation to the appropriate judicial officer as defined

30 by section seventeen, article eleven, chapter twenty-seven of
31 the code; or (4) if the individual is incapacitated and, in the
32 law-enforcement officer's judgment, is in need of acute medical
33 attention, that officer shall arrange for transportation by am-
34 bulance or otherwise to a hospital emergency room. The offi-
35 cer shall accompany the individual until he is discharged from
36 the emergency room or admitted to the hospital. If the indi-
37 vidual is released from the emergency room, the officer may
38 proceed as described in subdivisions (1), (2) and (3) of this
39 subsection. If the individual is admitted to the hospital, the
40 officer shall issue a citation to the individual specifying a
41 date for appearance before a judicial officer.

42 (c) Upon presentment before the proper judicial officer the
43 law-enforcement officer shall serve as the chief complaining
44 witness. The judicial officer must make a finding that there is
45 probative evidence that the individual may be guilty of the
46 charge of public intoxication. If such evidence is not pre-
47 sented, the charge shall be dismissed and the individual re-
48 leased. If sufficient evidence is presented, the judicial officer
49 shall issue a warrant and establish bail or issue a summons to
50 the individual. Once a warrant or summons has been issued,
51 the following actions may be taken: (1) If the individual is
52 no longer incapacitated, he may be released; (2) if the indi-
53 vidual is still incapacitated but a nonintoxicated person is
54 available to accept responsibility for him, he may be released
55 to the responsible person; or (3) if the individual is still in-
56 capacitated and no responsible person is available, the judi-
57 cial officer shall proceed under the provisions of articles five
58 or six-a, chapter twenty-seven of this code.

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

68 (e) Any person who violates subdivision (1), subsection (a)

69 of this section shall be guilty of a misdemeanor, and, upon
70 conviction thereof, shall be sentenced by a judicial officer in
71 accordance with the following options: (1) Upon first offense,
72 a fine of not less than five dollars nor more than one hundred
73 dollars and not more than sixty days in jail or completion of
74 an alcohol education program of not more than six hours'
75 duration at the nearest community mental health-mental re-
76 tardation center. If the individual, prior to conviction, agrees to
77 voluntarily attend the alcohol education program, the judicial
78 officer may delay sentencing until the program is completed
79 and upon completion may dismiss the charges; (2) upon con-
80 viction for a second offense, a fine of not less than five dollars
81 nor more than one hundred dollars and not more than sixty
82 days in jail or completion of not less than five hours of alco-
83 holism counseling at the nearest community mental health-
84 mental retardation center; (3) upon third and subsequent con-
85 victions, a fine of not less than five dollars nor more than one
86 hundred dollars and not less than five nor more than sixty
87 days in jail or a fine of not less than five dollars nor more than
88 one hundred dollars and completion of not less than five hours
89 of alcoholism counseling at the nearest community mental
90 health-mental retardation center: *Provided*, That three con-
91 victions for public intoxication within the preceding six months
92 shall be considered evidence of alcoholism: *Provided, how-*
93 *ever*, That for the educational counseling programs described
94 in this subsection the community mental health-mental retar-
95 dation center may charge each participant its usual and custo-
96 mary fee and shall certify in writing to the referring judicial
97 officer the completion or failure to complete the prescribed pro-
98 gram for each individual.

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

104 (g) Any person who violates subdivision (2), (3) or (4),
105 subsection (a) of this section shall be guilty of a misdemeanor,
106 and, upon conviction, shall be fined not less than five nor more
107 than one hundred dollars, or confined in jail not more than

108 sixty days, or both such fine and imprisonment. Any person
109 who violates subdivision (5) or (6), subsection (a) of this sub-
110 tion shall be guilty of a misdemeanor, and, upon conviction,
111 shall be fined not less than one hundred dollars nor more than
112 five hundred dollars, or confined in jail not less than sixty days
113 nor more than twelve months, or both such fine and imprison-
114 ment, and upon conviction of a second or subsequent offense
115 he shall be guilty of a felony and shall be confined in the
116 penitentiary of this state for a period of not less than one year
117 nor more than three years.

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

[Handwritten Signature]
Chairman Senate Committee

[Handwritten Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten Signature]
Clerk of the Senate

[Handwritten Signature]
Clerk of the House of Delegates

[Handwritten Signature]
President of the Senate

[Handwritten Signature]
Speaker House of Delegates

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

[Handwritten Signature]
Governor

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