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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for
SENATE BILL NO. 76

(By Senators *Clotnick, Holliday, Bolley*)

PASSED March 7, 1992

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 76

(SENATORS BLATNIK, HOLLIDAY AND BOLEY, *original sponsors*)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact sections seven and ten, article one, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, two, three and four, article five of said chapter, relating to mental health facilities and proceedings for involuntary hospitalization; setting forth requirements and duties of administrators and clinical directors of facilities; changing certain terminology consistent with government reorganization; defining and redefining certain terms; providing for the appointment of additional mental hygiene commissioners; providing for the designation of magistrates to hold probable cause and emergency detention hearings; mandating the supreme court of appeals to conduct a training course and to promulgate rules providing therefor; requiring the sheriff to maintain custody of individuals prior to and during involuntary hospitalization hearings; provisions for county commissions to pay for security; setting forth duty of the supreme court of appeals to provide forms for proceedings; establishing civil and criminal immu-

nity for health care facilities and professionals; and making provisions gender neutral.

Be it enacted by the Legislature of West Virginia:

That sections seven and ten, article one, chapter twenty seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one, two, three and four, article five of said chapter be amended and reenacted to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-7. Administrator and clinical director.

1 (a) The administrator of a state-operated treatment
2 facility shall be its chief executive officer and shall
3 have the authority to manage and administer the
4 financial, business and personnel affairs of such
5 facility. All other persons employed at the state-
6 operated treatment facility shall be under the jurisdic-
7 tion and authority of the administrator of the treat-
8 ment facility who need not be a physician.

9 (b) The clinical director shall have the responsibility
10 for decisions involving clinical and medical treatment
11 of patients in a state-operated mental health facility.
12 The clinical director must be a physician duly licensed
13 to practice medicine in this state who has completed
14 training in an accredited program of post-graduate
15 education in psychiatry.

16 (c) In any facility designated by the secretary of the
17 department of health and human resources as a
18 facility for the mentally retarded in which programs
19 and services are designed primarily to provide educa-
20 tion, training and rehabilitation rather than medical or
21 psychiatric treatment, the duties and responsibilities,
22 other than those directly related to medical treatment
23 services, assigned to the clinical director by this
24 section or elsewhere in this chapter, shall be assigned
25 to and become the responsibility of the administrator
26 of such facility, or of a person with expertise in the
27 field of mental retardation, who need not be a physi-
28 cian, designated by the administrator.

§27-1-10. Psychologists and psychiatrists.

1 (a) For the purposes of this chapter, “psychologist”
 2 means any person licensed under the laws of this state
 3 to engage in the practice of psychology, or any other
 4 psychologist not a resident of this state who engages in
 5 the practice of psychology in this state and who holds
 6 a license or certificate to engage in the practice of
 7 psychology issued by another state with licensing or
 8 certification requirements comparable to the licensing
 9 requirements of this state, as may be determined by
 10 the state board of examiners of psychologists.

11 (b) For purposes of this chapter, “psychiatrist”
 12 means a physician licensed under the laws of this state
 13 to practice medicine who has completed training in an
 14 accredited program of post-graduate education in
 15 psychiatry.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

1 (a) *Appointment of mental hygiene commissioners.* —
 2 The chief judge in each judicial circuit of this state
 3 shall appoint a competent attorney and may, if neces-
 4 sary, appoint additional attorneys to serve as mental
 5 hygiene commissioners to preside over involuntary
 6 hospitalization hearings. Mental hygiene commission-
 7 ers shall be persons of good moral character and of
 8 standing in their profession and they shall, before
 9 assuming the duties of such commissioner, take the
 10 oath required of other special commissioners as
 11 provided in article one, chapter six of this code.

12 All persons appointed to serve as mental hygiene
 13 commissioners and any magistrates designated by the
 14 chief judge of a judicial circuit to hold probable cause
 15 and emergency detention hearings involving involun-
 16 tary hospitalization must attend and complete a course
 17 provided by the supreme court of appeals which
 18 course shall include, but not be limited to, instruction

19 on the manifestations of mental illness, mental retar-
20 dation and addiction. Persons attending such courses
21 outside the county of their residence shall be reim-
22 bursed out of the budget of the supreme court -
23 general judicial for reasonable expenses incurred. The
24 supreme court shall establish rules for such course,
25 including rules providing for the reimbursement of
26 reasonable expenses as authorized herein.

27 (b) *Duties of mental hygiene commissioners.* —
28 Mental hygiene commissioners may sign and issue
29 summonses for the attendance, at any hearing held
30 pursuant to section four, article five of this chapter, of
31 the individual sought to be committed; may sign and
32 issue subpoenas for witnesses, including subpoenas
33 duces tecum; may place any witness under oath; and
34 may make findings of fact on evidence and may make
35 conclusions of law, but such findings and conclusions
36 shall not be binding on the circuit court. The circuit
37 court, by order entered of record, shall allow the
38 commissioner a reasonable fee for services rendered in
39 connection with each case. Mental hygiene commis-
40 sioners shall discharge their duties and hold their
41 office at the pleasure of the chief judge of the judicial
42 circuit in which he or she is appointed and may be
43 removed at any time by such chief judge. It shall be
44 the duty of a mental hygiene commissioner to conduct
45 orderly inquiries into the mental health of the individ-
46 ual sought to be committed concerning the advisability
47 of committing the individual to a mental health
48 facility. The mental hygiene commissioner shall
49 safeguard, at all times, the rights and interests of the
50 individual as well as the interests of the state. The
51 mental hygiene commissioner shall make a written
52 report of his findings to the circuit court. In any
53 proceedings before any court of record as set forth in
54 this article, the court of record shall appoint an
55 interpreter for any individual who is deaf or cannot
56 speak or who speaks a foreign language and who may
57 be subject to involuntary commitment to a mental
58 health facility.

59 (c) *Duties of prosecuting attorney.* — It shall be the

60 duty of the prosecuting attorney or one of his or her
61 assistants to represent the applicants in all proceedings
62 filed pursuant to the provisions of this article.

63 (d) *Duties of sheriff.* — Upon written order of the
64 circuit court or of a mental hygiene commissioner in
65 the county where the individual formally accused of
66 being mentally incompetent, mentally retarded or
67 addicted is a resident or is found, the sheriff of that
68 county shall take said individual into custody and
69 transport him or her to and from the place of hearing
70 and the mental health facility. The sheriff shall also
71 maintain custody and control of the accused individual
72 during the period of time in which the individual is
73 waiting for the involuntary commitment hearing to be
74 convened and while such hearing is being conducted.

75 (e) *Duties of sheriff upon presentment to mental*
76 *health care facility.* — Where a person is brought to a
77 mental health care facility for purposes of evaluation
78 for commitment under the provisions of this article, if
79 he or she is violent or combative, the sheriff or his or
80 her designee shall maintain custody of the person in
81 the facility until the evaluation is completed or the
82 county commission shall reimburse the mental health
83 care facility at a reasonable rate for security services
84 provided by the mental health care facility for the
85 period of time the person is at the hospital prior to the
86 determination of mental competence or incompetence.

87 (f) *Duties of supreme court of appeals.* — The
88 supreme court of appeals shall provide uniform
89 petition, procedure and order forms which shall be
90 used in all involuntary hospitalization proceedings
91 brought in this state.

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

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

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

24 (b) *Oath; to whom application for involuntary*
25 *custody for examination is made; contents of applica-*
26 *tion; custody; probable cause hearing; examination. —*

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

29 (2) Application for involuntary custody for examina-
30 tion may be made to the circuit court or a mental
31 hygiene commissioner of the county in which the
32 individual resides or of the county in which he or she
33 may be found.

34 (3) The person making such application shall give
35 such information and state such facts therein as may
36 be required, upon the form provided for this purpose
37 by the supreme court of appeals.

38 (4) The circuit court or the mental hygiene commis-
39 sioner may thereupon enter an order for the individ-
40 ual named in such action to be detained and taken into
41 custody, for the purpose of holding a probable cause
42 hearing as provided for in subdivision (5) of this
43 subsection and for the purpose of an examination of
44 the individual by a physician or a psychologist. Such

45 examination shall be provided or arranged by a
46 community mental health center designated by the
47 secretary of the department of health and human
48 resources to serve the county in which the action takes
49 place. The said order shall specify that such hearing be
50 held forthwith and shall provide for the appointment
51 of counsel for the individual: *Provided*, That where a
52 physician or psychologist has performed such exami-
53 nation, the community mental health center may
54 waive this requirement upon approving such examina-
55 tion. Notwithstanding the provisions of this subsection,
56 subsection (r), section four of this article shall apply
57 regarding payment by the county commission for
58 examinations at hearings.

59 In the event immediate detention is believed to be
60 necessary for the protection of the individual or others
61 at a time when no circuit court judge or mental
62 hygiene commissioner is available for immediate
63 presentation of the application, a magistrate desig-
64 nated by the chief judge of the judicial circuit may
65 accept the application and, upon a finding that such
66 immediate detention is necessary pending presentation
67 of the application to the circuit court or mental
68 hygiene commissioner, may order the individual to be
69 temporarily detained in custody until the earliest
70 reasonable time that the application can be presented
71 to the circuit court or mental hygiene commissioner,
72 which temporary period of detention may not exceed
73 twenty-four hours.

74 (5) A probable cause hearing shall be held before a
75 magistrate designated by the chief judge of the judicial
76 circuit, the mental hygiene commissioner or circuit
77 judge of the county of which the individual is a
78 resident or where he or she was found. If requested by
79 the individual or his or her counsel, the hearing may
80 be postponed for a period not to exceed forty-eight
81 hours.

82 The individual must be present at the hearing and
83 shall have the right to present evidence, confront all
84 witnesses and other evidence against him or her and
85 to examine testimony offered, including testimony by

86 representatives of the community mental health
87 center serving the area. The individual shall have the
88 right to remain silent and to be proceeded against in
89 accordance with the rules of evidence of the supreme
90 court of appeals. At the conclusion of the hearing, the
91 magistrate, mental hygiene commissioner or circuit
92 court judge shall find and enter an order stating
93 whether or not there is probable cause to believe that
94 such individual, as a result of mental illness, mental
95 retardation or addiction, is likely to cause serious
96 harm to himself or herself or to others.

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

1 (a) *Admission to a mental health facility for exam-*
2 *ination.* — Any individual may be admitted to a
3 mental health facility for examination upon entry of
4 an order finding probable cause as provided in section
5 two of this article and upon certification by one
6 physician or one psychologist that he or she has
7 examined the individual and is of the opinion that the
8 individual is mentally ill, mentally retarded or
9 addicted and because of such mental illness, mental
10 retardation or addiction is likely to cause serious harm
11 to himself or herself or to others if not immediately
12 restrained. The chief medical officer of said mental
13 health facility may, with the approval of the secretary
14 of health and human resources, transfer such individ-
15 ual to a state hospital or to another similar type of
16 mental health facility after determining that no less
17 restrictive treatment alternative is suitable or avail-
18 able. The chief medical officer of the mental health
19 facility admitting the individual shall forthwith make
20 a report thereof to the secretary of health and human
21 resources.

22 (b) *Three-day time limitation on examination.* — If
23 said examination does not take place within three days
24 from the date the individual is taken into custody, the
25 individual shall be released. If the examination reveals
26 that the individual is not mentally ill, mentally
27 retarded or addicted, the individual shall be released.

28 (c) *Three-day time limitation on certification.* — The
29 certification required in subsection (a) of this section
30 shall be valid for three days. Any individual with
31 respect to whom such certification has been issued
32 may not be admitted on the basis thereof at any time
33 after the expiration of three days from the date of
34 such examination.

35 (d) *Findings and conclusions required for certifica-*
36 *tion.* — A certification under this section must include
37 findings and conclusions of the mental examination,
38 the date, time and place thereof and the facts upon
39 which the conclusion of likelihood of causing serious
40 harm is based.

41 (e) *Notice requirements.* — When an individual is
42 admitted to a mental health facility pursuant to the
43 provisions of this section, the chief medical officer
44 thereof shall immediately give notice of the individ-
45 ual's admission to the individual's spouse, if any, and
46 one of the individual's parents or guardians, or if there
47 be no such spouse, parents or guardians to one of the
48 individual's adult next of kin: *Provided,* That such
49 next of kin shall not be the applicant. Notice shall also
50 be given to the community mental health facility, if
51 any, having jurisdiction in the county of the individ-
52 ual's residence. Such notices other than to the commu-
53 nity mental health facility shall be in writing and shall
54 be transmitted to such person or persons at his, her or
55 their last-known address by certified or registered
56 mail, return receipt requested.

57 (f) *Five-day time limitation for examination and*
58 *certification at mental health facility.* — After the
59 individual's admission to a mental health facility, he
60 or she may not be detained more than five days
61 excluding Sundays and holidays, unless, within such
62 period, the individual is examined by a staff physician
63 and such physician certifies that in his or her opinion,
64 the patient is mentally ill, mentally retarded or
65 addicted and is likely to injure himself or herself or
66 others if allowed to be at liberty.

67 (g) *Ten-day time limitation for institution of final*

68 *commitment proceedings.* — If, in the opinion of the
69 examining physician, the patient is mentally ill,
70 mentally retarded or addicted and because of such
71 mental illness, mental retardation or addiction is likely
72 to injure himself or herself or others if allowed to be
73 at liberty, the chief medical officer shall, within ten
74 days from the date of admission, institute final com-
75 mitment proceedings as provided in section four of
76 this article. If such proceedings are not instituted
77 within such ten-day period, the patient shall be
78 immediately released. After the request for hearing is
79 filed, the hearing shall not be canceled on the basis
80 that the individual has become a voluntary patient
81 unless the mental hygiene commissioner concurs in
82 the motion for cancellation of the hearing.

83 (h) *Thirty-day time limitation for conclusion of all*
84 *proceedings.* — If all proceedings as provided in
85 articles three and four of this chapter are not com-
86 pleted within thirty days from the date of institution
87 of such proceedings, the patient shall be immediately
88 released.

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

1 (a) *Involuntary commitment.* — Except as provided
2 in section three of this article, no individual may be
3 involuntarily committed to a mental health facility
4 except by order entered of record at any time by the
5 circuit court of the county wherein such person
6 resides or was found, or if the individual is hospital-
7 ized in a mental health facility located in a county
8 other than where he or she resides or was found, in
9 the county of the mental health facility, and then only
10 after a full hearing on issues relating to the necessity
11 of committing an individual to a mental health facility:
12 *Provided,* That if said individual objects to the hearing
13 being held in the county where the mental health
14 facility is located, the hearing shall be conducted in
15 the county of the individual's residence.

16 (b) *How final commitment proceedings are com-*
17 *menced.* — Final commitment proceedings for an

18 individual may be commenced by the filing of a
 19 written application under oath and the certificate or
 20 affidavit is hereinafter provided with the clerk of the
 21 circuit court or mental hygiene commissioner of the
 22 county of which the individual is a resident, or where
 23 he or she may be found, or the county of the mental
 24 health facility, if he or she is hospitalized in a mental
 25 health facility located in a county other than where he
 26 or she resides or may be found by an adult person
 27 having personal knowledge of the facts of the case.

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

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

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

43 (3) The written application, certificate, affidavit and
 44 any warrants issued pursuant thereto, including any
 45 papers and documents related thereto filed with any
 46 circuit court or mental hygiene commissioner for the
 47 involuntary hospitalization of any individual shall not
 48 be open to inspection by any person other than the
 49 individual, except upon authorization of the individual
 50 or his or her legal representative or by order of the
 51 circuit court, and such records may not be published
 52 except upon the authorization of the individual or his
 53 or her legal representative.

54 (4) Applications shall not be accepted for individuals
 55 who only have epilepsy, a mental deficiency or senility.

56 (d) *Certificate filed with application; contents of*
57 *certificate; affidavit by applicant in place of certificate. —*

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

73 (2) A certificate is not necessary only when an
74 affidavit is filed by the applicant showing facts and the
75 individual has refused to submit to examination by a
76 physician or a psychologist.

77 (e) *Notice requirements; eight days' notice required. —*
78 Upon receipt of an application, the mental hygiene
79 commissioner or circuit court shall review the applica-
80 tion and if it is determined that the facts alleged, if
81 any, are sufficient to warrant involuntary hospitaliza-
82 tion, forthwith fix a date for and have the clerk of the
83 circuit court give notice of the hearing: (1) To the
84 individual; (2) to the applicant or applicants; (3) to the
85 individual's spouse, one of the parents or guardians, or
86 if the individual does not have a spouse, parents or
87 parent or guardian, to one of the individual's adult
88 next of kin: *Provided*, That such person is not the
89 applicant; (4) to the mental health authorities serving
90 the area; (5) to the circuit court in the county of the
91 individual's residence if the hearing is to be held in a
92 county other than that of such individual's residence;
93 and (6) to the prosecuting attorney of the county in
94 which the hearing is to be held. Such notice shall be
95 served on the individual by personal service of process
96 not less than eight days prior to the date of the

97 hearing, and shall specify the nature of the charges
 98 against the individual; the facts underlying and
 99 supporting the application of involuntary commitment;
 100 the right to have counsel appointed; the right to
 101 consult with and be represented by counsel at every
 102 stage of the proceedings; and the time and place of the
 103 hearing. The notice to the individual's spouse, parents
 104 or parent or guardian, the individual's adult next of
 105 kin, or to the circuit court in the county of the
 106 individual's residence may be by personal service of
 107 process or by certified or registered mail, return
 108 receipt requested, and shall state the time and place of
 109 the hearing.

110 (f) *Examination of individual by court-appointed*
 111 *physician or psychologist; custody for examination;*
 112 *dismissal of proceedings. —*

113 (1) Except as provided in subsection ^{division} (3) of this
 114 ^{section} section, within a reasonable time after notice of the
 115 commencement of final commitment proceedings is
 116 given, the circuit court or mental hygiene commis-
 117 sioner shall appoint a physician or psychologist to
 118 examine the individual and report to the circuit court
 119 or mental hygiene commissioner his or her findings as
 120 to the mental condition of the individual and the
 121 likelihood of him or her causing serious harm to
 122 himself or herself or to others.

123 (2) If the designated physician or psychologist
 124 reports to the circuit court or mental hygiene commis-
 125 sioner that the individual has refused to submit to an
 126 examination, the circuit court or mental hygiene
 127 commissioner shall order him or her to submit to such
 128 examination. The circuit court or mental hygiene
 129 commissioner may direct that the individual be
 130 detained or taken into custody for the purpose of an
 131 immediate examination by the designated physician or
 132 psychologist. All such orders shall be directed to the
 133 sheriff of the county or other appropriate law-
 134 enforcement officer. After such examination has been
 135 completed, the individual shall be released from
 136 custody unless proceedings are instituted pursuant to
 137 section three of this article.

138 (3) If the reports of the appointed physician or
139 psychologist do not confirm that the individual is
140 mentally ill, mentally retarded or addicted and might
141 be harmful to himself or herself or to others, then the
142 proceedings for involuntary hospitalization shall be
143 dismissed.

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

146 (1) The individual shall be present at the final
147 commitment hearing and he or she, the applicant and
148 all persons entitled to notice of such hearing shall be
149 afforded an opportunity to testify and to present and
150 cross-examine witnesses.

151 (2) In the event that the individual has not retained
152 counsel, the court or mental hygiene commissioner at
153 least six days prior to hearing shall appoint a compe-
154 tent attorney, and shall inform the individual of the
155 name, address and telephone number of his or her
156 appointed counsel.

157 (3) The individual shall have the right to have an
158 examination by an independent expert of his or her
159 choice and testimony from such expert as a medical
160 witness on his or her behalf. The cost of such indepen-
161 dent expert shall be borne by the individual unless he
162 or she is indigent.

163 (4) The individual shall not be compelled to be a
164 witness against himself or herself.

165 (h) *Duties of counsel representing individual; pay-*
166 *ment of counsel representing indigent. —*

167 (1) The counsel representing an individual shall
168 conduct a timely interview, make investigation and
169 secure appropriate witnesses and shall be present at
170 the hearing and protect the interest of the individual.

171 (2) Any counsel representing an individual shall be
172 entitled to copies of all medical reports, psychiatric or
173 otherwise.

174 (3) The circuit court, by order of record, may allow
175 the attorney a reasonable fee not to exceed the

176 amount allowed for attorneys in defense of needy
177 persons as provided in article twenty-one, chapter
178 twenty-nine of this code.

179 (i) *Conduct of hearing; receipt of evidence; no*
180 *evidentiary privilege; record of hearing.* —

181 (1) The circuit court or mental hygiene commis-
182 sioner shall hear evidence from all interested parties
183 in chamber, including testimony from representatives
184 of the community mental health facility.

185 (2) The circuit court or mental hygiene commis-
186 sioner shall receive all relevant and material evidence
187 which may be offered.

188 (3) The circuit court or mental hygiene commis-
189 sioner shall be bound by the rules of evidence promul-
190 gated by the supreme court of appeals except that
191 statements made to physicians or psychologists by the
192 individual may be admitted into evidence by the
193 physician's or psychologist's testimony notwithstand-
194 ing failure to inform the individual that this statement
195 may be used against him or her. Any psychologist or
196 physician testifying shall bring all records pertaining
197 to said individual to said hearing. Such medical
198 evidence obtained pursuant to an examination under
199 this section, or section two or three of this article, is
200 not privileged information for purposes of a hearing
201 pursuant to this section.

202 (4) All final commitment proceedings shall be
203 reported or recorded, whether before the circuit court
204 or mental hygiene commissioner, and a transcript
205 shall be made available to the individual, his or her
206 counsel or the prosecuting attorney within thirty days,
207 if the same is requested for the purpose of further
208 proceedings. In any case wherein an indigent person
209 intends to pursue further proceedings the circuit court
210 shall, by order entered of record, authorize and direct
211 the court reporter to furnish a transcript of the
212 hearings.

213 (j) *Requisite findings by the court.* —

214 (1) Upon completion of the final commitment hear-

215 ing, and the evidence presented therein, the circuit
216 court or mental hygiene commissioner shall make
217 findings as to whether or not the individual is men-
218 tally ill, retarded or addicted and because of illness,
219 retardation or addiction is likely to cause serious harm
220 to himself or herself or to others if allowed to remain
221 at liberty and is a resident of the county in which the
222 hearing is held or currently is a patient at a mental
223 health facility in such county.

224 (2) The circuit court or mental hygiene commis-
225 sioner shall also make a finding as to whether or not
226 there is a less restrictive alternative than commitment
227 appropriate for the individual. The burden of proof of
228 the lack of a less restrictive alternative than commit-
229 ment shall be on the person or persons seeking the
230 commitment of the individual.

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

234 (k) *Orders issued pursuant to final commitment*
235 *hearing; entry of order; change in order of court;*
236 *expiration of order. —*

237 (1) Upon the requisite findings, the circuit court may
238 order the individual to a mental health facility for an
239 indeterminate period or for a temporary observatory
240 period not exceeding six months.

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

246 (3) If the order pursuant to a final commitment
247 hearing is for a temporary observation period, the
248 circuit court or mental hygiene commissioner may, at
249 any time prior to the expiration of such period on the
250 basis of a report by the chief medical officer of the
251 mental health facility in which the patient is confined,
252 hold another hearing pursuant to the terms of this
253 section and in the same manner as the hearing was

254 held as if it were an original petition for involuntary
 255 hospitalization, to determine whether the original
 256 order for a temporary observation period should be
 257 modified or changed to an order of indeterminate
 258 hospitalization of the patient. At the conclusion of the
 259 hearing, the circuit court shall order indeterminate
 260 hospitalization of the patient or dismissal of the
 261 proceedings.

262 (4) An order for an indeterminate period shall
 263 expire of its own terms at the expiration of two years
 264 from the date of the last order of commitment unless
 265 prior to the expiration, the department of health, upon
 266 findings based on an examination of the patient by a
 267 physician or a psychologist, extends the order for
 268 indeterminate hospitalization: *Provided*, That if the
 269 patient or his or her counsel requests a hearing, then
 270 a hearing shall be held by the mental hygiene commis-
 271 sioner; or by the circuit court of the county as
 272 provided in subsection (a) of this section.

273 (l) *Dismissal of proceedings.* — If the circuit court or
 274 mental hygiene commissioner finds that the individual
 275 is not mentally ill, mentally retarded or addicted, the
 276 proceedings shall be dismissed. If the circuit court or
 277 mental hygiene commissioner finds that the individual
 278 is mentally ill, mentally retarded or addicted but is not
 279 because of such illness, retardation or addiction likely
 280 to cause serious harm to himself or herself or to others
 281 if allowed to remain at liberty, the proceedings shall
 282 be dismissed.

283 (m) *Immediate notification of order of hospitaliza-*
 284 *tion.* — The clerk of the circuit court in which an
 285 order directing hospitalization is entered, if not in the
 286 county of the individual's residence, shall immediately
 287 upon entry thereof forward a certified copy of same to
 288 the clerk of the circuit court of the county of which
 289 the individual is a resident.

290 (n) *Consideration of transcript by circuit court of*
 291 *county of individual's residence; order of hospitaliza-*
 292 *tion; execution of order.* —

293 (1) If the circuit court or mental hygiene commis-

294 sioner is satisfied that hospitalization should be
 295 ordered but finds that the individual is not a resident
 296 of the county in which the hearing is held, and the
 297 individual is not currently a resident of a mental
 298 health facility, a transcript of the evidence adduced at
 299 the final commitment hearing of such individual,
 300 certified by the clerk of the circuit court, shall
 301 forthwith be forwarded to the clerk of the circuit court
 302 of the county of which such individual is a resident,
 303 who shall immediately present such transcript to the
 304 circuit court or mental hygiene commissioner of said
 305 county.

306 (2) If the circuit court or mental hygiene commis-
 307 sioner of the county of the residence of the individual
 308 is satisfied from the evidence contained in such
 309 transcript that such individual should be hospitalized
 310 as determined by the standard set forth above, the
 311 circuit court shall order the appropriate hospitalization
 312 as though the individual had been brought before the
 313 circuit court or its mental hygiene commissioner in
 314 the first instance.

315 (3) This order shall be transmitted forthwith to the
 316 clerk of the circuit court of the county in which the
 317 hearing was held who shall execute said order
 318 promptly.

319 (o) *Order of custody to responsible person.* — In lieu
 320 of ordering the patient to a mental health facility, the
 321 circuit court may order the individual delivered to
 322 some responsible person who will agree to take care of
 323 the individual and the circuit court may take from
 324 such responsible person a bond in an amount to be
 325 determined by the circuit court with condition to
 326 restrain and take proper care of such individual until
 327 further order of the court.

328 (p) *Individual not a resident of this state.* — If the
 329 individual found to be mentally ill, mentally retarded
 330 or addicted by the circuit court or mental hygiene
 331 commissioner is a resident of another state, this
 332 information shall be forthwith given to the secretary
 333 of the department of health and human resources, or

334 to his or her designee, who shall make appropriate
335 arrangements for transfer of the individual to the state
336 of his or her residence conditioned on the agreement
337 of the individual except as qualified by the interstate
338 compact on mental health.

339 (q) *Report to the secretary of the department of*
340 *health and human resources. —*

341 (1) The chief medical officer of a mental health
342 facility admitting a patient pursuant to proceedings
343 under this section shall forthwith make a report of
344 such admission to the secretary of the department of
345 health and human resources or to his or her designee.

346 (2) Whenever an individual is released from custody
347 due to the failure of an employee of a mental health
348 facility to comply with the time requirements of this
349 article, the chief medical officer of such mental health
350 facility shall forthwith after the release of the individ-
351 ual make a report to the secretary of the department
352 of health and human resources or to his or her
353 designee of the failure to comply.

354 (r) *Payment of some expenses by the state; mental*
355 *hygiene fund established; expenses paid by the county*
356 *commission. —*

357 (1) The state shall pay the commissioner's fee and
358 such court reporter fees as are not paid and reim-
359 bursed under article twenty-one, chapter twenty-nine
360 of this code out of a special fund to be established
361 within the supreme court of appeals to be known as
362 the "mental hygiene fund".

363 (2) The county commission shall pay out of the
364 county treasury all other expenses incurred in the
365 hearings conducted under the provisions of this article
366 whether or not hospitalization is ordered, including
367 any fee allowed by the circuit court by order entered
368 of record for any physician, psychologist and witness
369 called by the indigent individual.

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

Domer Luck
.....
Chairman Senate Committee

Ernest E. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Samuel E. Adams
.....
Clerk of the Senate

Donald G. Kapp
.....
Clerk of the House of Delegates

Paul F. Rutledge
.....
President of the Senate

Robert C. Cole
.....
Speaker House of Delegates

The within is approved this the *18* day of *April*, 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:40 pm