

SB 529

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



## ENROLLED

*Com. Sub. For Com. Sub. For*  
SENATE BILL NO. 529

(By Senator WOOTON, ET AL)



PASSED MARCH 7, 1996  
In Effect SEVEN DAYS FROM Passage

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COMMITTEE SUBSTITUTE  
FOR  
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FOR

### **Senate Bill No. 529**

(SENATORS WOOTON, BAILEY, WALKER AND MACNAUGHTAN,  
*original sponsors*)

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[Passed March 7, 1996; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two and five, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section seven, all relating to standard and emergency commitment proceedings for persons with communicable tuberculosis; authorizing the bureau of public health or its designee to make application for involuntary commitment in emergency situations; setting forth the procedures for involuntary commitment of persons suffering from tuberculosis; requiring information related to persons' uncooperative behavior; authorizing magistrate to accept application

in certain circumstances; permitting immediate detention for specified period of time; permitting postponement of hearing for specified period of time; requiring immediate commitment upon finding of probable cause that the person is likely to cause serious harm to him or herself or others; and eliminating or updating obsolete references.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 5A. TUBERCULOSIS CONTROL.**

**§26-5A-2. Forms for committing patients; other records.**

1 The state bureau of public health or its designee is  
2 authorized to prepare, prescribe and have printed forms  
3 to be used in committing patients to any state tuberculo-  
4 sis institution.

**§26-5A-5. Procedure when patient is health menace to others.**

1 (a) If any practicing physician, public health officer, or  
2 chief medical officer having under observation or care  
3 any person who is suffering from tuberculosis in a  
4 communicable stage is of the opinion that the environ-  
5 mental conditions of that person are not suitable for  
6 proper isolation or control by any type of local quaran-  
7 tine as prescribed by the state bureau of public health of  
8 the department of health and human resources or an  
9 authorized designee thereof, and that the person is  
10 unable or unwilling to conduct himself or herself and to  
11 live in such a manner as not to expose members of his or  
12 her family or household or other persons with whom he  
13 or she may be associated to danger of infection, he or she  
14 shall report the facts to the bureau of public health or its  
15 designee which shall forthwith investigate or have  
16 investigated the circumstances alleged.

17 (b) If the bureau of public health or its designee finds  
18 that any person's physical condition is a health menace  
19 to others, the bureau of public health or its designee  
20 shall petition the circuit court of the county in which the  
21 person resides, or the judge thereof in vacation, alleging  
22 that the person is afflicted with communicable tubercu-  
23 losis and that the person's physical condition is a health  
24 menace to others, and requesting an order of the court  
25 committing the person to one of the state institutions for  
26 the treatment of tuberculosis: *Provided*, That if the  
27 bureau of public health or its designee determines than  
28 an emergency situation exists which warrants the  
29 immediate detention and commitment of a person  
30 suffering from tuberculosis, an application for immedi-  
31 ate involuntary commitment may be filed pursuant to  
32 section seven of this article.

33 (c) Upon receiving the petition, the court shall fix a  
34 date for hearing thereof and notice of the petition and  
35 the time and place for hearing shall be served personally,  
36 at least seven days before the hearing, upon the person  
37 who is afflicted with tuberculosis and alleged to be  
38 dangerous to the health of others.

39 (d) If, upon hearing, it appears that the complaint of  
40 the bureau of public health or its designee is well found-  
41 ed, that the person is afflicted with communicable  
42 tuberculosis, and that the person is a source of danger to  
43 others, the court shall commit the individual to an  
44 institution maintained for the care and treatment of  
45 persons afflicted with tuberculosis. The person shall be  
46 deemed to be committed until discharged in the manner  
47 authorized in this section.

48 (e) The chief medical officer of the institution to which  
49 any person afflicted with tuberculosis has been commit-  
50 ted, may discharge that person when, in his or her  
51 judgment, the person may be discharged without danger  
52 to the health or life of others. The chief medical officer  
53 shall report immediately to the bureau of public health  
54 or its designee each discharge of a person afflicted with

55 tuberculosis.

56 (f) Every person committed under the provisions of this  
57 section shall observe all the rules of the institution. Any  
58 patient so committed may, by direction of the chief  
59 medical officer of the institution, be placed apart from  
60 the others and restrained from leaving the institution so  
61 long as he or she continues to be afflicted with tubercu-  
62 losis and remains a health menace.

63 (g) Nothing in this section may be construed to prohibit  
64 any person committed to any institution under the  
65 provisions of this section from applying to the supreme  
66 court of appeals for a review of the evidence on which  
67 the commitment was made. Nothing in this section may  
68 be construed or operate to empower or authorize the  
69 bureau of public health, the department of health and  
70 human resources or an authorized designee thereof or  
71 the chief medical officer of the institution, or their  
72 representatives, to restrict in any manner the individ-  
73 ual's right to select any method of tuberculosis treatment  
74 offered by the institution.

**§26-5A-7. Procedures for immediate involuntary commit-  
ment.**

1 (a) An application for immediate involuntary commit-  
2 ment of a person suffering from tuberculosis may be  
3 filed by the commissioner of the bureau of public health,  
4 or his or her designee, in the circuit court of the county  
5 in which the person resides. The application shall be  
6 filed under oath, and shall present information and facts  
7 which establish that the person suffering from tubercu-  
8 losis in a communicable stage has been uncooperative or  
9 irresponsible with regard to quarantine or safety mea-  
10 sures, presents a health menace to others, and is in need  
11 of immediate hospitalization until his or her communica-  
12 ble tuberculosis becomes noninfectious.

13 (b) Upon receipt of the application, the circuit court  
14 may thereupon enter an order for the individual named  
15 in the action to be detained and taken into custody for

16 the purpose of holding a probable cause hearing. The  
17 order shall specify that the hearing be held forthwith  
18 and shall appoint counsel for the individual: *Provided*,  
19 That in the event immediate detention is believed to be  
20 necessary for the protection of the individual or others at  
21 a time when no circuit court judge is available for  
22 immediate presentation of the application, a magistrate  
23 may accept the application and, upon a finding that  
24 immediate detention is necessary pending presentation  
25 of the application to the circuit court, may order the  
26 individual to be temporarily committed until the earliest  
27 reasonable time that the application can be presented to  
28 the circuit court, which temporary period of detention  
29 shall not exceed twenty-four hours, except as provided  
30 for in subsection (c) of this section.

31 (c) A probable cause hearing shall be held before a  
32 magistrate or circuit judge of the county of which the  
33 individual is a resident or where he or she was found. If  
34 requested by the individual or his or her counsel, the  
35 hearing may be postponed for a period not to exceed  
36 forty-eight hours.

37 (d) The individual shall be present at the probable  
38 cause hearing and shall have the right to present evi-  
39 dence, confront all witnesses and other evidence against  
40 him or her, and to examine testimony offered, including  
41 testimony by the bureau of public health or its designees.

42 (e) At the conclusion of the hearing the magistrate or  
43 circuit court shall find and enter an order stating  
44 whether there is probable cause to believe that the  
45 individual is likely to cause serious harm to himself,  
46 herself or others as a result of his or her disease and  
47 actions. If probable cause is found, the individual shall  
48 be immediately committed to an institution maintained  
49 for the care and treatment of persons afflicted with  
50 tuberculosis. The person shall remain so committed  
51 until discharged in the manner authorized pursuant to  
52 section five of this article.

53 (f) The bureau of public health shall promulgate rules

54 pursuant to the provisions of article three, chapter  
55 twenty-nine-a of this code necessary to implement the  
56 provisions of this article, including, but not limited to,  
57 rules relating to the transport and temporary involuntary  
58 commitment of patients.

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

*Randy Schoonover*  
.....  
Chairman Senate Committee

*Randy Seavert*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Paul E. Egan*  
.....  
Clerk of the Senate

*Gregory M. Bray*  
.....  
Clerk of the House of Delegates

*Carl Roy Imbrie*  
.....  
President of the Senate

*Rob. C. Bell*  
.....  
Speaker House of Delegates

The within *is approved* this the *21<sup>st</sup>*  
day of *March* ....., 1996.

*Gaston Caputo*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/15/96

Time 3:21 PM