

HB 2127

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SECRETARY OF STATE
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2127

(By Delegate _____ Staton _____)



Passed _____ April 12, _____ 1997

In Effect _____ Ninety Days From _____ Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2127

(BY DELEGATE STATON)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections five and seven, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspending general notice requirements in cases involving immediate involuntary commitments; enabling the commitment of alcoholics and drug users to detoxification centers prior to their commitment to a facility for the treatment of tuberculosis; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That sections five and seven, article five-a, chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. TUBERCULOSIS CONTROL.

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

- 1 (a) If any practicing physician, public health officer,
- 2 or chief medical officer having under observation or care
- 3 any person who is suffering from tuberculosis in a
- 4 commun-icable stage is of the opinion that the
- 5 environmental conditions of that person are not suitable
- 6 for proper isolation or control by any type of local

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7 quarantine as prescribed by the state division of health of
8 the department of health and human resources or an
9 authorized designee thereof, and that the person is unable
10 or unwilling to conduct himself or herself and to live in
11 such a manner as not to expose members of his or her
12 family or household or other persons with whom he or she
13 may be associated to danger of infection, he or she shall
14 report the facts to the division of health or its designee
15 which shall forthwith investigate or have investigated the
16 circumstances alleged.

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

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

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

47 provisions of this subsection shall not apply to immediate
48 involuntary commitments as provided in section seven of
49 this article.

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

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

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

§26-5A-7. Procedures for immediate involuntary commitment.

1 (a) An application for immediate involuntary
2 commitment of a person suffering from tuberculosis may
3 be filed by the commissioner of the bureau of public
4 health, or his or her designee, in the circuit court of the
5 county in which the person resides. The application shall
6 be filed under oath, and shall present information and
7 facts which establish that the person suffering from

8 tuberculosis in a communicable stage has been
9 uncooperative or irresponsible with regard to quarantine
10 or safety measures, presents a health menace to others, and
11 is in need of immediate hospitalization until his or her
12 communicable tuberculosis becomes noninfectious.

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

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

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

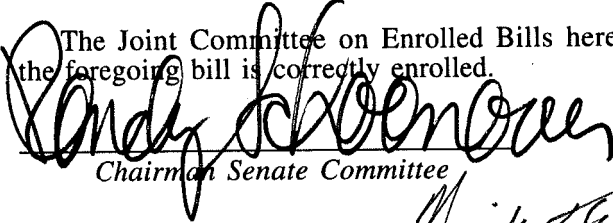
40 (e) At the conclusion of the hearing the magistrate or
41 circuit court judge shall enter an order stating whether
42 there is probable cause to believe that the individual is
43 likely to cause serious harm to himself, herself or others as
44 a result of his or her disease and actions. If probable
45 cause is found, the individual shall be immediately
46 committed to an institution maintained for the care and
47 treatment of persons afflicted with tuberculosis. The

48 person shall remain so committed until discharged in the
49 manner authorized pursuant to section five of this article:
50 *Provided*, That in the case of an alcoholic or drug user,
51 the judge or magistrate shall first order the individual
52 committed to a detoxification center for detoxification
53 prior to commitment to an institution maintained for the
54 care and treatment of persons afflicted with tuberculosis.

55 (f) The bureau of public health shall promulgate rules
56 pursuant to the provisions of article three, chapter twenty-
57 nine-a of this code necessary to implement the provisions
58 of this article, including, but not limited to, rules relating
59 to the transport and temporary involuntary commitment
60 of patients.

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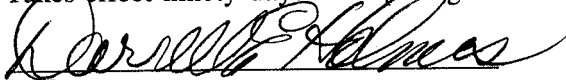
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

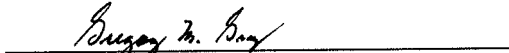

Chairman Senate Committee

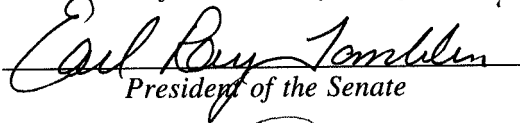

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

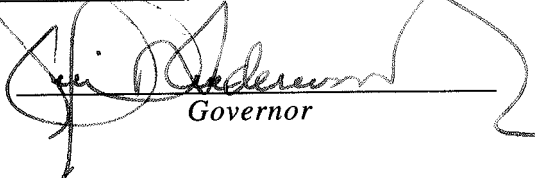

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 5th
day of May, 1997.


Governor

PRESENTED TO THE

GOVERNOR

Date 4/21/07

Time 11:35 am