

SB 398

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SENATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 398

(By Senator WOOTEN, ET AL)

PASSED MARCH 14, 1998

In Effect NINETY DAYS FROM Passage

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Senate Bill No. 398

(BY SENATORS WOOTON, BALL, BOWMAN, DITTMAR, FANNING,
HUNTER, KESSLER, OLIVERIO, ROSS, SCHOONOVER,
SNYDER, BUCKALEW AND DEEM)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and four, article six-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the commitment of certain persons found incompetent to stand trial; determination of mental competency to stand trial; hearings procedure; findings required; jurisdiction of court; release; and disclosure from court jurisdiction.

Be it enacted by the Legislature of West Virginia:

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

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

§27-6A-2. Hearing on competency to stand trial; findings.

1 (a) At a hearing to determine a defendant's competency
2 to stand trial, the defendant shall be present and he or she
3 shall have the right to be represented by counsel and
4 introduce evidence and cross-examine witnesses. The
5 defendant shall be afforded timely and adequate notice of
6 the issues at the hearing and shall have access to a sum-
7 mary of the medical evidence to be presented by the state.
8 The defendant shall have the right to an examination by
9 an independent expert of his or her choice and testimony
10 from such expert as a medical witness on his or her behalf.
11 All rights generally afforded a defendant in criminal
12 proceedings shall be afforded to a defendant in such
13 competency proceedings except trial by jury.

14 (b) At the termination of such hearing the court of
15 record shall make a finding of fact upon a preponderance
16 of the evidence as to the defendant's competency to stand
17 trial based on whether or not the defendant is capable of
18 participating substantially in his or her defense and
19 understanding the nature and consequences of a criminal
20 trial. If the defendant is found competent, the court of
21 record shall forthwith proceed with the criminal proceed-
22 ings. If the defendant is found incompetent to stand trial,
23 the court of record shall upon the evidence make further
24 findings as to whether or not there is a substantial likeli-
25 hood that the defendant will attain competency within the
26 next ensuing six months, and if the court of record so
27 finds, the defendant may be committed to a mental health
28 facility for an improvement period not to exceed six
29 months. If requested by the chief medical officer of the
30 mental health facility on the grounds that additional time
31 is necessary for the defendant to attain competency, the
32 court of record may, prior to the termination of the six-
33 month period, extend the period for an additional three
34 months. Within ten days of the termination of such

35 period, the court of record shall ascertain by hearing in
36 accordance with subsection (a) of this section whether or
37 not the defendant has attained competency to stand trial.

38 (c) If the defendant has been indicted or charged with a
39 misdemeanor or felony in which the misdemeanor or
40 felony does not involve an act of violence against a person
41 and is found to be incompetent to stand trial with no
42 substantial likelihood of obtaining competency, or if after
43 such improvement period the defendant is found to be
44 incompetent to stand trial, the criminal charges shall be
45 dismissed. The dismissal order may be stayed for ten days
46 to allow civil commitment proceedings to be instituted
47 pursuant to article five of this chapter.

48 (d) If the defendant has been indicted or charged with
49 a misdemeanor or felony in which the misdemeanor or
50 felony does involve an act of violence against a person and
51 upon hearing: (1) The defendant is found initially to be
52 incompetent to stand trial with no substantial likelihood
53 of obtaining competency and is found not to be a danger
54 to self or others; or (2) after an improvement period
55 pursuant to subsection (b) of this section, the defendant is
56 found to be incompetent to stand trial and is found not to
57 be a danger to self or others, then the court shall maintain
58 jurisdiction over the defendant.

59 (e) If the defendant has been indicted or charged with a
60 misdemeanor or felony in which the misdemeanor or
61 felony does involve an act of violence against a person
62 and, upon hearing: (1) The defendant is found initially to
63 be incompetent to stand trial with no substantial likeli-
64 hood of obtaining competency and is found to be a danger
65 to self or others; or (2) after an improvement period
66 pursuant to subsection (b) of this section, the defendant is
67 found to be incompetent to stand trial and is found to be
68 a danger to self or others, then the court shall maintain
69 jurisdiction over the defendant and shall commit the
70 defendant to a mental health facility under the authority

71 of the department of health and human resources. The
72 defendant's supervising physician or psychologist shall
73 cause the defendant's competency to stand trial and
74 dangerousness to self or others to be reviewed every six
75 months during the period of his or her inpatient hospital-
76 ization.

77 (f) If the defendant has been indicted or charged with a
78 misdemeanor or felony in which the misdemeanor or
79 felony does involve an act of violence against a person,
80 upon notice from the medical director of the mental health
81 facility that the defendant no longer constitutes a danger
82 to self or others along with an alternative disposition plan
83 which sets forth in detail a treatment plan for the defen-
84 dant designed to allow his or her release without endan-
85 gering the public, the court shall promptly conduct a
86 hearing. The clerk shall give notice of the hearing to the
87 prosecuting attorney and the victim or next of kin of the
88 victim of the offense for which the person was committed.
89 The burden shall be on the victim or next of kin of the
90 victim to keep the court apprised of that person's current
91 mailing address.

92 After hearing, the court may order the release from
93 hospitalization of a defendant found incompetent to stand
94 trial due to mental illness, addiction or retardation prior
95 to the expiration of the court's jurisdiction only when the
96 court finds that the defendant is no longer a danger to self
97 or others: *Provided*, That a defendant may be released
98 from inpatient hospitalization by the court when the
99 defendant's mental illness is in remission solely as a result
100 of medication or hospitalization or other mode of treat-
101 ment only if it can be determined by clear and convincing
102 evidence that with continued outpatient therapy or other
103 mode of outpatient treatment, the defendant's mental
104 illness does not make him or her a danger to self or others.
105 When a defendant's mental illness is in remission solely as
106 a result of medication or hospitalization or other mode of
107 treatment, the court in its discretion, may make the

108 continuance of the medication or other mode of treatment
109 a condition of the defendant's release. Upon notice that
110 a defendant who is released on the condition that he or she
111 continues medication or other mode of treatment does not
112 continue his medication or other mode of treatment, the
113 prosecuting attorney shall, by motion, cause the court to
114 reconsider the defendant's release. Upon a showing that
115 defendant is in violation of the conditions of his or her
116 release, the court shall recommit the defendant to the
117 mental health facility.

118 (g) The prosecuting attorney shall, by motion, cause the
119 competency to stand trial of a defendant subject to the
120 court's jurisdiction pursuant to subsection (d) of this
121 section or released pursuant to subsection (f) of this
122 section to be determined at least every six months while
123 the defendant remains under the jurisdiction of the court.
124 A defendant placed under the jurisdiction of the court
125 pursuant to the provisions of subsection (d) or (e) of this
126 section shall remain under the court's jurisdiction until
127 the expiration of the maximum possible sentence the
128 defendant could have received if convicted unless the
129 defendant regains competency and the criminal charges
130 reach resolution or the court, upon motion of the prosecut-
131 ing attorney, dismisses the indictment or charge.

§27-6A-4. Release from jurisdiction of the court; discharge.

1 (a) No later than thirty days prior to the release of a
2 defendant because of the expiration of the court's juris-
3 diction, if the defendant's supervising physician or
4 psychologist believes that the defendant's mental illness
5 or mental retardation or addiction causes the defendant to
6 be dangerous to self or others, the supervising physician or
7 psychologist shall notify the prosecuting attorney in the
8 county of the court having jurisdiction of such opinion
9 and the basis therefor. Following this notification, the
10 prosecuting attorney shall file a civil commitment appli-
11 cation against the defendant, pursuant to article five of

12 this chapter.

13 (b) Except as provided in subsection (g), section two of
14 this article, the court may discharge a mentally ill or
15 addicted defendant from the court's jurisdiction prior to
16 the expiration of the period specified in this section only
17 when the court finds that the person is no longer mentally
18 ill or addicted and that the person is no longer a danger to
19 self or others: *Provided*, That a defendant may not be
20 released from the court's jurisdiction when the defen-
21 dant's mental illness is in remission solely as a result of
22 medication or hospitalization or other mode of treatment
23 only if it can be determined by clear and convincing
24 evidence that with continued outpatient therapy or other
25 mode of outpatient treatment, the defendant's mental
26 illness does not make him or her a danger to self or others.
27 When a defendant's mental illness is in remission solely as
28 a result of medication or hospitalization or other mode of
29 treatment, the court in its discretion, may make the
30 continuance of the medication or other mode of treatment
31 a condition of the defendant's release. Upon notice that
32 a defendant who is released on the condition that he or she
33 continues medication or other mode of treatment does not
34 continue his medication or other mode of treatment, the
35 prosecuting attorney shall, by motion, cause the court to
36 reconsider the defendant's release. Upon a showing that
37 defendant is in violation of the conditions of his or her
38 release, the court shall reinstate its jurisdiction over the
39 defendant. The court may discharge a mentally retarded
40 defendant from the court's jurisdiction prior to the
41 expiration of the period specified in this section only when
42 the court finds that the person is no longer a danger to self
43 or others.

44 (c) Those persons committed under the provisions of this
45 article may be released or discharged from the inpatient
46 mental health facility only upon entry of an order from the
47 court of record which committed the defendant, finding
48 that the defendant will not be a danger to self or others if

49 so released, based upon the evidence admitted at the
50 hearing.

51 (d) The court shall promptly conduct a hearing after
52 receipt of the physician's or psychologist's notification
53 referred to in subsection (a) of this section. The clerk shall
54 notify the prosecuting attorney and the victim or next of
55 kin of the victim of the offense for which the defendant
56 was committed of the hearing. The burden shall be on the
57 victim or next of kin of the victim to keep the court
58 apprised of the defendant's current mailing address.

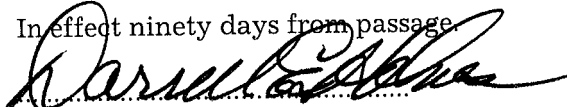
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

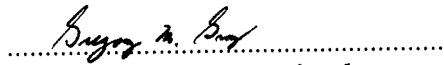

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Chairman Senate Committee.

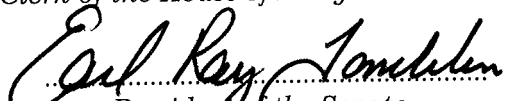

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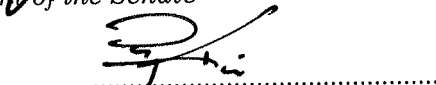
Originated in the Senate.

In effect ninety days from passage.

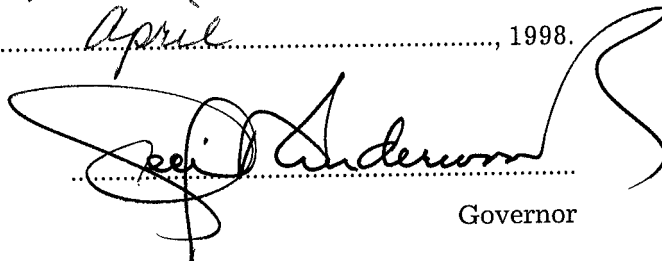

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 2nd
day of April, 1998.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/24/98

Time 3:10 pm