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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2002

ENROLLED

Committee Substitute for

SENATE BILL NO. 526

(By Senator Mitchell, et al)

PASSED March 9, 2002

In Effect 90 days from Passage

FILED

2002 APR -2 P 4: 43

OFFICE WEST VIRGINIA
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 536

(SENATORS MITCHELL, FANNING, KESSLER, MINARD, OLIVERIO,
ROWE, FACEMYER AND MCKENZIE, *original sponsors*)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two and three, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to mental hygiene proceedings generally; definitions; removing prosecutors from regular appearances at probable cause proceedings; extending time for hearing; allowing multiple county agreements; clarifying that no probable cause hearing is necessary where the physician or psychologist determines that the individual is neither mentally ill nor addicted or, if mentally ill, not a danger to self or others; proceedings involving involuntary custody; requiring probable cause hearings within a certain time period; clarifying that mental hygiene commissioners may elicit testimony regarding issues raised in the petition;

requiring data collection by supreme court of appeals; allowing fifteen days for holding of final commitment proceeding; and authorizing qualified licensed independent clinical social workers or certain advanced nurse practitioners to certify an individual.

Be it enacted by the Legislature of West Virginia:

That sections one, two and three, article five, 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 5. INVOLUNTARY HOSPITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of supreme court of appeals; use of certified municipal law-enforcement officers.

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

11 All persons newly appointed to serve as mental hygiene
12 commissioners shall attend and complete an orientation
13 course, within one year of their appointment, consisting of
14 at least three days of training provided annually by the
15 supreme court of appeals. In addition, existing mental
16 hygiene commissioners and any magistrates designated by
17 the chief judge of a judicial circuit to hold probable cause
18 and emergency detention hearings involving involuntary
19 hospitalization shall attend and complete a course pro-

20 vided by the supreme court of appeals, which course shall
21 include, but not be limited to, instruction on the manifes-
22 tations of mental illness and addiction. Persons attending
23 such courses outside the county of their residence shall be
24 reimbursed out of the budget of the supreme court –
25 general judicial for reasonable expenses incurred. The
26 supreme court shall establish rules for such courses,
27 including rules providing for the reimbursement of
28 reasonable expenses as authorized herein.

29 (b) *Duties of mental hygiene commissioners.* –

30 (1) Mental hygiene commissioners may sign and issue
31 summonses for the attendance, at any hearing held pursu-
32 ant to section four, article five of this chapter, of the
33 individual sought to be committed; may sign and issue
34 subpoenas for witnesses, including subpoenas duces tecum;
35 may place any witness under oath; may elicit testimony
36 from applicants, respondents and witnesses regarding
37 factual issues raised in the petition; and may make find-
38 ings of fact on evidence and may make conclusions of law,
39 but such findings and conclusions shall not be binding on
40 the circuit court. The circuit court, by order entered of
41 record, shall allow the commissioner a reasonable fee for
42 services rendered in connection with each case. Mental
43 hygiene commissioners shall discharge their duties and
44 hold their offices at the pleasure of the chief judge of the
45 judicial circuit in which he or she is appointed and may be
46 removed at any time by such chief judge. It shall be the
47 duty of a mental hygiene commissioner to conduct orderly
48 inquiries into the mental health of the individual sought to
49 be committed concerning the advisability of committing
50 the individual to a mental health facility. The mental
51 hygiene commissioner shall safeguard, at all times, the
52 rights and interests of the individual as well as the inter-
53 ests of the state. The mental hygiene commissioner shall
54 make a written report of his or her findings to the circuit
55 court. In any proceedings before any court of record as set
56 forth in this article, the court of record shall appoint an

57 interpreter for any individual who is deaf or cannot speak
58 or who speaks a foreign language and who may be subject
59 to involuntary commitment to a mental health facility.

60 (2) A mental hygiene commissioner appointed by the
61 circuit court of one county or multiple county circuit may
62 serve in such capacity in a jurisdiction other than that of
63 his or her original appointment if such be agreed upon by
64 the terms of a cooperative agreement between the circuit
65 courts and county commissions of two or more counties
66 entered into to provide prompt resolution of mental
67 hygiene matters during noncourt hours or on nonjudicial
68 days.

69 (c) *Duties of prosecuting attorney.* – It shall be the duty
70 of the prosecuting attorney or one of his or her assistants
71 to represent the applicants in all final commitment
72 proceedings filed pursuant to the provisions of this article.
73 The prosecuting attorney may appear in any proceeding
74 held pursuant to the provisions of this article if he or she
75 deems it to be in the public interest.

76 (d) *Duties of sheriff.* – Upon written order of the circuit
77 court, mental hygiene commissioner or magistrate in the
78 county where the individual formally accused of being
79 mentally ill or addicted is a resident or is found, the sheriff
80 of that county shall take said individual into custody and
81 transport him or her to and from the place of hearing and
82 the mental health facility. The sheriff shall also maintain
83 custody and control of the accused individual during the
84 period of time in which the individual is waiting for the
85 involuntary commitment hearing to be convened and while
86 such hearing is being conducted: *Provided*, That an
87 individual who is a resident of a state other than West
88 Virginia shall, upon a finding of probable cause, be
89 transferred to his or her state of residence for treatment
90 pursuant to the provisions of subsection (p), section four of
91 this article: *Provided, however*, That where an individual
92 is a resident of West Virginia but not a resident of the
93 county in which he or she is found and there is a finding of

94 probable cause, the county in which the hearing is held
95 may seek reimbursement from the county of residence for
96 reasonable costs incurred by the county attendant to the
97 mental hygiene proceeding. Notwithstanding any provi-
98 sion of this code to the contrary, sheriffs may enter into
99 cooperative agreements with sheriffs of one or more other
100 counties, with the concurrence of their respective circuit
101 courts and county commissions, whereby transportation
102 and security responsibilities for hearings held pursuant to
103 the provisions of this article during noncourt hours or on
104 nonjudicial days may be shared in order to facilitate
105 prompt hearings and to effectuate transportation of
106 persons found in need of treatment.

107 (e) *Duty of sheriff upon presentment to mental health*
108 *care facility.* – Where a person is brought to a mental
109 health care facility for purposes of evaluation for commit-
110 ment under the provisions of this article, if he or she is
111 violent or combative, the sheriff or his or her designee
112 shall maintain custody of the person in the facility until
113 the evaluation is completed or the county commission shall
114 reimburse the mental health care facility at a reasonable
115 rate for security services provided by the mental health
116 care facility for the period of time the person is at the
117 hospital prior to the determination of mental competence
118 or incompetence.

119 (f) *Duties of supreme court of appeals.* – The supreme
120 court of appeals shall provide uniform petition, procedure
121 and order forms which shall be used in all involuntary
122 hospitalization proceedings brought in this state.

**§27-5-2. Institution of proceedings for involuntary custody for
examination; custody; probable cause hearing;
examination of individual.**

1 (a) Any adult person may make an application for
2 involuntary hospitalization for examination of an individ-
3 ual who is not incarcerated at the time the application is

4 filed when the person making the application has reason
5 to believe that:

6 (1) The individual to be examined is addicted, as defined
7 in section eleven, article one of this chapter; or

8 (2) The individual is mentally ill and, because of his or
9 her mental illness, the individual is likely to cause serious
10 harm to himself or herself or to others if allowed to remain
11 at liberty while awaiting an examination and certification
12 by a physician or psychologist.

13 (b) The person making the application shall make the
14 application under oath.

15 (c) Application for involuntary custody for examination
16 may be made to the circuit court or a mental hygiene
17 commissioner of the county in which the individual resides
18 or of the county in which he or she may be found. When
19 no circuit court judge or mental hygiene commissioner is
20 available for immediate presentation of the application,
21 the application may be made to a magistrate designated by
22 the chief judge of the judicial circuit to accept applications
23 and hold probable cause hearings. A designated magis-
24 trate before whom an application or matter is pending
25 may upon the availability of a mental hygiene commis-
26 sioner or circuit court judge for immediate presentation of
27 an application or pending matter, transfer the pending
28 matter or application to the mental hygiene commissioner
29 or circuit court judge for further proceedings, unless
30 otherwise ordered by the chief judge of the judicial circuit.

31 (d) The person making the application shall give infor-
32 mation and state facts in the application as may be
33 required by the form provided for this purpose by the
34 supreme court of appeals.

35 (e) The circuit court, mental hygiene commissioner or
36 designated magistrate may enter an order for the individ-
37 ual named in the application to be detained and taken into
38 custody for the purpose of holding a probable cause

39 hearing as provided for in subsection (g) of this section for
40 the purpose of an examination of the individual by a
41 physician, psychologist, a licensed independent clinical
42 social worker practicing in compliance with article thirty,
43 chapter thirty of this code, or advanced nurse practitioner
44 with psychiatric certification, practicing in compliance
45 with article seven of said chapter: *Provided*, That a
46 licensed independent clinical social worker or an advanced
47 nurse practitioner with psychiatric certification may only
48 perform the examination if he or she has previously been
49 authorized by an order of the circuit court to do so, said
50 order having found that the licensed independent clinical
51 social worker or advanced nurse practitioner with psychi-
52 atric certification has particularized expertise in the areas
53 of mental health and mental hygiene sufficient to make
54 such determinations as are required by the provisions of
55 this section. The examination is to be provided or ar-
56 ranged by a community mental health center designated
57 by the secretary of the department of health and human
58 resources to serve the county in which the action takes
59 place. The order is to specify that the hearing be held
60 forthwith and is to provide for the appointment of counsel
61 for the individual: *Provided*, That the order may allow the
62 hearing to be held up to twenty-four hours after the person
63 to be examined is taken into custody rather than forthwith
64 if the circuit court of the county in which the person is
65 found has previously entered a standing order which
66 establishes within that jurisdiction a program for place-
67 ment of persons awaiting a hearing which assures the
68 safety and humane treatment of persons: *Provided*,
69 *however*, That the time requirements set forth in this
70 subsection shall only apply to persons who are not in need
71 of medical care for a physical condition or disease for
72 which the need for treatment precludes the ability to
73 comply with said time requirements. During periods of
74 holding and detention authorized by this subsection upon
75 consent of the individual or in the event of a medical or
76 psychiatric emergency, the individual may receive treat-

77 ment. The medical provider shall exercise due diligence in
78 determining the individual's existing medical needs and
79 provide such treatment as the individual requires, includ-
80 ing previously prescribed medications. As used in this
81 section, "psychiatric emergency" means an incident during
82 which an individual loses control and behaves in a manner
83 that poses substantial likelihood of physical harm to
84 himself, herself or others. Where a physician, psycholo-
85 gist, licensed independent clinical social worker or ad-
86 vanced nurse practitioner with psychiatric certification
87 has within the preceding seventy-two hours performed the
88 examination required by the provisions of this subdivision,
89 the community mental health center may waive the duty
90 to perform or arrange another examination upon approv-
91 ing the previously performed examination. Notwithstand-
92 ing the provisions of this subsection, subsection (r), section
93 four of this article applies regarding payment by the
94 county commission for examinations at hearings. If the
95 examination reveals that the individual is not mentally ill
96 or addicted, or is determined to be mentally ill but not
97 likely to cause harm to himself, herself or others, the
98 individual shall be immediately released without the need
99 for a probable cause hearing and absent a finding of
100 professional negligence such examiner shall not be civilly
101 liable for the rendering of such opinion absent a finding of
102 professional negligence. The examiner shall immediately
103 provide the mental hygiene commissioner, circuit court or
104 designated magistrate before whom the matter is pending,
105 the results of the examination on the form provided for
106 this purpose by the supreme court of appeals for entry of
107 an order reflecting the lack of probable cause.

108 (f) A probable cause hearing is to be held before a
109 magistrate designated by the chief judge of the judicial
110 circuit, the mental hygiene commissioner or circuit judge
111 of the county of which the individual is a resident or where
112 he or she was found. If requested by the individual or his
113 or her counsel, the hearing may be postponed for a period
114 not to exceed forty-eight hours.

115 The individual must be present at the hearing and has
116 the right to present evidence, confront all witnesses and
117 other evidence against him or her and to examine testi-
118 mony offered, including testimony by representatives of
119 the community mental health center serving the area.
120 Expert testimony at the hearing may be taken telephoni-
121 cally or via videoconferencing. The individual has the
122 right to remain silent and to be proceeded against in
123 accordance with the rules of evidence of the supreme court
124 of appeals, except as provided for in section twelve, article
125 one of this chapter. At the conclusion of the hearing, the
126 magistrate, mental hygiene commissioner or circuit court
127 judge shall find and enter an order stating whether or not
128 there is probable cause to believe that the individual, as a
129 result of mental illness, is likely to cause serious harm to
130 himself or herself or to others or is addicted.

131 (g) The magistrate, mental hygiene commissioner or
132 circuit court judge at a probable cause hearing or at a final
133 commitment hearing held pursuant to the provisions of
134 section four of this article finds that the individual, as a
135 result of mental illness, is likely to cause serious harm to
136 himself, herself or others or is addicted and because of
137 mental illness or addiction requires treatment, the magis-
138 trate, mental hygiene commissioner or circuit court judge
139 may consider evidence on the question of whether the
140 individual's circumstances make him or her amenable to
141 outpatient treatment in a nonresidential or nonhospital
142 setting pursuant to a voluntary treatment agreement. The
143 agreement is to be in writing and approved by the individ-
144 ual, his or her counsel and the magistrate, mental hygiene
145 commissioner or circuit judge. If the magistrate, mental
146 hygiene commissioner or circuit court judge determines
147 that appropriate outpatient treatment is available in a
148 nonresidential or nonhospital setting, the individual may
149 be released to outpatient treatment upon the terms and
150 conditions of the voluntary treatment agreement. The
151 failure of an individual released to outpatient treatment
152 pursuant to a voluntary treatment agreement to comply

153 with the terms of the voluntary treatment agreement
154 constitutes evidence that outpatient treatment is insuffi-
155 cient and, after a hearing before a magistrate, mental
156 hygiene commissioner or circuit judge on the issue of
157 whether or not the individual failed or refused to comply
158 with the terms and conditions of the voluntary treatment
159 agreement and whether the individual as a result of mental
160 illness remains likely to cause serious harm to himself,
161 herself or others or remains addicted, the entry of an order
162 requiring admission under involuntary hospitalization
163 pursuant to the provisions of section three of this article
164 may be entered. In the event a person released pursuant to
165 a voluntary treatment agreement is unable to pay for the
166 outpatient treatment and has no applicable insurance
167 coverage, including, but not limited to, private insurance
168 or medicaid, the secretary of health and human resources
169 may transfer funds for the purpose of reimbursing commu-
170 nity providers for services provided on an outpatient basis
171 for individuals for whom payment for treatment is the
172 responsibility of the department: *Provided*, That the
173 department may not authorize payment of outpatient
174 services for an individual subject to a voluntary treatment
175 agreement in an amount in excess of the cost of involun-
176 tary hospitalization of the individual. The secretary shall
177 establish and maintain fee schedules for outpatient
178 treatment provided in lieu of involuntary hospitalization.
179 Nothing in the provisions of this article regarding release
180 pursuant to a voluntary treatment agreement or conva-
181 lescent status may be construed as creating a right to receive
182 outpatient mental health services or treatment or as
183 obligating any person or agency to provide outpatient
184 services or treatment. Time limitations set forth in this
185 article relating to periods of involuntary commitment to a
186 mental health facility for hospitalization do not apply to
187 release pursuant to the terms of a voluntary treatment
188 agreement: *Provided, however*, That release pursuant to a
189 voluntary treatment agreement may not be for a period of
190 more than six months if the individual has not been found

191 to be involuntarily committed during the previous two
192 years and for a period of no more than two years if the
193 individual has been involuntarily committed during the
194 preceding two years. If in any proceeding held pursuant to
195 article five of this chapter the individual objects to the
196 issuance or conditions and terms of an order adopting a
197 voluntary treatment agreement, then the circuit judge,
198 magistrate or mental hygiene commissioner may not enter
199 an order directing treatment pursuant to a voluntary
200 treatment agreement. If involuntary commitment with
201 release pursuant to a voluntary treatment agreement is
202 ordered, the individual subject to the order may, upon
203 request during the period the order is in effect, have a
204 hearing before a mental hygiene commissioner or circuit
205 judge where the individual may seek to have the order
206 cancelled or modified. Nothing in this section may affect
207 the appellate and habeas corpus rights of any individual
208 subject to any commitment order.

209 (h) If the certifying physician or psychologist determines
210 that a person requires involuntary hospitalization for an
211 addiction to a substance which, due to the degree of
212 addiction, creates a reasonable likelihood that withdrawal
213 or detoxification from the substance of addiction will
214 cause significant medical complications, the person
215 certifying the individual shall recommend that the individ-
216 ual be closely monitored for possible medical complica-
217 tions. If the magistrate, mental hygiene commissioner or
218 circuit court judge presiding orders involuntary hospital-
219 ization, he or she shall include a recommendation that the
220 individual be closely monitored in the order of commit-
221 ment.

222 (i) The supreme court of appeals and the secretary of the
223 department of health and human resources shall collect
224 data and report to the Legislature at its regular annual
225 sessions in two thousand three and two thousand four of
226 the effects of the changes made in the mental hygiene
227 judicial process along with any recommendations which

228 they may deem proper for further revision or implementa-
229 tion in order to improve the administration and function-
230 ing of the mental hygiene system utilized in this state, to
231 serve the ends of due process and justice in accordance
232 with the rights and privileges guaranteed to all citizens, to
233 promote a more effective, humane and efficient system and
234 to promote the development of good mental health. The
235 supreme court of appeals and the secretary of the depart-
236 ment of health and human resources shall specifically
237 develop and propose a statewide system for evaluation and
238 adjudication of mental hygiene petitions which shall
239 include payment schedules and recommendations regard-
240 ing funding sources. Additionally, the secretary of the
241 department of health and human resources shall also
242 immediately seek reciprocal agreements with officials in
243 contiguous states to develop interstate/intergovernmental
244 agreements to provide efficient and efficacious services to
245 out-of-state residents found in West Virginia and who are
246 in need of mental hygiene services.

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

1 (a) *Admission to a mental health facility for examina-*
2 *tion.* – Any individual may be admitted to a mental health
3 facility for examination and treatment upon entry of an
4 order finding probable cause as provided in section two of
5 this article and upon certification by one physician or one
6 psychologist that he or she has examined the individual
7 and is of the opinion that the individual is mentally ill and,
8 because of such mental illness, is likely to cause serious
9 harm to himself or herself or to others if not immediately
10 restrained, or is addicted.

11 (b) *Three-day time limitation on examination.* – If said
12 examination does not take place within three days from
13 the date the individual is taken into custody, the individ-
14 ual shall be released. If the examination reveals that the
15 individual is not mentally ill or addicted, the individual
16 shall be released.

17 (c) *Three-day time limitation on certification.* – The
18 certification required in subsection (a) of this section shall
19 be valid for three days. Any individual with respect to
20 whom such certification has been issued may not be
21 admitted on the basis thereof at any time after the expira-
22 tion of three days from the date of such examination.

23 (d) *Findings and conclusions required for certification.*
24 – A certification under this section must include findings
25 and conclusions of the mental examination, the date, time
26 and place thereof and the facts upon which the conclusion
27 that involuntary commitment is necessary is based.

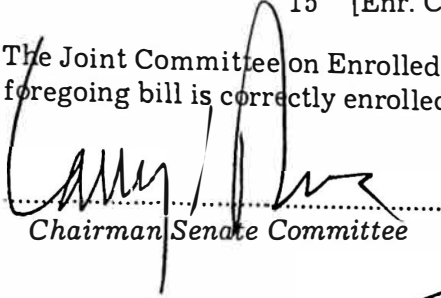
28 (e) *Notice requirements.* – When an individual is admit-
29 ted to a mental health facility pursuant to the provisions
30 of this section, the chief medical officer thereof shall
31 immediately give notice of the individual's admission to
32 the individual's spouse, if any, and one of the individual's
33 parents or guardians, or if there be no such spouse, parents
34 or guardians, to one of the individual's adult next of kin:
35 *Provided,* That such next of kin shall not be the applicant.
36 Notice shall also be given to the community mental health
37 facility, if any, having jurisdiction in the county of the
38 individual's residence. Such notices other than to the
39 community mental health facility shall be in writing and
40 shall be transmitted to such person or persons at his, her
41 or their last known address by certified or registered mail,
42 return receipt requested.

43 (f) *Five-day time limitation for examination and certifi-*
44 *cation at mental health facility.* – After the individual's
45 admission to a mental health facility, he or she may not be
46 detained more than five days, excluding Sundays and
47 holidays, unless, within such period, the individual is
48 examined by a staff physician and such physician certifies
49 that in his or her opinion the patient is mentally ill and is
50 likely to injure himself or herself or others or will remain
51 addicted if allowed to be at liberty.

52 (g) *Fifteen-day time limitation for institution of final*
53 *commitment proceedings.* – If, in the opinion of the
54 examining physician, the patient is mentally ill and
55 because of such mental illness is likely to injure himself or
56 herself or others or will continue to abuse a substance to
57 which he or she is addicted if allowed to be at liberty, the
58 chief medical officer shall, within fifteen days from the
59 date of admission, institute final commitment proceedings
60 as provided in section four of this article. If such proceed-
61 ings are not instituted within such fifteen-day period, the
62 patient shall be immediately released. After the request
63 for hearing is filed, the hearing shall not be canceled on
64 the basis that the individual has become a voluntary
65 patient unless the mental hygiene commissioner concurs in
66 the motion for cancellation of the hearing.

67 (h) *Thirty-day time limitation for conclusion of all*
68 *proceedings.* – If all proceedings as provided in articles
69 three and four of this chapter are not completed within
70 thirty days from the date of institution of such proceed-
71 ings, the patient shall be immediately released.

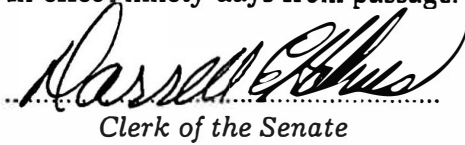
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

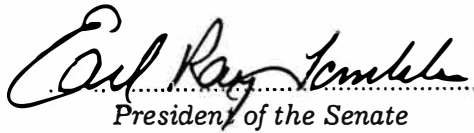

.....
Chairman House Committee

Originated in the Senate.


In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 2nd
Day of April, 2002.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/02

Time 11:20am