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WEST VIRGINIA LEGISLATURE

Regular Session, 2003

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Committee Substitute for

SENATE BILL NO. 204

(By Senator Oliverio, et al)

PASSED March 8, 2003

In Effect ninety days from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 204

(SENATORS OLIVERIO, SHARPE, ROSS, MCKENZIE
AND HUNTER, *original sponsors*)

[Passed March 8, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections 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 removing language which precludes incarcerated persons from being subjected to mental hygiene proceedings; and clarifying that licensed independent clinical social workers and advanced nurse practitioners with psychiatric certification may certify persons for purposes of mental health proceedings.

Be it enacted by the Legislature of West Virginia:

That sections 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.

§27-5-2. 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 when the person making the application has reason to
4 believe that:

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

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

12 Notwithstanding any language in subsection (a) of this
13 section to the contrary, if the individual to be examined
14 under the provisions of this section is incarcerated in a
15 jail, prison or other correctional facility, then only the
16 chief administrative officer of the facility holding the
17 individual may file the application and the application
18 must include the additional statement that the correc-
19 tional facility itself cannot reasonably provide treatment
20 and other services for the individual's mental illness or
21 addiction.

22 (b) The person making the application shall make the
23 application under oath.

24 (c) Application for involuntary custody for examination
25 may be made to the circuit court or a mental hygiene
26 commissioner of the county in which the individual resides
27 or of the county in which he or she may be found. When
28 no circuit court judge or mental hygiene commissioner is

29 available for immediate presentation of the application,
30 the application may be made to a magistrate designated by
31 the chief judge of the judicial circuit to accept applications
32 and hold probable cause hearings. A designated magis-
33 trate before whom an application or matter is pending
34 may, upon the availability of a mental hygiene commis-
35 sioner or circuit court judge for immediate presentation of
36 an application or pending matter, transfer the pending
37 matter or application to the mental hygiene commissioner
38 or circuit court judge for further proceedings unless
39 otherwise ordered by the chief judge of the judicial circuit.

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

44 (e) The circuit court, mental hygiene commissioner or
45 designated magistrate may enter an order for the individ-
46 ual named in the application to be detained and taken into
47 custody for the purpose of holding a probable cause
48 hearing as provided for in subsection (g) of this section for
49 the purpose of an examination of the individual by a
50 physician, psychologist, a licensed independent clinical
51 social worker practicing in compliance with article thirty,
52 chapter thirty of this code or advanced nurse practitioner
53 with psychiatric certification practicing in compliance
54 with article seven of said chapter: *Provided*, That a
55 licensed independent clinical social worker or an advanced
56 nurse practitioner with psychiatric certification may only
57 perform the examination if he or she has previously been
58 authorized by an order of the circuit court to do so, said
59 order having found that the licensed independent clinical
60 social worker or advanced nurse practitioner with psychi-
61 atric certification has particularized expertise in the areas
62 of mental health and mental hygiene sufficient to make
63 such determinations as are required by the provisions of
64 this section. The examination is to be provided or ar-
65 ranged by a community mental health center designated

66 by the secretary of the department of health and human
67 resources to serve the county in which the action takes
68 place. The order is to specify that the hearing be held
69 forthwith and is to provide for the appointment of counsel
70 for the individual: *Provided, however,* That the order may
71 allow the hearing to be held up to twenty-four hours after
72 the person to be examined is taken into custody rather
73 than forthwith if the circuit court of the county in which
74 the person is found has previously entered a standing order
75 which establishes within that jurisdiction a program for
76 placement of persons awaiting a hearing which assures the
77 safety and humane treatment of persons: *Provided*
78 *further,* That the time requirements set forth in this
79 subsection shall only apply to persons who are not in need
80 of medical care for a physical condition or disease for
81 which the need for treatment precludes the ability to
82 comply with said time requirements. During periods of
83 holding and detention authorized by this subsection, upon
84 consent of the individual or in the event of a medical or
85 psychiatric emergency, the individual may receive treat-
86 ment. The medical provider shall exercise due diligence in
87 determining the individual's existing medical needs and
88 provide such treatment as the individual requires, includ-
89 ing previously prescribed medications. As used in this
90 section, "psychiatric emergency" means an incident during
91 which an individual loses control and behaves in a manner
92 that poses substantial likelihood of physical harm to
93 himself, herself or others. Where a physician, psycholo-
94 gist, licensed independent clinical social worker or ad-
95 vanced nurse practitioner with psychiatric certification
96 has within the preceding seventy-two hours performed the
97 examination required by the provisions of this subdivision,
98 the community mental health center may waive the duty
99 to perform or arrange another examination upon approv-
100 ing the previously performed examination. Notwithstand-
101 ing the provisions of this subsection, subsection (r), section
102 four of this article applies regarding payment by the
103 county commission for examinations at hearings. If the

104 examination reveals that the individual is not mentally ill
105 or addicted, or is determined to be mentally ill but not
106 likely to cause harm to himself, herself or others, the
107 individual shall be immediately released without the need
108 for a probable cause hearing and absent a finding of
109 professional negligence such examiner shall not be civilly
110 liable for the rendering of such opinion absent a finding of
111 professional negligence. The examiner shall immediately
112 provide the mental hygiene commissioner, circuit court or
113 designated magistrate before whom the matter is pending
114 the results of the examination on the form provided for
115 this purpose by the supreme court of appeals for entry of
116 an order reflecting the lack of probable cause.

117 (f) A probable cause hearing is to be held before a
118 magistrate designated by the chief judge of the judicial
119 circuit, the mental hygiene commissioner or circuit judge
120 of the county of which the individual is a resident or where
121 he or she was found. If requested by the individual or his
122 or her counsel, the hearing may be postponed for a period
123 not to exceed forty-eight hours.

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

140 (g) The magistrate, mental hygiene commissioner or
141 circuit court judge at a probable cause hearing or at a final
142 commitment hearing held pursuant to the provisions of
143 section four of this article finds that the individual, as a
144 result of mental illness, is likely to cause serious harm to
145 himself, herself or others or is addicted and because of
146 mental illness or addiction requires treatment, the magis-
147 trate, mental hygiene commissioner or circuit court judge
148 may consider evidence on the question of whether the
149 individual's circumstances make him or her amenable to
150 outpatient treatment in a nonresidential or nonhospital
151 setting pursuant to a voluntary treatment agreement. The
152 agreement is to be in writing and approved by the individ-
153 ual, his or her counsel and the magistrate, mental hygiene
154 commissioner or circuit judge. If the magistrate, mental
155 hygiene commissioner or circuit court judge determines
156 that appropriate outpatient treatment is available in a
157 nonresidential or nonhospital setting, the individual may
158 be released to outpatient treatment upon the terms and
159 conditions of the voluntary treatment agreement. The
160 failure of an individual released to outpatient treatment
161 pursuant to a voluntary treatment agreement to comply
162 with the terms of the voluntary treatment agreement
163 constitutes evidence that outpatient treatment is insuffi-
164 cient and, after a hearing before a magistrate, mental
165 hygiene commissioner or circuit judge on the issue of
166 whether or not the individual failed or refused to comply
167 with the terms and conditions of the voluntary treatment
168 agreement and whether the individual as a result of mental
169 illness remains likely to cause serious harm to himself,
170 herself or others or remains addicted, the entry of an order
171 requiring admission under involuntary hospitalization
172 pursuant to the provisions of section three of this article
173 may be entered. In the event a person released pursuant to
174 a voluntary treatment agreement is unable to pay for the
175 outpatient treatment and has no applicable insurance
176 coverage, including, but not limited to, private insurance
177 or medicaid, the secretary of health and human resources

178 may transfer funds for the purpose of reimbursing commu-
179 nity providers for services provided on an outpatient basis
180 for individuals for whom payment for treatment is the
181 responsibility of the department: *Provided*, That the
182 department may not authorize payment of outpatient
183 services for an individual subject to a voluntary treatment
184 agreement in an amount in excess of the cost of involun-
185 tary hospitalization of the individual. The secretary shall
186 establish and maintain fee schedules for outpatient
187 treatment provided in lieu of involuntary hospitalization.
188 Nothing in the provisions of this article regarding release
189 pursuant to a voluntary treatment agreement or convales-
190 cent status may be construed as creating a right to receive
191 outpatient mental health services or treatment or as
192 obligating any person or agency to provide outpatient
193 services or treatment. Time limitations set forth in this
194 article relating to periods of involuntary commitment to a
195 mental health facility for hospitalization do not apply to
196 release pursuant to the terms of a voluntary treatment
197 agreement: *Provided, however*, That release pursuant to
198 a voluntary treatment agreement may not be for a period
199 of more than six months if the individual has not been
200 found to be involuntarily committed during the previous
201 two years and for a period of no more than two years if the
202 individual has been involuntarily committed during the
203 preceding two years. If in any proceeding held pursuant to
204 this article the individual objects to the issuance or
205 conditions and terms of an order adopting a voluntary
206 treatment agreement, then the circuit judge, magistrate or
207 mental hygiene commissioner may not enter an order
208 directing treatment pursuant to a voluntary treatment
209 agreement. If involuntary commitment with release
210 pursuant to a voluntary treatment agreement is ordered,
211 the individual subject to the order may, upon request
212 during the period the order is in effect, have a hearing
213 before a mental hygiene commissioner or circuit judge
214 where the individual may seek to have the order canceled
215 or modified. Nothing in this section may affect the

216 appellate and habeas corpus rights of any individual
217 subject to any commitment order.

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

231 (i) The supreme court of appeals and the secretary of the
232 department of health and human resources shall collect
233 data and report to the Legislature at its regular annual
234 sessions in two thousand three and two thousand four of
235 the effects of the changes made in the mental hygiene
236 judicial process along with any recommendations which
237 they may deem proper for further revision or implementa-
238 tion in order to improve the administration and function-
239 ing of the mental hygiene system utilized in this state, to
240 serve the ends of due process and justice in accordance
241 with the rights and privileges guaranteed to all citizens, to
242 promote a more effective, humane and efficient system and
243 to promote the development of good mental health. The
244 supreme court of appeals and the secretary of the depart-
245 ment of health and human resources shall specifically
246 develop and propose a statewide system for evaluation and
247 adjudication of mental hygiene petitions which shall
248 include payment schedules and recommendations regard-
249 ing funding sources. Additionally, the secretary of the
250 department of health and human resources shall also
251 immediately seek reciprocal agreements with officials in
252 contiguous states to develop interstate/intergovernmental

253 agreements to provide efficient and efficacious services to
254 out-of-state residents found in West Virginia and who are
255 in need of mental hygiene services.

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

1 (a) *Admission to a mental health facility for examination*
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 a physician, psychol-
6 ogist, licensed independent clinical social worker practic-
7 ing in compliance with the provisions of article thirty,
8 chapter thirty of this code or an advanced nurse practitio-
9 ner with psychiatric certification practicing in compliance
10 with article seven of said chapter that he or she has
11 examined the individual and is of the opinion that the
12 individual is mentally ill and, because of such mental
13 illness, is likely to cause serious harm to himself or herself
14 or to others if not immediately restrained or is addicted:
15 *Provided,* That the opinions offered by an independent
16 clinical social worker or an advanced nurse practitioner
17 with psychiatric certification must be within their particu-
18 lar areas of expertise, as recognized by the order of the
19 authorizing court.

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

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

32 (d) *Findings and conclusions required for certification.* –
33 A certification under this section must include findings
34 and conclusions of the mental examination, the date, time
35 and place thereof and the facts upon which the conclusion
36 that involuntary commitment is necessary is based.

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

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

61 (g) *Fifteen-day time limitation for institution of final*
62 *commitment proceedings.* – If, in the opinion of the
63 examining physician, the patient is mentally ill and
64 because of such mental illness is likely to injure himself or
65 herself or others or will continue to abuse a substance to
66 which he or she is addicted if allowed to be at liberty, the
67 chief medical officer shall, within fifteen days from the
68 date of admission, institute final commitment proceedings

69 as provided in section four of this article. If such proceed-
70 ings are not instituted within such fifteen-day period, the
71 patient shall be immediately released. After the request
72 for hearing is filed, the hearing shall not be canceled on
73 the basis that the individual has become a voluntary
74 patient unless the mental hygiene commissioner concurs in
75 the motion for cancellation of the hearing.

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

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

Curry D. Moore
.....
Chairman Senate Committee

Shao Spence
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell G. Gibson
.....
Clerk of the Senate

Gregory A. Smith
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Talent S. Strick
.....
Speaker House of Delegates

The within *is approved* this the *1st*
Day of *April*, 2003.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/27/03

Time 10:10am