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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2005*

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**ENROLLED**

*Committee Substitute for Committee Substitute for*  
**SENATE BILL NO. 191**

(By Senator Kessler, et al )

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**PASSED** April 9, 2005

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

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FOR

**Senate Bill No. 191**

(SENATORS KESSLER, HUNTER, FOSTER, SHARPE,  
UNGER AND SPROUSE, *original sponsors*)

[Passed April 9, 2005; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-5-11, relating to mental hygiene proceedings generally; authorizing implementation of a modified mental hygiene procedure in limited number of counties relating to persons who are medication-dependent and who have had at least one prior conviction for a crime of violence against the person within the previous twenty-four months related to mental illness or two prior hospitalizations within the previous twenty-four months due to mental illness; directing cooperation of Secretary of Department of Health and Human Resources and Supreme Court of Appeals in developing modified

procedures; authorizing use of treatment compliance orders in certain judicial circuits; authorizing hospitalization and treatment for up to forty-eight hours prior to probable cause hearing for medication-dependent individuals who meet requirements; reporting requirements; expiration date; time limits; requirements of petitions; procedures; required findings; hearings; and forms required for procedures.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §27-5-11, to read as follows:

**ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

**§27-5-11. Modified procedures for temporary compliance orders for certain medication-dependent persons with prior hospitalizations or convictions; to institute modified mental hygiene procedures; procedures; forms.**

1 (a) The Supreme Court of Appeals shall, in consultation  
2 with the Secretary of the Department of Health and  
3 Human Resources and local mental health services con-  
4 sumers and providers, implement in at least four and no  
5 more than six judicial circuits, beginning on the first day  
6 of July, two thousand six, modified mental hygiene  
7 procedures that are consistent with the requirements set  
8 forth in this section. The judicial circuits selected for  
9 implementing the modified procedures shall be circuits in  
10 which the Supreme Court of Appeals determines, after  
11 consultation with the Secretary of the Department of  
12 Health and Human Resources and local mental health  
13 consumers and service providers, that adequate resources  
14 will be available to implement the modified procedures.  
15 The Secretary of the Department of Health and Human  
16 Resources, after consultation with the Supreme Court of  
17 Appeals and local mental health services consumers and  
18 service providers, shall prescribe appropriate forms to  
19 implement the modified procedures and shall annually

20 prepare a report on the use of the modified procedures and  
21 transmit the report to the Legislature on or before the last  
22 day of each calendar year. The Supreme Court of Appeals  
23 may, after consultation with the Secretary of the Depart-  
24 ment of Health and Human Resources and local mental  
25 health services consumers and providers during the pilot  
26 program period, further modify any specific modified  
27 procedures that are implemented: *Provided*, That the  
28 modified procedures must be consistent with the require-  
29 ments of this chapter and this section. If the Secretary of  
30 the Department of Health and Human Resources deter-  
31 mines that the use of any modified procedure in one or  
32 more judicial circuits is placing an unacceptable addi-  
33 tional burden upon state mental health resources, the  
34 Supreme Court of Appeals shall, in consultation with the  
35 Secretary, modify the procedures used in such a fashion as  
36 will address the concerns of the Secretary, consistent with  
37 the requirements of this chapter. The provisions of this  
38 section and the modified procedures thereby authorized  
39 shall cease to have any force and effect on the thirtieth day  
40 of June, two thousand ten, unless extended by an Act of  
41 the Legislature prior to that date.

42 (b) (1) The modified procedures shall authorize that a  
43 verified petition seeking a treatment compliance order  
44 may be filed by any person alleging:

45 (A) That an individual, on two or more occasions within  
46 a 24-month period prior to the filing of the petition, as a  
47 result of mental illness, has been hospitalized pursuant to  
48 the provisions of this chapter; or that the individual has  
49 been convicted of one or more crimes of violence against  
50 the person within a 24-month period prior to the filing of  
51 the petition and the individual's failure to take prescribed  
52 medication or follow another prescribed regimen to treat  
53 a mental illness was a significant aggravating or contrib-  
54 uting factor in the circumstances surrounding the crime;

55 (B) That the individual's previous hospitalizations due to  
56 mental illness or the individual's crime of violence oc-

57 curred after or as a result of the individual's failure to take  
58 medication or other treatment as prescribed by a physician  
59 to treat the individual's mental illness; and

60 (C) That the individual, in the absence of a court order  
61 requiring him or her to take medication or other treatment  
62 as prescribed, is unlikely to do so and that his or her  
63 failure to take medication or follow other regimen or  
64 treatment as prescribed is likely to lead to further in-  
65 stances in the reasonably near future in which the individ-  
66 ual becomes likely to cause serious harm or commit a  
67 crime of violence against the person.

68 (2) Upon the filing of a petition seeking a treatment  
69 compliance order and the petition's review by a circuit  
70 judge or mental hygiene commissioner, counsel shall be  
71 appointed for the individual if the individual does not  
72 already have counsel and a copy of the petition and all  
73 supporting evidence shall be furnished to the individual  
74 and their counsel. If the circuit judge or mental hygiene  
75 commissioner determines on the basis of the petition that  
76 it is necessary to protect the individual or to secure their  
77 examination, a detention order may be entered ordering  
78 that the individual be taken into custody and examined by  
79 a psychiatrist or licensed psychologist. A hearing on the  
80 allegations in the petition, which may be combined with a  
81 hearing on a probable cause petition conducted pursuant  
82 to the provisions of section two of this article or a final  
83 commitment hearing conducted pursuant to the provisions  
84 of section four of this article, shall be held before a circuit  
85 judge or mental hygiene commissioner. If the individual  
86 is taken into custody and remains in custody as a result of  
87 a detention order, the hearing shall be held within forty-  
88 eight hours of the time that the individual is taken into  
89 custody.

90 (3) If the allegations in the petition seeking a treatment  
91 compliance order are proved by the evidence adduced at  
92 the hearing, which must include expert testimony by a  
93 psychiatrist or licensed psychologist, the circuit judge or

94 mental hygiene commissioner may enter a treatment  
95 compliance order for a period not to exceed six months  
96 upon making the following findings:

97 (A) That the individual is eighteen years of age or older;

98 (B) That on two or more occasions within a 24-month  
99 period prior to the filing of the petition an individual, as  
100 a result of mental illness, has been hospitalized pursuant  
101 to the provisions of this chapter; or that on at least one  
102 occasion within a 24-month period prior to the filing of the  
103 petition has been convicted of a crime of violence against  
104 any person;

105 (C) That the individual's previous hospitalizations due to  
106 mental illness occurred as a result of the individual's  
107 failure to take prescribed medication or follow a regimen  
108 or course of treatment as prescribed by a physician or  
109 psychiatrist to treat the individual's mental illness; or that  
110 the individual has been convicted for crimes of violence  
111 against any person and the individual's failure to take  
112 medication or follow a prescribed regimen or course of  
113 treatment of the individual's mental illness was a signifi-  
114 cant aggravating or contributing factor in the commission  
115 of the crime;

116 (D) That a psychiatrist or licensed psychologist who has  
117 personally examined the individual within the preceding  
118 twenty-four months has issued a written opinion that the  
119 individual, without the aid of the medication or other  
120 prescribed treatment, is likely to cause serious harm to  
121 himself or herself or to others;

122 (E) That the individual, in the absence of a court order  
123 requiring him or her to take medication or other treatment  
124 as prescribed, is unlikely to do so and that his or her  
125 failure to take medication or other treatment as prescribed  
126 is likely to lead to further instances in the reasonably near  
127 future in which the individual becomes likely to cause

128 serious harm or commit a crime of violence against any  
129 person;

130 (F) That, where necessary, a responsible entity or  
131 individual is available to assist and monitor the individ-  
132 ual's compliance with an order requiring the individual to  
133 take the medication or follow other prescribed regimen or  
134 course of treatment;

135 (G) That the individual can obtain and take the pre-  
136 scribed medication or follow other prescribed regimen or  
137 course of treatment without undue financial or other  
138 hardship; and

139 (H) That, if necessary, a medical provider is available to  
140 assess the individual within forty-eight hours of the entry  
141 of the treatment compliance order.

142 (4) The order may require an individual to take medica-  
143 tion and treatment as prescribed and if appropriate to  
144 attend scheduled medication and treatment-related  
145 appointments: *Provided*, That a treatment compliance  
146 order shall be subject to termination or modification by a  
147 circuit judge or mental hygiene commissioner if a petition  
148 is filed seeking termination or modification of the order  
149 and it is shown in a hearing on the petition that there has  
150 been a material change in the circumstances that led to the  
151 entry of the original order that justifies the order's modifi-  
152 cation or termination: *Provided, however*, That a treat-  
153 ment compliance order may be extended by a circuit judge  
154 or mental hygiene commissioner for additional periods of  
155 time not to exceed six months, upon the filing of a petition  
156 seeking an extension and after a hearing on the petition or  
157 upon the agreement of the individual.

158 (5)(A) After the entry of a treatment compliance order in  
159 accordance with the provisions of subdivisions (3) and (4),  
160 subsection (b) of this section, if a verified petition is filed  
161 alleging that an individual has not complied with the  
162 terms of a medication and treatment compliance order and

163 if a circuit judge or mental hygiene commissioner deter-  
164 mines from the petition and any supporting evidence that  
165 there is probable cause to believe that the allegations in  
166 the petition are true, counsel shall be appointed for the  
167 individual and a copy of the petition and all supporting  
168 evidence shall be furnished to the individual and his or her  
169 counsel. If the circuit judge or mental hygiene commis-  
170 sioner considers it necessary to protect the individual or to  
171 secure his or her examination, a detention order may be  
172 entered to require that the individual be examined by a  
173 psychiatrist or psychologist. A hearing on the allegations  
174 in the petition, which may be combined with a hearing on  
175 a probable cause petition conducted pursuant to section  
176 two of this article or a final commitment hearing con-  
177 ducted pursuant to section four of this article, shall be  
178 held before a circuit judge or mental hygiene commis-  
179 sioner. If the individual is taken and remains in custody as  
180 a result of a detention order, the hearing shall be held  
181 within forty-eight hours of the time that the individual is  
182 taken into custody.

183 (B) At a hearing on any petition filed pursuant to the  
184 provisions of paragraph (A), subdivision (5), subsection (b)  
185 of this section, the circuit judge or mental hygiene com-  
186 missioner shall determine whether the individual has  
187 complied with the terms of the medication and treatment  
188 compliance order. If the individual has complied with the  
189 order, the petition shall be dismissed: *Provided*, That if  
190 the evidence presented to the circuit judge or mental  
191 hygiene commissioner shows that the individual has  
192 complied with the terms of the existing order, but the  
193 individual's prescribed medication, dosage or course of  
194 treatment needs to be modified, then the newly modified  
195 medication and treatment prescribed by a psychiatrist who  
196 personally examined the individual may be properly  
197 incorporated into a modified order. If the order has not  
198 been complied with, the circuit judge or mental hygiene  
199 commissioner, after inquiring into the reasons for noncom-  
200 pliance and whether any aspects of the order should be



201 modified, may continue the individual upon the terms of  
202 the original order and direct the individual to comply with  
203 the order or may modify the order in light of the evidence  
204 presented at the hearing. If the evidence shows that the  
205 individual at the time of the hearing is likely to cause  
206 serious harm to himself, herself or others as a result of the  
207 individual's mental illness, the circuit judge or mental  
208 hygiene commissioner may convert the proceeding into a  
209 probable cause proceeding and enter a probable cause  
210 order directing the involuntary admission of the individual  
211 to a mental health facility for examination and treatment:  
212 *Provided*, That all applicable due process and hearing  
213 requirements contained in sections two and three of this  
214 article have been fully satisfied.

215 (c) (1) The modified procedures may authorize that upon  
216 the certification of a qualified mental health professional,  
217 as described in subdivision (2) of this subsection, that there  
218 is probable cause to believe that an individual who has  
219 been hospitalized two or more times in the previous  
220 twenty-four months because of mental illness is likely to  
221 cause serious harm to himself, herself or to others as a  
222 result of the mental illness if not immediately restrained  
223 and that the best interests of the individual would be  
224 served by immediate hospitalization, a circuit judge,  
225 mental hygiene commissioner or designated magistrate  
226 may enter a temporary probable cause order directing the  
227 involuntary hospitalization of the individual at a mental  
228 health facility for immediate examination and treatment.

229 (2) The modified procedures may authorize the chief  
230 judge of a judicial circuit, or circuit judge if there is no  
231 chief judge, to enter orders authorizing specific psychia-  
232 trists or licensed psychologists, whose qualifications and  
233 training have been reviewed and approved by the Supreme  
234 Court of Appeals, to issue certifications that authorize and  
235 direct the involuntary admission of an individual subject  
236 to the provisions of this section on a temporary probable  
237 cause basis to a mental health facility for examination and

238 treatment: *Provided*, That the authorized psychiatrist or  
239 licensed psychologist must conclude and certify based on  
240 personal observation prior to certification that the individ-  
241 ual is mentally ill and, because of such mental illness, is  
242 imminently likely to cause serious harm to himself or  
243 herself or to others if not immediately restrained and  
244 promotion of the best interests of the individual requires  
245 immediate hospitalization. Immediately upon certifica-  
246 tion, the psychiatrist or licensed psychologist shall provide  
247 notice of the certification to a circuit judge, mental  
248 hygiene commissioner or designated magistrate in the  
249 county where the individual resides.

250 (3) No involuntary hospitalization pursuant to a tempo-  
251 rary probable cause determination issued pursuant to the  
252 provisions of this section shall continue in effect for more  
253 than forty-eight hours without the filing of a petition for  
254 involuntary hospitalization and the occurrence of a  
255 probable cause hearing before a circuit judge, mental  
256 hygiene commissioner or designated magistrate. If at any  
257 time the chief medical officer of the mental health facility  
258 to which the individual is admitted determines that the  
259 individual is not likely to cause serious harm as a result of  
260 mental illness, the chief medical officer shall discharge the  
261 individual and immediately forward a copy of the individ-  
262 ual's discharge to the circuit judge, mental hygiene  
263 commissioner or designated magistrate.

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

*Chandeleur*  
.....  
Chairman Senate Committee

*D. Robert Brown*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Harrell*  
.....  
Clerk of the Senate

*Barry D. Br...*  
.....  
Clerk of the House of Delegates

*Carl Ray Smith*  
.....  
President of the Senate

*Robert D. ...*  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *2nd*  
Day of *May* ..... 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 27 2005

Time 2:00pm