

SB 551

FILED

2006 MAR 23 P 4: 49

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

SENATE BILL NO. 551

(By Senator Prezioso, et al)



PASSED March 9, 2006

In Effect 90 days from Passage

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Senate Bill No. 551

(BY SENATORS PREZIOSO, KESSLER AND HUNTER)

[Passed March 9, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §27-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-2, §27-5-3 and §27-5-4 of said code, all relating to institution of proceedings for involuntary custody for examination; addressing procedures regarding custody, probable cause and other hearings; examination of individuals; admission under involuntary hospitalization for examination; release; institution of final commitment proceedings; other hearing requirements; and defining terms.

Be it enacted by the Legislature of West Virginia:

That §27-1-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-2, §27-5-3 and §27-5-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-12. Likely to cause serious harm.

1 (a) "Likely to cause serious harm" means an individual
2 is exhibiting behaviors consistent with a medically recog-
3 nized mental disorder or addiction, excluding, however,
4 disorders that are manifested only through antisocial or
5 illegal behavior and as a result of the mental disorder or
6 addiction:

7 (1) The individual has inflicted or attempted to inflict
8 bodily harm on another;

9 (2) The individual, by threat or action, has placed others
10 in reasonable fear of physical harm to themselves;

11 (3) The individual, by action or inaction, presents a
12 danger to himself, herself or others in his or her care;

13 (4) The individual has threatened or attempted suicide or
14 serious bodily harm to himself or herself; or

15 (5) The individual is behaving in a manner as to indicate
16 that he or she is unable, without supervision and the
17 assistance of others, to satisfy his or her need for nourish-
18 ment, medical care, shelter or self-protection and safety so
19 that there is a substantial likelihood that death, serious
20 bodily injury, serious physical debilitation, serious mental
21 debilitation or life-threatening disease will ensue unless
22 adequate treatment is afforded.

23 (b) In making the "likely to cause serious harm" determi-
24 nation, judicial, medical, psychological and other evalua-
25 tors and decisionmakers should utilize all available
26 information, including psychosocial, medical, hospitaliza-
27 tion and psychiatric information and including the cir-
28 cumstances of any previous commitments or convalescent
29 or conditional releases that are relevant to a current
30 situation, in addition to the individual's current overt
31 behavior. The rules of evidence shall be followed in
32 making the "likely to cause serious harm" determination
33 except that hearsay evidence not admissible thereunder
34 may be admitted, except where precluded by statute, if it

35 is of a type commonly relied upon by reasonably prudent
36 persons in the conduct of their affairs.

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 the individual to be examined is addicted, as
5 defined in section eleven, article one of this chapter, or is
6 mentally ill and, because of his or her addiction or mental
7 illness, the individual is likely to cause serious harm to
8 himself, herself or to others if allowed to remain at liberty
9 while awaiting an examination and certification by a
10 physician or psychologist.

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

20 (b) The person making the application shall make the
21 application under oath.

22 (c) Application for involuntary custody for examination
23 may be made to the circuit court or a mental hygiene
24 commissioner of the county in which the individual resides
25 or of the county in which he or she may be found. When
26 no circuit court judge or mental hygiene commissioner is
27 available for immediate presentation of the application,
28 the application may be made to a magistrate designated by
29 the chief judge of the judicial circuit to accept applications

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

38 (d) The person making the application shall give infor-
39 mation and state facts in the application as may be
40 required by the form provided for this purpose by the
41 Supreme Court of Appeals.

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

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

105 the individual shall be immediately released without the
106 need for a probable cause hearing and absent a finding of
107 professional negligence the examiner is not civilly liable
108 for the rendering of the opinion absent a finding of
109 professional negligence. The examiner shall immediately
110 provide the mental hygiene commissioner, circuit court or
111 designated magistrate before whom the matter is pending
112 the results of the examination on the form provided for
113 this purpose by the Supreme Court of Appeals for entry of
114 an order reflecting the lack of probable cause.

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

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

139 (g) Probable cause hearings may occur in the county
140 where a person is hospitalized. The judicial hearing
141 officer may: Use videoconferencing and telephonic tech-

142 nology; permit persons hospitalized for addiction to be
143 involuntarily hospitalized only until detoxification is
144 accomplished; and specify other alternative or modified
145 procedures that are consistent with the purposes and
146 provisions of this article. The alternative or modified
147 procedures shall fully and effectively guarantee to the
148 person who is the subject of the involuntary commitment
149 proceeding and other interested parties due process of the
150 law and access to the least restrictive available treatment
151 needed to prevent serious harm to self or others.

152 (h) The magistrate, mental hygiene commissioner or
153 circuit court judge at a probable cause hearing or at a final
154 commitment hearing held pursuant to the provisions of
155 section four of this article finds that the individual, as a
156 result of mental illness or addiction, is likely to cause
157 serious harm to himself, herself or others and because of
158 mental illness or addiction requires treatment, the magis-
159 trate, mental hygiene commissioner or circuit court judge
160 may consider evidence on the question of whether the
161 individual's circumstances make him or her amenable to
162 outpatient treatment in a nonresidential or nonhospital
163 setting pursuant to a voluntary treatment agreement. The
164 agreement is to be in writing and approved by the individ-
165 ual, his or her counsel and the magistrate, mental hygiene
166 commissioner or circuit court judge. If the magistrate,
167 mental hygiene commissioner or circuit court judge
168 determines that appropriate outpatient treatment is
169 available in a nonresidential or nonhospital setting, the
170 individual may be released to outpatient treatment upon
171 the terms and conditions of the voluntary treatment
172 agreement. The failure of an individual released to
173 outpatient treatment pursuant to a voluntary treatment
174 agreement to comply with the terms of the voluntary
175 treatment agreement constitutes evidence that outpatient
176 treatment is insufficient and, after a hearing before a
177 magistrate, mental hygiene commissioner or circuit judge
178 on the issue of whether or not the individual failed or
179 refused to comply with the terms and conditions of the

180 voluntary treatment agreement and whether the individual
181 as a result of mental illness or addiction remains likely to
182 cause serious harm to himself, herself or others, the entry
183 of an order requiring admission under involuntary hospi-
184 talization pursuant to the provisions of section three of
185 this article may be entered. In the event a person released
186 pursuant to a voluntary treatment agreement is unable to
187 pay for the outpatient treatment and has no applicable
188 insurance coverage, including, but not limited to, private
189 insurance or Medicaid, the Secretary of the Department of
190 Health and Human Resources may transfer funds for the
191 purpose of reimbursing community providers for services
192 provided on an outpatient basis for individuals for whom
193 payment for treatment is the responsibility of the depart-
194 ment: *Provided*, That the department may not authorize
195 payment of outpatient services for an individual subject to
196 a voluntary treatment agreement in an amount in excess of
197 the cost of involuntary hospitalization of the individual.
198 The secretary shall establish and maintain fee schedules
199 for outpatient treatment provided in lieu of involuntary
200 hospitalization. Nothing in the provisions of this article
201 regarding release pursuant to a voluntary treatment
202 agreement or convalescent status may be construed as
203 creating a right to receive outpatient mental health
204 services or treatment or as obligating any person or agency
205 to provide outpatient services or treatment. Time limita-
206 tions set forth in this article relating to periods of involun-
207 tary commitment to a mental health facility for hospital-
208 ization do not apply to release pursuant to the terms of a
209 voluntary treatment agreement: *Provided, however*, That
210 release pursuant to a voluntary treatment agreement may
211 not be for a period of more than six months if the individ-
212 ual has not been found to be involuntarily committed
213 during the previous two years and for a period of no more
214 than two years if the individual has been involuntarily
215 committed during the preceding two years. If in any
216 proceeding held pursuant to this article the individual
217 objects to the issuance or conditions and terms of an order
218 adopting a voluntary treatment agreement, then the circuit

219 judge, magistrate or mental hygiene commissioner may not
220 enter an order directing treatment pursuant to a voluntary
221 treatment agreement. If involuntary commitment with
222 release pursuant to a voluntary treatment agreement is
223 ordered, the individual subject to the order may, upon
224 request during the period the order is in effect, have a
225 hearing before a mental hygiene commissioner or circuit
226 judge where the individual may seek to have the order
227 canceled or modified. Nothing in this section affects the
228 appellate and habeas corpus rights of any individual
229 subject to any commitment order.

230 (i) If the certifying physician or psychologist determines
231 that a person requires involuntary hospitalization for an
232 addiction to a substance which, due to the degree of
233 addiction, creates a reasonable likelihood that withdrawal
234 or detoxification from the substance of addiction will
235 cause significant medical complications, the person
236 certifying the individual shall recommend that the individ-
237 ual be closely monitored for possible medical complica-
238 tions. If the magistrate, mental hygiene commissioner or
239 circuit court judge presiding orders involuntary hospital-
240 ization, he or she shall include a recommendation that the
241 individual be closely monitored in the order of commit-
242 ment.

243 (j) The Supreme Court of Appeals and the Secretary of
244 the Department of Health and Human Resources shall
245 specifically develop and propose a statewide system for
246 evaluation and adjudication of mental hygiene petitions
247 which shall include payment schedules and recommenda-
248 tions regarding funding sources. Additionally, the Secre-
249 tary of the Department of Health and Human Resources
250 shall also immediately seek reciprocal agreements with
251 officials in contiguous states to develop inter-
252 state/intergovernmental agreements to provide efficient
253 and efficacious services to out-of-state residents found in
254 West Virginia and who are in need of mental hygiene
255 services.

§27-5-3. Admission under involuntary hospitalization for examination; 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 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 or addicted and, because of such
13 mental illness or addiction, is likely to cause serious harm
14 to himself, herself or to others if not immediately re-
15 strained: *Provided*, That the opinions offered by an
16 independent clinical social worker or an advanced nurse
17 practitioner with psychiatric certification must be within
18 their particular areas of expertise, as recognized by the
19 order of the authorizing court.

20 (b) *Three-day time limitation on examination.* – If the
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 the certification has been issued may not be admit-
30 ted on the basis of the certification at any time after the
31 expiration of three days from the date of the 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 of the examination and the facts upon which the
36 conclusion that involuntary commitment is necessary is
37 based.

38 (e) *Notice requirements.* – When an individual is admit-
39 ted to a mental health facility pursuant to the provisions
40 of this section, the chief medical officer of the facility shall
41 immediately give notice of the individual’s admission to
42 the individual’s spouse, if any, and one of the individual’s
43 parents or guardians or if there is no spouse and are no
44 parents or guardians, to one of the individual’s adult next
45 of kin if the next of kin is not the applicant. Notice shall
46 also be given to the community mental health facility, if
47 any, having jurisdiction in the county of the individual’s
48 residence. The notices other than to the community
49 mental health facility shall be in writing and shall be
50 transmitted to the person or persons at his, her or their last
51 known address by certified mail, 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 the period, the individual is
57 examined by a staff physician and the physician certifies
58 that in his or her opinion the patient is mentally ill or
59 addicted and is likely to injure himself, herself or others if
60 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 or addicted
64 and because of the mental illness or addiction is likely to
65 injure himself, herself or others if allowed to be at liberty,
66 the chief medical officer shall, within fifteen days from the
67 date of admission, institute final commitment proceedings
68 as provided in section four of this article. If the proceed-
69 ings are not instituted within such fifteen-day period, the
70 patient shall be immediately released. After the request
71 for hearing is filed, the hearing may not be canceled on the

72 basis that the individual has become a voluntary patient
73 unless the mental hygiene commissioner concurs in the
74 motion for cancellation of the hearing.

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

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* – Except as provided in
2 section three of this article, no individual may be involun-
3 tarily committed to a mental health facility except by
4 order entered of record at any time by the circuit court of
5 the county in which the person resides or was found, or if
6 the individual is hospitalized in a mental health facility
7 located in a county other than where he or she resides or
8 was found, in the county of the mental health facility and
9 then only after a full hearing on issues relating to the
10 necessity of committing an individual to a mental health
11 facility: *Provided,* That, if the individual objects to the
12 hearing being held in the county where the mental health
13 facility is located, the hearing shall be conducted in the
14 county of the individual's residence.

15 (b) *How final commitment proceedings are commenced.*
16 – Final commitment proceedings for an individual may be
17 commenced by the filing of a written application under
18 oath and the certificate or affidavit is hereinafter provided
19 with the clerk of the circuit court or mental hygiene
20 commissioner of the county of which the individual is a
21 resident, or where he or she may be found, or the county of
22 the mental health facility, if he or she is hospitalized in a
23 mental health facility located in a county other than where
24 he or she resides or may be found by an adult person
25 having personal knowledge of the facts of the case.

26 (c) *Oath; contents of application; who may inspect*
27 *application; when application cannot be filed. –*

28 (1) The person making the application shall do so under
29 oath.

30 (2) The application shall contain statements by the
31 applicant that he or she believes because of symptoms of
32 mental illness or addiction the individual is likely to cause
33 serious harm to himself, herself or to others and the
34 grounds for the belief, stating in detail the recent overt
35 acts upon which the belief is based.

36 (3) The written application, certificate, affidavit and any
37 warrants issued pursuant thereto, including any papers
38 and documents related thereto, filed with any circuit court
39 or mental hygiene commissioner for the involuntary
40 hospitalization of any individual are not open to inspec-
41 tion by any person other than the individual, except upon
42 authorization of the individual or his or her legal represen-
43 tative or by order of the circuit court, and the records may
44 not be published except upon the authorization of the
45 individual or his or her legal representative.

46 (4) Applications may not be accepted for individuals
47 who only have epilepsy, a mental deficiency or senility.

48 (d) *Certificate filed with application; contents of certifi-*
49 *cate; affidavit by applicant in place of certificate. –*

50 (1) The applicant shall file with his or her application
51 the certificate of a physician or a psychologist stating that
52 in his or her opinion the individual is mentally ill or
53 addicted and that because of the mental illness or addic-
54 tion the individual is likely to cause serious harm to
55 himself, herself or to others if he or she is allowed to
56 remain at liberty and therefore he or she should be hospi-
57 talized, stating in detail the recent overt acts upon which
58 the conclusion is based.

59 (2) A certificate is not necessary only when an affidavit
60 is filed by the applicant showing facts and the individual
61 has refused to submit to examination by a physician or a
62 psychologist.

63 (e) *Notice requirements; eight days' notice required.* –
64 Upon receipt of an application, the mental hygiene
65 commissioner or circuit court shall review the application
66 and if it is determined that the facts alleged, if any, are
67 sufficient to warrant involuntary hospitalization, forth-
68 with fix a date for and have the clerk of the circuit court
69 give notice of the hearing: (1) To the individual; (2) to the
70 applicant or applicants; (3) to the individual's spouse, one
71 of the parents or guardians, or if the individual does not
72 have a spouse, parents or parent or guardian, to one of the
73 individual's adult next of kin if the next of kin is not the
74 applicant; (4) to the mental health authorities serving the
75 area; (5) to the circuit court in the county of the individ-
76 ual's residence if the hearing is to be held in a county other
77 than that of the individual's residence; and (6) to the
78 prosecuting attorney of the county in which the hearing is
79 to be held. The notice shall be served on the individual by
80 personal service of process not less than eight days prior to
81 the date of the hearing and shall specify the nature of the
82 charges against the individual; the facts underlying and
83 supporting the application of involuntary commitment; the
84 right to have counsel appointed; the right to consult with
85 and be represented by counsel at every stage of the pro-
86 ceedings; and the time and place of the hearing. The
87 notice to the individual's spouse, parents or parent or
88 guardian, the individual's adult next of kin, or to the
89 circuit court in the county of the individual's residence
90 may be by personal service of process or by certified or
91 registered mail, return receipt requested, and shall state
92 the time and place of the hearing.

93 (f) *Examination of individual by court-appointed*
94 *physician or psychologist; custody for examination;*
95 *dismissal of proceedings.* –

96 (1) Except as provided in subdivision (3) of this subsec-
97 tion, within a reasonable time after notice of the com-
98 mencement of final commitment proceedings is given, the
99 circuit court or mental hygiene commissioner shall appoint
100 a physician or psychologist to examine the individual and
101 report to the circuit court or mental hygiene commissioner
102 his or her findings as to the mental condition or addiction
103 of the individual and the likelihood of him or her causing
104 serious harm to himself, herself or to others.

105 (2) If the designated physician or psychologist reports to
106 the circuit court or mental hygiene commissioner that the
107 individual has refused to submit to an examination, the
108 circuit court or mental hygiene commissioner shall order
109 him or her to submit to the examination. The circuit court
110 or mental hygiene commissioner may direct that the
111 individual be detained or taken into custody for the
112 purpose of an immediate examination by the designated
113 physician or psychologist. All such orders shall be di-
114 rected to the sheriff of the county or other appropriate
115 law-enforcement officer. After the examination has been
116 completed, the individual shall be released from custody
117 unless proceedings are instituted pursuant to section three
118 of this article.

119 (3) If the reports of the appointed physician or psycholo-
120 gist do not confirm that the individual is mentally ill or
121 addicted and might be harmful to himself, herself or to
122 others then the proceedings for involuntary hospitalization
123 shall be dismissed.

124 (g) *Rights of the individual at the final commitment*
125 *hearing; seven days' notice to counsel required. -*

126 (1) The individual shall be present at the final commit-
127 ment hearing and he or she, the applicant and all persons
128 entitled to notice of the hearing shall be afforded an
129 opportunity to testify and to present and cross-examine
130 witnesses.

131 (2) In the event that the individual has not retained
132 counsel, the court or mental hygiene commissioner at least
133 six days prior to hearing shall appoint a competent
134 attorney and shall inform the individual of the name,
135 address and telephone number of his or her appointed
136 counsel.

137 (3) The individual has the right to have an examination
138 by an independent expert of his or her choice and testi-
139 mony from the expert as a medical witness on his or her
140 behalf. The cost of the independent expert shall be borne
141 by the individual unless he or she is indigent.

142 (4) The individual may not be compelled to be a witness
143 against himself or herself.

144 (h) *Duties of counsel representing individual; payment*
145 *of counsel representing indigent. -*

146 (1) The counsel representing an individual shall conduct
147 a timely interview, make investigation and secure appro-
148 priate witnesses and shall be present at the hearing and
149 protect the interest of the individual.

150 (2) Any counsel representing an individual is entitled to
151 copies of all medical reports, psychiatric or otherwise.

152 (3) The circuit court, by order of record, may allow the
153 attorney a reasonable fee not to exceed the amount
154 allowed for attorneys in defense of needy persons as
155 provided in article twenty-one, chapter twenty-nine of this
156 code.

157 (i) *Conduct of hearing; receipt of evidence; no eviden-*
158 *tiary privilege; record of hearing. -*

159 (1) The circuit court or mental hygiene commissioner
160 shall hear evidence from all interested parties in chamber,
161 including testimony from representatives of the commu-
162 nity mental health facility.

163 (2) The circuit court or mental hygiene commissioner
164 shall receive all relevant and material evidence which may
165 be offered.

166 (3) The circuit court or mental hygiene commissioner is
167 bound by the rules of evidence promulgated by the Su-
168 preme Court of Appeals except that statements made to
169 physicians or psychologists by the individual may be
170 admitted into evidence by the physician's or psychologist's
171 testimony, notwithstanding failure to inform the individ-
172 ual that this statement may be used against him or her.
173 Any psychologist or physician testifying shall bring all
174 records pertaining to the individual to the hearing. The
175 medical evidence obtained pursuant to an examination
176 under this section, or section two or three of this article, is
177 not privileged information for purposes of a hearing
178 pursuant to this section.

179 (4) All final commitment proceedings shall be reported
180 or recorded, whether before the circuit court or mental
181 hygiene commissioner, and a transcript shall be made
182 available to the individual, his or her counsel or the
183 prosecuting attorney within thirty days, if it is requested
184 for the purpose of further proceedings. In any case where
185 an indigent person intends to pursue further proceedings,
186 the circuit court shall, by order entered of record, autho-
187 rize and direct the court reporter to furnish a transcript of
188 the hearings.

189 (j) *Requisite findings by the court.* -

190 (1) Upon completion of the final commitment hearing,
191 and the evidence presented in the hearing, the circuit court
192 or mental hygiene commissioner shall make findings as to
193 whether or not the individual is mentally ill or addicted
194 and because of illness or addiction is likely to cause
195 serious harm to himself, herself or to others if allowed to
196 remain at liberty and is a resident of the county in which
197 the hearing is held or currently is a patient at a mental
198 health facility in the county.

199 (2) The circuit court or mental hygiene commissioner
200 shall also make a finding as to whether or not there is a
201 less restrictive alternative than commitment appropriate
202 for the individual. The burden of proof of the lack of a less
203 restrictive alternative than commitment is on the person or
204 persons seeking the commitment of the individual.

205 (3) The findings of fact shall be incorporated into the
206 order entered by the circuit court and must be based upon
207 clear, cogent and convincing proof.

208 (k) *Orders issued pursuant to final commitment hearing;*
209 *entry of order; change in order of court; expiration of*
210 *order. -*

211 (1) Upon the requisite findings, the circuit court may
212 order the individual to a mental health facility for an
213 indeterminate period or for a temporary observatory
214 period not exceeding six months.

215 (2) The individual may not be detained in a mental
216 health facility for a period in excess of ten days after a
217 final commitment hearing pursuant to this section unless
218 an order has been entered and received by the facility.

219 (3) If the order pursuant to a final commitment hearing
220 is for a temporary observation period, the circuit court or
221 mental hygiene commissioner may, at any time prior to the
222 expiration of such period on the basis of a report by the
223 chief medical officer of the mental health facility in which
224 the patient is confined, hold another hearing pursuant to
225 the terms of this section and in the same manner as the
226 hearing was held as if it were an original petition for
227 involuntary hospitalization to determine whether the
228 original order for a temporary observation period should
229 be modified or changed to an order of indeterminate
230 hospitalization of the patient. At the conclusion of the
231 hearing, the circuit court shall order indeterminate
232 hospitalization of the patient or dismissal of the proceed-
233 ings.

234 (4) An order for an indeterminate period expires of its
235 own terms at the expiration of two years from the date of
236 the last order of commitment unless prior to the expira-
237 tion, the Department of Health and Human Resources,
238 upon findings based on an examination of the patient by
239 a physician or a psychologist, extends the order for
240 indeterminate hospitalization: *Provided*, That if the
241 patient or his or her counsel requests a hearing, then a
242 hearing shall be held by the mental hygiene commissioner
243 or by the circuit court of the county as provided in subsec-
244 tion (a) of this section.

245 (l) *Dismissal of proceedings.* – If the circuit court or
246 mental hygiene commissioner finds that the individual is
247 not mentally ill or addicted, the proceedings shall be
248 dismissed. If the circuit court or mental hygiene commis-
249 sioner finds that the individual is mentally ill or addicted
250 but is not because of the illness or addiction likely to cause
251 serious harm to himself, herself or to others if allowed to
252 remain at liberty, the proceedings shall be dismissed.

253 (m) *Immediate notification of order of hospitalization.*
254 – The clerk of the circuit court in which an order directing
255 hospitalization is entered, if not in the county of the
256 individual's residence, shall immediately upon entry of the
257 order forward a certified copy of the order to the clerk of
258 the circuit court of the county of which the individual is a
259 resident.

260 (n) *Consideration of transcript by circuit court of county*
261 *of individual's residence; order of hospitalization; execu-*
262 *tion of order.* –

263 (1) If the circuit court or mental hygiene commissioner
264 is satisfied that hospitalization should be ordered but finds
265 that the individual is not a resident of the county in which
266 the hearing is held and the individual is not currently a
267 resident of a mental health facility, a transcript of the
268 evidence adduced at the final commitment hearing of the
269 individual, certified by the clerk of the circuit court, shall

270 forthwith be forwarded to the clerk of the circuit court of
271 the county of which the individual is a resident, who shall
272 immediately present the transcript to the circuit court or
273 mental hygiene commissioner of the county.

274 (2) If the circuit court or mental hygiene commissioner
275 of the county of the residence of the individual is satisfied
276 from the evidence contained in the transcript that the
277 individual should be hospitalized as determined by the
278 standard set forth above, the circuit court shall order the
279 appropriate hospitalization as though the individual had
280 been brought before the circuit court or its mental hygiene
281 commissioner in the first instance.

282 (3) This order shall be transmitted forthwith to the clerk
283 of the circuit court of the county in which the hearing was
284 held who shall execute the order promptly.

285 (o) *Order of custody to responsible person.* – In lieu of
286 ordering the patient to a mental health facility, the circuit
287 court may order the individual delivered to some responsi-
288 ble person who will agree to take care of the individual
289 and the circuit court may take from the responsible person
290 a bond in an amount to be determined by the circuit court
291 with condition to restrain and take proper care of the
292 individual until further order of the court.

293 (p) *Individual not a resident of this state.* – If the
294 individual found to be mentally ill or addicted by the
295 circuit court or mental hygiene commissioner is a resident
296 of another state, this information shall be forthwith given
297 to the Secretary of the Department of Health and Human
298 Resources, or to his or her designee, who shall make
299 appropriate arrangements for transfer of the individual to
300 the state of his or her residence conditioned on the agree-
301 ment of the individual except as qualified by the interstate
302 compact on mental health.

303 (q) *Report to the Secretary of the Department of Health*
304 *and Human Resources.* –

305 (1) The chief medical officer of a mental health facility
306 admitting a patient pursuant to proceedings under this
307 section shall forthwith make a report of the admission to
308 the Secretary of the Department of Health and Human
309 Resources or to his or her designee.

310 (2) Whenever an individual is released from custody due
311 to the failure of an employee of a mental health facility to
312 comply with the time requirements of this article, the chief
313 medical officer of the mental health facility shall forth-
314 with after the release of the individual make a report to
315 the Secretary of the Department of Health and Human
316 Resources or to his or her designee of the failure to comply.

317 (r) *Payment of some expenses by the state; mental*
318 *hygiene fund established; expenses paid by the county*
319 *commission. -*

320 (1) The state shall pay the commissioner's fee and the
321 court reporter fees that are not paid and reimbursed under
322 article twenty-one, chapter twenty-nine of this code out of
323 a special fund to be established within the Supreme Court
324 of Appeals to be known as the Mental Hygiene Fund.

325 (2) The county commission shall pay out of the county
326 treasury all other expenses incurred in the hearings
327 conducted under the provisions of this article whether or
328 not hospitalization is ordered, including any fee allowed
329 by the circuit court by order entered of record for any
330 physician, psychologist and witness called by the indigent
331 individual.

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

Randy White
.....
Chairman Senate Committee

W. Burr
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David E. Gibbs
.....
Clerk of the Senate

Gregg D. Sear
.....
Clerk of the House of Delegates

Earl Ray Bennett
.....
President of the Senate

Robert J. [Signature]
.....
Speaker House of Delegates

The within is approved this the 23rd
Day of March, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 17 2006

Time 11:15 am