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2008 APR -1 AM 11:07

SBC 481

**WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008**

STATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 481

(SENATOR PREZIOSO, *original sponsor*)

[Passed March 8, 2008; in effect ninety days from passage.]

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STATE OF VIRGINIA
SECRETARY OF STATE

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(SENATOR PREZIOSO, *original sponsor*)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §27-5-2 of the Code of West Virginia, 1931, as amended, relating to authority of physician assistants to conduct examinations in the mental health hygiene process.

Be it enacted by the Legislature of West Virginia:

That §27-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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
3 individual when the person making the application has
4 reason to believe that the individual to be examined is
5 addicted, as defined in section eleven, article one of this
6 chapter, or is mentally ill and, because of his or her
7 addiction or mental illness, the individual is likely to
8 cause serious harm to himself, herself or to others if
9 allowed to remain at liberty while awaiting an
10 examination and certification by a physician or
11 psychologist.

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

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

24 (c) Application for involuntary custody for
25 examination may be made to the circuit court or a
26 mental hygiene commissioner of the county in which
27 the individual resides or of the county in which he or

28 she may be found. When no circuit court judge or
29 mental hygiene commissioner is available for immediate
30 presentation of the application, the application may be
31 made to a magistrate designated by the chief judge of
32 the judicial circuit to accept applications and hold
33 probable cause hearings. A designated magistrate
34 before whom an application or matter is pending may,
35 upon the availability of a mental hygiene commissioner
36 or circuit court judge for immediate presentation of an
37 application or pending matter, transfer the pending
38 matter or application to the mental hygiene
39 commissioner or circuit court judge for further
40 proceedings unless otherwise ordered by the chief judge
41 of the judicial circuit.

42 (d) The person making the application shall give
43 information and state facts in the application as may be
44 required by the form provided for this purpose by the
45 Supreme Court of Appeals.

46 (e) The circuit court, mental hygiene commissioner or
47 designated magistrate may enter an order for the
48 individual named in the application to be detained and
49 taken into custody for the purpose of holding a
50 probable cause hearing as provided in subsection (g) of
51 this section for the purpose of an examination of the
52 individual by a physician, psychologist, a licensed
53 independent clinical social worker practicing in
54 compliance with article thirty, chapter thirty of this
55 code, an advanced nurse practitioner with psychiatric
56 certification practicing in compliance with article seven
57 of said chapter, a physician assistant practicing in
58 compliance with article three of said chapter or a
59 physician assistant practicing in compliance with
60 article fourteen-a of said chapter: *Provided*, That a

61 licensed independent clinical social worker, a physician
62 assistant or an advanced nurse practitioner with
63 psychiatric certification may only perform the
64 examination if he or she has previously been authorized
65 by an order of the circuit court to do so, the order
66 having found that the licensed independent clinical
67 social worker, physician assistant or advanced nurse
68 practitioner with psychiatric certification has
69 particularized expertise in the areas of mental health
70 and mental hygiene or addiction sufficient to make the
71 determinations as are required by the provisions of this
72 section. The examination is to be provided or arranged
73 by a community mental health center designated by the
74 Secretary of the Department of Health and Human
75 Resources to serve the county in which the action takes
76 place. The order is to specify that the hearing be held
77 forthwith and is to provide for the appointment of
78 counsel for the individual: *Provided, however,* That the
79 order may allow the hearing to be held up to
80 twenty-four hours after the person to be examined is
81 taken into custody rather than forthwith if the circuit
82 court of the county in which the person is found has
83 previously entered a standing order which establishes
84 within that jurisdiction a program for placement of
85 persons awaiting a hearing which assures the safety
86 and humane treatment of persons: *Provided further,*
87 That the time requirements set forth in this subsection
88 only apply to persons who are not in need of medical
89 care for a physical condition or disease for which the
90 need for treatment precludes the ability to comply with
91 the time requirements. During periods of holding and
92 detention authorized by this subsection, upon consent
93 of the individual or in the event of a medical or
94 psychiatric emergency, the individual may receive
95 treatment. The medical provider shall exercise due

96 diligence in determining the individual's existing
97 medical needs and provide treatment the individual
98 requires, including previously prescribed medications.
99 As used in this section, "psychiatric emergency" means
100 an incident during which an individual loses control
101 and behaves in a manner that poses substantial
102 likelihood of physical harm to himself, herself or others.
103 Where a physician, psychologist, licensed independent
104 clinical social worker, physician assistant or advanced
105 nurse practitioner with psychiatric certification has
106 within the preceding seventy-two hours performed the
107 examination required by the provisions of this
108 subdivision, the community mental health center may
109 waive the duty to perform or arrange another
110 examination upon approving the previously performed
111 examination. Notwithstanding the provisions of this
112 subsection, subsection (r), section four of this article
113 applies regarding payment by the county commission
114 for examinations at hearings. If the examination
115 reveals that the individual is not mentally ill or
116 addicted or is determined to be mentally ill or addicted
117 but not likely to cause harm to himself, herself or
118 others, the individual shall be immediately released
119 without the need for a probable cause hearing and
120 absent a finding of professional negligence the
121 examiner is not civilly liable for the rendering of the
122 opinion absent a finding of professional negligence.
123 The examiner shall immediately provide the mental
124 hygiene commissioner, circuit court or designated
125 magistrate before whom the matter is pending the
126 results of the examination on the form provided for this
127 purpose by the Supreme Court of Appeals for entry of
128 an order reflecting the lack of probable cause.

129 (f) A probable cause hearing is to be held before a

130 magistrate designated by the chief judge of the judicial
131 circuit, the mental hygiene commissioner or circuit
132 judge of the county of which the individual is a resident
133 or where he or she was found. If requested by the
134 individual or his or her counsel, the hearing may be
135 postponed for a period not to exceed forty-eight hours.

136 The individual must be present at the hearing and has
137 the right to present evidence, confront all witnesses and
138 other evidence against him or her and to examine
139 testimony offered, including testimony by
140 representatives of the community mental health center
141 serving the area. Expert testimony at the hearing may
142 be taken telephonically or via videoconferencing. The
143 individual has the right to remain silent and to be
144 proceeded against in accordance with the Rules of
145 Evidence of the Supreme Court of Appeals, except as
146 provided in section twelve, article one of this chapter.
147 At the conclusion of the hearing, the magistrate, mental
148 hygiene commissioner or circuit court judge shall find
149 and enter an order stating whether or not there is
150 probable cause to believe that the individual, as a result
151 of mental illness or addiction, is likely to cause serious
152 harm to himself or herself or to others.

153 (g) Probable cause hearings may occur in the county
154 where a person is hospitalized. The judicial hearing
155 officer may: Use videoconferencing and telephonic
156 technology; permit persons hospitalized for addiction to
157 be involuntarily hospitalized only until detoxification
158 is accomplished; and specify other alternative or
159 modified procedures that are consistent with the
160 purposes and provisions of this article. The alternative
161 or modified procedures shall fully and effectively
162 guarantee to the person who is the subject of the

163 involuntary commitment proceeding and other
164 interested parties due process of the law and access to
165 the least restrictive available treatment needed to
166 prevent serious harm to self or others.

167 (h) If the magistrate, mental hygiene commissioner or
168 circuit court judge at a probable cause hearing or at a
169 final commitment hearing held pursuant to the
170 provisions of section four of this article finds that the
171 individual, as a result of mental illness or addiction, is
172 likely to cause serious harm to himself, herself or others
173 and because of mental illness or addiction requires
174 treatment, the magistrate, mental hygiene commissioner
175 or circuit court judge may consider evidence on the
176 question of whether the individual's circumstances
177 make him or her amenable to outpatient treatment in a
178 nonresidential or nonhospital setting pursuant to a
179 voluntary treatment agreement. The agreement is to be
180 in writing and approved by the individual, his or her
181 counsel and the magistrate, mental hygiene
182 commissioner or circuit court judge. If the magistrate,
183 mental hygiene commissioner or circuit court judge
184 determines that appropriate outpatient treatment is
185 available in a nonresidential or nonhospital setting, the
186 individual may be released to outpatient treatment
187 upon the terms and conditions of the voluntary
188 treatment agreement. The failure of an individual
189 released to outpatient treatment pursuant to a
190 voluntary treatment agreement to comply with the
191 terms of the voluntary treatment agreement constitutes
192 evidence that outpatient treatment is insufficient and,
193 after a hearing before a magistrate, mental hygiene
194 commissioner or circuit judge on the issue of whether or
195 not the individual failed or refused to comply with the
196 terms and conditions of the voluntary treatment

197 agreement and whether the individual as a result of
198 mental illness or addiction remains likely to cause
199 serious harm to himself, herself or others, the entry of
200 an order requiring admission under involuntary
201 hospitalization pursuant to the provisions of section
202 three of this article may be entered. In the event a
203 person released pursuant to a voluntary treatment
204 agreement is unable to pay for the outpatient treatment
205 and has no applicable insurance coverage, including,
206 but not limited to, private insurance or Medicaid, the
207 Secretary of the Department of Health and Human
208 Resources may transfer funds for the purpose of
209 reimbursing community providers for services provided
210 on an outpatient basis for individuals for whom
211 payment for treatment is the responsibility of the
212 department: *Provided*, That the department may not
213 authorize payment of outpatient services for an
214 individual subject to a voluntary treatment agreement
215 in an amount in excess of the cost of involuntary
216 hospitalization of the individual. The secretary shall
217 establish and maintain fee schedules for outpatient
218 treatment provided in lieu of involuntary
219 hospitalization. Nothing in the provisions of this article
220 regarding release pursuant to a voluntary treatment
221 agreement or convalescent status may be construed as
222 creating a right to receive outpatient mental health
223 services or treatment or as obligating any person or
224 agency to provide outpatient services or treatment.
225 Time limitations set forth in this article relating to
226 periods of involuntary commitment to a mental health
227 facility for hospitalization do not apply to release
228 pursuant to the terms of a voluntary treatment
229 agreement: *Provided, however*, That release pursuant to
230 a voluntary treatment agreement may not be for a
231 period of more than six months if the individual has not

232 been found to be involuntarily committed during the
233 previous two years and for a period of no more than two
234 years if the individual has been involuntarily
235 committed during the preceding two years. If in any
236 proceeding held pursuant to this article the individual
237 objects to the issuance or conditions and terms of an
238 order adopting a voluntary treatment agreement, then
239 the circuit judge, magistrate or mental hygiene
240 commissioner may not enter an order directing
241 treatment pursuant to a voluntary treatment
242 agreement. If involuntary commitment with release
243 pursuant to a voluntary treatment agreement is
244 ordered, the individual subject to the order may, upon
245 request during the period the order is in effect, have a
246 hearing before a mental hygiene commissioner or
247 circuit judge where the individual may seek to have the
248 order canceled or modified. Nothing in this section
249 affects the appellate and habeas corpus rights of any
250 individual subject to any commitment order.

251 (i) If the certifying physician or psychologist
252 determines that a person requires involuntary
253 hospitalization for an addiction to a substance which,
254 due to the degree of addiction, creates a reasonable
255 likelihood that withdrawal or detoxification from the
256 substance of addiction will cause significant medical
257 complications, the person certifying the individual shall
258 recommend that the individual be closely monitored for
259 possible medical complications. If the magistrate,
260 mental hygiene commissioner or circuit court judge
261 presiding orders involuntary hospitalization, he or she
262 shall include a recommendation that the individual be
263 closely monitored in the order of commitment.

264 (j) The Supreme Court of Appeals and the Secretary

265 of the Department of Health and Human Resources
266 shall specifically develop and propose a statewide
267 system for evaluation and adjudication of mental
268 hygiene petitions which shall include payment
269 schedules and recommendations regarding funding
270 sources. Additionally, the Secretary of the Department
271 of Health and Human Resources shall also immediately
272 seek reciprocal agreements with officials in contiguous
273 states to develop interstate/intergovernmental
274 agreements to provide efficient and efficacious services
275 to out-of-state residents found in West Virginia and
276 who are in need of mental hygiene services.

11 [Enr. Com. Sub. for S. B. No. 481

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

Randy White
Chairman Senate Committee

J. R.
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
Clerk of the Senate

Billy A. Ray
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

John G. Harshbarger
Speaker House of Delegates

The within *is apportioned* this
the *1st* Day of *April*, 2008.

Bob Hancher
Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2008

Time 101051m