

SB 604

FILED

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-NINTH LEGISLATURE**  
**REGULAR SESSION, 2010**

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

**Senate Bill No. 604**

(BY SENATORS BOWMAN, WHITE AND PLYMALE)

[Passed March 10, 2010; in effect ninety days from passage.]

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C. CURTIS WEAVER, JR.  
SECRETARY OF STATE

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**Senate Bill No. 604**

(BY SENATORS BOWMAN, WHITE AND PLYMALE)

[Passed March 10, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to extending the termination date of the modified mental hygiene procedures pilot project by two years.

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

That §27-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 July 1, 2006,  
6 modified mental hygiene procedures that are consistent  
7 with the requirements set forth in this section. The  
8 judicial circuits selected for implementing the modified  
9 procedures shall be circuits in which the Supreme Court of  
10 Appeals determines, after consultation with the Secretary  
11 of the Department of Health and Human Resources and  
12 local mental health consumers and service providers, that  
13 adequate resources will be available to implement the  
14 modified procedures. The Secretary of the Department of  
15 Health and Human Resources, after consultation with the  
16 Supreme Court of Appeals and local mental health  
17 services consumers and service providers, shall prescribe  
18 appropriate forms to implement the modified procedures  
19 and shall annually prepare a report on the use of the  
20 modified procedures and transmit the report to the  
21 Legislature on or before the last day of each calendar year.  
22 The Supreme Court of Appeals may, after consultation  
23 with the Secretary of the Department of Health and  
24 Human Resources and local mental health services con-  
25 sumers and providers during the pilot program period,  
26 further modify any specific modified procedures that are  
27 implemented: *Provided*, That the modified procedures  
28 must be consistent with the requirements of this chapter  
29 and this section. If the Secretary of the Department of  
30 Health and Human Resources determines that the use of  
31 any modified procedure in one or more judicial circuits is  
32 placing an unacceptable additional burden upon state  
33 mental health resources, the Supreme Court of Appeals  
34 shall, in consultation with the secretary, modify the  
35 procedures used in such a fashion as will address the  
36 concerns of the secretary, consistent with the requirements  
37 of this chapter. The provisions of this section and the  
38 modified procedures thereby authorized shall cease to  
39 have any force and effect on June 30, 2012, unless ex-  
40 tended by an act of the Legislature prior to that date.

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

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

55 (B) That the individual's previous hospitalizations due  
56 to mental illness or the individual's crime of violence  
57 occurred after or as a result of the individual's failure to  
58 take medication or other treatment as prescribed by a  
59 physician 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  
88 forty-eight hours of the time that the individual is taken  
89 into 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 twenty-four  
99 month period prior to the filing of the petition an individ-  
100 ual, as a result of mental illness, has been hospitalized  
101 pursuant to the provisions of this chapter; or that on at  
102 least one occasion within a twenty-four month period  
103 prior to the filing of the petition has been convicted of a  
104 crime of violence against 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

180 as 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 the  
190 evidence presented to the circuit judge or mental hygiene  
191 commissioner shows that the individual has complied with  
192 the terms of the existing order, but the individual's  
193 prescribed medication, dosage or course of treatment  
194 needs to be modified, then the newly modified medication  
195 and treatment prescribed by a psychiatrist who personally  
196 examined the individual may be properly incorporated  
197 into a modified order. If the order has not been complied  
198 with, the circuit judge or mental hygiene commissioner,  
199 after inquiring into the reasons for noncompliance and  
200 whether any aspects of the order should be modified, may  
201 continue the individual upon the terms of the original  
202 order and direct the individual to comply with the order or  
203 may modify the order in light of the evidence presented at  
204 the hearing. If the evidence shows that the individual at  
205 the time of the hearing is likely to cause serious harm to  
206 himself or herself, 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, however*, That all applicable due process and  
213 hearing requirements of contained in sections two and  
214 three of this article have been fully satisfied.



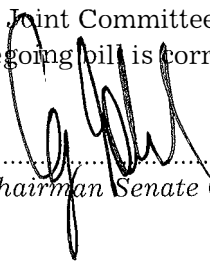
215 (c)(1) The modified procedures may authorize that upon  
216 the certification of a qualified mental health professional,  
217 as described in subdivision (2) of this subsection, that  
218 there is probable cause to believe that an individual who  
219 has been hospitalized two or more times in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

230 (2) The modified procedures may authorize the chief  
231 judge of a judicial circuit, or circuit judge if there is no  
232 chief judge, to enter orders authorizing specific psychia-  
233 trists or licensed psychologists, whose qualifications and  
234 training have been reviewed and approved by the Supreme  
235 Court of Appeals, to issue certifications that authorize and  
236 direct the involuntary admission of an individual subject  
237 to the provisions of this section on a temporary probable  
238 cause basis to a mental health facility for examination and  
239 treatment: *Provided*, That the authorized psychiatrist or  
240 licensed psychologist must conclude and certify based on  
241 personal observation prior to certification that the indi-  
242 vidual is mentally ill and, because of such mental illness,  
243 is imminently likely to cause serious harm to himself or  
244 herself or to others if not immediately restrained and  
245 promotion of the best interests of the individual requires  
246 immediate hospitalization. Immediately upon certifica-  
247 tion, the psychiatrist or licensed psychologist shall provide  
248 notice of the certification to a circuit judge, mental  
249 hygiene commissioner or designated magistrate in the  
250 county where the individual resides.

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



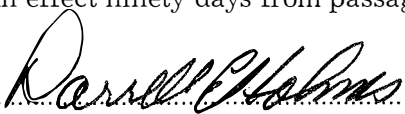
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

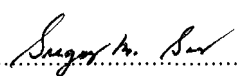
  
.....  
Chairman Senate Committee


  
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Chairman House Committee

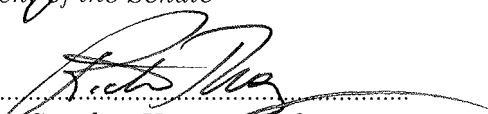
Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *18<sup>th</sup>* .....  
Day of *March* ..... 2010.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 17 2010

Time 9:16am