

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 4424**

5  
6 (By Delegates Morgan, Stephens, Butcher,  
7 Stagers and Border)

8 [Passed March 10, 2012; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §27-5-11 of the Code of West Virginia,  
11 1931, as amended, relating to modified mental hygiene  
12 procedures; extending the termination date of the modified  
13 mental hygiene procedures pilot project; including addiction  
14 as a basis for treatment under the pilot project; authorizing  
15 additional programs throughout the state; continuing the pilot  
16 project through July 1, 2014; and requiring the secretary of  
17 the Department of Health and Human Resources to report to the  
18 legislature regarding the efficacy of the pilot program on or  
19 before the first day of the 2013 and 2014 regular sessions of  
20 the Legislature.

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

22 That §27-5-11 of the Code of West Virginia, 1931, as amended,  
23 be amended and reenacted to read as follows:

24 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

25 **§27-5-11. Modified procedures for temporary compliance orders for**  
26 **certain medication dependent persons with prior**

1           **hospitalizations or convictions; instituting modified**  
2           **mental hygiene procedures; establishing procedures;**  
3           **providing for forms and reports.**

4           (a) The Supreme Court of Appeals shall, in consultation with  
5 the Secretary of the Department of Health and Human Resources and  
6 local mental health services consumers and providers, implement  
7 throughout the state modified mental hygiene procedures that are  
8 consistent with the requirements set forth in this section. The  
9 judicial circuits selected for implementing the modified procedures  
10 shall be circuits in which the Supreme Court of Appeals determines,  
11 after consultation with the Secretary of the Department of Health  
12 and Human Resources and local mental health consumers and service  
13 providers, that adequate resources will be available to implement  
14 the modified procedures. After July 1, 2012, the Supreme Court of  
15 Appeals and the Secretary of the Department of Health and Human  
16 Resources in consultation with local mental health consumers and  
17 providers may add programs for modified mental hygiene procedures  
18 in any judicial circuit that establishes a need for the same.

19           (b) The Secretary of the Department of Health and Human  
20 Resources, after consultation with the Supreme Court of Appeals and  
21 local mental health services consumers and service providers, shall  
22 prescribe appropriate forms to implement the modified procedures  
23 and shall annually prepare reports on the efficacy of the modified  
24 procedures and transmit the report to the Legislature on or before  
25 the first day of the 2013 and 2014 regular sessions of the

1 Legislature.

2           (c) The Supreme Court of Appeals may, after consultation with  
3 the Secretary of the Department of Health and Human Resources and  
4 local mental health services consumers and providers further modify  
5 any specific modified procedures that are implemented pursuant to  
6 this section. The modified procedures must be consistent with the  
7 requirements of this chapter and this section. If the Secretary of  
8 the Department of Health and Human Resources determines that the  
9 use of any modified procedure in one or more judicial circuits is  
10 placing an unacceptable additional burden upon state mental health  
11 resources, the Supreme Court of Appeals shall, in consultation with  
12 the secretary, modify the procedures used in such a fashion as will  
13 address the concerns of the secretary, consistent with the  
14 requirements of this chapter. The provisions of this section and  
15 the modified procedures thereby authorized shall cease to have any  
16 force and effect on June 30, 2014, unless extended by an act of the  
17 Legislature prior to that date.

18           (1) The modified procedures shall authorize that a verified  
19 petition seeking a treatment compliance order may be filed by any  
20 person alleging:

21           (A) That an individual, on two or more occasions within a  
22 twenty-four month period prior to the filing of the petition, as a  
23 result of mental illness or addiction or both, has been  
24 hospitalized pursuant to the provisions of this chapter; or that  
25 the individual has been convicted of one or more crimes of violence

1 against the person within a twenty-four month period prior to the  
2 filing of the petition and the individual's failure to take  
3 prescribed medication or follow another prescribed regimen to treat  
4 a mental illness or addiction or both was a significant aggravating  
5 or contributing factor in the circumstances surrounding the crime;

6 (B) That the individual's previous hospitalizations due to  
7 mental illness or addiction or both or the individual's crime of  
8 violence occurred after or as a result of the individual's failure  
9 to take medication or other treatment as prescribed by a physician  
10 to treat the individual's mental illness or addiction or both; and

11 (C) That the individual, in the absence of a court order  
12 requiring him or her to take medication or other treatment as  
13 prescribed, is unlikely to do so and that his or her failure to  
14 take medication or follow other regimen or treatment as prescribed  
15 is likely to lead to further instances in the reasonably near  
16 future in which the individual becomes likely to cause serious harm  
17 or commit a crime of violence against the person.

18 (2) Upon the filing of a petition seeking a treatment  
19 compliance order and the petition's review by a circuit judge or  
20 mental hygiene commissioner, counsel shall be appointed for the  
21 individual if the individual does not already have counsel and a  
22 copy of the petition and all supporting evidence shall be furnished  
23 to the individual and their counsel. If the circuit judge or  
24 mental hygiene commissioner determines on the basis of the petition  
25 that it is necessary to protect the individual or to secure their

1 examination, a detention order may be entered ordering that the  
2 individual be taken into custody and examined by a psychiatrist or  
3 licensed psychologist. A hearing on the allegations in the  
4 petition, which may be combined with a hearing on a probable cause  
5 petition conducted pursuant to the provisions of section two of  
6 this article or a final commitment hearing conducted pursuant to  
7 the provisions of section four of this article, shall be held  
8 before a circuit judge or mental hygiene commissioner. If the  
9 individual is taken into custody and remains in custody as a result  
10 of a detention order, the hearing shall be held within forty-eight  
11 hours of the time that the individual is taken into custody.

12 (3) If the allegations in the petition seeking a treatment  
13 compliance order are proved by the evidence adduced at the hearing,  
14 which must include expert testimony by a psychiatrist or licensed  
15 psychologist, the circuit judge or mental hygiene commissioner may  
16 enter a treatment compliance order for a period not to exceed six  
17 months upon making the following findings:

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

19 (B) That on two or more occasions within a twenty-four month  
20 period prior to the filing of the petition an individual, as a  
21 result of mental illness, has been hospitalized pursuant to the  
22 provisions of this chapter; or that on at least one occasion within  
23 a twenty-four month period prior to the filing of the petition has  
24 been convicted of a crime of violence against any person;

25 (C) That the individual's previous hospitalizations due to

1 mental illness or addiction or both occurred as a result of the  
2 individual's failure to take prescribed medication or follow a  
3 regimen or course of treatment as prescribed by a physician or  
4 psychiatrist to treat the individual's mental illness or addiction;  
5 or that the individual has been convicted for crimes of violence  
6 against any person and the individual's failure to take medication  
7 or follow a prescribed regimen or course of treatment of the  
8 individual's mental illness or addiction or both was a significant  
9 aggravating or contributing factor in the commission of the crime;

10 (D) That a psychiatrist or licensed psychologist who has  
11 personally examined the individual within the preceding twenty-four  
12 months has issued a written opinion that the individual, without  
13 the aid of the medication or other prescribed treatment, is likely  
14 to cause serious harm to himself or herself or to others;

15 (E) That the individual, in the absence of a court order  
16 requiring him or her to take medication or other treatment as  
17 prescribed, is unlikely to do so and that his or her failure to  
18 take medication or other treatment as prescribed is likely to lead  
19 to further instances in the reasonably near future in which the  
20 individual becomes likely to cause serious harm or commit a crime  
21 of violence against any person;

22 (F) That, where necessary, a responsible entity or individual  
23 is available to assist and monitor the individual's compliance with  
24 an order requiring the individual to take the medication or follow  
25 other prescribed regimen or course of treatment;

1 (G) That the individual can obtain and take the prescribed  
2 medication or follow other prescribed regimen or course of  
3 treatment without undue financial or other hardship; and

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

7 (4) The order may require an individual to take medication and  
8 treatment as prescribed and if appropriate to attend scheduled  
9 medication and treatment-related appointments: *Provided*, That a  
10 treatment compliance order shall be subject to termination or  
11 modification by a circuit judge or mental hygiene commissioner if  
12 a petition is filed seeking termination or modification of the  
13 order and it is shown in a hearing on the petition that there has  
14 been a material change in the circumstances that led to the entry  
15 of the original order that justifies the order's modification or  
16 termination: *Provided, however*, That a treatment compliance order  
17 may be extended by a circuit judge or mental hygiene commissioner  
18 for additional periods of time not to exceed six months, upon the  
19 filing of a petition seeking an extension and after a hearing on  
20 the petition or upon the agreement of the individual.

21 (5) After the entry of a treatment compliance order in  
22 accordance with the provisions of subdivisions (3) and (4) of this  
23 subsection if a verified petition is filed alleging that an  
24 individual has not complied with the terms of a medication and  
25 treatment compliance order and if a circuit judge or mental hygiene

1 commissioner determines from the petition and any supporting  
2 evidence that there is probable cause to believe that the  
3 allegations in the petition are true, counsel shall be appointed  
4 for the individual and a copy of the petition and all supporting  
5 evidence shall be furnished to the individual and his or her  
6 counsel. If the circuit judge or mental hygiene commissioner  
7 considers it necessary to protect the individual or to secure his  
8 or her examination, a detention order may be entered to require  
9 that the individual be examined by a psychiatrist or psychologist.

10 (A) A hearing on the allegations in the petition, which may be  
11 combined with a hearing on a probable cause petition conducted  
12 pursuant to section two of this article or a final commitment  
13 hearing conducted pursuant to section four of this article, shall  
14 be held before a circuit judge or mental hygiene commissioner. If  
15 the individual is taken and remains in custody as a result of a  
16 detention order, the hearing shall be held within forty-eight hours  
17 of the time that the individual is taken into custody.

18 (B) At a hearing on any petition filed pursuant to the  
19 provisions of paragraph (A) of this subdivision, the circuit judge  
20 or mental hygiene commissioner shall determine whether the  
21 individual has complied with the terms of the medication and  
22 treatment compliance order. If the individual has complied with  
23 the order, the petition shall be dismissed. If the evidence  
24 presented to the circuit judge or mental hygiene commissioner shows  
25 that the individual has complied with the terms of the existing



1 order, but the individual's prescribed medication, dosage or course  
2 of treatment needs to be modified, then the newly modified  
3 medication and treatment prescribed by a psychiatrist who  
4 personally examined the individual may be properly incorporated  
5 into a modified order. If the order has not been complied with,  
6 the circuit judge or mental hygiene commissioner, after inquiring  
7 into the reasons for noncompliance and whether any aspects of the  
8 order should be modified, may continue the individual upon the  
9 terms of the original order and direct the individual to comply  
10 with the order or may modify the order in light of the evidence  
11 presented at the hearing. If the evidence shows that the  
12 individual at the time of the hearing is likely to cause serious  
13 harm to himself or herself, herself or others as a result of the  
14 individual's mental illness, the circuit judge or mental hygiene  
15 commissioner may convert the proceeding into a probable cause  
16 proceeding and enter a probable cause order directing the  
17 involuntary admission of the individual to a mental health facility  
18 for examination and treatment. Any procedures conducted pursuant  
19 to this subsection must comply with and satisfy all applicable due  
20 process and hearing requirements of sections two and three of this  
21 article.

22 (d) The modified procedures may authorize that upon the  
23 certification of a qualified mental health professional, as  
24 described in subsection (e) of this section, that there is probable  
25 cause to believe that an individual who has been hospitalized two

1 or more times in the previous twenty-four months because of mental  
2 illness is likely to cause serious harm to himself or herself,  
3 herself or to others as a result of the mental illness if not  
4 immediately restrained and that the best interests of the  
5 individual would be served by immediate hospitalization, a circuit  
6 judge, mental hygiene commissioner or designated magistrate may  
7 enter a temporary probable cause order directing the involuntary  
8 hospitalization of the individual at a mental health facility for  
9 immediate examination and treatment.

10 (e) The modified procedures may authorize the chief judge of  
11 a judicial circuit, or circuit judge if there is no chief judge, to  
12 enter orders authorizing specific psychiatrists or licensed  
13 psychologists, whose qualifications and training have been reviewed  
14 and approved by the Supreme Court of Appeals, to issue  
15 certifications that authorize and direct the involuntary admission  
16 of an individual subject to the provisions of this section on a  
17 temporary probable cause basis to a mental health facility for  
18 examination and treatment. The authorized psychiatrist or licensed  
19 psychologist must conclude and certify based on personal  
20 observation prior to certification that the individual is mentally  
21 ill and, because of such mental illness or addiction or both, is  
22 imminently likely to cause serious harm to himself or herself or to  
23 others if not immediately restrained and promotion of the best  
24 interests of the individual requires immediate hospitalization.  
25 Immediately upon certification, the psychiatrist or licensed

1 psychologist shall provide notice of the certification to a circuit  
2 judge, mental hygiene commissioner or designated magistrate in the  
3 county where the individual resides.

4       (f) No involuntary hospitalization pursuant to a temporary  
5 probable cause determination issued pursuant to the provisions of  
6 this section shall continue in effect for more than forty-eight  
7 hours without the filing of a petition for involuntary  
8 hospitalization and the occurrence of a probable cause hearing  
9 before a circuit judge, mental hygiene commissioner or designated  
10 magistrate. If at any time the chief medical officer of the mental  
11 health facility to which the individual is admitted determines that  
12 the individual is not likely to cause serious harm as a result of  
13 mental illness or addiction or both, the chief medical officer  
14 shall discharge the individual and immediately forward a copy of  
15 the individual's discharge to the circuit judge, mental hygiene  
16 commissioner or designated magistrate.