

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4424**

4
5 (By Delegates Morgan, Stephens, Butcher,
6 Stagers and Border)

7 (Originating in the Committee on the Judiciary)

8 [February 22, 2012]

9
10 A BILL 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; authorizing
14 additional programs throughout the state; and continuing the
15 pilot project through July 1, 2013.

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

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

19 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

20 **§27-5-11. Modified procedures for temporary compliance orders for**
21 **certain medication dependent persons with prior**
22 **hospitalizations or convictions; ~~to~~ institute**
23 **instituting modified mental hygiene procedures;**
24 **establishing procedures; providing for forms and**
25 **reports.**

26 (a) The Supreme Court of Appeals shall, in consultation with

1 the Secretary of the Department of Health and Human Resources and
2 local mental health services consumers and providers, implement ~~in~~
3 ~~at least four and no more than six judicial circuits, beginning on~~
4 ~~July 1, 2006,~~ throughout the state modified mental hygiene
5 procedures that are consistent with the requirements set forth in
6 this section. The judicial circuits selected for implementing the
7 modified procedures shall be circuits in which the Supreme Court of
8 Appeals determines, after consultation with the Secretary of the
9 Department of Health and Human Resources and local mental health
10 consumers and service providers, that adequate resources will be
11 available to implement the modified procedures. After July 1,
12 2012, the Supreme Court of Appeals and the Secretary of the
13 Department of Health and Human Resources may add programs for
14 modified mental hygiene procedures in any judicial circuit that
15 establishes a need for the same.

16 (b) The Secretary of the Department of Health and Human
17 Resources, after consultation with the Supreme Court of Appeals and
18 local mental health services consumers and service providers, shall
19 prescribe appropriate forms to implement the modified procedures
20 and shall annually prepare a report on the use of the modified
21 procedures and transmit the report to the Legislature on or before
22 the last day of each calendar year.

23 (c) The Supreme Court of Appeals may, after consultation with
24 the Secretary of the Department of Health and Human Resources and
25 local mental health services consumers and providers ~~during the~~
26 ~~pilot program period,~~ further modify any specific modified

1 procedures that are implemented ~~Provided, That~~ pursuant to this
2 section. The modified procedures must be consistent with the
3 requirements of this chapter and this section. If the Secretary of
4 the Department of Health and Human Resources determines that the
5 use of any modified procedure in one or more judicial circuits is
6 placing an unacceptable additional burden upon state mental health
7 resources, the Supreme Court of Appeals shall, in consultation with
8 the secretary, modify the procedures used in such a fashion as will
9 address the concerns of the secretary, consistent with the
10 requirements of this chapter. The provisions of this section and
11 the modified procedures thereby authorized shall cease to have any
12 force and effect on June 30, ~~2012~~ 2013, unless extended by an act
13 of the Legislature prior to that date.

14 ~~(b)~~ (1) The modified procedures shall authorize that a
15 verified petition seeking a treatment compliance order may be filed
16 by any person alleging:

17 (A) That an individual, on two or more occasions within a
18 twenty-four month period prior to the filing of the petition, as a
19 result of mental illness or addiction or both, has been
20 hospitalized pursuant to the provisions of this chapter; or that
21 the individual has been convicted of one or more crimes of violence
22 against the person within a twenty-four month period prior to the
23 filing of the petition and the individual's failure to take
24 prescribed medication or follow another prescribed regimen to treat
25 a mental illness or addiction or both was a significant aggravating

1 or contributing factor in the circumstances surrounding the crime;

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

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

14 (2) Upon the filing of a petition seeking a treatment
15 compliance order and the petition's review by a circuit judge or
16 mental hygiene commissioner, counsel shall be appointed for the
17 individual if the individual does not already have counsel and a
18 copy of the petition and all supporting evidence shall be furnished
19 to the individual and their counsel. If the circuit judge or
20 mental hygiene commissioner determines on the basis of the petition
21 that it is necessary to protect the individual or to secure their
22 examination, a detention order may be entered ordering that the
23 individual be taken into custody and examined by a psychiatrist or
24 licensed psychologist. A hearing on the allegations in the
25 petition, which may be combined with a hearing on a probable cause

1 petition conducted pursuant to the provisions of section two of
2 this article or a final commitment hearing conducted pursuant to
3 the provisions of section four of this article, shall be held
4 before a circuit judge or mental hygiene commissioner. If the
5 individual is taken into custody and remains in custody as a result
6 of a detention order, the hearing shall be held within forty-eight
7 hours of the time that the individual is taken into custody.

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

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

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

21 (C) That the individual's previous hospitalizations due to
22 mental illness or addiction or both occurred as a result of the
23 individual's failure to take prescribed medication or follow a
24 regimen or course of treatment as prescribed by a physician or
25 psychiatrist to treat the individual's mental illness or addiction;

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

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

11 (E) 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 other treatment as prescribed is likely to lead
15 to further instances in the reasonably near future in which the
16 individual becomes likely to cause serious harm or commit a crime
17 of violence against any person;

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

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

25 (H) That, if necessary, a medical provider is available to

1 assess the individual within forty-eight hours of the entry of the
2 treatment compliance order.

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

17 (5) ~~(A)~~ After the entry of a treatment compliance order in
18 accordance with the provisions of subdivisions (3) and (4) of this
19 subsection ~~(b) of this section~~, if a verified petition is filed
20 alleging that an individual has not complied with the terms of a
21 medication and treatment compliance order and if a circuit judge or
22 mental hygiene commissioner determines from the petition and any
23 supporting evidence that there is probable cause to believe that
24 the allegations in the petition are true, counsel shall be
25 appointed for the individual and a copy of the petition and all

1 supporting evidence shall be furnished to the individual and his or
2 her counsel. If the circuit judge or mental hygiene commissioner
3 considers it necessary to protect the individual or to secure his
4 or her examination, a detention order may be entered to require
5 that the individual be examined by a psychiatrist or psychologist.

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

14 (B) At a hearing on any petition filed pursuant to the
15 provisions of paragraph (A) of this subdivision, ~~(5), subsection~~
16 ~~(b) of this section,~~ the circuit judge or mental hygiene
17 commissioner shall determine whether the individual has complied
18 with the terms of the medication and treatment compliance order.
19 If the individual has complied with the order, the petition shall
20 be dismissed. ~~Provided, That~~ If the evidence presented to the
21 circuit judge or mental hygiene commissioner shows that the
22 individual has complied with the terms of the existing order, but
23 the individual's prescribed medication, dosage or course of
24 treatment needs to be modified, then the newly modified medication
25 and treatment prescribed by a psychiatrist who personally examined

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

19 ~~(c)(1)~~ (d) The modified procedures may authorize that upon the
20 certification of a qualified mental health professional, as
21 described in ~~subdivision (2) of this~~ subsection (e) of this
22 section, that there is probable cause to believe that an individual
23 who has been hospitalized two or more times in the previous
24 twenty-four months because of mental illness is likely to cause
25 serious harm to himself or herself, herself or to others as a

1 result of the mental illness if not immediately restrained and that
2 the best interests of the individual would be served by immediate
3 hospitalization, a circuit judge, mental hygiene commissioner or
4 designated magistrate may enter a temporary probable cause order
5 directing the involuntary hospitalization of the individual at a
6 mental health facility for immediate examination and treatment.

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

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