

**Senate Bill No. 578**

(By Senators Stollings and Foster)

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[Introduced February 13, 2012; referred to the Committee on the  
Judiciary.]

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A BILL to amend and reenact §27-5-11 of the Code of West Virginia,  
1931, as amended, relating to modified mental hygiene  
procedures; deleting the termination date of the modified  
mental hygiene procedures pilot project; authorizing  
additional programs throughout the state; and continuing the  
pilot project as a permanent program.

*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; instituting modified  
mental hygiene procedures; establishing procedures;**

1                   **providing for forms and reports.**

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

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

1        (c) The Supreme Court of Appeals may, after consultation with  
2 the Secretary of the Department of Health and Human Resources and  
3 local mental health services consumers and providers ~~during the~~  
4 ~~pilot program period,~~ further modify any specific modified  
5 procedures that are implemented ~~Provided, That~~ pursuant to this  
6 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, 2012, unless extended by an act of the~~  
17 ~~Legislature prior to that date.~~

18        ~~(b)~~ (1) The modified procedures shall authorize that a  
19 verified petition seeking a treatment compliance order may be filed  
20 by any 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, has been hospitalized pursuant to the  
24 provisions of this chapter; or that the individual has been

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

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

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

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

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

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

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

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

1 a twenty-four month period prior to the filing of the petition has  
2 been convicted of a crime of violence against any person;

3 (C) That the individual's previous hospitalizations due to  
4 mental illness occurred as a result of the individual's failure to  
5 take prescribed medication or follow a regimen or course of  
6 treatment as prescribed by a physician or psychiatrist to treat the  
7 individual's mental illness; or that the individual has been  
8 convicted for crimes of violence against any person and the  
9 individual's failure to take medication or follow a prescribed  
10 regimen or course of treatment of the individual's mental illness  
11 was a significant aggravating or contributing factor in the  
12 commission of the crime;

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

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

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

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

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

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

1           (5) ~~(A)~~ After the entry of a treatment compliance order in  
2 accordance with the provisions of subdivisions (3) and (4) of this  
3 subsection ~~(b) of this section,~~ if a verified petition is filed  
4 alleging that an individual has not complied with the terms of a  
5 medication and treatment compliance order and if a circuit judge or  
6 mental hygiene commissioner determines from the petition and any  
7 supporting evidence that there is probable cause to believe that  
8 the allegations in the petition are true, counsel shall be  
9 appointed for the individual and a copy of the petition and all  
10 supporting evidence shall be furnished to the individual and his or  
11 her counsel. If the circuit judge or mental hygiene commissioner  
12 considers it necessary to protect the individual or to secure his  
13 or her examination, a detention order may be entered to require  
14 that the individual be examined by a psychiatrist or psychologist.

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

23           (B) At a hearing on any petition filed pursuant to the  
24 provisions of paragraph (A) of this subdivision, ~~(5), subsection~~

1 ~~(b) of this section,~~ the circuit judge or mental hygiene  
2 commissioner shall determine whether the individual has complied  
3 with the terms of the medication and treatment compliance order.  
4 If the individual has complied with the order, the petition shall  
5 be dismissed. ~~Provided, That~~ If the evidence presented to the  
6 circuit judge or mental hygiene commissioner shows that the  
7 individual has complied with the terms of the existing order, but  
8 the individual's prescribed medication, dosage or course of  
9 treatment needs to be modified, then the newly modified medication  
10 and treatment prescribed by a psychiatrist who personally examined  
11 the individual may be properly incorporated into a modified order.  
12 If the order has not been complied with, the circuit judge or  
13 mental hygiene commissioner, after inquiring into the reasons for  
14 noncompliance and whether any aspects of the order should be  
15 modified, may continue the individual upon the terms of the  
16 original order and direct the individual to comply with the order  
17 or may modify the order in light of the evidence presented at the  
18 hearing. If the evidence shows that the individual at the time of  
19 the hearing is likely to cause serious harm to himself or herself,  
20 herself or others as a result of the individual's mental illness,  
21 the circuit judge or mental hygiene commissioner may convert the  
22 proceeding into a probable cause proceeding and enter a probable  
23 cause order directing the involuntary admission of the individual  
24 to a mental health facility for examination and treatment.

1 ~~Provided, however, That~~ Any procedures conducted pursuant to this  
2 subsection must comply with and satisfy all applicable due process  
3 and hearing requirements of ~~contained in~~ sections two and three of  
4 this article. ~~have been fully satisfied~~

5 ~~(c)(1)~~ (d) The modified procedures may authorize that upon the  
6 certification of a qualified mental health professional, as  
7 described in ~~subdivision (2) of this~~ subsection (e) of this  
8 section, that there is probable cause to believe that an individual  
9 who has been hospitalized two or more times in the previous  
10 twenty-four months because of mental illness is likely to cause  
11 serious harm to himself or herself, or to others as a result of the  
12 mental illness if not immediately restrained and that the best  
13 interests of the individual would be served by immediate  
14 hospitalization, a circuit judge, mental hygiene commissioner or  
15 designated magistrate may enter a temporary probable cause order  
16 directing the involuntary hospitalization of the individual at a  
17 mental health facility for immediate examination and treatment.

18 ~~(2)~~ (e) The modified procedures may authorize the chief judge  
19 of a judicial circuit, or circuit judge if there is no chief judge,  
20 to enter orders authorizing specific psychiatrists or licensed  
21 psychologists, whose qualifications and training have been reviewed  
22 and approved by the Supreme Court of Appeals, to issue  
23 certifications that authorize and direct the involuntary admission  
24 of an individual subject to the provisions of this section on a

1 temporary probable cause basis to a mental health facility for  
2 examination and treatment. ~~Provided, That~~ The authorized  
3 psychiatrist or licensed psychologist must conclude and certify  
4 based on personal observation prior to certification that the  
5 individual is mentally ill and, because of such mental illness, is  
6 imminently likely to cause serious harm to himself or herself or to  
7 others if not immediately restrained and promotion of the best  
8 interests of the individual requires immediate hospitalization.  
9 Immediately upon certification, the psychiatrist or licensed  
10 psychologist shall provide notice of the certification to a circuit  
11 judge, mental hygiene commissioner or designated magistrate in the  
12 county where the individual resides.

13       ~~(3)~~ (f) No involuntary hospitalization pursuant to a temporary  
14 probable cause determination issued pursuant to the provisions of  
15 this section shall continue in effect for more than forty-eight  
16 hours without the filing of a petition for involuntary  
17 hospitalization and the occurrence of a probable cause hearing  
18 before a circuit judge, mental hygiene commissioner or designated  
19 magistrate. If at any time the chief medical officer of the mental  
20 health facility to which the individual is admitted determines that  
21 the individual is not likely to cause serious harm as a result of  
22 mental illness, the chief medical officer shall discharge the  
23 individual and immediately forward a copy of the individual's  
24 discharge to the circuit judge, mental hygiene commissioner or

1 designated magistrate.

NOTE: The purpose of this bill is to remove the expiration date of the pilot project establishing emergency mental hygiene procedures and make the program permanent.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.