

COMMITTEE SUBSTITUTE

FOR

H. B. 4424

(BY DELEGATES MORGAN, STEPHENS,
BUTCHER, STAGGERS AND BORDER)

(Originating in the Committee on the Judiciary)
[February 22, 2012]

A BILL to amend and reenact §27-5-11 of the Code of West Virginia, 1931, as amended, relating to modified mental hygiene procedures; extending the termination date of the modified mental hygiene procedures pilot project; authorizing additional programs throughout the state; and continuing the pilot project through July 1, 2013.

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~~ instituting modified mental hygiene procedures; establishing procedures; providing for forms and reports.

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

15 Appeals and the Secretary of the Department of Health and
16 Human Resources may add programs for modified mental
17 hygiene procedures in any judicial circuit that establishes a
18 need for the same.

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

27 (c) The Supreme Court of Appeals may, after
28 consultation with the Secretary of the Department of Health
29 and Human Resources and local mental health services
30 consumers and providers ~~during the pilot program period;~~
31 further modify any specific modified procedures that are
32 implemented *Provided, That* pursuant to this section. The
33 modified procedures must be consistent with the

34 requirements of this chapter and this section. If the Secretary
35 of the Department of Health and Human Resources
36 determines that the use of any modified procedure in one or
37 more judicial circuits is placing an unacceptable additional
38 burden upon state mental health resources, the Supreme
39 Court of Appeals shall, in consultation with the secretary,
40 modify the procedures used in such a fashion as will address
41 the concerns of the secretary, consistent with the
42 requirements of this chapter. The provisions of this section
43 and the modified procedures thereby authorized shall cease
44 to have any force and effect on June 30, ~~2012~~ 2013, unless
45 extended by an act of the Legislature prior to that date.

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

49 (A) That an individual, on two or more occasions within
50 a twenty-four month period prior to the filing of the petition,
51 as a result of mental illness or addiction or both, has been
52 hospitalized pursuant to the provisions of this chapter; or that

53 the individual has been convicted of one or more crimes of
54 violence against the person within a twenty-four month
55 period prior to the filing of the petition and the individual's
56 failure to take prescribed medication or follow another
57 prescribed regimen to treat a mental illness or addiction or
58 both was a significant aggravating or contributing factor in
59 the circumstances surrounding the crime;

60 (B) That the individual's previous hospitalizations due to
61 mental illness or addiction or both or the individual's crime
62 of violence occurred after or as a result of the individual's
63 failure to take medication or other treatment as prescribed by
64 a physician to treat the individual's mental illness or
65 addiction or both; and

66 (C) That the individual, in the absence of a court order
67 requiring him or her to take medication or other treatment as
68 prescribed, is unlikely to do so and that his or her failure to
69 take medication or follow other regimen or treatment as
70 prescribed is likely to lead to further instances in the
71 reasonably near future in which the individual becomes likely

72 to cause serious harm or commit a crime of violence against
73 the person.

74 (2) Upon the filing of a petition seeking a treatment
75 compliance order and the petition's review by a circuit judge
76 or mental hygiene commissioner, counsel shall be appointed
77 for the individual if the individual does not already have
78 counsel and a copy of the petition and all supporting
79 evidence shall be furnished to the individual and their
80 counsel. If the circuit judge or mental hygiene commissioner
81 determines on the basis of the petition that it is necessary to
82 protect the individual or to secure their examination, a
83 detention order may be entered ordering that the individual
84 be taken into custody and examined by a psychiatrist or
85 licensed psychologist. A hearing on the allegations in the
86 petition, which may be combined with a hearing on a
87 probable cause petition conducted pursuant to the provisions
88 of section two of this article or a final commitment hearing
89 conducted pursuant to the provisions of section four of this
90 article, shall be held before a circuit judge or mental hygiene

91 commissioner. If the individual is taken into custody and
92 remains in custody as a result of a detention order, the
93 hearing shall be held within forty-eight hours of the time that
94 the individual is taken into custody.

95 (3) If the allegations in the petition seeking a treatment
96 compliance order are proved by the evidence adduced at the
97 hearing, which must include expert testimony by a
98 psychiatrist or licensed psychologist, the circuit judge or
99 mental hygiene commissioner may enter a treatment
100 compliance order for a period not to exceed six months upon
101 making the following findings:

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

103 (B) That on two or more occasions within a twenty-four
104 month period prior to the filing of the petition an individual,
105 as a result of mental illness, has been hospitalized pursuant
106 to the provisions of this chapter; or that on at least one
107 occasion within a twenty-four month period prior to the filing
108 of the petition has been convicted of a crime of violence
109 against any person;

110 (C) That the individual's previous hospitalizations due to
111 mental illness or addiction or both occurred as a result of the
112 individual's failure to take prescribed medication or follow
113 a regimen or course of treatment as prescribed by a physician
114 or psychiatrist to treat the individual's mental illness or
115 addiction; or that the individual has been convicted for
116 crimes of violence against any person and the individual's
117 failure to take medication or follow a prescribed regimen or
118 course of treatment of the individual's mental illness or
119 addiction or both was a significant aggravating or
120 contributing factor in the commission of the crime;

121 (D) That a psychiatrist or licensed psychologist who has
122 personally examined the individual within the preceding
123 twenty-four months has issued a written opinion that the
124 individual, without the aid of the medication or other
125 prescribed treatment, is likely to cause serious harm to
126 himself or herself or to others;

127 (E) That the individual, in the absence of a court order
128 requiring him or her to take medication or other treatment as

129 prescribed, is unlikely to do so and that his or her failure to
130 take medication or other treatment as prescribed is likely to
131 lead to further instances in the reasonably near future in
132 which the individual becomes likely to cause serious harm or
133 commit a crime of violence against any person;

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

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

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

145 (4) The order may require an individual to take medication
146 and treatment as prescribed and if appropriate to attend
147 scheduled medication and treatment-related appointments:

148 *Provided*, That a treatment compliance order shall be subject
149 to termination or modification by a circuit judge or mental
150 hygiene commissioner if a petition is filed seeking termination
151 or modification of the order and it is shown in a hearing on the
152 petition that there has been a material change in the
153 circumstances that led to the entry of the original order that
154 justifies the order's modification or termination: *Provided*,
155 *however*, That a treatment compliance order may be extended
156 by a circuit judge or mental hygiene commissioner for
157 additional periods of time not to exceed six months, upon the
158 filing of a petition seeking an extension and after a hearing on
159 the petition or upon the agreement of the individual.

160 (5) ~~(A)~~ After the entry of a treatment compliance order in
161 accordance with the provisions of subdivisions (3) and (4) of
162 this subsection ~~(b) of this section~~, if a verified petition is filed
163 alleging that an individual has not complied with the terms of
164 a medication and treatment compliance order and if a circuit
165 judge or mental hygiene commissioner determines from the
166 petition and any supporting evidence that there is probable

167 cause to believe that the allegations in the petition are true,
168 counsel shall be appointed for the individual and a copy of
169 the petition and all supporting evidence shall be furnished to
170 the individual and his or her counsel. If the circuit judge or
171 mental hygiene commissioner considers it necessary to
172 protect the individual or to secure his or her examination, a
173 detention order may be entered to require that the individual
174 be examined by a psychiatrist or psychologist.

175 (A) A hearing on the allegations in the petition, which
176 may be combined with a hearing on a probable cause petition
177 conducted pursuant to section two of this article or a final
178 commitment hearing conducted pursuant to section four of
179 this article, shall be held before a circuit judge or mental
180 hygiene commissioner. If the individual is taken and remains
181 in custody as a result of a detention order, the hearing shall
182 be held within forty-eight hours of the time that the
183 individual is taken into custody.

184 (B) At a hearing on any petition filed pursuant to the
185 provisions of paragraph (A) of this subdivision, ~~(5)~~;

186 ~~subsection (b) of this section~~, the circuit judge or mental
187 hygiene commissioner shall determine whether the individual
188 has complied with the terms of the medication and treatment
189 compliance order. If the individual has complied with the
190 order, the petition shall be dismissed. *Provided, That* If the
191 evidence presented to the circuit judge or mental hygiene
192 commissioner shows that the individual has complied with
193 the terms of the existing order, but the individual's prescribed
194 medication, dosage or course of treatment needs to be
195 modified, then the newly modified medication and treatment
196 prescribed by a psychiatrist who personally examined the
197 individual may be properly incorporated into a modified
198 order. If the order has not been complied with, the circuit
199 judge or mental hygiene commissioner, after inquiring into
200 the reasons for noncompliance and whether any aspects of
201 the order should be modified, may continue the individual
202 upon the terms of the original order and direct the individual
203 to comply with the order or may modify the order in light of
204 the evidence presented at the hearing. If the evidence shows

205 that the individual at the time of the hearing is likely to cause
206 serious harm to himself or herself, herself or others as a result
207 of the 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 order
210 directing the involuntary admission of the individual to a
211 mental health facility for examination and treatment.

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

216 ~~(c)(1)~~ (d) The modified procedures may authorize that
217 upon the certification of a qualified mental health
218 professional, as described in ~~subdivision (2) of this~~
219 subsection (e) of this section, that there is probable cause to
220 believe that an individual who has been hospitalized two or
221 more times in the previous twenty-four months because of
222 mental illness is likely to cause serious harm to himself or
223 herself, or to others as a result of the mental illness if not

224 immediately restrained and that the best interests of the
225 individual would be served by immediate hospitalization, a
226 circuit judge, mental hygiene commissioner or designated
227 magistrate may enter a temporary probable cause order
228 directing the involuntary hospitalization of the individual at
229 a mental health facility for immediate examination and
230 treatment.

231 (2) (e) The modified procedures may authorize the chief
232 judge of a judicial circuit, or circuit judge if there is no chief
233 judge, to enter orders authorizing specific psychiatrists or
234 licensed psychologists, whose qualifications and training
235 have been reviewed and approved by the Supreme Court of
236 Appeals, to issue certifications that authorize and direct the
237 involuntary admission of an individual subject to the
238 provisions of this section on a temporary probable cause
239 basis to a mental health facility for examination and
240 treatment. ~~Provided, That~~ The authorized psychiatrist or
241 licensed psychologist must conclude and certify based on
242 personal observation prior to certification that the individual

243 is mentally ill and, because of such mental illness or
244 addiction or both, is imminently likely to cause serious harm
245 to himself or herself or to others if not immediately restrained
246 and promotion of the best interests of the individual requires
247 immediate hospitalization. Immediately upon certification,
248 the psychiatrist or licensed psychologist shall provide notice
249 of the certification to a circuit judge, mental hygiene
250 commissioner or designated magistrate in the county where
251 the individual resides.

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

262 or addiction or both, the chief medical officer shall discharge
263 the individual and immediately forward a copy of the
264 individual's discharge to the circuit judge, mental hygiene
265 commissioner or designated magistrate.