

1 **H. B. 2587**

2
3 (By Delegates Sobonya, Miller, Nelson, J., Westfall,
4 Poore, Fleischauer, Shott, Ellem, McCuskey,
5 Espinosa and Manchin)
6

7 [Introduced February 21, 2013; referred to the
8 Committee on Health and Human Resources then the
9 Judiciary.]

10 A BILL to amend and reenact §27-5-9 of the Code of West Virginia,
11 1931, as amended, relating to mentally ill persons;
12 involuntary hospitalization; rights of patients; and right to
13 have records expunged when hospitalization is based upon a
14 wrong diagnosis of condition.

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

16 That §27-5-9 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

19 **§27-5-9. Rights of patients.**

20 (a) No person may be deprived of any civil right solely by
21 reason of his or her receipt of services for mental illness,
22 intellectual disability or addiction, nor does the receipt of the
23 services modify or vary any civil right of the person, including,
24 but not limited to, civil service status and appointment, the right
25 to register for and to vote at elections, the right to acquire and

1 to dispose of property, the right to execute instruments or rights
2 relating to the granting, forfeiture or denial of a license,
3 permit, privilege or benefit pursuant to any law, but a person who
4 has been adjudged incompetent pursuant to article eleven of this
5 chapter and who has not been restored to legal competency may be
6 deprived of such rights. Involuntary commitment pursuant to this
7 article does not of itself relieve the patient of legal capacity.

8 (b) Each patient of a mental health facility receiving
9 services from the facility shall receive care and treatment that is
10 suited to his or her needs and administered in a skillful, safe and
11 humane manner with full respect for his or her dignity and personal
12 integrity.

13 (c) Every patient has the following rights regardless of
14 adjudication of incompetency:

15 (1) Treatment by trained personnel;

16 (2) Careful and periodic psychiatric reevaluation no less
17 frequently than once every three months;

18 (3) Periodic physical examination by a physician no less
19 frequently than once every six months; and

20 (4) Treatment based on appropriate examination and diagnosis
21 by a staff member operating within the scope of his or her
22 professional license.

23 (d) The chief medical officer shall cause to be developed
24 within the clinical record of each patient a written treatment plan

1 based on initial medical and psychiatric examination not later than
2 seven days after he or she is admitted for treatment. The
3 treatment plan shall be updated periodically, consistent with
4 reevaluation of the patient. Failure to accord the patient the
5 requisite periodic examinations or treatment plan and reevaluations
6 entitles the patient to release.

7 (e) A clinical record shall be maintained at a mental health
8 facility for each patient treated by the facility. The record
9 shall contain information on all matters relating to the admission,
10 legal status, care and treatment of the patient and shall include
11 all pertinent documents relating to the patient. Specifically, the
12 record shall contain results of periodic examinations,
13 individualized treatment programs, evaluations and reevaluations,
14 orders for treatment, orders for application for mechanical
15 restraint and accident reports, all signed by the personnel
16 involved.

17 (f) Every patient, upon his or her admission to a hospital and
18 at any other reasonable time, shall be given a copy of the rights
19 afforded by this section.

20 (g) The Secretary of the Department of Health and Human
21 Resources shall propose rules for legislative approval in
22 accordance with the provisions of article three, chapter
23 twenty-nine-a of this code to protect the personal rights of
24 patients not inconsistent with this section and the provisions of

1 subsection (h) of this section relating to the procedure to expunge
2 records of involuntary hospitalization.

3 (h) Notwithstanding any provision of this chapter or any other
4 provision of law to the contrary, if a person is hospitalized
5 involuntarily as the result of an improper diagnosis of a medical,
6 mental or physical condition resulting from the use of a legally
7 prescribed medication, all records pertaining to the involuntary
8 hospitalization shall be expunged. The Secretary of the
9 Department of Health and Human Resources shall accept evidence from
10 a qualified forensic psychiatrist, qualified forensic psychologist
11 or qualified forensic evaluator, as those terms are defined in
12 section one, article six-a of this chapter, concerning the proper
13 diagnosis of the condition of the person hospitalized
14 involuntarily, and that the underlying cause was identified and
15 corrected. The secretary shall inform any person or other legal
16 entity that has received information, under the exceptions listed
17 in section one, article three of this chapter, concerning the
18 involuntary hospitalization of the person that the hospitalization
19 was the result of an improper diagnosis and that all records of
20 involuntary hospitalization are expunged.

NOTE: The purpose of this bill is to provide persons who have been hospitalized involuntarily the right to have records expunged when the hospitalization was based upon a wrong diagnosis of condition.

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