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**ENROLLED**  
**H. B. 2797**

(By Delegates Campbell, Perry, Moye, Fleischauer, Bates, Guthrie,  
Ellington, Householder, Ashley, P. Smith and McCuskey)

[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-20-1a of said code; to amend and reenact §28-1-2 of said code; and to amend and reenact §28-5-31 of said code, all relating to changing the term "mentally retarded" to "intellectually disabled;" and changing the term "handicapped" to "disabled."

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

That §17A-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-20-1a of said code be amended and reenacted; that §28-1-2 of said code be amended and reenacted; and that §28-5-31 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION,  
CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF  
CERTIFICATES OF TITLE.**

**§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumer sales and service tax provisions; exceptions.**

1           (a) Certificates of registration of any vehicle or registration plates for the vehicle, whether  
2 original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or  
3 any other officer or agent charged with the duty, unless the applicant already has received, or at the  
4 same time makes application for and is granted, an official certificate of title of the vehicle in either  
5 an electronic or paper format. The application shall be upon a blank form to be furnished by the  
6 Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall  
7 contain a manufacturer's serial or identification number or other number as determined by the  
8 commissioner and any distinguishing marks, together with a statement of the applicant's title and  
9 of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens  
10 and any other information as the Division of Motor Vehicles may require. The application shall be  
11 signed and sworn to by the applicant. A duly certified copy of the division's electronic record of a  
12 certificate of title is admissible in any civil, criminal or administrative proceeding in this state as  
13 evidence of ownership.

14           (b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle  
15 in the amount equal to five percent of the value of the motor vehicle at the time of the certification,  
16 to be assessed as follows:

17           (1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the  
18 vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market  
19 value at time of transfer or purchase is the value of the vehicle for the purposes of this section:  
20 *Provided*, That so much of the purchase price or consideration as is represented by the exchange of  
21 other vehicles on which the tax imposed by this section has been paid by the purchaser shall be  
22 deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new

1 or secondhand. If the vehicle is acquired through gift or by any manner whatsoever, unless  
2 specifically exempted in this section, the present market value of the vehicle at the time of the gift  
3 or transfer is the value of the vehicle for the purposes of this section.

4 (2) No certificate of title for any vehicle may be issued to any applicant unless the applicant  
5 has paid to the Division of Motor Vehicles the tax imposed by this section which is five percent of  
6 the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or  
7 by any other manner whatsoever, except gifts between husband and wife or between parents and  
8 children: *Provided*, That the husband or wife, or the parents or children, previously have paid the  
9 tax on the vehicles transferred to the State of West Virginia.

10 (3) The Division of Motor Vehicles may issue a certificate of registration and title to an  
11 applicant if the applicant provides sufficient proof to the Division of Motor Vehicles that the  
12 applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has  
13 gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and  
14 the taxes and fees so required to be paid by the applicant have not been sent to the division by the  
15 motor vehicle dealership or have been impounded due to the bankruptcy proceedings: *Provided*,  
16 That the applicant makes an affidavit of the same and assigns all rights to claims for money the  
17 applicant may have against the motor vehicle dealership to the Division of Motor Vehicles.

18 (4) The Division of Motor Vehicles shall issue a certificate of registration and title to an  
19 applicant without payment of the tax imposed by this section if the applicant is a corporation,  
20 partnership or limited liability company transferring the vehicle to another corporation, partnership  
21 or limited liability company when the entities involved in the transfer are members of the same  
22 controlled group and the transferring entity has previously paid the tax on the vehicle transferred.

1 For the purposes of this section, control means ownership, directly or indirectly, of stock or equity  
2 interests possessing fifty percent or more of the total combined voting power of all classes of the  
3 stock of a corporation or equity interests of a partnership or limited liability company entitled to vote  
4 or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of  
5 the value of the corporation, partnership or limited liability company.

6 (5) The tax imposed by this section does not apply to vehicles to be registered as Class H  
7 vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or  
8 to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of  
9 Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling  
10 of Class C semitrailers, full trailers, pole trailers and converter gear: *Provided*, That if an owner of  
11 a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds  
12 or more and the title was issued without the payment of the tax imposed by this section, then before  
13 the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand  
14 pounds, the owner shall surrender to the commissioner the exempted registration, the exempted  
15 certificate of title and pay the tax imposed by this section based upon the current market value of the  
16 vehicle: *Provided, however*, That notwithstanding the provisions of section nine, article fifteen,  
17 chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess  
18 of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear  
19 does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

20 (6) The tax imposed by this section does not apply to titling of vehicles leased by residents  
21 of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle  
22 leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly

1 payment, applied to each payment, and continuing for the entire term of the initial lease period. The  
2 tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the  
3 vehicle.

4 (7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer  
5 of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by  
6 this state or any political subdivision thereof, or by any volunteer fire department or duly chartered  
7 rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit  
8 corporation for protection of life or property. The total amount of revenue collected by reason of this  
9 tax shall be paid into the state Road Fund and expended by the Commissioner of Highways for  
10 matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of \$5 for  
11 each original certificate of title or duplicate certificate of title so issued: *Provided*, That this state  
12 or any political subdivision of this state or any volunteer fire department or duly chartered rescue  
13 squad is exempt from payment of the charge.

14 (8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held  
15 by the original holder of the certificate and need not be renewed annually, or any other time, except  
16 as provided in this section.

17 (9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the  
18 tax imposed by this section previously has been paid to the Division of Motor Vehicles on that  
19 vehicle, he or she is not required to pay the tax.

20 (10) A person who has paid the tax imposed by this section is not required to pay the tax a  
21 second time for the same motor vehicle, but is required to pay a charge of \$5 for the certificate of  
22 retitling of that motor vehicle, except that the tax shall be paid by the person when the title to the

1 vehicle has been transferred either in this or another state from the person to another person and  
2 transferred back to the person.

3 (11) The tax imposed by this section does not apply to any passenger vehicle offered for rent  
4 in the normal course of business by a daily passenger rental car business as licensed under the  
5 provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means  
6 a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in  
7 this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax  
8 of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The commissioner  
9 shall propose an emergency rule in accordance with the provisions of article three, chapter  
10 twenty-nine-a of this code to establish this tax.

11 (12) The tax imposed by this article does not apply to the titling of any vehicle purchased by  
12 a senior citizen service organization which is exempt from the payment of income taxes under the  
13 United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be a  
14 bona fide senior citizen service organization by the senior services bureau existing under the  
15 provisions of article five, chapter sixteen of this code.

16 (13) The tax imposed by this section does not apply to the titling of any vehicle operated by  
17 an urban mass transit authority as defined in article twenty-seven, chapter eight of this code or a  
18 nonprofit entity exempt from federal and state income tax under the Internal Revenue Code and  
19 whose purpose is to provide mass transportation to the public at large designed for the transportation  
20 of persons and being operated for the transportation of persons in the public interest.

21 (14) The tax imposed by this section does not apply to the transfer of a title to a vehicle  
22 owned and titled in the name of a resident of this state if the applicant:

1 (A) Was not a resident of this state at the time the applicant purchased or otherwise acquired  
2 ownership of the vehicle;

3 (B) Presents evidence as the commissioner may require of having titled the vehicle in the  
4 applicant's previous state of residence;

5 (C) Has relocated to this state and can present such evidence as the commissioner may  
6 require to show bona-fide residency in this state;

7 (D) Presents an affidavit, completed by the assessor of the applicant's county of residence,  
8 establishing that the vehicle has been properly reported and is on record in the office of the assessor  
9 as personal property; and

10 (E) Makes application to the division for a title and registration, and pays all other fees  
11 required by this chapter within thirty days of establishing residency in this state as prescribed in  
12 subsection (a), section one-a of this article: *Provided*, That a period of amnesty of three months be  
13 established by the commissioner during the calendar year 2007, during which time any resident of  
14 this state, having titled his or her vehicle in a previous state of residence, may pay without penalty  
15 any fees required by this chapter and transfer the title of his or her vehicle in accordance with the  
16 provisions of this section.

17 (c) Notwithstanding any provisions of this code to the contrary, the owners of trailers,  
18 semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior  
19 to the enactment of this chapter are subject to the privilege tax imposed by this section: *Provided*,  
20 That the certification of title of any recreational vehicle owned by the applicant on June 30, 1989,  
21 is not subject to the tax imposed by this section: *Provided, however*, That mobile homes,  
22 manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational

1 vehicles and house trailers, susceptible of being moved upon the highways but primarily designed  
2 for habitation and occupancy, rather than for transporting persons or property, or any vehicle  
3 operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled  
4 or physically disabled children when the application for certificate of registration for the vehicle is  
5 accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used  
6 exclusively for the transportation of intellectually disabled and physically disabled children, are not  
7 subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and  
8 fifteen-a, chapter eleven of this code.

9 (d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is  
10 abolished and after that date no certificate of title for any motor vehicle may be issued to any  
11 applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the  
12 applicant has paid the fees required by this article and the tax imposed under section three-b, article  
13 fifteen, chapter eleven of this code.

14 (e) Any person making any affidavit required under any provision of this section who  
15 knowingly swears falsely, or any person who counsels, advises, aids or abets another in the  
16 commission of false swearing, or any person, while acting as an agent of the Division of Motor  
17 Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform  
18 any other duty required by this chapter or chapter eleven of this code to be performed before a  
19 vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction  
20 thereof, shall be fined not more than \$500 or be confined in jail for a period not to exceed six months  
21 or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction  
22 within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not



1 more than \$5,000 or be imprisoned in a state correctional facility for not less than one year nor more  
2 than five years or, in the discretion of the court, both fined and imprisoned.

3 (f) Notwithstanding any other provisions of this section, any person in the military stationed  
4 outside West Virginia or his or her dependents who possess a motor vehicle with valid registration  
5 are exempt from the provisions of this article for a period of nine months from the date the person  
6 returns to this state or the date his or her dependent returns to this state, whichever is later.

7 (g) No person may transfer, purchase or sell a factory-built home without a certificate of title  
8 issued by the commissioner in accordance with the provisions of this article:

9 (1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale  
10 of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first  
11 offense be fined not less than \$100 nor more than \$1,000, or be confined in jail for not more than  
12 one year, or both fined and confined. For each subsequent offense, the fine may be increased to not  
13 more than \$2,000, with confinement in jail not more than one year, or both fined and confined.

14 (2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built  
15 home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of  
16 damages, costs and reasonable attorney fees.

17 (3) This subsection does not apply to a mobile or manufactured home for which a certificate  
18 of title has been canceled pursuant to section twelve-b of this article.

19 (h) Notwithstanding any other provision to the contrary, whenever reference is made to the  
20 application for or issuance of any title or the recordation or release of any lien, it includes the  
21 application, transmission, recordation, transfer of ownership and storage of information in an  
22 electronic format.

1 (i) Notwithstanding any other provision contained in this section, nothing herein shall be  
2 considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter  
3 thirty-seven of this code and built to the state Building Code as established by legislative rules  
4 promulgated by the state Fire Commission pursuant to section five-b, article three, chapter  
5 twenty-nine of this code.

6 **CHAPTER 18. EDUCATION.**

7 **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

8 **§18-20-1a. Preschool programs for severely disabled children; rules and regulations.**

9 (a) During the school year beginning on July 1, 1985, each county board of education shall  
10 develop a coordinated service delivery plan in accordance with standards for preschool programs for  
11 severely disabled children to be developed by the state Board of Education and begin services where  
12 plans are already developed.

13 (b) Only in any year in which funds are made available by legislative appropriation, and only  
14 to the extent of such funding, each county board of education shall establish and maintain a special  
15 educational program, including, but not limited to, special classes and home-teaching and  
16 visiting-teacher services for all severely disabled children between the ages of three and five  
17 according to the following schedule:

18 (1) By the school year beginning on July 1, 1986, and thereafter, for severely disabled  
19 children who are age four before September 1, 1986;

20 (2) By the school year beginning on July 1, 1987, and thereafter, for severely disabled  
21 children who are age three before September 1, 1987.

22 As used in this section, the term "severely disabled children" means those children who fall

1 in any one of the following categories as defined or to be defined in the state Board of Education  
 2 standards for the education of exceptional children: Severe behavioral disorders, severely speech  
 3 and language impaired, deaf-blind, hearing impaired, autistic, physically, disabled profoundly  
 4 intellectually disabled, trainable intellectually disabled or visually impaired.

5 Before August 1, 1985, the state Board of Education shall adopt rules and regulations to  
 6 advance and accomplish this program and to assure that an appropriate educational program is  
 7 available to all such children in the state, including children in mental health facilities, residential  
 8 institutions and private schools.

9 This section does not prevent county boards of education from providing special education  
 10 programs, including, but not limited to, special schools, classes, regular class programs and  
 11 home-teaching or visiting-teacher services for severely disabled preschool children prior to such  
 12 times as are required by this section. In addition, county boards of education may provide these  
 13 services to preschool exceptional children in disability categories other than those listed above.

14 **CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**

15 **ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.**

16 **§28-1-2. Commitment; age limits; physical, educational and psychological examinations;**  
 17 **admission; transfer and placement.**

18 (a) Any male youth between the ages of ten and eighteen years may be committed to the  
 19 custody of the commissioner of corrections by a circuit court of this state in the manner prescribed  
 20 in article five, chapter forty-nine of this code; and further, any male youth who has been adjudged  
 21 delinquent pursuant to subdivision(1), section four, article one, chapter forty-nine of this code, who,  
 22 as a result thereof, was placed on probation and has been found, in a proceeding pursuant to the

1 procedural requirements of article five, chapter forty-nine of this code, to have violated a term of  
2 probation, prior to the attainment of his or her twentieth birthday, which constitutes a criminal  
3 offense, may be committed to the custody of the commissioner of corrections as a youthful offender.

4 (b) Every youth committed hereunder shall, following the dispositional proceeding, be  
5 transferred to the place or places designated by the commissioner of corrections for complete  
6 physical, educational and psychological examinations, including all appropriate tests, to be  
7 completed as soon as possible, the completion of the physical examinations to be within twenty days.  
8 Such youth shall be housed in a manner so as to prevent the spread of infectious disease. Following  
9 disposition and prior to transfer to the custody of the commissioner of corrections, each youth shall  
10 be allowed to visit with his or her relatives, without being committed to jail for a period of not less  
11 than one hour. The cost of the examinations herein shall be borne by the committing county. The  
12 youth shall be provided all treatment and rehabilitation indicated by such examinations.

13 In lieu of the physical examinations and tests provided for herein, the court may, in the  
14 absence of objection, have the county health officer or other local health care facility perform  
15 physical and mental examinations and tests, so long as such examinations and tests are performed  
16 prior to the dispositional proceeding. Except as otherwise provided by law, no child shall be  
17 committed to a jail following a dispositional proceeding solely to await a physical, educational or  
18 mental examination or the results thereof.

19 (c) All such examinations shall be private. No youth who is mentally ill or significantly  
20 intellectually disabled shall be committed to, or retained by, the commissioner of corrections, but  
21 shall be returned to the committing court for further disposition. No youth who has a serious  
22 infectious disease shall be retained in the custody of the commissioner of corrections, but shall be

1 transferred to an appropriate treatment facility. Detailed medical records shall be kept of every  
2 youth.

3 (d) The results of any such physical, educational and psychological examinations, together  
4 with a copy of the petition, the adjudicatory order and the dispositional order shall accompany every  
5 youth committed to the commissioner of corrections, without which such youth shall not be  
6 accepted. The commissioner, or his or her designated representative, shall review the records of each  
7 youth committed to assure that no youth is illegally detained in an inappropriate facility or custodial  
8 situation.

9 (e) The commissioner of corrections shall have the authority to transfer and place such youth  
10 in any of the centers or homes or halfway programs which shall be established, and in less restrictive  
11 settings, whether under his or her jurisdiction or private nonprofit residential facilities, as he or she  
12 may deem appropriate to promote the rehabilitation of such youth. To the extent possible, no youth  
13 under the age of fifteen shall be in regular contact with youths between the ages of sixteen and  
14 eighteen.

15 **ARTICLE 5. THE PENITENTIARY.**

16 **§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health**  
17 **facilities; penal facility procedures.**

18 (a) No person who is, or was considered to be, mentally ill, intellectually disabled or addicted  
19 shall be denied parole or a parole hearing based upon such past or present condition. In the event a  
20 convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting  
21 involuntary hospitalization such person shall be paroled and proceedings instituted pursuant to  
22 section four, article five, chapter twenty-seven of this code. Any time spent in such facility shall be

1 considered part of the term, and any person whose sentence expires while receiving treatment for a  
2 mental condition shall be discharged unless proceedings have been instituted and a determination  
3 made pursuant to section four, article five, chapter twenty-seven of this code.

4 (b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill,  
5 intellectually disabled or addicted, as those terms are defined in article one, chapter twenty-seven  
6 of this code, and in need of treatment, training or other services, the facts relating to such illness,  
7 shall be presented to the chief administrative officer of the facility. Such facts may be presented by  
8 a correctional officer, member of a correctional institution medical staff, relative, or the convicted  
9 person. Immediately upon receipt of such facts, the chief administrative officer shall arrange for  
10 psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the  
11 examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and  
12 that treatment, training or other services are required which cannot reasonably be provided at the  
13 correctional facility, the chief administrative officer shall file within twenty days after presentation  
14 of the facts an application for transfer with the clerk of the circuit court of the county of location of  
15 the correctional facility. Such application for transfer shall include a statement of the nature of the  
16 treatment which the person's condition warrants and the facility to which transfer is sought.

17 Within ten days of receipt of the application from the chief administrative officer, the mental  
18 hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person  
19 is indigent.

20 The clerk of the circuit court shall forthwith notify the convicted person, by certified mail,  
21 return receipt requested, delivered only to addressee, that such application has been filed, enclosing  
22 therewith a copy of the application with an explanation of the place and purpose of the transfer and

1 the type of treatment to be afforded, together with the name, address, and telephone number of any  
2 appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel.  
3 The clerk shall also notify the superintendent or other chief administrative officer of the facility to  
4 which transfer is sought. Within fifteen days after receipt of notice, the convicted person, through  
5 counsel, shall file a verified return admitting or denying the allegations and informing the court or  
6 mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel  
7 shall file the return only after personal consultation with the convicted person. The superintendent  
8 of the facility to which transfer is sought shall also file a return within fifteen days of the receipt of  
9 notice, informing the court or mental hygiene commissioner as to whether the needed treatment or  
10 other services can be provided within that facility. If said superintendent objects to receiving the  
11 convicted person for treatment or services, the reasons for such objection shall be specified in detail.

12         If the transfer is opposed by either the convicted person or by the superintendent of the  
13 facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed  
14 thirty days from the date of the return opposing such transfer, and the clerk shall provide to the  
15 convicted person, the superintendent of the facility to which transfer is sought, and the  
16 superintendent of the correctional facility, at least ten days' written notice, by certified mail, return  
17 receipt requested, of the purpose, time and place of the hearing.

18         The convicted person shall be present at the hearing, and be afforded an opportunity to testify  
19 and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to  
20 copies of all medical reports upon request. The person shall have the right to an examination by an  
21 independent expert of the person's choice and testimony from such expert as a medical witness on  
22 the person's behalf. The cost of providing such medical expert shall be borne by the state if the

1 person is indigent. The person shall not be required to give testimony which is self-incriminating.  
2 The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with  
3 the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made  
4 available to the person within thirty days, if the same is requested for the purpose of further  
5 proceedings, and without cost if the person is indigent.

6       Upon completion of the hearing, and consideration of the evidence presented therein, the  
7 circuit court or mental hygiene commissioner shall make findings of facts as to whether or not (1)  
8 the individual is mentally ill, intellectually disabled or addicted; (2) the individual because of mental  
9 illness, mental retardation or addiction is likely to cause serious harm to self or others; (3) the  
10 individual could not obtain the requisite treatment or training at the correctional facility or another  
11 appropriate correctional facility; and (4) the designated facility to which transfer is sought could  
12 provide such treatment or training with such security as the court finds appropriate; and, if all such  
13 findings are in the affirmative, the circuit court may order the transfer of such person to the  
14 appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit  
15 court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm  
16 must be established by clear, cogent and convincing evidence, and the likelihood of serious harm  
17 must be based upon evidence of recent overt acts.