

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2418

FISCAL
NOTE

2015 Carryover

(BY DELEGATES P. SMITH, RODIGHIERO AND LYNCH)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §27-5-4 of the Code of West Virginia, 1931, as amended, relating
 2 to requiring the Department of Health and Human Resources to reimburse the circuit clerk
 3 of the county for expenses of filing, postage and copies of involuntary commitment
 4 hearings.

Be it enacted by the Legislature of West Virginia:

1 That §27-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

1 (a) *Involuntary commitment.* -- Except as provided in section three of this article, no
 2 individual may be involuntarily committed to a mental health facility except by order entered of
 3 record at any time by the circuit court of the county in which the person resides or was found, or
 4 if the individual is hospitalized in a mental health facility located in a county other than where he
 5 or she resides or was found, in the county of the mental health facility and then only after a full
 6 hearing on issues relating to the necessity of committing an individual to a mental health facility.
 7 If the individual objects to the hearing being held in the county where the mental health facility is
 8 located, the hearing shall be conducted in the county of the individual's residence.

9 (b) *How final commitment proceedings are commenced.* -- Final commitment
 10 proceedings for an individual may be commenced by the filing of a written application under oath
 11 by an adult person having personal knowledge of the facts of the case. The certificate or affidavit
 12 is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the
 13 individual is a resident or where he or she may be found or the county of a mental health facility
 14 if he or she is hospitalized in a mental health facility located in a county other than where he or
 15 she resides or may be found.

16 (c) *Oath; contents of application; who may inspect application; when application cannot*
17 *be filed.* -

18 (1) The person making the application shall do so under oath.

19 (2) The application shall contain statements by the applicant that the individual is likely to
20 cause serious harm to self or others due to what the applicant believes are symptoms of mental
21 illness or addiction. The applicant shall state in detail the recent overt acts upon which the belief
22 is based.

23 (3) The written application, certificate, affidavit and any warrants issued pursuant thereto,
24 including any related documents, filed with a circuit court, mental hygiene commissioner or
25 designated magistrate for the involuntary hospitalization of an individual are not open to inspection
26 by any person other than the individual, unless authorized by the individual or his or her legal
27 representative or by order of the circuit court. The records may not be published unless
28 authorized by the individual or his or her legal representative. Disclosure of these records may,
29 however, be made by the clerk, circuit court, mental hygiene commissioner or designated
30 magistrate to provide notice to the Federal National Instant Criminal Background Check System
31 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C.
32 §922, and the central state mental health registry, in accordance with article seven-a, chapter
33 sixty-one of this code. Disclosure may also be made to the prosecuting attorney and reviewing
34 court in an action brought by the individual pursuant to section five, article seven-a, chapter
35 sixty-one of this code to regain firearm and ammunition rights.

36 (4) Applications may not be accepted for individuals who only have epilepsy, a mental
37 deficiency or senility.

38 (d) *Certificate filed with application; contents of certificate; affidavit by applicant in place*
39 *of certificate.* -

40 (1) The applicant shall file with his or her application the certificate of a physician or a
41 psychologist stating that in his or her opinion the individual is mentally ill or addicted and that
42 because of the mental illness or addiction, the individual is likely to cause serious harm to self or
43 others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall
44 state in detail the recent overt acts on which the conclusion is based.

45 (2) A certificate is not necessary when an affidavit is filed by the applicant showing facts
46 and the individual has refused to submit to examination by a physician or a psychologist.

47 (e) *Notice requirements; eight days notice required.* -- Upon receipt of an application, the
48 mental hygiene commissioner or circuit court shall review the application and if it is determined
49 that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, forthwith fix a
50 date for and have the clerk of the circuit court give notice of the hearing:

51 (1) To the individual;

52 (2) To the applicant or applicants;

53 (3) To the individual's spouse, one of the parents or guardians, or, if the individual does
54 not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the
55 next of kin is not the applicant;

56 (4) To the mental health authorities serving the area;

57 (5) To the circuit court in the county of the individual's residence if the hearing is to be held
58 in a county other than that of the individual's residence; and

59 (6) To the prosecuting attorney of the county in which the hearing is to be held.

60 (f) The notice shall be served on the individual by personal service of process not less
61 than eight days prior to the date of the hearing and shall specify:

62 (1) The nature of the charges against the individual;

63 (2) The facts underlying and supporting the application of involuntary commitment;

64 (3) The right to have counsel appointed;

65 (4) The right to consult with and be represented by counsel at every stage of the
66 proceedings; and

67 (5) The time and place of the hearing.

68 The notice to the individual's spouse, parents or parent or guardian, the individual's adult
69 next of kin or to the circuit court in the county of the individual's residence may be by personal
70 service of process or by certified or registered mail, return receipt requested, and shall state the
71 time and place of the hearing.

72 (g) *Examination of individual by court-appointed physician or psychologist; custody for*
73 *examination; dismissal of proceedings. --*

74 (1) Except as provided in subdivision (3) of this subsection, within a reasonable time after
75 notice of the commencement of final commitment proceedings is given, the circuit court or mental
76 hygiene commissioner shall appoint a physician or psychologist to examine the individual and
77 report to the circuit court or mental hygiene commissioner his or her findings as to the mental
78 condition or addiction of the individual and the likelihood of causing serious harm to self or others.

79 (2) If the designated physician or psychologist reports to the circuit court or mental hygiene
80 commissioner that the individual has refused to submit to an examination, the circuit court or
81 mental hygiene commissioner shall order him or her to submit to the examination. The circuit
82 court or mental hygiene commissioner may direct that the individual be detained or taken into
83 custody for the purpose of an immediate examination by the designated physician or psychologist.
84 All such orders shall be directed to the sheriff of the county or other appropriate law-enforcement
85 officer. After the examination has been completed, the individual shall be released from custody
86 unless proceedings are instituted pursuant to section three of this article.

87 (3) If the reports of the appointed physician or psychologist do not confirm that the

88 individual is mentally ill or addicted and might be harmful to self or others, then the proceedings
89 for involuntary hospitalization shall be dismissed.

90 (h) *Rights of the individual at the final commitment hearing; seven days' notice to counsel*
91 *required. -*

92 (1) The individual shall be present at the final commitment hearing and he or she, the
93 applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify
94 and to present and cross-examine witnesses.

95 (2) In the event the individual has not retained counsel, the court or mental hygiene
96 commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall
97 inform the individual of the name, address and telephone number of his or her appointed counsel.

98 (3) The individual has the right to have an examination by an independent expert of his or
99 her choice and to present testimony from the expert as a medical witness on his or her behalf.
100 The cost of the independent expert is paid by the individual unless he or she is indigent.

101 (4) The individual may not be compelled to be a witness against himself or herself.

102 (i) *Duties of counsel representing individual; payment of counsel representing indigent. -*

103 (1) Counsel representing an individual shall conduct a timely interview, make investigation
104 and secure appropriate witnesses, be present at the hearing and protect the interests of the
105 individual.

106 (2) Counsel representing an individual is entitled to copies of all medical reports,
107 psychiatric or otherwise.

108 (3) The circuit court, by order of record, may allow the attorney a reasonable fee not to
109 exceed the amount allowed for attorneys in defense of needy persons as provided in article
110 twenty-one, chapter twenty-nine of this code.

111 (j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing. -*

112 (1) The circuit court or mental hygiene commissioner shall hear evidence from all
113 interested parties in chamber including testimony from representatives of the community mental
114 health facility.

115 (2) The circuit court or mental hygiene commissioner shall receive all relevant and material
116 evidence which may be offered.

117 (3) The circuit court or mental hygiene commissioner is bound by the rules of evidence
118 promulgated by the Supreme Court of Appeals except that statements made to physicians or
119 psychologists by the individual may be admitted into evidence by the physician's or psychologist's
120 testimony, notwithstanding failure to inform the individual that this statement may be used against
121 him or her. A psychologist or physician testifying shall bring all records pertaining to the
122 individual to the hearing. The medical evidence obtained pursuant to an examination under this
123 section, or section two or three of this article, is not privileged information for purposes of a hearing
124 pursuant to this section.

125 (4) All final commitment proceedings shall be reported or recorded, whether before the
126 circuit court or mental hygiene commissioner, and a transcript made available to the individual,
127 his or her counsel or the prosecuting attorney within thirty days if requested for the purpose of
128 further proceedings. In any case where an indigent person intends to pursue further
129 proceedings, the circuit court shall, by order entered of record, authorize and direct the court
130 reporter to furnish a transcript of the hearings.

131 (k) *Requisite findings by the court.* -

132 (1) Upon completion of the final commitment hearing and the evidence presented in the
133 hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

134 (A) Whether the individual is mentally ill or addicted;

135 (B) Whether, because of illness or addiction, the individual is likely to cause serious harm

136 to self or others if allowed to remain at liberty;

137 (C) Whether the individual is a resident of the county in which the hearing is held or
138 currently is a patient at a mental health facility in the county; and

139 (D) Whether there is a less restrictive alternative than commitment appropriate for the
140 individual. The burden of proof of the lack of a less restrictive alternative than commitment is on
141 the person or persons seeking the commitment of the individual. (2) The findings of fact shall
142 be incorporated into the order entered by the circuit court and must be based upon clear, cogent
143 and convincing proof.

144 (l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of*
145 *court; expiration of order.* -- (1) Upon the requisite findings, the circuit court may order the
146 individual to a mental health facility for an indeterminate period or for a temporary observatory
147 period not exceeding six months.

148 (2) The individual may not be detained in a mental health facility for a period in excess of
149 ten days after a final commitment hearing pursuant to this section unless an order has been
150 entered and received by the facility.

151 (3) If the order pursuant to a final commitment hearing is for a temporary observation
152 period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration
153 of such period on the basis of a report by the chief medical officer of the mental health facility in
154 which the patient is confined, hold another hearing pursuant to the terms of this section and in the
155 same manner as the hearing was held as if it were an original petition for involuntary
156 hospitalization to determine whether the original order for a temporary observation period should
157 be modified or changed to an order of indeterminate hospitalization of the patient. At the
158 conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient
159 or dismissal of the proceedings.

160 (4) An order for an indeterminate period expires of its own terms at the expiration of two
161 years from the date of the last order of commitment unless prior to the expiration, the Department
162 of Health and Human Resources, upon findings based on an examination of the patient by a
163 physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or
164 his or her counsel requests a hearing, a hearing shall be held by the mental hygiene commissioner
165 or by the circuit court of the county as provided in subsection (a) of this section.

166 (m) *Dismissal of proceedings.* -- If the circuit court or mental hygiene commissioner finds
167 that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit
168 court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not,
169 because of the illness or addiction, likely to cause serious harm to self or others if allowed to
170 remain at liberty, the proceedings shall be dismissed.

171 (n) *Immediate notification of order of hospitalization.* -- The clerk of the circuit court in
172 which an order directing hospitalization is entered, if not in the county of the individual's residence,
173 shall immediately upon entry of the order forward a certified copy of the order to the clerk of the
174 circuit court of the county of which the individual is a resident.

175 (o) *Consideration of transcript by circuit court of county of individual's residence; order of*
176 *hospitalization; execution of order.* --

177 (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization
178 should be ordered but finds that the individual is not a resident of the county in which the hearing
179 is held and the individual is not currently a resident of a mental health facility, a transcript of the
180 evidence adduced at the final commitment hearing of the individual, certified by the clerk of the
181 circuit court, shall forthwith be forwarded to the clerk of the circuit court of the county of which the
182 individual is a resident. The clerk shall immediately present the transcript to the circuit court or
183 mental hygiene commissioner of the county.

184 (2) If the circuit court or mental hygiene commissioner of the county of the residence of
185 the individual is satisfied from the evidence contained in the transcript that the individual should
186 be hospitalized as determined by the standard set forth above, the circuit court shall order the
187 appropriate hospitalization as though the individual had been brought before the circuit court or
188 its mental hygiene commissioner in the first instance.

189 (3) This order shall be transmitted forthwith to the clerk of the circuit court of the county in
190 which the hearing was held who shall execute the order promptly.

191 (p) *Order of custody to responsible person.* -- In lieu of ordering the patient to a mental
192 health facility, the circuit court may order the individual delivered to some responsible person who
193 will agree to take care of the individual and the circuit court may take from the responsible person
194 a bond in an amount to be determined by the circuit court with condition to restrain and take proper
195 care of the individual until further order of the court.

196 (q) *Individual not a resident of this state.* -- If the individual found to be mentally ill or
197 addicted by the circuit court or mental hygiene commissioner is a resident of another state, this
198 information shall be forthwith given to the Secretary of the Department of Health and Human
199 Resources, or to his or her designee, who shall make appropriate arrangements for transfer of
200 the individual to the state of his or her residence conditioned on the agreement of the individual
201 except as qualified by the interstate compact on mental health.

202 (r) *Report to the Secretary of the Department of Health and Human Resources.* --

203 (1) The chief medical officer of a mental health facility admitting a patient pursuant to
204 proceedings under this section shall forthwith make a report of the admission to the Secretary of
205 the Department of Health and Human Resources or to his or her designee.

206 (2) Whenever an individual is released from custody due to the failure of an employee of
207 a mental health facility to comply with the time requirements of this article, the chief medical officer

208 of the mental health facility shall forthwith, after the release of the individual, make a report to the
209 Secretary of the Department of Health and Human Resources or to his or her designee of the
210 failure to comply.

211 (s) *Payment of some expenses by the state; mental hygiene fund established; expenses*
212 *paid by the county commission. -*

213 (1) The state shall pay the commissioner's fee and the court reporter fees that are not paid
214 and reimbursed under article twenty-one, chapter twenty-nine of this code out of a special fund to
215 be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

216 (2) The county commission shall pay out of the county treasury all other expenses incurred
217 in the hearings conducted under ~~the provisions of~~ this article whether or not hospitalization is
218 ordered, including any fee allowed by the circuit court by order entered of record for any physician,
219 psychologist and witness called by the indigent individual. The copying and mailing costs
220 associated with providing notice of the final commitment hearing and issuance of the final order
221 shall be paid by the county where the involuntary commitment petition was initially filed.

222 (3) The Department of Health and Human Resources shall reimburse the circuit clerk of
223 the county where the hearings are held for expenses of filing, postage and copies.

NOTE: The purpose of this bill is to require the Department of Health and Human Resources to reimburse the circuit clerk of the county where involuntary commitment hearings are held for expenses of filing, postage and copies.

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