

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2808

BY DELEGATES SUMMERS, ATKINSON, ROHRBACH AND

SHOTT

[Introduced March 7, 2017; Referred
to the Committee on Health and Human Resources then
the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §27-5A-1, §27-5A-2, §27-5A-3, §27-5A-4, §27-5A-5, §27-5A-6, §27-5A-7,
 3 §27-5A-8, §27-5A-9, §27-5A-10, §27-5A-11, §27-5A-12, §27-5A-13, §27-5A-14, §27-5A-
 4 15, §27-5A-16 and §27-5A-17, all relating to establishing assisted outpatient treatment of
 5 persons suffering from mental illness; defining terms; setting forth policy and goals of the
 6 Legislature in establishing assisted outpatient treatment; requiring legal proceedings; and
 7 setting forth the procedure by which assisted outpatient treatment be implemented.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated, §27-5A-1, §27-5A-2, §27-5A-3, §27-5A-4, §27-5A-5, §27-5A-6, §27-5A-7,
 3 §27-5A-8, §27-5A-9, §27-5A-10, §27-5A-11, §27-5A-12, §27-5A-13, §27-5A-14, §27-5A-15, §27-
 4 5A-16, and §27-5A-17, all to read as follows:

ARTICLE 5A. THE WEST VIRGINIA ASSISTED OUTPATIENT TREATMENT ACT.

§27-5A-1. Policy and purpose.

1 The consequences of untreated mental illness are as apparent as they are devastating:
 2 criminalization; homelessness; victimization; lost productivity; permanently decreased medication
 3 responses; resultant inpatient hospitalization and its related costs as conditions deteriorate
 4 unchecked; functional loss of civil liberties as individuals are criminally imprisoned for actions
 5 stemming from their illness or are civilly involuntarily committed upon reaching levels of
 6 dangerousness, or are restricted in meaningful exercise of their liberties or loss of free will by the
 7 mental and physical effects of their illness; and the incalculable costs of unnecessary suffering.
 8 Mental illness may render many people incapable of voluntarily entering treatment because they
 9 become unable to make rational decisions or are unaware that they are ill. When individuals
 10 become incapable of making rational or informed medical decisions concerning their treatment,
 11 they may require assisted treatment to avoid tragic personal and societal consequences and to

12 protect their lives. The West Virginia Assisted Outpatient Treatment Act is designed to be the
13 legal framework for the provision of care to individuals who, due to the symptoms of mental illness,
14 become incapable of making rational and informed medical decisions concerning their treatment,
15 yet the act provides safeguards to protect both the rights and well-being of those subject to it.

§27-5A-2. Definitions.

1 In addition to the definitions under article one of this chapter, the following definitions are
2 added specific to this article:

3 “Assisted outpatient treatment” means court ordered outpatient treatment.

4 “Least restrictive potentially effective treatment” means treatment that will not over-
5 compensate for the situation causing undue stress and potential harm to the patient concerned
6 and which has a reasonable likelihood of positively impacting the individual’s behavior or condition
7 of mental illness or substance use disorder. Treatment presenting a significant and likely risk of
8 harm to the individual shall not be ordered by the court.

9 “Cooccurring disorder” means an individual has one or more substance use disorders and
10 one or more mental health or psychiatric disorders coexisting at the same time.

11 “Requires necessary treatment” means an individual is:

12 (A) Suffering from severe and persistent mental illness; and

13 (B) Has a reasonable prospect of benefiting by or being stabilized with outpatient
14 treatment; and

15 (C) The individual has an inability to participate in outpatient treatment services effectively
16 and voluntarily, demonstrated by:

17 (i) The individual’s level of impairment or psychiatric or substance use history, or actions
18 occurring within the two-year period immediately preceding the hearing; or

19 (ii) Noncompliance with treatment has been a factor in the individual’s prior placement in
20 a psychiatric hospital, substance abuse facility, prison, or jail, or has resulted in involuntary
21 hospitalization under article five of this chapter;

22 and

23 (iii) As a consequence of the mental illness, the individual will, if not treated, continue to:

24 (I) Suffer severe and abnormal psychiatric, emotional, or physical distress or harm, or
25 become likely to cause serious harm to self or others, or

26 (II) Experience deterioration of the ability to function independently to the extent that the
27 individual will be unable to live safely in the community without court ordered outpatient services.

28 “In reasonable accessibility” means within the community, county, or region near
29 respondent’s residence, preferably within one hour’s transport, public or private. Available means
30 and costs of transportation must be considered by the judge or mental hygiene commissioner in
31 making the determination of reasonable accessibility.

32 “Outpatient treatment” means any of the services set forth under section nine-e of this
33 article and chapter that are delivered without overnight inpatient hospitalization, and, in addition,
34 includes all outpatient mental health or substance use disorder services covered and defined by
35 third party payor sources, including Medicare, for a respondent. These services may be obtained
36 at hospitals, centers, clinics, treatment provider offices, or at other qualified facilities or community
37 settings.

38 “Substance use disorder” means a substance related disorder, including substance use
39 and induced disorders, as defined by the American Psychiatric Association’s “Diagnostic and
40 Statistical Manual of Mental Disorders” excluding those for tobacco, caffeine, and substances
41 used as prescribed by a medical professional. Addiction as defined under article one, section
42 eleven of this chapter is a type of substance use disorder.

§27-5A-3. Institution of proceedings for assisted outpatient treatment.

1 (a) Any of the following adult persons may file a petition for assisted outpatient treatment
2 of an adult individual or emancipated minor when the person making the petition has reason to
3 believe that the individual is mentally ill and, because of his or her mental illness, “requires

4 necessary treatment”, as defined in section two of this article, but has not as of the time of filing
5 deteriorated in condition to behaviors likely to cause serious harm to self or others:

6 (1) Any person with whom the individual resides; or

7 (2) Parent, guardian, spouse, sibling, or child eighteen years of age or older of the
8 individual; or

9 (3) Chief medical officer, pursuant to section thirteen, article one of this chapter, of a
10 hospital in which the individual is hospitalized; or

11 (4) Director of any public, private or charitable organization, agency, treatment facility, or
12 care home providing substance use disorder or mental health services to the individual, in whose
13 institution the individual resides; or

14 (5) Psychiatrist who is either supervising the treatment of or treating the individual for
15 substance use disorder or mental illness; or

16 (6) Psychologist, social worker, or other licensed mental health or substance use disorder
17 professional who is treating the individual for substance use disorder or mental illness; or

18 (7) Department of health officials, including adult protective services officials, of the county
19 in which the individual resides or is found; or

20 (8) Parole or probation officer assigned to supervise the individual; or

21 (9) Chief administrative officer of a jail, or other correctional facility holding the individual:
22 Provided, That the individual is scheduled to be released from the facility within ten days. Any
23 assisted outpatient treatment ordered must be effective upon release of the inmate from the
24 correctional facility; or

25 (10) In the event of conversion of a pending matter for involuntary hospitalization pursuant
26 to section twelve of this article, the adult filing the application for involuntary hospitalization, or via

27 sua sponte conversion action of the judicial officer under section twelve of this article.

28 (b) The petition must be in writing, executed under oath, and must include the following
29 information:

30 (1) The petitioner's name, address, and, if any, relationship to the individual;

31 (2) The name, address, and other relevant identifying information of the individual;

32 (3) The name and address, if known, of the individual's spouse, legal counsel, conservator
33 or guardian, and next-of-kin;

34 (4) The name and address, if known, of anyone currently providing substance use disorder
35 or mental health care to the individual;

36 (5) That the petitioner has reason to believe the individual meets the criteria for assisted
37 outpatient treatment pursuant to this article;

38 (6) That the beliefs of the petitioner are based on specific behavior, acts, attempts, or
39 threats, which must be specified and described in detail;

40 (7) The names and addresses, if known, of other persons with knowledge of respondent's
41 mental illness who may be called as witnesses;

42 (8) An examination report pursuant to section four of this article, unless the individual
43 named in the petition refuses to be examined which must be indicated on the petition. A petition
44 filed without an examination report must present sufficient evidence to establish the reasonable
45 belief that the respondent may be subject to assisted outpatient treatment;

46 (9) A proposed outpatient treatment plan for the individual, approved by a medical
47 professional of a type pursuant to section four of this article; and

48 (10) Such additional information and facts in the petition as may be required by the form
49 provided for this purpose by the Supreme Court of Appeals.

50 (c) The petition may be made to the circuit court or a mental hygiene commissioner of the
51 county in which the individual resides pursuant to section eight, article one of this chapter. A
52 designated magistrate before whom an involuntary hospitalization matter under article five of this

53 chapter is pending and who, upon hearing the evidence at hearing, converts the matter pursuant
54 to section twelve of this article to an action for assisted outpatient treatment, must transfer the
55 pending matter to the circuit court judge or mental hygiene commissioner of the county for further
56 proceedings.

57 (d) Within twenty-four hours of the filing of the petition for assisted outpatient treatment,
58 the court or mental hygiene commissioner must:

59 (1) Determine whether the petition is sufficient to establish the reasonable belief that the
60 individual may be subject to assisted outpatient treatment, and dismiss without prejudice those
61 that do not;

62 (2) Schedule a hearing on the petition, if not dismissed, within ten calendar days of filing
63 of the petition. The hearing may be continued by the court or mental hygiene commissioner to
64 allow for the court ordered examination of the individual or upon motion for good cause shown;

65 (3) If necessary, issue an order for the individual to be examined pursuant to section four
66 of this article; and

67 (4) Forward a copy of any petition not dismissed and notice of hearing to the local
68 community mental health center designated by the Secretary of the Department of Health and
69 Human Resources to serve the county in which the action takes place. The mental health center
70 may send a representative to the hearing to advise the court of available treatment and services
71 for the individual.

72 (e) The petition, evaluation report, and other filed or issued documents and records related
73 to the case filed with the circuit court or mental hygiene commissioner are not open to inspection
74 by any person other than the parties to the action and their legal representatives while the case
75 is open; to the individual or his or her legal representative, except upon authorization of the
76 individual or his or her legal representative; to court ordered treatment providers of the individual
77 while the case is open; as otherwise authorized by this article; or by order of the court. The

78 documents and records may not be published except upon authorization of the individual or his
79 or her legal representative.

§27-5A-4. Examination.

1 (a) The respondent must have been examined not more than seven days before the
2 petition is filed. For purposes of section three-(b)(8) of this article and chapter, the examination
3 must be completed by a physician, psychologist, or other examiner permitted under section two,
4 article five of this chapter. The examiner may not be the petitioner.

5 (b) The examiner must personally examine the respondent; recommend assisted
6 outpatient treatment for the respondent as may be appropriate; approve or disapprove based on
7 the examination and examiner's educational and clinical judgment all or part of the proposed
8 outpatient treatment plan filed by the petitioner, and be willing and able to testify at the hearing
9 on the petition. The court or mental hygiene commissioner may permit this testimony to be
10 presented telephonically or via videoconferencing. The examiner must state the facts and clinical
11 determinations which support the allegation that the individual meets each criterion for assisted
12 outpatient treatment.

13 (c) If the individual refuses to be examined, the circuit court or mental hygiene
14 commissioner may order the individual named in the petition to submit to examination.
15 Respondent's refusal to be examined may be considered as evidence indicative of the need for
16 assisted outpatient treatment. The court or mental hygiene commissioner may continue the
17 proceeding for purposes of examination, and if the respondent presents good and credible reason
18 why he or she was not present for an ordered examination, the court or mental hygiene
19 commissioner may issue another order for examination. If the individual does not comply with
20 the order for examination, the circuit court or mental hygiene commissioner may enter an order
21 for the individual named in the petition to be detained and taken into custody by the sheriff of the
22 county for the purpose of an examination to be provided or arranged by a community mental
23 health center designated by the Secretary of the Department of Health and Human Resources to

24 serve the county in which the action takes place. The individual must be immediately released
25 from custody upon completion of the ordered examination, and retention of the individual for
26 purposes of examination is not to exceed twenty-four hours.

27 (d) Notwithstanding the provisions of this chapter, subsection (r), section four of article five
28 of this chapter applies regarding payment by the county commission for court ordered
29 examinations.

30 (e) If the examination reveals that the individual is not mentally ill, the petition shall be
31 dismissed. Absent a finding of professional gross negligence or willful misconduct the examiner
32 is not civilly liable for the rendering of the opinion. The court-ordered examiner shall provide the
33 circuit court or mental hygiene commissioner before whom the matter is pending the results of
34 the examination on a form provided for this purpose by the Supreme Court of Appeals at least
35 seventy-two hours prior to the hearing under section seven of this article and chapter.

§27-5A-5. Criminal penalty for false petition.

1 A person who knowingly files, or causes to be filed, a petition pursuant to this article
2 containing a false material statement or information, is guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not more than \$10,000 or confined in jail not more than one year,
4 or both fined and confined.

§27-5A-6. Notice of hearing.

1 The clerk must mail notice of hearing with a copy of the petition to the individual named in
2 the petition; the individual's legal counsel; the individual's legal guardian and conservator, if
3 known; an adult member of the individual's household, if known; petitioner; and petitioner's
4 counsel, if known.

§27-5A-7. Assisted outpatient treatment hearing procedure.

1 (a) The individual must be present at the hearing and has the right to present evidence,
2 confront all witnesses and other evidence against him or her and to examine testimony offered.
3 The individual has the right to remain silent and to be proceeded against in accordance with the

4 Rules of Evidence of the Supreme Court of Appeals, except as provided in section twelve, article
5 one of this chapter.

6 (b) In the event the individual has not retained counsel, and the case is converted to an
7 involuntary hospitalization case under article five of this chapter, the court or mental hygiene
8 commissioner must appoint a competent attorney to represent the individual.

9 (c) The testimony of a licensed treating mental health professional, or examiner pursuant
10 to section four of this article, who has examined the respondent more recently than seven
11 calendar days before the filing of the petition is required at hearing. Expert testimony at the
12 hearing may be taken telephonically or via videoconferencing. The mental health professional
13 who testifies must state: (1) The facts known which support the allegation that the individual meets
14 each criterion for assisted outpatient treatment; (2) the recommended assisted outpatient
15 treatment; (3) that the treatment is the least restrictive available; (4) the rationale for the
16 recommended assisted outpatient treatment. If the recommended treatment included medication,
17 the examiner must describe the types or classes of medication which should be authorized, any
18 beneficial or detrimental physical and mental effects of the medication, and whether the
19 medication should be self-administered or administered by authorized personnel.

20 (d) Consistent with subdivision (3), subsection-(h), section four, article five of this chapter,
21 the individual has the right to have an examination by an independent expert of his or her choice
22 and to present testimony from the expert as a medical witness on his or her behalf. The cost of
23 the independent expert is to be paid by the individual.

24 (e) Assisted outpatient treatment hearings may occur in the county where a person resides
25 or is hospitalized.

26 (f) Assisted outpatient treatment hearings must be reported or recorded.

27 (g) The hearing is closed to the public; however, the court or mental hygiene commissioner
28 may permit any individual or entity to attend and observe the proceeding if not objected to by the
29 respondent, or upon request of the respondent. The court or mental hygiene commissioner may

30 also approve a motion for a family member of the respondent to participate upon a showing of
31 substantial interest in the proceeding. An approved participating family member has the right to
32 representation by counsel at his or her own expense, to present evidence, to cross-examine
33 witnesses, and to appeal.

§27-5A-8. Agreed order.

1 At the hearing, the petitioner and respondent may proffer a mutually agreed upon
2 proposed assisted treatment order. The terms of the order must be consistent with those of an
3 initial order for assisted treatment under this article. The proposed order must be accompanied
4 with an affidavit of a licensed treating mental health professional testifying that the suggested
5 order is clinically appropriate for the respondent. The court or mental hygiene commissioner may
6 enter the proposed order without a full hearing. Once entered, the agreed order has the same
7 effect as an assisted treatment order issued pursuant to section nine of this article.

§27-5A-9. Assisted outpatient treatment hearing initial order.

1 (a) At the conclusion of the hearing, the mental hygiene commissioner or circuit court
2 judge shall find and enter an order stating whether or not there is clear and convincing evidence
3 to believe that the individual, as a result of mental illness, requires necessary treatment, pursuant
4 to section two of this article. Any treatment ordered must be the least restrictive potentially
5 effective treatment available.

6 (b) If the evidence, via expert testimony, establishes that an individual's cooccurring
7 substance use disorder creates a reasonable likelihood that withdrawal or detoxification from the
8 substance will cause significant medical complications, the court or mental hygiene commissioner
9 may order monitored or inpatient detoxification for the individual, and detoxification ordered must
10 be the least restrictive available and needed.

11 (c) An order for assisted outpatient treatment, for its duration, subordinates the individual's
12 right to refuse the administration of medication or other minor medical treatment to the department
13 of health, its designee, or other medical provider obligated to care for the person in the order. The

14 treatment setting must be the least restrictive possible appropriate alternative. Each patient
15 receiving medication pursuant to an assisted outpatient treatment order shall be examined every
16 thirty days for serious side effects by a psychiatrist or physician as part of the terms of the order.
17 If the psychiatrist or physician determines, in his or her clinical judgment that the patient has
18 serious side effects from his or her current medication, an alternative appropriate treatment that
19 will have fewer side effects must be prescribed.

20 (d) An order for assisted outpatient treatment may be for up to one hundred eighty
21 calendar days.

22 (e) Services in the order for assisted outpatient treatment must include provisions for
23 intensive case management, assertive community treatment, or other regularly scheduled case
24 management. The order may also require the respondent's care providers to supply any or all of
25 the following categories of services to the individual:

26 (1) Medication;

27 (2) Periodic blood tests or urinalysis to determine compliance, side effects, and treatment
28 effectiveness;

29 (3) Individual or group therapy;

30 (4) Day or partial day programming activities;

31 (5) Educational and vocational training or activities;

32 (6) Alcohol or substance use disorder treatment and counseling for cooccurring disorders,
33 and periodic tests for the presence of alcohol or other drugs for persons with a history of alcohol
34 or substance abuse;

35 (7) Supervision of living arrangements;

36 (8) Any other services prescribed to treat the person's mental illness or cooccurring
37 disorder and to assist the person in living and functioning in the community, or to attempt to
38 prevent a relapse or deterioration.

39 (9) All ordered services must be in reasonable accessibility for the respondent, as defined
40 in section one of this article. The lack of all needed services within reasonable accessibility for
41 the respondent does not preclude the court or mental hygiene commissioner from ordering those
42 services which are within reasonable accessibility for the respondent.

43 (10) If the respondent is gainfully employed, outpatient services may not be ordered which
44 conflict with the respondent's continued employment.

45 (11) If the respondent has executed a medical power of attorney, the same, if known, must
46 be considered in ordering assisted outpatient treatment.

47 (12) In implementation of the order, any material modifications of the provisions of the
48 assisted treatment order to which the patient does not agree must be approved by the court.

§27-5A-10. Effect of assisted outpatient treatment determination on other rights.

1 (a) The determination that a person is in need of assisted outpatient treatment is not a
2 determination that the individual is legally incompetent or incapacitated for any purpose other than
3 those set out in the order concerning treatment for mental illness or substance use disorder.

4 (b) An individual subject to an assisted outpatient treatment order or agreed order under
5 this article is not to be reported to the West Virginia Central State Mental Health Registry or the
6 National Instant Criminal Background Check System.

§27-5A-11. Payment for outpatient treatment.

1 (a) The providers and facilities providing outpatient treatment and services under an
2 assisted outpatient treatment order are to seek payment from any available insurance, federal or
3 state entitlement program or benefit available to the respondent, including Medicaid, or any other
4 third party payor source of the respondent. Thereafter, the providers and facilities may seek
5 payment for services rendered directly from the respondent. After these sources are exhausted
6 and/or reasonable efforts have been made to collect the costs of treatment, the remaining unpaid
7 cost of outpatient treatment: *Provided*, That the total of paid and unpaid costs do not exceed
8 current Medicaid rates for the services provided, is to be paid out of funds appropriated for the

9 Department of Health and Human Resources, but the department, through the director of health,
10 shall have a right of reimbursement, for all or any part of such costs from each patient or from the
11 committee or guardian of the estate of the patient, or the estate of the patient if deceased, or if
12 that be insufficient, then from the patient's husband or wife, or if the patient be an unemancipated
13 child, the father and mother, or any of them. If a relative so liable does not reside in this state and
14 has no estate or debts due him within the state by means of which the liability can be enforced
15 against him, the other relatives shall be liable as provided by this section. In exercising this right
16 of reimbursement, the director of health may, whenever it is deemed just and expedient to do so,
17 exonerate any person chargeable with such costs from the payment thereof, in whole or in part,
18 if the director finds that the person is unable to pay or that payment would work an undue hardship
19 on him or her, or on those dependent upon him or her.

20 (b) There shall be no discrimination on the part of providers and facilities as to care,
21 protection, treatment or rehabilitation, between patients who pay for their services and those who
22 are unable to do so.

§27-5A-12. Conversion to and from involuntary hospitalization.

1 (a) If at hearing on an application for involuntary hospitalization under article five of this
2 chapter the evidence presented to the court, mental hygiene commissioner, or designated
3 magistrate does not meet the standard for involuntary hospitalization, but does provide evidence
4 sufficient to meet the requirements for assisted outpatient treatment, and the individual is an adult
5 or emancipated minor who is a resident of the county, the action may be converted by the court,
6 mental hygiene commissioner, designated magistrate, or upon motion of the applicant, to a
7 proceeding for assisted outpatient treatment under this article.

8 (b) If at hearing on a petition for assisted outpatient treatment, evidence is presented to
9 the court or mental hygiene commissioner that the individual is likely to cause serious harm to
10 self or others as a result of mental illness or addiction sufficient to meet the burden of proof of

11 probable cause under section two, article five of this chapter, and there is no less restrictive
12 alternative available, the proceeding may be converted by the court or mental hygiene
13 commissioner to a probable cause action for involuntary hospitalization under section two, article
14 five of this chapter. Notice of the hearing for assisted outpatient treatment must include notice of
15 possible conversion and involuntary hospitalization under article five of this chapter. The individual
16 must be represented by counsel at hearing. Regardless of any provision in this chapter to the
17 contrary, the examination for assisted outpatient treatment is sufficient for purposes of evaluation
18 under article five involuntary hospitalization: *Provided*, That an independent evaluation under
19 article five is to be ordered if the examination for assisted outpatient treatment is not court ordered
20 or does make a determination of whether the individual is mentally ill or addicted and as a result
21 likely to cause serious harm to self or others.

§27-5A-13. Modification and review.

1 (a) The petitioner or individual subject to an assisted outpatient treatment order, under this
2 article may seek review thereof by the circuit court judge for any order entered by a mental
3 hygiene commissioner, under such rules and forms as may be promulgated by the state Supreme
4 Court of Appeals for this purpose. The review must be requested within seven days of entry of
5 the order to be reviewed, and the review may be ex parte by the circuit court judge.

6 (b) Any individual adversely affected by an assisted outpatient treatment order or renewal
7 entered or reviewed as in subsection (a) of this section, by the circuit court under this article may
8 seek review thereof by appeal to the state Supreme Court of Appeals and jurisdiction is hereby
9 conferred upon such court to hear and entertain such appeals upon application made therefor in
10 the manner and within the time provided by law for civil appeals generally.

11 (c) If the time for appeal of an assisted outpatient treatment order or renewal order has
12 expired, the respondent may request modification or review of the assisted outpatient treatment
13 order or renewal order by the circuit court or mental hygiene commissioner. A hearing on the
14 modification or review must be held within fourteen calendar days. The respondent may request

15 modification or review not more than once every ninety days.

16 (d) Notice of hearing must be provided to those who received notice of hearing of the
17 original petition or were recognized as a party at the initial hearing or subsequent renewal
18 hearings.

§27-5A-14. Renewal of assisted outpatient treatment.

1 (a) The assisted outpatient treatment order may be renewed for a period not to exceed
2 three hundred sixty days on any subsequent renewals by the circuit court judge of the county,
3 upon hearing, and upon a finding of clear and convincing evidence of the requirements in this
4 article for assisted outpatient treatment. The circuit judge may direct the mental hygiene
5 commissioner to hold the hearing as trier of fact and present findings and recommendations to
6 the circuit judge.

7 (b) Notice of renewal hearing must be provided in the same manner as that of the initial
8 hearing, or any subsequent modification and review hearings, or subsequent renewal hearings.

9 (c) A motion for renewal must be filed not less than thirty days prior to the expiration of the
10 assisted outpatient treatment order in effect.

§27-5A-15. Medical discharge from assisted outpatient treatment.

1 (a) A patient under an assisted outpatient treatment order may be discharged from
2 treatment on the signatures of both the patient's treating medical professional and the director of
3 the outpatient treatment program.

4 (b) Notice of discharge must be mailed at least seventy-two hours before the planned
5 discharge to the petitioner; the patient's legal guardian and conservator, if known; the patient's
6 attorney; an adult member of the patient's household, if known; and anyone recognized as a party.
7 A notice of discharge must be filed with the circuit court.

8 (c) A hearing on early discharge may be demanded by the petitioner or any other party to
9 the assisted outpatient treatment action. A hearing on early discharge may be held by the court
10 or mental hygiene commissioner. Filing of a demand for hearing on early discharge stays the

11 discharge of the patient until the court or mental hygiene commissioner rules upon the
12 appropriateness of medical discharge, but the stay cannot exceed the terms of the assisted
13 outpatient order at issue.

§27-5A-16. Failure to adhere to order.

1 (a) The treatment provider of a patient under an assisted outpatient treatment order must
2 provide notification to the court if the patient fails to adhere to the ordered treatment from that
3 provider. The person or entity providing notice shall give information and state facts as may be
4 required by a form provided for this purpose by the Supreme Court of Appeals. Upon ex parte
5 review of the notice, the court or mental hygiene commissioner may set the matter for hearing on
6 the issue of the individual's failure to adhere to the requirements of the assisted outpatient
7 treatment order. A copy of the notice of failure to adhere must be sent to all parties with a copy
8 of the notice of hearing issued by the court or mental hygiene commissioner.

9 (b) Any interested adult may move the court or mental hygiene commissioner for a hearing
10 on an individual's failure to adhere to the requirements of an assisted outpatient treatment order.
11 A copy of the notice of failure to adhere must be sent to all parties with a copy of the notice of
12 hearing issued by the court or mental hygiene commissioner.

13 (c) The court or mental hygiene commissioner may order any of the following upon a
14 finding of failure to adhere to the requirements of an assisted outpatient treatment order:

15 (1) Require the individual to report periodically to status hearing before the court or mental
16 hygiene commissioner;

17 (2) Appoint a responsible entity or individual to assist and monitor the individual's
18 compliance and make status reports to the court;

19 (3) Require the filing of a petition for limited guardianship and/or conservatorship for the
20 individual pursuant to chapter forty-four-a of this code for purposes of the individual's care and
21 treatment for mental health and substance use disorder, if a limited or full guardianship does not
22 currently exist;

23 (4) Require the individual’s guardian or conservator to appear at status hearings and make
24 status reports to the court or mental hygiene commissioner regarding the ward;

25 (5) Conversion of the case to an involuntary hospitalization case if appropriate, pursuant
26 to section twelve of this article and chapter and article five of this chapter;

27 (6) Hold the individual in civil contempt;

28 (7) Take such further action as the circuit judge deems appropriate; and

29 (8) Dismiss the case.

§27-5A-17. Immunity from liability.

1 Any mental health facility or substance use disorder or mental health provider who, in good
2 faith, provides treatment services pursuant to this article shall not be liable in any civil action
3 unless their actions were the result of gross negligence or willful misconduct. The grant of
4 immunity provided in this subsection shall extend to all employees and administrative personnel
5 of the facility or provider.

NOTE: The purpose of this bill is to provide assisted outpatient treatment to individuals suffering from mental illness to prevent such individuals from decompensating to the point of likelihood to cause serious harm to self or others for safety of the public, to prevent the costs of inpatient involuntary hospitalization, and costs of incarceration due to untreated mental illness. The bill defines terms, requires legal proceedings, and provides for limitation of liability to examiners and providers.

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