

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3064

BY DELEGATE STEELE

[Introduced February 12, 2019; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then then Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-3E-1, §16-3E-2, §16-3E-3, §16-3E-4, §16-3E-5 and §16-3E-6, all relating
 3 to establishing an intravenous drug user treatment and commitment process; defining
 4 terms; establishing a commitment procedure; requiring rule-making; and providing that an
 5 individual's gun rights are unaffected.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. INTRAVENOUS DRUG USER TREATMENT AND COMMITMENT.

§16-3E-1. Purpose and legislative findings.

1 (a) The purpose of this article is to bring together the state law governing intravenous (IV)
 2 drug users as well as the statutes pertaining to the treatment, control and commitment of those
 3 persons at treatment facilities, clinics and other health care facilities throughout the state.

4 (b) Diagnosis, proper and complete treatment for people who are IV drug users is essential
 5 for the well-being of the user, his or her family, and the state as a whole.

§16-3E-2. Definitions.

1 As used in this article:

2 "Bureau" means the Bureau for Public Health in the Department of Health and Human
 3 Resources;

4 "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state
 5 health officer;

6 "Local board of health," "local board" or "board" means a board of health serving one or
 7 more counties or one or more municipalities or a combination thereof;

8 "Local health department" means the staff of the local board of health; and

9 "Local health officer" means the individual physician with a current West Virginia license
 10 to practice medicine who supervises and directs the activities of the local health department
 11 services, staff and facilities and is appointed by the local board of health with approval by the
 12 commissioner.

13 “Suspected IV drug user” means a person who is suspected of being an intravenous drug
14 user showing physical symptoms, such as scarred or collapsed veins, or general behavioral cues
15 such as:

16 (A) Becoming evasive or upset if you ask about drug use;

17 (B) Being unable to stop or limit drug use;

18 (C) Going out of their way to find and use the drug;

19 (D) Experiencing intense urges or cravings to use the drug;

20 (E) Ignoring important responsibilities at work or school;

21 (F) Losing interest in their favorite things;

22 (G) Needing more of the drug than before to feel good (tolerance);

23 (H) Pushing people away and/or suddenly having new “friends” (fellow drug users);

24 (I) Spending money they can’t afford on the drug;

25 (J) Thinking or talking excessively about the substance;

26 (K) Hoarding, hiding, or stealing the drug;

27 (L) Doctor shopping to procure more of the drug (in the case of prescription medications);

28 and

29 (M) Wearing long sleeves to cover up track marks even in warm weather.

§16-3E-3. Procedure when IV drug user is a danger; court ordered treatment; requirements for discharge; appeals.

1 (a) If the commissioner, local health officer, physician, social worker or law-enforcement
2 officer suspects that any IV drug user is a threat to himself or herself, or to others, that individual
3 may petition the circuit court of the county in which the person resides, requesting an
4 individualized course of treatment to deal with the person’s current or inadequately treated IV
5 drug use. Refusal to adhere to prescribed treatment may result in an order of the court committing
6 the person to a health care facility equipped for the treatment of IV drug users: *Provided*, That if
7 it is determined that an emergency situation exists which warrants the immediate detention and

8 commitment of an IV drug user, an application for immediate involuntary commitment may be filed
9 pursuant to §16-3E-5 of this code.

10 (b) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of
11 the petition and the time and place for hearing shall be served personally, at least seven days
12 before the hearing, upon the IV drug user alleged to be dangerous to himself or others.

13 (c) If, upon a hearing, it appears that the complaint of the bureau is well founded, that
14 other less restrictive treatment options have been exhausted, that the person is an IV drug user
15 and that the person is a danger to himself or herself, or to others, the court shall commit the
16 individual to a health care facility equipped for the care and treatment of IV drug users. The person
17 shall be deemed to be committed until discharged in the manner authorized in subsection (d) of
18 this section: *Provided*, That the hearing and notice provisions of this subsection do not apply to
19 immediate involuntary commitments as provided in §16-3E-5 of this code.

20 (d) The chief medical officer of the institution to which any IV drug user has been
21 committed may discharge that person when, after consultation with the commissioner and the
22 local health officer in the patient's county of residence, it is agreed that the person may be
23 discharged without danger to himself or herself, or others. The chief medical officer shall report
24 immediately to the commissioner and to the local health officer in the patient's county of residence
25 each discharge of an IV drug user.

26 (e) Every person committed under the provisions of this section shall observe all the rules
27 of the institution. Any patient so committed may, by direction of the chief medical officer of the
28 institution, be placed apart from the others and restrained from leaving the institution so long as
29 he or she continues to be an IV drug user and remains a danger.

30 (f) Nothing in this section may be construed to prohibit any person committed to any
31 institution under the provisions of this section from applying to the Supreme Court of Appeals for
32 a review of the evidence on which the commitment was made. Nothing in this section may be
33 construed or operated to empower or authorize the commissioner or the chief medical officer of

34 the institution to restrict in any manner the individual's right to select any method of IV drug user
35 treatment offered by the institution.

§16-3E-4. Return of escapees from IV drug treatment facility.

1 If any person confined in an IV drug treatment facility by virtue of an order of a circuit court
2 escapes from the IV drug treatment facility, the chief medical officer shall issue a notice giving the
3 name and description of the person escaping and requesting his or her apprehension and return
4 to the treatment facility. The chief medical officer shall issue a warrant directed to the sheriff of
5 the county commanding him or her to arrest and return the escaped person back to the treatment
6 facility, which warrant may be executed in any part of the state. If the person flees to another
7 state, the chief medical officer shall notify the appropriate state health official in the state where
8 the person has fled, and that state health official may take the actions that are necessary for the
9 return of the person to the treatment facility.

§16-3E-5. Procedures for immediate involuntary commitment; rules.

1 (a) An application for immediate involuntary commitment of an IV drug user may be filed
2 by the commissioner, local health officer, physician, social worker or law-enforcement officer in
3 the circuit court of the county in which the person resides. The application shall be filed under
4 oath, and shall present information and facts which establish that the IV drug user has been
5 uncooperative or irresponsible with regard to treatment, quarantine or safety measures, presents
6 a health menace to others, and is in need of immediate hospitalization.

7 (b) Upon receipt of the application, the circuit court may enter an order for the individual
8 named in the action to be detained and taken into custody for the purpose of holding a probable
9 cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel
10 for the individual: *Provided*, That in the event immediate detention is believed to be necessary for
11 the protection of the individual or others at a time when no circuit court judge is available for
12 immediate presentation of the application, a magistrate may accept the application and, upon a
13 finding that immediate detention is necessary, may order the individual to be temporarily

14 committed until the earliest reasonable time that the application can be presented to the circuit
15 court, which period of time shall not exceed 24 hours except as provided in subsection (c) of this
16 section.

17 (c) A probable cause hearing shall be held before a magistrate or circuit judge of the
18 county in which the individual is a resident or where he or she was found. If requested by the
19 individual or his or her counsel, the hearing may be postponed for a period not to exceed 48
20 hours, or as soon thereafter as possible.

21 (d) The individual shall be present at the probable cause hearing and shall have the right
22 to present evidence, confront all witnesses and other evidence against him or her, and to examine
23 testimony offered, including testimony by the bureau or its designees.

24 (e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an
25 order stating whether there is probable cause to believe that the individual is likely to cause
26 serious harm to himself or herself, or others as a result of his or her disease and actions. If
27 probable cause is found, the individual shall be immediately committed to a health care facility
28 equipped for the care and treatment of IV drug users. The person shall remain so committed until
29 discharged in the manner authorized pursuant to §16-3E-3(d) of this code.

30 (f) The bureau shall propose rules for legislative approval in accordance with the
31 provisions of §29A-3-1 et seq., of this code, to implement the provisions of this article, including,
32 but not limited to, rules relating to the transport and temporary involuntary commitment of patients.

§16-3E-6. Gun rights.

1 Notwithstanding any provision in this code to the contrary, nothing in this article may be
2 construed as affecting an individual's right to keep and bear arms.

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NOTE: The purpose of this bill is to establish an intravenous drug user treatment and commitment process. The bill defines terms. The bill establishes a commitment procedure. The bill requires rule-making. The bill provides that an individual's gun rights are unaffected.

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