WEST virginia legislature

2021 regular session

Engrossed

Committee Substitute

for

Senate Bill 509

By Senator Trump

[Originating in the Committee on Health and Human Resources; reported on March 17, 2021]

A BILL to amend and reenact §27-5-3 and §27-5-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §27-5-3a, all relating to involuntary hospitalization; requesting the Supreme Court of Appeals to provide training to specified persons on medical conditions mimicking, causing, or contributing to a psychiatric presentation; providing that magistrate or mental hygiene commissioner may determine individual be evaluated for medical condition; removing a requirement that a determination of medical stability be found prior to admission to a mental health facility; providing that a physical may be provided to the individual upon admission to the mental health facility; providing that if after entry of order of involuntary hospitalization is entered the cause is determined to be medical rather than physical this shall not serve to make the person banned from possessing a firearm; and requiring specified persons to transport to a diversion facility as designated by the chief medical officer of the state hospital.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) *Admission to a mental health facility for examination*. —

(1) Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code ~~upon a finding by a licensed physician that the individual is medically stable,~~ and upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician’s assistant practicing in compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or has a substance use disorder and, because of the mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided*, That the opinions offered by an independent clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician’s assistant with advanced duties in psychiatric medicine must be within his or her particular areas of expertise, as recognized by the order of the authorizing court. ~~A magistrate, mental hygiene commissioner, or examiner shall have training regarding medical causation for psychiatric disease with a focus on medical conditions causing or contributing to a psychiatric presentation.~~

(2) Upon admission to the mental health facility, a physical examination, consistent with the standard of care, may be provided to the individual. This examination may be provided either directly by the mental health facility or by a hospital as defined in §16-5B-1 of this code, with which the mental health facility may have a contractual arrangement, and thereafter treatment may be provided in accordance with the provisions of §27-5-2a of this code.

(3) The magistrate or mental hygiene commissioner may, on his or her own or upon the recommendation of the examiner, order that the individual be evaluated for a medical condition causing or contributing to the psychiatric presentation or which might significantly impair or preclude psychiatric evaluation or treatment.

(4) The Supreme Court of Appeals is requested to provide magistrates, mental hygiene commissioners, and examiners training regarding medical conditions mimicking, causing, or contributing to a psychiatric presentation.

(b) *Three-day time limitation on examination*. — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification*. — The certification required in §27-5-3(a) of this code is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification*. — A certification under this section must include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based.

(e) *Notice requirements*. — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual’s admission to the individual’s spouse, if any, and one of the individual’s parents or guardians, or if there is no spouse and are no parents or guardians, to one of the individual’s adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual’s residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Three-day time limitation for examination and certification at mental health facility or state hospital*. — After the individual’s admission to a mental health facility or state hospital, he or she may not be detained more than three days, excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is mentally ill or has a substance use disorder and is likely to injure himself, herself, or others if allowed to be at liberty. In the event the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself, or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) *Ten-day time limitation for institution of final commitment proceedings*. — If, in the opinion of the examining physician, the patient is mentally ill or has a substance use disorder and because of the mental illness or substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within 10 days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within the 10-day period, the individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) *Twenty-day time limitation for conclusion of all proceedings*. — If all proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 20 days from the date of institution of the proceedings, the individual shall be immediately released.

**§27-5-3a. Legal effect of commitment later determined not to be based on mental illness or addiction.**

In the event that a person is involuntarily hospitalized, and it is determined after the entry of the order that the behavior which led to the entry of the order of involuntary hospitalization was caused by a physical condition or disorder rather than mental illness or addiction, the hospitalization shall not serve to make the person a proscribed person under state laws relating to firearms possession. Furthermore, while it is clear that it is the government of the United States, and not the government of West Virginia, which has the authority under 18 U. S. C. 922 (g) (4) to determine whether a person has been “committed to a mental institution”, the legislature notes that “federal courts often look to state law to help determine whether a commitment has occurred”. *United States v. Vertz*, 40 F. App’x 69 (6th Cir. 2002). Under such principles of interpretation, it is the intent of the Legislature to make clear that in circumstances under which there is an order finding that a person’s involuntarily hospitalization was necessitated and ordered as a result of a physical condition or disorder, the Legislature does not deem this to be a “commitment”, under state law, and the Legislature’s determination that such an involuntary hospitalization is not a “commitment” should be viewed by the government of the United States as consistent with the provisions of the amendments to the NICS Improvement Amendments Act of 2007, Public Law 110-180, Tit. I, Sec. 101(c)(1), 121 Stat. 2559, 2562-63 (2008).

§27-5-10. Transportation for the mentally ill or persons with substance use disorder.

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.* of this code, the sheriff shall provide immediate transportation to or from the appropriate mental health facility or state hospital: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual’s hospitalization, for the interested person to arrange for the individual’s transportation to the mental health facility or state hospital if the sheriff determines that those means are suitable given the individual’s condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual’s safety and well-being.

(c) *Use of certified municipal law-enforcement officers*. — Sheriffs and municipal governments may enter into written agreements by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, “certified municipal law-enforcement officer” means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq.* of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual. In the event the sheriff, arresting officer, or certified municipal law-enforcement officer is informed by the state hospital that the state hospital lacks suitable bed capacity to place such individual, the sheriff, arresting officer, or certified municipal law-enforcement officer shall transport such individual to a diversion facility in the state as designated by the chief medical officer of the state hospital.

(e) Nothing in this section is intended to alter security responsibilities for the patient by the sheriff unless mutually agreed upon as provided in subsection (c) of this section.