

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 509

BY SENATOR TRUMP

[Originating in the Committee on Health and Human

Resources; reported on March 17, 2021]

1 A BILL to amend and reenact §27-5-3 of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §27-5-3a, all relating to
3 involuntary hospitalization; requiring training by specified persons on medical causation
4 for psychiatric disease with focus on medical conditions causing or contributing to
5 psychiatric presentation; providing that magistrate or mental hygiene commissioner may
6 determine individual be evaluated for medical condition; removing a requirement that a
7 determination of medical stability be found prior to admission to a mental health facility;
8 providing that a physical may be provided to the individual upon admission to the mental
9 health facility; and providing that if after entry of order of involuntary hospitalization is
10 entered the cause is determined to be medical rather than physical this shall not serve to
11 make the person banned from possessing a firearm.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

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

1 (a) *Admission to a mental health facility for examination.* —
2 (1) Any individual may be admitted to a mental health facility for examination and treatment
3 upon entry of an order finding probable cause as provided in §27-5-2 of this code ~~upon a finding~~
4 ~~by a licensed physician that the individual is medically stable~~, and upon certification by a
5 physician, psychologist, licensed professional counselor, licensed independent clinical social
6 worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, an advanced
7 nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this
8 code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with
9 advanced duties in psychiatric medicine that he or she has examined the individual and is of the
10 opinion that the individual is mentally ill or has a substance use disorder and, because of the
11 mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or to
12 others if not immediately restrained: *Provided*, That the opinions offered by an independent

13 clinical social worker, an advanced nurse practitioner with psychiatric certification, or a physician's
14 assistant with advanced duties in psychiatric medicine must be within his or her particular areas
15 of expertise, as recognized by the order of the authorizing court. A magistrate, mental hygiene
16 commissioner, or examiner shall have training regarding medical causation for psychiatric disease
17 with a focus on medical conditions causing or contributing to a psychiatric presentation.

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

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

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

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

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

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

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

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

62 (g) *Ten-day time limitation for institution of final commitment proceedings.* — If, in the
63 opinion of the examining physician, the patient is mentally ill or has a substance use disorder and

64 because of the mental illness or substance use disorder is likely to injure himself, herself, or others
65 if allowed to be at liberty, the chief medical officer shall, within 10 days from the date of admission,
66 institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are
67 not instituted within the 10-day period, the individual shall be immediately released. After the
68 request for hearing is filed, the hearing may not be canceled on the basis that the individual has
69 become a voluntary patient unless the mental hygiene commissioner concurs in the motion for
70 cancellation of the hearing.

71 (h) *Twenty-day time limitation for conclusion of all proceedings.* — If all proceedings as
72 provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within 20 days
73 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.**

1 In the event that a person is involuntarily hospitalized, and it is determined after the entry
2 of the order that the behavior which led to the entry of the order of involuntary hospitalization was
3 caused by a physical condition or disorder rather than mental illness or addiction, the
4 hospitalization shall not serve to make the person a proscribed person under federal or state laws
5 relating to firearms possession.