

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5154

By Delegates Rohrbach, Worrell, Akers, and Chiarelli

[Introduced January 25, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §27-5-2 of the Code of West Virginia, 1931, as amended, relating to
 2 removing liability for mental health professionals providing services in mental hygiene
 3 cases involving possible involuntary hospitalization.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) Any adult person may make an application for involuntary hospitalization for
 2 examination of an individual when the person making the application has reason to believe that the
 3 individual to be examined has a substance use disorder as defined by the most recent edition of
 4 the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders,
 5 inclusive of substance use withdrawal, or is mentally ill and because of his or her substance use
 6 disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to
 7 others if allowed to remain at liberty while awaiting an examination and certification by a physician,
 8 psychologist, licensed professional counselor, licensed independent social worker, an advanced
 9 nurse practitioner, or physician assistant as provided in subsection (e) of this section: Provided,
 10 That a diagnosis of dementia, epilepsy, or intellectual or developmental disability alone may not be
 11 a basis for involuntary commitment to a state hospital.

12 (b) Notwithstanding any language in this subsection to the contrary, if the individual to be
 13 examined under the provisions of this section is incarcerated in a jail, prison, or other correctional
 14 facility, then only the chief administrative officer of the facility holding the individual may file the
 15 application, and the application ~~must~~ shall include the additional statement that the correctional
 16 facility itself cannot reasonably provide treatment and other services necessary to treat the
 17 individual's mental illness or substance use.

18 (c) Application for involuntary custody for examination may be made to the circuit court,
 19 magistrate court, or a mental hygiene commissioner of the county in which the individual resides,

20 or of the county in which he or she may be found. A magistrate before whom an application or
21 matter is pending may, upon the availability of a mental hygiene commissioner or circuit court
22 judge for immediate presentation of an application or pending matter, transfer the pending matter
23 or application to the mental hygiene commissioner or circuit court judge for further proceedings
24 unless otherwise ordered by the chief judge of the judicial circuit.

25 (d) The person making the application shall give information and state facts in the
26 application required by the form provided for this purpose by the Supreme Court of Appeals.

27 (e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for
28 the individual named in the application to be detained and taken into custody as provided in §27-5-
29 1 and §27-5-10 of this code for the purpose of holding a probable cause hearing as provided in
30 ~~§27-5-2 of this code~~ subsection (f) of this section. An examination of the individual to determine
31 whether the individual meets involuntary hospitalization criteria shall be conducted in person
32 unless an in person examination would create a substantial delay in the resolution of the matter in
33 which case the examination may be by video conference, and shall be performed by a physician,
34 psychologist, a licensed professional counselor practicing in compliance with §30-31-1 et seq. of
35 this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 et
36 seq. of this code, an advanced nurse practitioner with psychiatric certification practicing in
37 compliance with §30-7-1 et seq. of this code, a physician assistant practicing in compliance with
38 §30-3-1 et seq. of this code, or a physician assistant practicing in compliance with §30-3E-1 et
39 seq. of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical
40 social worker, a physician assistant, or an advanced nurse practitioner with psychiatric certification
41 may only perform the examination if he or she has previously been authorized by an order of the
42 circuit court to do so, the order having found that the licensed professional counselor, the licensed
43 independent clinical social worker, physician assistant, or advanced nurse practitioner with
44 psychiatric certification has particularized expertise in the areas of mental health and mental
45 hygiene or substance use disorder sufficient to make the determinations required by the

46 provisions of this section. The examination shall be provided or arranged by a community mental
47 health center designated by the Secretary of the Department of Health and Human Resources to
48 serve the county in which the action takes place. The order is to specify that the evaluation be held
49 within a reasonable period of time not to exceed two hours and shall provide for the appointment of
50 counsel for the individual: *Provided*, however, That the time requirements set forth in this
51 subsection only apply to persons who are not in need of medical care for a physical condition or
52 disease for which the need for treatment precludes the ability to comply with the time
53 requirements. During periods of holding and detention authorized by this subsection, upon
54 consent of the individual or if there is a medical or psychiatric emergency, the individual may
55 receive treatment. The medical provider shall exercise due diligence in determining the
56 individual's existing medical needs and provide treatment the individual requires, including
57 previously prescribed medications. As used in this section, "psychiatric emergency" means an
58 incident during which an individual loses control and behaves in a manner that poses substantial
59 likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed
60 professional counselor, licensed independent clinical social worker, physician assistant, or
61 advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours,
62 performed the examination required by this subsection the community mental health center may
63 waive the duty to perform or arrange another examination upon approving the previously
64 performed examination. Notwithstanding this subsection, §27-5-4(r) of this code applies regarding
65 payment by the county commission for examinations at hearings. If the examination reveals that
66 the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill
67 or has a substance use disorder but not likely to cause harm to himself, herself, or others, the
68 individual shall be immediately released without the need for a probable cause hearing and the
69 examiner is not ~~civilly~~ liable for the rendering of the opinion absent a finding of professional
70 negligence. The examiner shall immediately, but no later than 60 minutes after completion of the
71 examination, provide the mental hygiene commissioner, circuit court, or magistrate before whom

72 the matter is pending, and the state hospital to which the individual may be involuntarily
73 hospitalized, the results of the examination on the form provided for this purpose by the Supreme
74 Court of Appeals for entry of an order reflecting the lack of probable cause.

75 Any mental health service provider authorized under this subsection (e) to perform such an
76 examination shall be free from liability, regardless of the examination results determined by the
77 professional, unless clear evidence of negligence or deviation from the applicable standard of
78 care, legal causation, and a compensable injury are demonstrated to and affirmed by a court of
79 competent jurisdiction.

80 (f) A probable cause hearing shall be held promptly before a magistrate, the mental
81 hygiene commissioner, or circuit judge of the county of which the individual is a resident or where
82 he or she was found. If requested by the individual or his or her counsel, the hearing may be
83 postponed for a period not to exceed 48 hours. Hearings may be conducted via videoconferencing
84 unless the individual or his or her attorney object for good cause or unless the magistrate, mental
85 hygiene commissioner, or circuit judge orders otherwise. The Supreme Court of Appeals is
86 requested to develop regional mental hygiene collaboratives where mental hygiene
87 commissioners can share on-call responsibilities, thereby reducing the burden on individual
88 circuits and commissioners.

89 The individual shall be present at the hearing and ~~has the right to~~ may present evidence,
90 confront all witnesses and other evidence against him or her, and examine testimony offered,
91 including testimony by representatives of the community mental health center serving the area.
92 Expert testimony at the hearing may be taken telephonically or via videoconferencing. The
93 individual ~~has the right to~~ may remain silent ~~and to be proceeded against in accordance with the~~
94 Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code.
95 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court
96 judge shall find and enter an order stating whether or not it is likely that deterioration will occur
97 without clinically necessary treatment, or there is probable cause to believe that the individual, as

98 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or
99 herself or to others. Any such order entered shall be provided to the state hospital to which the
100 individual may or will be involuntarily hospitalized within 60 minutes of filing absent good cause.

101 (g) Probable cause hearings may occur in the county where a person is hospitalized. The
102 judicial hearing officer may: use videoconferencing and telephonic technology; permit persons
103 hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is
104 accomplished; and specify other alternative or modified procedures that are consistent with the
105 purposes and provisions of this article to promote a prompt, orderly, and efficient hearing. The
106 alternative or modified procedures shall fully and effectively guarantee to the person who is the
107 subject of the involuntary commitment proceeding and other interested parties due process of the
108 law and access to the least restrictive available treatment needed to prevent serious harm to self
109 or others.

110 (h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable
111 cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing
112 held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a direct result of
113 mental illness or substance use disorder is likely to cause serious harm to himself, herself, or
114 others and because of mental illness or a substance use disorder requires treatment, the
115 magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the
116 question of whether the individual's circumstances make him or her amenable to outpatient
117 treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement.
118 At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court
119 judge shall find and enter an order stating whether or not it is likely that deterioration will occur
120 without clinically necessary treatment, or there is probable cause to believe that the individual, as
121 a result of mental illness or substance use disorder, is likely to cause serious harm to himself or
122 herself or others. The agreement ~~is to~~ shall be in writing and approved by the individual, his or her
123 counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the

124 magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate
125 outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be
126 released to outpatient treatment upon the terms and conditions of the voluntary treatment
127 agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary
128 treatment agreement to comply with the terms of the voluntary treatment agreement constitutes
129 evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental
130 hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or
131 refused to comply with the terms and conditions of the voluntary treatment agreement and whether
132 the individual as a result of mental illness or substance use disorder remains likely to cause
133 serious harm to himself, herself, or others, the entry of an order requiring admission under
134 involuntary hospitalization pursuant to §27-5-3 of this code may be entered. Nothing in the
135 provisions of this article regarding release pursuant to a voluntary treatment agreement or
136 convalescent status may be construed as creating a right to receive outpatient mental health
137 services or treatment, or as obligating any person or agency to provide outpatient services or
138 treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a
139 mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary
140 treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may
141 not be for a period of more than six months if the individual has not been found to be involuntarily
142 committed during the previous two years and for a period of no more than two years if the
143 individual has been involuntarily committed during the preceding two years. If in any proceeding
144 held pursuant to this article the individual objects to the issuance or conditions and terms of an
145 order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental
146 hygiene commissioner may not enter an order directing treatment pursuant to a voluntary
147 treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment
148 agreement is ordered, the individual subject to the order may, upon request during the period the
149 order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the

150 individual may seek to have the order canceled or modified. Nothing in this section affects the
151 appellate and habeas corpus rights of any individual subject to any commitment order.

152 The commitment of any individual as provided in this article shall be in the least restrictive
153 setting and in an outpatient community-based treatment program to the extent resources and
154 programs are available, unless the clear and convincing evidence of the certifying professional
155 under subsection (e) of this section, who is acting in a manner consistent with the standard of care
156 establishes that the commitment or treatment of that individual requires an inpatient hospital
157 placement. Outpatient treatment will be based upon a plan jointly prepared by the department and
158 the comprehensive community mental health center or licensed behavioral health provider.

159 (i) If the certifying professional determines that an individual requires involuntary
160 hospitalization for a substance use disorder as permitted by §27-5-2(a) of this code which, due to
161 the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will
162 cause significant medical complications, the person certifying the individual shall recommend that
163 the individual be closely monitored for possible medical complications. If the magistrate, mental
164 hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she
165 shall include a recommendation that the individual be closely monitored in the order of
166 commitment.

167 (j) The Supreme Court of Appeals and the Secretary of the Department of Health and
168 Human Resources shall specifically develop and propose a statewide system for evaluation and
169 adjudication of mental hygiene petitions which shall include payment schedules and
170 recommendations regarding funding sources. Additionally, the Secretary of the Department of
171 Health and Human Resources shall also immediately seek reciprocal agreements with officials in
172 contiguous states to develop interstate/intergovernmental agreements to provide efficient and
173 efficacious services to out-of-state residents found in West Virginia and who are in need of mental
174 hygiene services.

NOTE: The purpose of this bill is to remove liability for mental health professionals providing services in mental hygiene cases involving possible involuntary hospitalization.

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