

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-1

§ 27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers

Effective: June 5, 2020

[Currentness](#)

(a) *Appointment of mental hygiene commissioners.* -- The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of a commissioner, take the oath required of other special commissioners as provided in § 6-1-1 *et seq.* of this code.

Prior to presiding over an involuntary hospitalization hearing, each newly appointed person to serve as a mental hygiene commissioner and all magistrates shall attend and complete an orientation course that consists of training provided annually by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health and Human Resources. In addition, existing mental hygiene commissioners and all magistrates trained to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health and Human Resources. Persons attending the courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court--General Judicial for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and rules for the courses, including rules providing for the reimbursement of reasonable expenses as authorized in this section. The Secretary of the Department of Health and Human Resources shall consult with the Supreme Court of Appeals regarding the development of the orientation program.

(b) *Duties of mental hygiene commissioners.* --

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to § 27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but the findings and conclusions are not binding on the circuit court. All mental hygiene commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by the chief judge. A mental hygiene commissioner shall conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before

any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak, or who speaks a foreign language, and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuits may serve in that capacity in a jurisdiction other than that of his or her original appointment if it is agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during hours when the courthouse is closed or on nonjudicial days.

(c) *Duties of prosecuting attorney.* -- The prosecuting attorney or one of his or her assistants shall represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she determines it to be in the public interest.

(d) *Duties of sheriff.* -- Upon written order of the circuit court, mental hygiene commissioner, or magistrate in the county where the individual formally accused of being mentally ill or having a substance use disorder is a resident or is found, the sheriff of that county shall take the individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while the hearing is being conducted: *Provided*, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to § 27-5-4(p) of this code: *Provided, however*, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, by which transportation and security responsibilities for hearings held pursuant to the provisions of this article during hours when the courthouse is closed or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment. In the event an individual requires transportation to a state hospital as defined by § 27-1-6 of this code, the sheriff shall contact the state hospital in advance of the transportation to determine if the state hospital has available suitable bed capacity to place the individual.

(e) *Duty of sheriff upon presentment to mental health care facility.* -- When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed, or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) *Duties of Supreme Court of Appeals.* -- The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

(g) *Duties of the Department of Health and Human Resources.* -- The secretary shall develop an orientation program as provided in subsection (a) of this section. The orientation program shall include, but not be limited to, instruction regarding the nature and treatment of mental illness and substance use disorder; the goal and purpose of commitment; community-based treatment options; and less restrictive alternatives to inpatient commitment.

Credits

Acts 1965, c. 98; Acts 1974, c. 66; Acts 1975, c. 151; Acts 1978, c. 62; Acts 1979, c. 69; Acts 1992, c. 125; Acts 2001, c. 194, eff. 90 days after April 14, 2001; Acts 2002, c. 162, eff. 90 days after March 9, 2002; Acts 2012, c. 113, eff. March 7, 2012; Acts 2018, c. 195, eff. March 7, 2018; Acts 2020, c. 273, eff. June 5, 2020.

Notes of Decisions (32)

W. Va. Code, § 27-5-1, WV ST § 27-5-1

Current with legislation of the 2020 Regular Session.

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-1a

§ 27-5-1a. Appointment of attorney to aid prosecutor; certification of performance; fee

Currentness

If, in any case, the prosecuting attorney and his assistants in a county in which there is a state mental health hospital are unable to act due to a burdensome number of cases brought under this article, the circuit court shall appoint some competent practicing attorney to act in that case. The court shall certify to the director of the administrative office of the supreme court of appeals the performance of that service when completed and may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in article twenty-one, chapter twenty-nine of this code. Compensation shall be paid out of the "mental hygiene fund" provided for in section four of this article.

Credits

Acts 1979, c. 69; Acts 1981, c. 183.

W. Va. Code, § 27-5-1a, WV ST § 27-5-1a

Current with legislation of the 2020 Regular Session.



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional by State ex rel. Riley v. Rudloff, W.Va., Dec. 06, 2002

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-2

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

Effective: June 5, 2020

Currentness

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

Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services for the individual's mental illness or substance use disorder.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. A magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

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

(e) The circuit court, mental hygiene commissioner, or magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in § 27-5-2(g) of this code for the purpose of an examination of the individual by a physician, psychologist, a licensed professional counselor practicing in compliance with § 30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with § 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, a physician's assistant practicing in compliance with § 30-3-1 *et seq.* of this code, or a physician's assistant practicing in compliance with § 30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician's assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or substance use disorder sufficient to make the determinations required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held immediately and is to provide for the appointment of counsel for the individual: *Provided, however*, That the order may allow the hearing to be held up to 24 hours after the person to be examined is taken into custody rather than immediately if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: *Provided further*, That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by the provisions of this subsection, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, § 27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or has no substance use disorder, or is determined to be mentally ill or has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court, or magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

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

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent

with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of § 27-5-4 of this code finds that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself, herself, or others and because of mental illness or a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is likely that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of § 27-5-3 of this code may be entered. Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

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

(i) If the certifying professional determines that an individual requires involuntary hospitalization for a substance use disorder which, due to the degree of the disorder, creates a reasonable likelihood that withdrawal or detoxification will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders

involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

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

Credits

Acts 1965, c. 98; Acts 1966, c. 42; Acts 1972, c. 67; Acts 1974, c. 66; Acts 1975, c. 151; Acts 1978, c. 62; Acts 1979, c. 69; Acts 1980, c. 84; Acts 1983, c. 7; Acts 1992, c. 125; Acts 2001, c. 194, eff. 90 days after April 14, 2001; Acts 2002, c. 162, eff. 90 days after March 9, 2002; Acts 2003, c. 149, eff. 90 days after March 8, 2003; Acts 2006, c. 127, eff. 90 days after March 9, 2006; Acts 2008, c. 145, eff. June 7, 2008; Acts 2018, c. 201, eff. June 8, 2018; Acts 2020, c. 273, eff. June 5, 2020.

Notes of Decisions (16)

W. Va. Code, § 27-5-2, WV ST § 27-5-2

Current with legislation of the 2020 Regular Session.

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KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 27-5-2a. Repealed by Acts 1979, c. 69

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-2a

§ 27-5-2a. Repealed by Acts 1979, c. 69

[Currentness](#)

W. Va. Code, § 27-5-2a, WV ST § 27-5-2a

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Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-2a

§ 27-5-2a. Process for involuntary hospitalization

Effective: June 5, 2020

Currentness

(a) As used in this section:

(1) "Addiction" has the same meaning as the term is defined in § 27-1-11 of this code.

(2) "Authorized staff physician" means a physician, authorized pursuant to the provisions of § 30-3-1 *et seq.* or § 30-14-1 *et seq.* of this code, who is a bona fide member of the hospital's medical staff.

(3) "Hospital" means a facility licensed pursuant to the provisions of § 16-5b-1 *et seq.* of this code, and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals under the supervision of physicians.

(4) "Psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others.

(b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician may order the involuntary hospitalization of an individual who is present at, or presented at, a hospital emergency department in need of treatment, if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to generate a form for the statement to be signed by the authorized staff physician or other person authorized by the hospital and provided to the individual.

(2) Immediately upon admission, or as soon as practicable thereafter, but in no event later than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff physician or designated employee shall file a mental hygiene petition in which the authorized staff physician certifies that the individual for whom the involuntary hospitalization is sought is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff physician shall also certify the same in the individual's health records. Upon receipt of this filing, the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant to § 27-5-2 of this code.

(3) An individual who is involuntarily hospitalized pursuant to this section shall be released from the hospital within 72 hours, unless further detained under the applicable provisions of this article.

(c) During a period of involuntary hospitalization authorized by this section, upon consent of the individual, or in the event of a medical or psychiatric emergency, the individual may receive treatment. The hospital or authorized staff physician shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications.

(d) Each hospital or authorized staff physician which provides services under this section shall be paid for the services at the same rate the hospital or authorized staff physician negotiates with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may file a claim for payment with the West Virginia Legislative Claims Commission in accordance with § 14-2-1 *et seq.* of this code.

(e) Authorized staff physicians and hospitals and their employees carrying out duties or rendering professional opinions as provided in this section shall be free from liability for their actions, if the actions are performed in good faith and within the scope of their professional duties and in a manner consistent with the standard of care.

(f) The West Virginia Supreme Court of Appeals is requested, by no later than July 1, 2020, to provide each hospital with a list of names and contact information of the mental hygiene commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the West Virginia Supreme Court of Appeals.

(g) An action taken against an individual pursuant to this section may not be construed to be an adjudication of the individual, nor shall any action taken pursuant to this section be construed to satisfy the requirements of § 61-7-7(a)(4) of this code.

Credits

Acts 2020, c. 273, eff. June 5, 2020.

W. Va. Code, § 27-5-2a, WV ST § 27-5-2a

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-3

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

Effective: June 5, 2020
Currentness

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

(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.

Credits

Acts 1965, c. 98; Acts 1966, c. 42; Acts 1974, c. 66; Acts 1977, c. 102; Acts 1978, c. 62; Acts 1979, c. 69; Acts 1992, c. 125; Acts 2001, c. 194, eff. 90 days after April 14, 2001; Acts 2002, c. 162, eff. 90 days after March 9, 2002; Acts 2003, c. 149, eff. 90 days after March 8, 2003; Acts 2006, c. 127, eff. 90 days after March 9, 2006; Acts 2018, c. 201, eff. June 8, 2018; Acts 2020, c. 273, eff. June 5, 2020.

Notes of Decisions (17)

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-4

§ 27-5-4. Institution of final commitment proceedings; hearing requirements; release

Effective: June 5, 2020
Currentness

(a) *Involuntary commitment.* -- Except as provided in § 27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) *How final commitment proceedings are commenced.* -- Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* --

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or substance use disorder. The applicant shall state in detail the recent overt acts upon which the belief is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents, filed with a circuit court, mental hygiene commissioner, or magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, and the central state mental health registry, in accordance with § 61-7A-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to § 61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications may not be accepted for individuals who only have epilepsy, dementia, or an intellectual or developmental disability.

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* --

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or has a substance use disorder and that because of the mental illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is based.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* -- Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, psychologist, advanced nurse practitioner, or physician's assistant; custody for examination; dismissal of proceedings. --

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, psychologist, an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or substance use disorder of the individual and the likelihood of causing serious harm to self or others.

(2) If the designated physician, psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, psychologist, nurse practitioner, or physician's assistant. All orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to § 27-5-3 of this code.

(3) If the reports of the appointed physician, psychologist, nurse practitioner, or physician's assistant do not confirm that the individual is mentally ill or has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. --

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) In the event the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) *Duties of counsel representing individual; payment of counsel representing indigent.* --

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in § 29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* --

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or § 27-5-2 or § 27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* --

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

(A) Whether the individual is mentally ill or has a substance use disorder;

(B) Whether, because of illness or substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: *Provided*, That for any commitment to a state hospital as defined by § 27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(1) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order. --*

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under § 27-6A-1 *et seq.* of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the department and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment. The chief medical officer shall provide notice to the court and the prosecuting attorney that the individual requires commitment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe the reasons for ongoing commitment. In its discretion, the court or prosecuting attorney may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment.

- (2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:
- (A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in remission;
 - (B) Whether the individual's condition resulting from mental illness or substance use disorder is likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others unless treatment is continued;
 - (C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;
 - (D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;
 - (E) Whether the individual is not a danger to self or others; and
 - (F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.
- (3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.
- (4) An individual committed pursuant to § 27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.
- (5) In the event the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.
- (m) *Dismissal of proceedings.* -- In the event the individual is discharged as provided in subsection (l) of this section, the circuit court or mental hygiene commissioner shall dismiss the proceedings.
- (n) *Immediate notification of order of hospitalization.* -- The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.
- (o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* --
- (1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental

health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* -- In lieu of ordering the individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* -- If the individual is found to be mentally ill or to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be immediately given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health and Human Resources.* --

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall immediately make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall immediately, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* --

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under § 29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

Credits

Acts 1955, c. 104; Acts 1957, c. 107; Acts 1965, c. 98; Acts 1972, c. 67; Acts 1974, c. 66; Acts 1975, c. 151; Acts 1978, c. 62; Acts 1979, c. 69; Acts 1981, c. 183; Acts 1992, c. 125; Acts 2001, c. 194, eff. 90 days after April 14, 2001; Acts 2006, c. 127, eff. 90 days after March 9, 2006; Acts 2012, c. 112, eff. June 8, 2012; Acts 2020, c. 273, eff. June 5, 2020.

Notes of Decisions (51)

W. Va. Code, § 27-5-4, WV ST § 27-5-4

Current with legislation of the 2020 Regular Session.

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-5

§ 27-5-5. Judicial review

Currentness

Any individual adversely affected by any order of commitment entered by the circuit court under this article may seek review thereof by appeal to the state supreme court of appeals and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally.

This section shall not be construed to in any way limit or precondition the right to seek release of such individual by habeas corpus.

Credits

Acts 1965, c. 98; Acts 1974, c. 66.

Notes of Decisions (8)

W. Va. Code, § 27-5-5, WV ST § 27-5-5

Current with legislation of the 2020 Regular Session.



KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 27-5-6. Repealed by Acts 1979, c. 69

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-6

§ 27-5-6. Repealed by Acts 1979, c. 69

[Currentness](#)

W. Va. Code, § 27-5-6, WV ST § 27-5-6

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-7

§ 27-5-7. Hospitalization by agency of the United States

Currentness


If an individual ordered to be hospitalized pursuant to section four of this article is eligible for hospital care or treatment by any agency of the United States, then, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, the circuit court or mental hygiene commissioner may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such circuit court or mental hygiene commissioner to any hospital or institution established, maintained or operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized shall, with respect to such individual, be vested with the same powers as the chief medical officers of mental health facilities or the director of health within this state with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in the appropriate circuit court or mental hygiene commissioner of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

Credits

Acts 1965, c. 98; Acts 1974, c. 66; Acts 1977, c. 102.

W. Va. Code, § 27-5-7, WV ST § 27-5-7

Current with legislation of the 2020 Regular Session.

 KeyCite Red Flag - Severe Negative Treatment

KeyCite Red Flag Negative Treatment§ 27-5-8. Repealed by Acts 1979, c. 69

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-8

§ 27-5-8. Repealed by Acts 1979, c. 69

Currentness

W. Va. Code, § 27-5-8, WV ST § 27-5-8

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West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-9

§ 27-5-9. Rights of patients

Effective: August 12, 2010

Currentness

(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, intellectual disability or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less frequently than once every three months;

(3) Periodic physical examination by a physician no less frequently than once every six months; and

(4) Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized

treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

(f) Every patient, upon his or her admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The Secretary of the Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to protect the personal rights of patients not inconsistent with this section.


Credits

Acts 1974, c. 66; Acts 1977, c. 102; Acts 2007, c. 167, eff. June 8, 2007; Acts 2010, 1st Ex. Sess., c. 14, eff. Aug. 12, 2010.

Notes of Decisions (23)

W. Va. Code, § 27-5-9, WV ST § 27-5-9

Current with legislation of the 2020 Regular Session.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Annotated Code of West Virginia
Chapter 27. Mentally Ill Persons
Article 5. Involuntary Hospitalization (Refs & Annos)

W. Va. Code, § 27-5-10

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

Effective: June 5, 2020

Currentness

(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.

(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.

Credits

Acts 1974, c. 66; Acts 1993, c. 90; Acts 2001, c. 194, eff. 90 days after April 14, 2001; Acts 2020, c. 273, eff. June 5, 2020.

W. Va. Code, § 27-5-10, WV ST § 27-5-10
Current with legislation of the 2020 Regular Session.

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