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**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

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EFFECTIVE DATE:

OFFICE OF THE SECRETARY OF STATE
09 November 2022

**SUBJECT: MENTAL HYGIENE
COMMITMENT APPLICATION
PROCEDURES**

POLICY DIRECTIVE

PURPOSE:

To provide application procedures for the mental hygiene/involuntary hospitalization of an inmate in accordance with state code.

REFERENCE:

WV Code §27-5-2.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject.

APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation (DCR) that have custody of adult inmates. This Policy is available for general distribution.

DEFINITIONS:

None.

POLICY:

- I. The Superintendent, as the chief administrative officer of a Division of Corrections and Rehabilitation (DCR) facility, may file an application for involuntary hospitalization for examination of an individual when:

- he or she has reason to believe that an inmate 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 (DSM), inclusive of substance use withdrawal, or is mentally ill; and
- because of his or her substance use disorder or mental illness, the inmate is likely to cause serious harm to himself, herself, or to others.

II. The Superintendent shall ensure the completion of the Application for Involuntary Custody for Mental Health Examination of Individual Incarcerated in a Jail, Prison, or Other Correctional Facility (Attachment #1) as provided by the Supreme Court of Appeals.

- A. The application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services necessary to treat the inmate's mental illness or substance use.
- B. The Superintendent shall give information and state facts in the application required by the form. Facility medical and mental health providers shall assist by providing information as required and appropriate.
- C. Members of the public are not permitted by law to file for involuntary hospitalization of incarcerated individuals.
- D. The application may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the facility is located.

III. The circuit court, mental hygiene commissioner, or magistrate may order an examination of the inmate to determine whether the inmate meets involuntary hospitalization criteria. The examination shall be provided or arranged by the community mental health center designated by WV Department of Health and Human Resources to serve that county. The order is to specify that the evaluation be held within a reasonable period of time not to exceed two (2) hours and shall provide for the appointment of counsel for the inmate.

IV. A probable cause hearing shall be held promptly before a magistrate, the mental hygiene commissioner, or circuit judge. If the examination reveals the inmate is not mentally ill or has no substance use disorder or is determined to be mentally ill or have a substance use disorder but not likely to cause harm to himself, herself, or others, there shall be no need for a probable cause hearing. If requested by the inmate or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight (48) hours.

- A. The inmate shall 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. Hearings may be conducted via videoconferencing.

B. 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 inmate, as a result of mental illness or substance use disorder, is likely to cause serious harm to himself or herself or to others.

ATTACHMENT(S):

#1 Application for Involuntary Custody for Mental Health Examination of Individual Incarcerated in a Jail, Prison, or other Correctional Facility (5 pages)

APPROVED SIGNATURE:



Brad Douglas, Acting Commissioner

10/26/22

Date

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: INVOLUNTARY HOSPITALIZATION OF _____, RESPONDENT

DATE: _____ CASE NUMBER _____ - MH - _____

If this application is GRANTED, distribute copies of the application and Form INV 4 or 5 ORDER to: Applicant, Respondent, Respondent's Attorney, Prosecuting Attorney and the Regional Mental Health Center.

**APPLICATION FOR INVOLUNTARY CUSTODY FOR
MENTAL HEALTH EXAMINATION
OF INDIVIDUAL INCARCERATED IN A JAIL, PRISON,
OR OTHER CORRECTIONAL FACILITY**

[West Virginia Code: § 27-5-2(a)(2)]

INSTRUCTIONS TO CHIEF ADMINISTRATIVE OFFICER OF CORRECTIONAL FACILITY:

- A. All information must be printed or typed and be clearly readable.
- B. All information requested must be provided, if known. If unknown, you must state it is unknown.
- C. Any petition and application that does not provide the necessary information, or is unreadable, may be rejected or denied.
- D. Read and answer all questions carefully.
- D. In this document, the **RESPONDENT** is the incarcerated individual whose examination is being requested.

1. FULL NAME OF INCARCERATED PERSON TO BE EXAMINED (**RESPONDENT**):

Identification Information of Respondent: DATE OF BIRTH ____/____/____; WEIGHT ____;
HAIR COLOR _____; HAIR LENGTH _____;
SEX _____; HEIGHT _____; EYE COLOR _____; RACE _____.

2. RESPONDENT'S LAST KNOWN ADDRESS PRIOR TO INCARCERATION: _____

3. PLACE OF BIRTH [*state or county*]: _____

4. THE RESPONDENT IS:

- A. A RESIDENT OF _____ COUNTY, _____ STATE.
- B. CURRENTLY PRESENT IN _____ COUNTY, _____ STATE.

5. NAME OF CORRECTIONAL FACILITY AT WHICH RESPONDENT IS NOW BEING HELD: _____

6. ADDRESS OF CORRECTIONAL FACILITY: _____

CORRECTIONAL FACILITY TELEPHONE NUMBER: () _____

7. CHIEF ADMINISTRATIVE OFFICER'S FULL NAME: _____

WORK PHONE NUMBER OF CHIEF ADMINISTRATIVE OFFICER: () _____

PLEASE PROVIDE A WAY TO CONTACT YOU PENDING THIS APPLICATION PROCESS (example: cell phone, pager number). **THE COURT MUST BE ABLE TO REACH YOU AND NOTIFY YOU OF THE TIME AND PLACE OF ANY HEARING. FAILURE OF FACT WITNESSES WITH FIRSTHAND KNOWLEDGE OF RESPONDENT'S CONDITION AND BEHAVIOR TO APPEAR AT THE HEARING MAY RESULT IN THE APPLICATION BEING DISMISSED AND THE RESPONDENT BEING RETURNED TO YOUR CORRECTIONAL FACILITY.** If you do not want the Respondent to have this information, you may supply the information separately to the Court.

PHONE NUMBER TO REACH CHIEF ADMINISTRATIVE OFFICER: _____

8. DO YOU BELIEVE THE RESPONDENT IS:

A. ADDICTED TO DRUGS, ALCOHOL AND/OR OTHER SUBSTANCES? _____ YES _____ NO

B. MENTALLY ILL? _____ YES _____ NO

9. HOW LONG HAS THE RESPONDENT SHOWN SUCH BEHAVIOR ? _____

10. IN YOUR OWN WORDS, PROVIDE ANY INFORMATION WHICH SUPPORTS YOUR BELIEF THAT THE RESPONDENT IS ADDICTED AND/OR MENTALLY ILL:

(Attach additional pages if necessary)

11. DO YOU BELIEVE THE RESPONDENT, **BECAUSE OF MENTAL ILLNESS OR ADDICTION**, IS LIKELY TO CAUSE SERIOUS HARM TO :

A. HIM/HER SELF? _____ YES _____ NO

B. OTHER PEOPLE? _____ YES _____ NO

12. LIST ANY AND ALL RECENT ACTS WHICH SUPPORT YOUR BELIEF THAT THE RESPONDENT IS LIKELY TO CAUSE SERIOUS HARM TO HIM/HER SELF AND/OR OTHERS. **INCLUDE APPROXIMATE DATE(S) WHEN EACH ACT OCCURRED:**

(Attach additional pages if necessary)

A. IS RESPONDENT A SUICIDE RISK? _____ YES _____ NO _____ UNKNOWN

IF YES, EXPLAIN: _____

B. IS RESPONDENT VIOLENT? YES NO UNKNOWN

IF YES, EXPLAIN: _____

13. LIST THE NAMES AND ADDRESSES OF OTHER PERSONS WHO HAVE SEEN THE BEHAVIOR OR CONDITION OF THE RESPONDENT: _____

IF YOU WANT THESE PEOPLE TO APPEAR AT HEARING ON THIS APPLICATION, YOU MUST CONTACT THEM DIRECTLY.

14. IS THE RESPONDENT CURRENTLY HOSPITALIZED? YES NO

IF YES, STATE WHERE HOSPITALIZED AND EXPECTED LENGTH OF STAY IN HOSPITAL: _____

15. HAS THE RESPONDENT BEEN UNDER THE RECENT CARE OF A PHYSICIAN? YES NO

IF YES, STATE PHYSICIAN'S NAME, ADDRESS, AND PHONE NUMBER: _____

16. IS THE RESPONDENT IN NEED OF MEDICAL CARE FOR ANY PHYSICAL CONDITION OR DISEASE? YES NO

IF YES, DESCRIBE THE CONDITION/DISEASE: _____

17. IS THE RESPONDENT TAKING ANY MEDICATIONS? YES NO

IF YES, LIST THE MEDICATIONS AND DOSAGE: _____

18. DOES THE RESPONDENT NEED MEDICAL CARE, TREATMENT, OR HOSPITALIZATION THAT WOULD PREVENT EXAMINATION BY A MENTAL HEALTH PROFESSIONAL OR A COURT APPEARANCE?

A. IMMEDIATELY? YES NO

B. WITHIN THE NEXT 24 HOURS? YES NO

19. HAS THE RESPONDENT BEEN EXAMINED BY A PSYCHIATRIST OR PSYCHOLOGIST? YES NO

IF YES, STATE PSYCHIATRIST'S OR PSYCHOLOGIST'S NAME, ADDRESS, AND DATE OF LAST EXAMINATION: _____

20. HAS THE RESPONDENT EVER BEEN DIAGNOSED WITH MENTAL RETARDATION? YES NO

21. HAS THE RESPONDENT EVER BEEN CONFINED IN A HOSPITAL FOR MENTAL ILLNESS OR ADDICTION ?

YES NO

IF YES, STATE THE REASON FOR HOSPITALIZATION, THE FACILITY IN WHICH THE RESPONDENT WAS HOSPITALIZED, AND THE DATE(S) OF HOSPITALIZATION:

22. NOTICE INFORMATION - YOU **MUST** COMPLETE THIS SECTION:

A. Respondent's Spouse:

<i>Name</i>	<i>Address</i>
<i>City, State, Zip</i>	<i>Telephone</i>

B. Respondent's Parents/Guardians:

<i>Name(s)</i>	<i>Address</i>
<i>City, State, Zip</i>	<i>Telephone</i>

C. Respondent's Next-of-Kin:

<i>Name</i>	<i>Address</i>
<i>City, State, Zip</i>	<i>Telephone</i>

23. *[initial]* THE HEREIN NAMED CORRECTIONAL FACILITY AT WHICH THE RESPONDENT IS INCARCERATED CANNOT REASONABLY PROVIDE TREATMENT AND OTHER SERVICES FOR THE RESPONDENT'S MENTAL ILLNESS OR ADDICTION.

24. *[initial]* THE NAMED RESPONDENT HAS BEEN OFFERED VOLUNTARY TREATMENT, BUT HAS EITHER REFUSED APPROPRIATE VOLUNTARY HOSPITALIZATION AND/OR TREATMENT, OR IS IN A MENTAL OR MEDICAL CONDITION PRECLUDING HIS OR HER ABILITY TO CONSENT TO VOLUNTARY HOSPITALIZATION AND/OR TREATMENT.

NOTICE:

If involuntarily committed, the person against whom you are filing this application, will be:

- (1) prohibited from possessing and receiving firearms and ammunition, in some cases for his or her entire life,
- (2) required to immediately surrender ANY firearms owned or in his or her possession,
- (3) if committed for treatment of mental illness, reported to both federal and state database registries used for firearm purchases and permits/licenses to carry concealed weapons, and
- (4) subject to future criminal charges for possession or receipt of firearms or ammunition. Conviction in West Virginia can result in a fine up to \$1,000.00 or jail time of up to one year. Federal conviction is a FELONY and can result in fines and jail time up to TEN years. (See, W.Va. Code § 61-7-7 and 18 U.S.C.A. § 924(a)(2))

Persons seeking voluntary admission for treatment, who have NOT been involuntarily committed, are NOT subject to these prohibitions and requirements.

I, _____, the Applicant and Chief Administrative Officer of the
[print YOUR name here]

_____ correctional facility, hereby certify that I truly believe that
[print NAME OF CORRECTIONAL FACILITY here]

the Respondent, _____ is
[print RESPONDENT'S name here]

[check applicable category(s)] _____ addicted and/or _____ mentally ill and because of mental illness or addiction is likely to cause serious harm to him/her self and/or others if allowed to remain at liberty, and should, therefore, be taken into custody for examination and treatment. I therefore petition that the Respondent be brought before Court in order that the Court may determine what further actions, if any, are warranted according to the provisions of the *West Virginia Code*: § 27-5-2.

I understand that **MALICIOUS MAKING OF AN APPLICATION** to any circuit court or mental hygiene commissioner for the purpose of having another person declared mentally ill or an inebriate is a crime and can result in fine or imprisonment up to one year, or both. *West Virginia Code*: § 27-12-1.

I further certify, **UNDER PENALTIES OF FALSE SWEARING** as provided by law, that the information, statements and allegations contained in this Petition and Application are true and accurate to the best of my knowledge, information and belief and constitute the sole basis and reasons for the making of this application. I understand that if I knowingly provide **FALSE** information in the application, I could be subject to a criminal charge of false swearing.

[NOTE: APPLICATION MUST BE MADE UNDER OATH/NOTARIZED OR WILL BE DENIED]

DATE: _____

CHIEF ADMINISTRATIVE OFFICER'S SIGNATURE

The foregoing Petition and Application was subscribed and sworn to or affirmed before the undersigned authority this

_____ day of _____, 2 _____.
[if notary - affix Notarial Seal]

NOTARY PUBLIC/ CIRCUIT CLERK

My Commission Expires: _____.