

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 826 Session of  
2003

INTRODUCED BY MAITLAND, MACKERETH, VANCE, TRUE, BAKER, BARRAR,  
BROWNE, CAPPELLI, CAWLEY, CRAHALLA, DeLUCA, DeWEESE, EGOLF,  
FAIRCHILD, FLEAGLE, GRUCELA, HARHAI, HORSEY, KELLER,  
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TIGUE, WATSON, WEBER, E. Z. TAYLOR, O'NEILL, JAMES, PAYNE AND  
HARPER, MARCH 11, 2003

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, APRIL 13, 2004

## AN ACT

1 Amending the act of February 13, 1970 (P.L.19, No.10), entitled  
2 "An act enabling certain minors to consent to medical, dental  
3 and health services, declaring consent unnecessary under  
4 certain circumstances," further providing for consent to  
5 treatment; AND PROVIDING FOR RELEASE OF MEDICAL RECORDS AND <—  
6 FOR CERTAIN COURT REPORTING.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. The act of February 13, 1970 (P.L.19, No.10),  
10 entitled "An act enabling certain minors to consent to medical,  
11 dental and health services, declaring consent unnecessary under  
12 certain circumstances," is amended by adding sections to read:

13 Section 1.1. Mental Health Treatment.--(a) The following  
14 shall apply to consent for outpatient treatment:

15 (1) Any minor who is fourteen years of age or older may  
16 consent on his or her own behalf to outpatient mental health

examination and treatment, and the minor's parent or legal guardian's consent shall not be necessary.

(2) A parent or legal guardian of a minor less than eighteen years of age may consent to voluntary outpatient mental health examination or treatment on behalf of the minor, and the minor's consent shall not be necessary.

(3) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or legal guardian abrogate consent given by the minor on his or her own behalf.

(b) The following shall apply to consent for inpatient treatment:

(1) A minor's parent or legal guardian may consent to voluntary inpatient treatment, pursuant to Article II of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," on behalf of a minor less than eighteen years of age on the recommendation of a physician who has examined the minor. The minor's consent shall not be necessary.

(2) Nothing in this section shall be construed as restricting or altering a minor's existing rights, including, but not limited to, those enumerated under the "Mental Health Procedures Act" to consent to voluntary inpatient mental health treatment on his or her own behalf at fourteen years of age or older.

(3) Nothing in this section shall be construed as restricting or altering a parent or legal guardian's existing rights to object to a minor's voluntary treatment provided pursuant to the minor's consent on his or her own behalf.

(4) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or legal

1 guardian abrogate consent given by the minor on his or her own  
2 behalf.

3 (5) A PARENT OR LEGAL GUARDIAN WHO HAS PROVIDED CONSENT TO <—  
4 INPATIENT TREATMENT UNDER PARAGRAPH (1) MAY REVOKE THAT CONSENT.  
5 THE REVOCATION SHALL BE EFFECTIVE UNLESS THE MINOR IS FOURTEEN  
6 TO EIGHTEEN YEARS OF AGE AND CONSENTS TO CONTINUED INPATIENT  
7 TREATMENT.

8 (6) A MINOR FOURTEEN TO EIGHTEEN YEARS OF AGE WHO HAS  
9 PROVIDED CONSENT TO INPATIENT TREATMENT MAY REVOKE THAT CONSENT.  
10 THE REVOCATION SHALL BE EFFECTIVE UNLESS THE MINOR'S PARENT OR  
11 LEGAL GUARDIAN HAS PROVIDED CONSENT FOR CONTINUED INPATIENT  
12 TREATMENT UNDER PARAGRAPH (1).

13 ~~(5)~~ (7) At the time of admission, the director of the <—  
14 admitting facility or his designee shall provide the minor with  
15 an explanation of the nature of the mental health treatment in  
16 which he may be involved together with a statement of his  
17 rights, including the right to object to treatment by filing a  
18 petition with the court. If the minor wishes to exercise this  
19 right, the director of the facility or his designee shall  
20 provide a form for the minor to provide notice of the request  
21 for modification or withdrawal from treatment. The director of  
22 the facility or his designee shall file the signed petition with  
23 the court.

24 ~~(6)~~ (8) Any minor fourteen years of age or older and under <—  
25 eighteen years of age who has been confined for inpatient  
26 treatment on the consent of a parent or legal guardian and who  
27 objects to continued inpatient treatment may file a petition in  
28 the court of common pleas requesting a withdrawal from or  
29 modification of treatment. The court shall promptly appoint an  
30 attorney for such minor person and schedule a hearing to be held

1 within seventy-two hours following the filing of the petition,  
2 unless continued upon the request of the attorney for the minor,  
3 by a judge or mental health review officer who shall determine  
4 whether or not the voluntary mental health treatment is in the  
5 best interest of the minor. For inpatient treatment to continue  
6 against the minor's wishes, the court must find all of the  
7 following by clear and convincing evidence:

8 (i) that the minor has a diagnosed mental disorder;

9 (ii) that the disorder is treatable;

10 (iii) that the disorder can be treated in the particular  
11 facility where the treatment is taking place; and

12 (iv) that the ~~treatment~~ PROPOSED INPATIENT TREATMENT SETTING <—  
13 represents the least restrictive alternative that is medically  
14 appropriate.

15 ~~(7) A minor ordered to undergo treatment due to a~~ <—  
16 ~~determination under paragraph (6) shall remain under the~~  
17 ~~treatment designated by the court for a period of twenty days.~~  
18 ~~The minor shall be discharged whenever the director of the~~  
19 ~~facility determines that the minor no longer is in need of~~  
20 ~~treatment~~

21 (9) A MINOR ORDERED TO UNDERGO TREATMENT DUE TO A <—  
22 DETERMINATION UNDER PARAGRAPH (8) SHALL REMAIN AND RECEIVE  
23 INPATIENT TREATMENT AT THE TREATMENT SETTING DESIGNATED BY THE  
24 COURT FOR A PERIOD NOT MORE THAN TWENTY DAYS. THE MINOR SHALL BE  
25 DISCHARGED WHENEVER THE ATTENDING PHYSICIAN DETERMINES THAT THE  
26 MINOR NO LONGER IS IN NEED OF TREATMENT, CONSENT TO TREATMENT  
27 HAS BEEN REVOKED UNDER PARAGRAPH (5), or at the end of the time  
28 period of the order, ~~whichever occurs first. Prior to the end of~~ <—  
29 ~~the time period of the order, the court shall conduct a review~~  
30 ~~hearing in~~ WHICHEVER OCCURS FIRST. IF THE ATTENDING PHYSICIAN <—

1 DETERMINES THAT CONTINUED INPATIENT TREATMENT WILL BE NECESSARY  
2 AT THE END OF THE TIME PERIOD OF THE ORDER AND THE MINOR DOES  
3 NOT CONSENT TO CONTINUED INPATIENT TREATMENT, THE COURT SHALL,  
4 PRIOR TO THE END OF THE TIME PERIOD OF THE ORDER, CONDUCT A  
5 REVIEW HEARING IN accordance with this subsection to determine  
6 whether to:

7 (i) release the minor; or

8 (ii) make a subsequent order for inpatient mental health  
9 treatment for a period not to exceed sixty days subject to

10 discharge of the minor whenever the ~~director of the facility~~ <—

11 ATTENDING PHYSICIAN determines that the minor no longer is in <—

12 need of treatment OR IF CONSENT TO TREATMENT HAS BEEN REVOKED <—

13 UNDER PARAGRAPH (5).

14 ~~(8)~~ (10) The procedure for a sixty-day period of treatment <—

15 under paragraph ~~(7)(ii)~~ (9)(II) shall be repeated until the <—

16 court determines to release the minor or the minor is discharged  
17 in accordance with paragraph ~~(7)~~ (9). <—

18 (C) NOTHING IN SUBSECTIONS (A) AND (B) IS INTENDED TO <—

19 RESTRICT THE RIGHTS OF A MINOR WHO SATISFIES THE CONDITIONS OF

20 SECTION 1 TO CONSENT TO MENTAL HEALTH TREATMENT NOR TO ENLARGE

21 THE RIGHTS OF PARENTS TO CONSENT TO MENTAL HEALTH TREATMENT FOR

22 SUCH MINORS.

23 ~~(c) Definitions.~~ <—

24 (D) As used in this section, the following words and phrases <—  
25 shall have the meanings given to them in this subsection:

26 "Court of common pleas" means the court of common pleas in  
27 the county where the subject of the proceeding is being treated.

28 "Facility" means any mental health establishment, hospital,  
29 clinic, institution, center, day-care center, base service unit,  
30 community mental health center, or part thereof, that provides

1 for the diagnosis, treatment, care or rehabilitation of mentally  
2 ill persons.

3 "Inpatient treatment" means all mental health treatment that  
4 requires full-time or part-time residence in a facility that  
5 provides mental health treatment.

6 "Mental health treatment" means a course of treatment,  
7 including evaluation, diagnosis, therapy and rehabilitation,  
8 designed and administered to alleviate an individual's pain and  
9 distress and to maximize the probability of recovery from mental  
10 illness. The term also includes care and other services which  
11 supplement treatment and aid or promote recovery.

12 Section 1.2. Release of Medical Records.--The individual <—  
13 consenting to treatment of the minor may consent to the release  
14 of the minor's medical records. (A) WHEN A PARENT OR LEGAL <—  
15 GUARDIAN HAS CONSENTED TO TREATMENT OF A MINOR FOURTEEN YEARS OF  
16 AGE OR OLDER UNDER SECTION 1.1(A)(2) OR (B)(1), THE FOLLOWING  
17 SHALL APPLY TO RELEASE OF THE MINOR'S MEDICAL RECORDS AND  
18 INFORMATION:

19 (1) THE PARENT OR LEGAL GUARDIAN MAY CONSENT TO RELEASE OF  
20 THE MINOR'S MEDICAL RECORDS AND INFORMATION, INCLUDING, BUT NOT  
21 LIMITED TO, RECORDS OF PRIOR MENTAL HEALTH TREATMENT, TO THE  
22 MINOR'S MENTAL HEALTH TREATMENT PROVIDERS. IF DEEMED PERTINENT  
23 BY THE MINOR'S MENTAL HEALTH TREATMENT PROVIDERS, THE RELEASE  
24 MAY ALSO INCLUDE RECORDS OF PRIOR MENTAL HEALTH TREATMENT FOR  
25 WHICH THE MINOR HAD PROVIDED CONSENT TO TREATMENT. RELEASE OF  
26 MENTAL HEALTH RECORDS AND INFORMATION SHALL BE LIMITED TO  
27 RELEASE DIRECTLY FROM ONE PROVIDER OF TREATMENT TO ANOTHER.

28 (2) THE PARENT OR LEGAL GUARDIAN MAY CONSENT TO RELEASE OF  
29 THE MINOR'S MENTAL HEALTH RECORDS AND INFORMATION TO THE PRIMARY  
30 CARE PROVIDER, AND THOSE RECORDS SHALL BE PROVIDED IF, IN THE

JUDGMENT OF THE MINOR'S MENTAL HEALTH TREATMENT PROVIDER, THE  
TRANSFER WOULD NOT BE DETRIMENTAL TO THE MINOR. RELEASE OF  
MENTAL HEALTH RECORDS AND INFORMATION SHALL BE LIMITED TO  
RELEASE DIRECTLY FROM THE PROVIDER OF MENTAL HEALTH TREATMENT OR  
THE FACILITY TO THE PRIMARY CARE PROVIDER.

(3) THE PARENT OR LEGAL GUARDIAN SHALL HAVE THE RIGHT TO  
INFORMATION NECESSARY FOR PROVIDING CONSENT TO THE MINOR'S  
MENTAL HEALTH TREATMENT, INCLUDING, BUT NOT LIMITED TO, THE  
SYMPTOMS AND CONDITIONS TO BE TREATED, MEDICATIONS AND OTHER  
TREATMENTS TO BE PROVIDED, RISKS, BENEFITS AND EXPECTED RESULTS.

(4) EXCEPT TO THE EXTENT SET FORTH ABOVE, THE MINOR SHALL  
CONTROL THE RELEASE OF THE MINOR'S MENTAL HEALTH RECORDS AND  
INFORMATION TO THE EXTENT ALLOWED BY LAW.

(B) CONSENT TO RELEASE OF MENTAL HEALTH RECORDS FOR ALL  
PURPOSES AND IN ALL CIRCUMSTANCES OTHER THAN THOSE PROVIDED FOR  
IN SUBSECTION (A) SHALL BE SUBJECT TO THE PROVISIONS OF THE ACT  
OF JULY 9, 1976 (P.L.817, NO.143), KNOWN AS THE "MENTAL HEALTH  
PROCEDURES ACT," AND OTHER APPLICABLE FEDERAL AND STATE STATUTES  
AND REGULATIONS. SUBJECT TO THE PROVISIONS OF SUBSECTION (A)(1),  
WHEN A MINOR HAS PROVIDED CONSENT TO OUTPATIENT MENTAL HEALTH  
TREATMENT UNDER SECTION 1.1(A)(1), THE MINOR SHALL CONTROL THE  
RECORDS OF TREATMENT TO THE SAME EXTENT AS THE MINOR WOULD  
CONTROL RECORDS OF INPATIENT CARE OR INVOLUNTARY OUTPATIENT CARE  
UNDER THE "MENTAL HEALTH PROCEDURES ACT" AND ITS REGULATIONS.

Section 1.3. Court Reporting.--(a) Each court of common  
pleas shall report annually to the Administrative Office of  
Pennsylvania Courts the number of:

(1) Petitions filed under section ~~1.1(b)(5)~~ 1.1(B)(7).

(2) Petitions resulting in minors ordered to undergo  
treatment.

<—

1       (3) Subsequent treatment period ordered per minor.

2       (b) The Administrative Office of Pennsylvania Courts shall  
3 compile the figures reported under this section and report its  
4 findings, within sixty days of the receipt of the last report,  
5 to the Public Health and Welfare Committee of the Senate and the  
6 Health and Human Services Committee of the House of  
7 Representatives.

8       (c) This section shall expire March 1, 2005.

9       Section 2. This act shall take effect in 60 days.