

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 65

Session of
1995

INTRODUCED BY STURLA, FAJT, FLICK, GORDNER, ROBINSON, STEELMAN,
PLATTS, YOUNGBLOOD, MUNDY, ROONEY, DeLUCA, BATTISTO,
PISTELLA, STABACK, CURRY AND PETRONE, JANUARY 19, 1995

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JANUARY 19, 1995

AN ACT

1 Establishing the Substance Abuse and Chemical Dependency
2 Assessment Program; providing for pretrial substance abuse
3 and chemical dependency assessments for certain criminal
4 offenders, for substance abuse treatment and for mandatory
5 chemical testing of certain probationers and parolees;
6 imposing duties on the Department of Health and participating
7 counties; providing for substance abuse assessment grants and
8 for rules and regulations; and making an appropriation.

9 TABLE OF CONTENTS

- 10 Section 1. Short title.
- 11 Section 2. Legislative findings and intent.
- 12 Section 3. Definitions.
- 13 Section 4. Substance Abuse and Chemical Dependency Assessment
14 Program.
- 15 Section 5. Pretrial substance abuse and chemical dependency
16 assessment program.
- 17 Section 6. Treatment for substance abuse and chemical
18 dependency.
- 19 Section 7. Termination of treatment.
- 20 Section 8. Probation as alternative or dismissal.

1 Section 9. Alternative sentencing.
2 Section 10. Mandatory substance abuse and chemical dependency
3 assessments, chemical testing and treatment.
4 Section 11. Duties of department.
5 Section 12. Duties of participating county.
6 Section 13. Applications and grants for program participation.
7 Section 14. Reports.
8 Section 15. Appropriation.
9 Section 16. Effect on existing law.
10 Section 17. Effective date.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Short title.

14 This act shall be known and may be cited as the Substance
15 Abuse and Chemical Dependency Assessment Program Act.

16 Section 2. Legislative findings and intent.

17 The General Assembly finds and declares as follows:

18 (1) The Commonwealth's ability to fight crime
19 effectively requires a multipronged effort focusing on
20 particular classes of criminal offenders and the development
21 of innovative programs aimed at reducing crime and
22 recidivism.

23 (2) The General Assembly recognizes, and research
24 conducted over the last decade affirms, the correlation
25 between criminal behavior and drug and alcohol dependency.
26 Research studies have concluded that the chemical dependent
27 person commits more crimes during periods of active drug use
28 than periods of abstinence. A nationwide study initiated in
29 1986 by the Bureau of Justice Statistics of the National
30 Institute of Justice found that 75% of state prison inmates

1 and 82% of youth in long-term juvenile facilities have used
2 drugs at some point in their lives. Fifty-four percent of the
3 inmates reported that they were under the influence of drugs
4 or alcohol or both at the time they committed the offenses.

5 (3) The Pennsylvania Commission on Crime and Delinquency
6 concluded in a recent report that the majority of growth in
7 the Department of Corrections' population is the result of
8 increased court commitments of drug law offenders. Using the
9 number of drug convictions reported for the first half of
10 1989, the Pennsylvania Commission on Crime and Delinquency
11 Correctional Population Projection Committee estimated that
12 drug convictions rose 43% from 1988 to 1989.

13 (4) The criminal justice system in this Commonwealth is
14 being strained to the breaking point by the effects of
15 substance abuse and chemical dependency and the resulting
16 criminal behavior. Reducing the level of drug and alcohol
17 abuse and dependency may serve to reduce the level of
18 criminal activity. However, most criminal offenders who need
19 drug and alcohol abuse and dependency treatment and who are
20 amenable to intervention efforts are not in the criminal
21 justice system's custody for a sufficient time to accomplish
22 the initial objective of breaking the cycle of crime and drug
23 and alcohol dependency.

24 (5) The criminal justice system in this Commonwealth
25 currently lacks sufficient programs and strategies to
26 intervene with substance abuse and chemical dependency and
27 other behavior that contributes to criminality. Judges should
28 have the option of referring arrestees for chemical testing
29 to determine drug and alcohol use or dependency.

30 (6) A program aimed at assessing arrestees for drug and

1 alcohol dependency will provide a mechanism for identifying
2 substance abusing and chemical dependent arrestees, for
3 monitoring their behavior while under court jurisdiction and
4 for measuring the degree of drug and alcohol use by
5 offenders. The program will further provide judges with an
6 additional tool for determining the conditions of pretrial
7 release for certain criminal offenders.

8 (7) It is the intent of the General Assembly to
9 establish a substance abuse and chemical dependency
10 assessment pilot program of sufficient scope which will
11 enable the criminal justice system to identify substance
12 abusing and chemical dependent offenders and institute
13 effective intervention with the hope of breaking the vicious
14 cycle of alcohol, drugs and crime, thereby providing for the
15 general welfare, health and safety of the residents of this
16 Commonwealth and reducing the long-term costs of the health
17 delivery, criminal justice and prison systems.

18 Section 3. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Arrestee" or "arrested person." A person who is arrested
23 for a violation of the criminal laws of this Commonwealth.

24 "Assessment." A gathering of information or diagnostic
25 interviewing technique necessary to evaluate, detect or
26 determine substance abuse or drug and alcohol dependency.

27 Assessments shall include, but not be limited to, a plan for
28 treatment and recommendations for level of care, length of stay
29 and aftercare.

30 "Assessment plan." A system of services tailored to a

1 person's needs as identified in the assessment which may
2 include, but not be limited to, medical, social or psychological
3 services, counseling, provisions for inpatient or outpatient
4 care and aftercare and other rehabilitative services designed to
5 benefit the person. The assessment plan shall include
6 appropriate methods for monitoring the person's progress and for
7 periodic review.

8 "Chemical dependent person." A person who is using a drug,
9 controlled substance or alcohol and who is in a state of psychic
10 or physical dependence, or both, arising from administration of
11 the drug, controlled substance or alcohol on a continuing basis.
12 The dependence is characterized by behavior and other responses
13 which include a strong compulsion to take the drug, controlled
14 substance or alcohol on a continuing basis in order to
15 experience its psychic effects or to avoid the discomfort of its
16 absence. The term shall also include those persons commonly
17 known as "drug addicts."

18 "Chemical test." A form of scientific analysis or
19 examination of bodily fluids, through the use of chemicals, to
20 determine the presence of controlled substances and alcohol.

21 "Controlled substance." A drug, substance or immediate
22 precursor in Schedules I through V of the act of April 14, 1972
23 (P.L.233, No.64), known as The Controlled Substance, Drug,
24 Device and Cosmetic Act.

25 "Court." All courts of the Commonwealth, including
26 magistrates and district justices.

27 "Crimes of violence." An attempt, solicitation or conspiracy
28 to commit murder, assault and related offenses, rape, robbery,
29 involuntary deviate sexual intercourse, incest, sexual abuse,
30 extortion accompanied by threats of violence or any other crime

1 involving the use of a deadly weapon or which results in bodily
2 harm or death.

3 "Criminal justice agency." A governmental agency or subunit
4 thereof, authorized by statute or by the Federal or State
5 constitutions to perform as its principal function the
6 administration of criminal justice, including, but not limited
7 to, organized State and municipal police departments, local
8 detention facilities, county, regional and State correctional
9 facilities, probation agencies, district or prosecuting
10 attorneys and such agencies or subunits thereof.

11 "Department." The Department of Health of the Commonwealth.

12 "Program." The Substance Abuse and Chemical Dependency
13 Assessment Program.

14 "Substance abuse." The chronic abuse of alcohol or the act
15 of habitually injecting, inhaling, ingesting or using by any
16 other means any controlled substance under circumstances which
17 constitute a violation of the law.

18 "Treatment." Services provided by detoxification centers,
19 outpatient clinics, residential care facilities, hospitals and
20 such other facilities licensed by the Office of Drug and Alcohol
21 Programs within the Department of Health, any of which may
22 provide diagnosis and assessment for drug and alcohol
23 dependency, medical care, detoxification, social services,
24 rehabilitation or educational programs. This definition shall
25 include any treatment services provided in correctional
26 institutions established under the act of April 14, 1972
27 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol
28 Abuse Control Act.

29 Section 4. Substance Abuse and Chemical Dependency Assessment
30 Program.

1 (5) Obtain written consent for an assessment from the
2 arrestee. The written consent shall include a signed
3 statement authorizing the release of assessment and treatment
4 records to persons and agencies stipulated in section 543 of
5 the Public Health Service Act (58 Stat. 682, 42 U.S.C. §
6 290dd-2).

7 (6) Inform the arrested person that the results of the
8 assessment cannot be used to determine guilt or innocence on
9 the current charge or as evidence of probation or parole
10 violation in another case.

11 (7) Inform the arrested person that a positive
12 assessment revealing substance abuse or chemical dependency
13 will not be placed in the person's criminal record history
14 information.

15 (8) Inform the arrested person of the agency which will
16 administer the drug and alcohol assessment.

17 (b) Additional notifications.--In the event that the police
18 officer or person making the arrest fails to inform the arrested
19 person of the availability of drug and alcohol assessments,
20 within 24 hours of the time of booking, an officer of the court
21 may so inform. The judge presiding over the arraignment hearing
22 or, if arraignment is waived, the preliminary hearing shall
23 further inform the arrested person of the pretrial substance
24 abuse and chemical dependency assessment program in accordance
25 with subsection (a).

26 (c) Violent offenders and drug offenders.--Every person
27 arrested for a violation of the criminal statutes of this
28 Commonwealth which involves a crime of violence, and every
29 person arrested for a violation of the act of April 14, 1972
30 (P.L.233, No.64), known as The Controlled Substance, Drug,

1 Device and Cosmetic Act, shall be informed by the judge
2 presiding over the bail hearing of the pretrial substance abuse
3 and chemical dependency assessment program and of the
4 availability of assessments for drug and alcohol use and
5 dependency. Violent offenders and drug offenders shall not be
6 eligible for dismissal of any criminal charges as a result of
7 participation in the program and the results of any assessment
8 shall not be used to set conditions of pretrial release. If an
9 assessment reveals that a violent offender or drug offender is a
10 chemical dependent person, the offender may be eligible for a
11 modification in probation or parole for successful completion of
12 a drug and alcohol treatment program provided in a correctional
13 institution. Any correctional institution which provides drug
14 and alcohol detoxification, treatment or rehabilitation services
15 shall conform to and be in compliance with the provisions of 28
16 Pa. Code Ch. 709 (relating to standards for licensure of
17 freestanding treatment facilities).

18 (d) Positive assessments.--When the results of an assessment
19 for substance abuse or chemical dependency reveal that the
20 arrested person is a chemical dependent person, the judge may,
21 as a condition to pretrial release, order the person to do any
22 of the following:

23 (1) Refrain from drug and alcohol use.

24 (2) Submit to chemical testing for scientific
25 verification of positive assessment.

26 (3) Undergo intensive chemical testing as a condition to
27 pretrial release.

28 (4) Serve a term of imprisonment for continued violation
29 of the pretrial release conditions if such violations are
30 contrary to a judicial order. The term of imprisonment shall

1 not be for an extended duration as to result in dismissal of
2 a pending charge.

3 (e) Chemical testing as condition to pretrial release.--

4 Whenever an arrestee volunteers to participate in the program
5 and tests positive for drug and alcohol use and is ordered by
6 the court to undergo intensive chemical testing as a condition
7 to pretrial release, the arrestee shall be informed of the
8 conditions of the release which shall include random chemical
9 testing. The arrestee shall further be advised of the sanctions
10 for noncompliance with program rules.

11 (f) Authority to make assessments.--All assessments for drug
12 and alcohol use shall be made by a single county authority on
13 substance abuse, by an organization designated by that authority
14 or by an outpatient or inpatient facility licensed by the
15 department's Office of Drug and Alcohol Programs. Priority shall
16 be given to those licensed authorities whose agency and staff
17 have a history and experience working with the criminal justice
18 population.

19 (g) Results of assessments.--Except as provided in this
20 section, any of the following shall be privileged and
21 confidential information:

22 (1) The results of an assessment for substance abuse and
23 chemical dependency.

24 (2) Any oral or written statements.

25 (3) Any other information voluntarily provided by an
26 arrestee.

27 (4) Any observations and conclusions of a health
28 professional or any other person derived as a result of an
29 assessment to determine substance abuse or chemical
30 dependency.

1 (h) Admissibility at trial.--Any results obtained from an
2 assessment for substance abuse and chemical dependency of an
3 arrestee shall not be admissible into evidence against the
4 arrestee in any subsequent criminal proceedings. Whenever
5 possible, the results of an assessment shall be made available
6 to the prosecuting and defense attorneys and the presiding judge
7 of the court of appropriate jurisdiction.

8 (i) Records of assessment program and confidentiality.--All
9 records of substance abuse and chemical dependency assessments
10 and treatment shall be maintained by the originating agency and
11 shall include the arrestee's assessment and treatment
12 information as may be required under section 548 of the Public
13 Health Service Act (58 Stat. 682, 42 U.S.C. § 290ee-3) and rules
14 of the department. Unless explicitly waived by express and
15 informed written consent by the arrestee, the privileged and
16 confidential status of the diagnostic assessment and treatment
17 record shall not be jeopardized by either authorized or
18 unauthorized disclosure.

19 (j) Authorized disclosures of assessment records.--Pretrial
20 substance abuse and chemical dependency assessment and treatment
21 records shall not be public records and shall not be disclosed,
22 except to:

23 (1) Persons and agencies designated by the arrestee or,
24 if the arrested person is deceased, the person's guardian or
25 personal representative.

26 (2) Persons authorized by order of court.

27 (3) A qualified researcher for statistical and research
28 purposes if the information is abstracted in a way to protect
29 the identity of the arrestee.

30 (4) A court or law enforcement agency authorized to

1 receive the information.

2 (k) Failure to inform.--The failure of a police officer,
3 officer of the court or any other person ordered to inform an
4 arrestee of the program in accordance with the provisions of
5 this act shall not be grounds for the dismissal of any criminal
6 charges filed against the person as a result of an arrest.

7 Section 6. Treatment for substance abuse and chemical
8 dependency.

9 (a) Treatment as alternative to proceedings on pending
10 charge.--Whenever an arrestee is determined to be a chemical
11 dependent person in accordance with the provisions of this act
12 and the substance abuse and chemical dependency assessment
13 reveals that the arrestee may benefit in a substantial manner
14 from treatment, the judge may, upon the request of the defense
15 attorney and with the consent of the attorney for the
16 Commonwealth, order the arrestee to receive treatment and
17 successfully complete a treatment program as a contingent
18 alternative to proceeding with prosecution on the pending
19 charges. An arrestee may be assigned to a treatment facility for
20 no more than the minimum time a person can be sentenced or
21 placed on probation for the criminal offense charged, unless the
22 arrested person consents to a longer period of treatment.

23 (b) Court-stipulated treatment.--Upon a request for
24 treatment as an alternative to incarceration, a hearing shall be
25 held in open court in the presence of the arrested person, the
26 defense attorney, the attorney for the Commonwealth and any
27 victim or witness who may attend. At the hearing, the facts of
28 the case shall be presented as prescribed by law. When a person
29 is ordered to undergo a period of treatment, the judge shall
30 postpone proceedings on the pending charges during the term of

1 the treatment program. Treatment as an alternative to
2 proceedings on the pending charges may be ordered by the court,
3 provided that:

4 (1) The arrested person acknowledges an understanding of
5 the conditions of treatment, including an understanding that
6 acceptance into and successful completion of the treatment
7 program may offer an opportunity for dismissal of pending
8 charges or alternative sentencing.

9 (2) An appropriate method has been established for
10 monitoring the progress of the arrestee toward achievement of
11 defined treatment goals.

12 (3) The arrestee understands that failure to
13 satisfactorily complete the treatment program shall result in
14 proceeding with prosecution on pending charges as provided by
15 law.

16 (4) The assessment report includes an assessment plan
17 which outlines the treatment modalities and the settings for
18 additional services as are needed to promote the arrestee's
19 rehabilitation and recovery from substance abuse and chemical
20 dependency.

21 (5) The arrestee reviews and agrees to the conditions of
22 treatment, including the method for monitoring progress, and
23 executes a written statement of consent.

24 (6) The arrestee agrees to waive the appropriate statute
25 of limitations and the right to a speedy trial under any
26 applicable Federal or State constitutional provisions,
27 statutes or rules of court during the period of enrollment in
28 the treatment program. The statement of consent shall include
29 a voluntary waiver of such rights.

30 (c) Eligibility criteria.--To determine an arrestee's

1 eligibility for treatment as an alternative to prosecution, the
2 court may consider the arrested person's:

3 (1) Criminal history and how it relates to the arrested
4 person's drug and alcohol abuse or dependency.

5 (2) History of drug and alcohol abuse treatment.

6 (3) History of drug and alcohol abuse and dependency.

7 (4) Tendency toward and degree of past and present
8 aggressive or violent behavior.

9 (5) Mental health symptoms.

10 (6) Current criminal offense and the nature thereof.

11 (7) Willingness to cooperate and fully participate in
12 treatment programs.

13 (d) Availability of treatment.--An arrested person who is
14 assessed in need of treatment for drug and/or alcohol abuse or
15 dependency and who is ordered by the court to undergo treatment
16 as an alternative to proceeding with prosecution on the pending
17 charges shall be assigned to an inpatient or outpatient
18 treatment facility, as specifically indicated by the treatment
19 modality outlined in the assessment report. If there are no
20 available beds or slots for an arrestee at the time of referral
21 for treatment, the arrestee shall be placed on a waiting list
22 and shall be admitted to the appropriate inpatient or outpatient
23 facility at the earliest possible date.

24 (e) Right to refuse to admit.--An inpatient or outpatient
25 treatment facility shall have the right to refuse to admit an
26 arrestee for treatment.

27 (f) Cost of treatment.--When an arrestee, after a
28 comprehensive assessment for substance abuse and chemical
29 dependency, is determined to be a drug or alcohol dependent
30 person and is referred by court order to a drug and alcohol

1 treatment facility licensed by the Office of Drug and Alcohol
2 Programs, that person shall be assessed liability for the cost
3 of such treatment which shall include any public or private
4 third party coverage for which the arrestee is eligible or any
5 combination of public or private third party coverage for which
6 the arrestee is or becomes eligible during treatment. The cost
7 of the treatment may be covered by medical assistance payments
8 under sections 2334(b)(1) and 2335(a) of the act of April 9,
9 1929 (P.L.177, No.175), known as The Administrative Code of
10 1929, provided the following:

11 (1) The arrestee is eligible for medical assistance
12 coverage under the rules and regulations adopted by the
13 Department of Public Welfare in cooperation with the
14 Department of Health under section 2334(b)(3) of The
15 Administrative Code of 1929.

16 (2) The treatment facility is a licensed inpatient
17 hospital or nonhospital drug, alcohol or drug and alcohol
18 treatment, detoxification or rehabilitation facility which
19 provides drug and alcohol detoxification and/or
20 rehabilitation services to persons eligible for medical
21 assistance or an outpatient treatment facility licensed by
22 the Office of Drug and Alcohol Programs within the
23 department.

24 (3) The treatment facility, with the support of the
25 participating county, petitions the Department of Public
26 Welfare for medical assistance payments to cover the cost of
27 drug and alcohol treatment for arrested persons eligible for
28 payments under The Administrative Code of 1929, to provide
29 for a continuum of alcohol and drug detoxification and
30 rehabilitation services to persons eligible for medical

1 assistance. The department shall serve as an advocate for
2 participating counties seeking such medical assistance
3 payments in accordance with the provisions of this section.

4 (4) The treatment facility has experience with and an
5 understanding of ethnic and cultural differences which may
6 require development of innovative treatment strategies.

7 (g) Annual report.--Each treatment facility participating in
8 the program shall submit an annual report to the department at a
9 time and in a manner as the department requires. The report
10 shall include, but may not be limited to, information on the
11 number of arrested persons placed in the facility by the courts,
12 scope of treatment offered, treatment services actually
13 provided, results of treatment, status of persons in treatment
14 and any other information the department requires.

15 Section 7. Termination of treatment.

16 (a) Termination of court-stipulated treatment.--The court,
17 prosecutor or treatment facility may institute a request to the
18 sentencing court to have treatment terminated at any time. If
19 circumstances exist that require immediate removal of the
20 arrested person from the treatment facility, the facility shall
21 immediately inform the person's probation officer or a
22 designated officer of the court who shall implement procedures
23 to promptly remove the person from the treatment facility.

24 (b) Request by person.--An arrestee may petition the court
25 for termination of treatment for any reason, but any subsequent
26 request by the arrestee to have treatment continued, after a
27 termination request has been granted, shall be denied unless
28 proven circumstances exist which make it necessary for the
29 person to continue treatment. Upon the approval of a termination
30 request initiated by the arrestee, prosecution shall be

1 immediately resumed.

2 (c) Notifications of unsuccessful treatment.--If the
3 arrestee fails to cooperate or violates the treatment facility's
4 rules or if it is determined that the arrested person is not
5 amenable to treatment and that treatment should not be
6 continued, the arrestee's probation officer or a designated
7 officer of the court shall be notified by the treatment
8 facility. After notification is made, the probation officer or a
9 designated officer of the court shall remove the person from the
10 treatment facility.

11 (d) Proceedings.--If treatment is terminated for a violation
12 of conditions during the period of the program or if there are
13 objections to the arrested person's request to have treatment
14 terminated, the prosecuting attorney shall file a motion with
15 the court alleging such violations or objections. After the
16 motion is filed, the judge who ordered treatment as an
17 alternative to proceeding with prosecution on pending charges
18 shall issue the necessary process to bring the person before the
19 court. When the person is brought before the court, the judge
20 shall give the person the opportunity to be heard. After the
21 facts are presented, the judge may, if it is found that the
22 person violated the conditions of the program, order the
23 treatment to be terminated, and prosecution of the person shall
24 proceed as provided by law.

25 Section 8. Probation as alternative or dismissal.

26 (a) Application.--If it is determined, upon completion of
27 treatment, that the arrested person has successfully completed
28 the treatment program and progressed to the extent that the
29 person is no longer an active substance abuser or an actively
30 chemical dependent person and poses no apparent threat or danger

1 to the peace and safety of the public, the person or a
2 representative of the person may make an application to the
3 court for an order providing for probation as an alternative to
4 proceeding with prosecution on pending charges or dismissing the
5 charges related to the offense for which treatment was ordered.

6 (b) Prerequisite for application to provide probation as an
7 alternative or dismiss.--A person or representative of such
8 person may not make an application to the court for providing
9 probation as an alternative to proceeding with prosecution on
10 pending charges or a dismissal of charges in accordance with
11 this section unless there is evidence of complete compliance
12 with the terms and conditions of an aftercare plan for a
13 designated period of time and evidence of follow-up
14 communication with treatment facility staff.

15 (c) Documentation.--The application shall be supported by
16 affidavit of the person and by a written discharge summary of
17 the treatment facility or the agent or official charged with
18 supervising the program.

19 (d) Notice of probation alternative or dismissal.--Notice of
20 the filing of an application to provide probation as an
21 alternative to proceeding with prosecution or dismiss charges
22 shall be served on the attorney for the Commonwealth who shall,
23 within 30 days of such notification, advise the judge of any
24 objections to the application. The attorney for the Commonwealth
25 shall serve a copy of any objections on the person and the
26 person's attorney. If no objections are filed within the 30-day
27 period, the judge shall provide probation as an alternative or
28 dismiss the charges against the person related to the offense
29 for which treatment was ordered. The dismissal of charges should
30 be contingent upon successful completion of a community-based

1 drug or alcohol rehabilitation program, or both. If objections
2 to the application are filed, the judge shall proceed in
3 accordance with section 7(d).

4 (e) Evaluation of request to provide probation as an
5 alternative or dismiss charges.--Upon reviewing a request to
6 dismiss criminal charges, the court shall consider the
7 following:

8 (1) Grade and nature of the current offense charged. No
9 charges shall be dismissed for offenses that:

10 (i) Involve crimes of violence.

11 (ii) Involve danger to persons or offenses against
12 property which, in the course of commission, inflicts
13 serious bodily harm.

14 (iii) Threaten a person with or intentionally put a
15 person in fear of immediate serious bodily harm.

16 (iv) Inflict bodily injury upon a person or threaten
17 a person with or intentionally put a person in fear of
18 immediate bodily injury.

19 (v) Constitute a crime designated as a felony of the
20 first, second or third degree or a misdemeanor of the
21 third degree.

22 (2) Criminal history of the arrested person.

23 (3) Recommendations of the treatment facility, probation
24 office and prosecuting attorney.

25 (4) Willingness and ability of the arrested person to
26 make financial restitution to the victim within a period of
27 time as determined by the court.

28 (5) Willingness of the arrested person to participate in
29 and successfully complete a community-based drug and/or
30 alcohol rehabilitation program as determined by the court.

1 (6) Evidence of compliance with an aftercare plan for a
2 designated period of time and follow-up communication with
3 treatment facility staff.

4 (7) Any other information which the court considers
5 necessary and appropriate.

6 (f) Expungement upon completion of treatment.--When the
7 judge orders the dismissal of charges against the person, the
8 judge may further order the expungement of the person's arrest
9 record if the attorney for the Commonwealth does not object to
10 the expungement. If the attorney for the Commonwealth objects to
11 an expungement, the objection shall be filed with the judge,
12 together with the objection to dismiss charges as provided for
13 in subsection (d). Upon the filing of any objections, the judge
14 shall hold a hearing on the objections and afford all persons
15 the opportunity to be heard.

16 (g) Crimes of violence.--The court shall not consider the
17 expungement of an arrest record of any person who has committed
18 offenses involving crimes of violence or danger to persons as
19 provided for in subsection (e)(1).

20 Section 9. Alternative sentencing.

21 In the event the person facing charges is denied application
22 for probation as an alternative or dismissal of charges as
23 provided under section 8(d) and prosecution proceeds as provided
24 under section 7(d), the judge who ordered treatment as an
25 alternative to proceeding with prosecution on pending charges
26 may provide for alternative sentencing, provided that the
27 proceedings result in a conviction.

28 Section 10. Mandatory substance abuse and chemical dependency
29 assessments, chemical testing and treatment.

30 (a) Post-conviction assessments.--Every arrested person in a

1 county selected to participate in the substance abuse and
2 chemical dependency assessment program who shall be placed on
3 probation or parole for violation of any criminal law of this
4 Commonwealth shall, as a condition of probation or parole, be
5 required, at the person's expense, unless the expense is
6 determined to be a financial hardship, to submit to chemical
7 testing for the detection and determination of drug and alcohol
8 abuse or dependency, not less than twice per month.

9 (b) Treatment.--If it is determined that the person placed
10 on probation or parole for violation of the criminal laws of
11 this Commonwealth is a chemical dependent person, the court may
12 impose, as a condition of such probation or parole, that the
13 person receive treatment in a treatment facility as an inpatient
14 or outpatient. A person shall be referred to either an inpatient
15 or outpatient facility based on the treatment modality
16 considered to be appropriate for the person's recovery from
17 substance abuse or dependency.

18 (c) Duration of treatment.--The person shall receive
19 treatment at the facility for as long as it is determined by the
20 treatment facility that the person will benefit from treatment,
21 but in no event shall the person receive treatment at the
22 facility for a period longer than the period of probation or
23 parole ordered by the court, unless the person consents to an
24 extended period of treatment. The court shall require a periodic
25 program of chemical testing as a condition of probation or
26 parole to determine the drug and alcohol free status of the
27 person. A probationer or parolee who successfully completes the
28 treatment program and who complies with its conditions may be
29 eligible for a reduction in the period of probation or parole.

30 (d) Violation of conditions.--If at any time during the term

1 of probation or parole the person is found to be a substance
2 abuser, thereby violating the judicial condition, the court
3 shall issue an order revoking probation or parole and shall
4 order the person to immediately appear before the court for
5 breach of probation or parole.

6 (e) Notification of unsuccessful treatment.--If at any time
7 during treatment ordered as a condition to probation or parole
8 the person violates the conditions by not complying with
9 facility or treatment rules or if it is determined that the
10 person is not amenable to treatment and that the treatment
11 should not be continued, the facility shall immediately notify
12 the person's probation or parole officer or a designated officer
13 of the court. After notification is received, the court shall
14 issue such process as necessary to order the person to
15 immediately appear before the court.

16 (f) Additional postconviction requirements.--A person
17 assessed for drug and alcohol use and dependence, in accordance
18 with section 5(c) relating to violent offenders, and who is
19 found to be a chemical dependent person may be required to
20 participate in compulsory programs of drug and alcohol treatment
21 established by the department in collaboration with the
22 Department of Corrections under the act of April 14, 1972
23 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol
24 Abuse Control Act. Persons required to participate in a
25 correctional institution-based program shall not be eligible for
26 parole nor a modification of sentence until successful
27 completion of the program.

28 Section 11. Duties of department.

29 The department shall administer the pretrial substance abuse
30 and chemical dependency assessment program and shall adopt and

1 promulgate any rules, regulations, guidelines, policy statements
2 and forms necessary to enforce the provisions of this act
3 relating to program administration. The department shall:

4 (1) Provide financial assistance and technical expertise
5 to the county or counties selected to implement the program.

6 (2) Collaborate with the court and criminal justice
7 agencies in the participating county or counties to develop
8 and initiate procedures to assess arrestees for substance
9 abuse and drug and alcohol dependency within 72 hours after
10 arrest and to have such assessments completed within seven
11 days of arrest. The assessments shall incorporate methods for
12 detection and determination of chronic drug and alcohol
13 addiction and shall include, but not be limited to, drug and
14 alcohol counseling and evaluation, chemical testing and any
15 other acceptable means for detection and determination of
16 substance abuse and chemical dependency.

17 (3) Adopt and promulgate policies governing the use of
18 information obtained from substance abuse and chemical
19 dependency assessments and any subsequent chemical tests to
20 ensure data integrity, confidentiality and security.

21 (4) Develop and promulgate guidelines to ensure chain of
22 custody of specimens obtained for scientific verification of
23 positive assessment for substance abuse and drug and alcohol
24 dependency.

25 (5) Establish procedures to verify and expedite the
26 dissemination of positive test results to the appropriate
27 court or criminal justice agency.

28 (6) Conduct an ongoing comprehensive evaluation program
29 to determine the effectiveness of the substance abuse
30 assessment program in reducing criminal behavior, recidivism,

1 arrest and commitments to correctional institutions.

2 (7) Collaborate with the Department of Public Welfare to
3 secure medical assistance payments to cover the cost of drug
4 and alcohol detoxification and rehabilitation services for
5 any arrested person eligible for the payments. The Department
6 of Health shall serve as an advocate for counties seeking the
7 payments from the Department of Public Welfare under the act
8 of April 9, 1929 (P.L.177, No.175), known as The
9 Administrative Code of 1929.

10 (8) Prepare and publish annually a list of all assessors
11 who refer persons to hospital and nonhospital drug
12 detoxification and rehabilitation facilities, hospital and
13 nonhospital alcohol detoxification and rehabilitation
14 facilities, hospital and nonhospital drug and alcohol
15 detoxification and rehabilitation facilities and outpatient
16 services licensed by the Office of Drug and Alcohol Programs.
17 The list shall be made available to the courts in the
18 participating county or counties on an annual basis and
19 updated information shall be provided quarterly. The list may
20 include the following:

21 (i) Eligibility guidelines for treatment.

22 (ii) Scope of treatment services offered.

23 (iii) Patient capacity.

24 (iv) Waiting period for admission.

25 (v) Facilities for emergency treatment.

26 (vi) Cost of treatment.

27 Section 12. Duties of participating county.

28 The county or counties selected by the department to
29 implement the program shall:

30 (1) Collaborate with the department in the planning and

1 implementation of a comprehensive substance abuse and
2 chemical dependence assessment program. The program shall be
3 designed to distinguish between incidental use and chronic
4 drug and alcohol abuse and dependency.

5 (2) Assign an agency to administer the pretrial program
6 on a local level. The county's pretrial services agency may
7 be designated to administer the program.

8 (3) Assist the department with the development of
9 guidelines and regulations for the day-to-day operation of
10 the program.

11 (4) Collaborate with the department in developing
12 policies and guidelines governing the use of assessments and
13 the results of chemical tests.

14 (5) Collaborate with local criminal justice agencies and
15 the court to determine sanctions for arrestees in the
16 pretrial program who violate the terms of conditional release
17 by failing to report for chemical testing or by testing
18 positive for drug and alcohol use. The sanctions may include
19 entering a treatment program or a program of intensive drug
20 and alcohol testing or, for two or more violations,
21 incarceration in a correctional facility for an appropriate
22 period of time.

23 (6) Prepare or cause to be prepared any pretrial
24 substance abuse and chemical dependency assessment report the
25 department may require relative to the program.

26 (7) Maintain or cause to be maintained a secure central
27 information system for the purpose of collecting and storing
28 data on program participants and activities.

29 (8) Establish or cause to be established specific goals
30 for persons referred to treatment for substance abuse or

chemical dependency as an alternative to proceeding with prosecution on pending charges. Treatment goals shall include, but may not be limited to:

(i) Reduction of criminal recidivism.

(ii) Reduction of drug and alcohol abuse and dependency, with abstinence as a goal for each person assigned to treatment.

(iii) Development of the skills essential to obtaining and retaining employment.

(iv) Development of educational skills.

(v) Development of parenting skills.

(vi) Development of a support network and continued participation in available counseling services as provided by Alcoholics Anonymous, Narcotics Anonymous and other such organizations in order to maintain treatment progress.

(9) Develop a method for monitoring the progress of persons ordered to treatment toward the achievement of defined treatment objectives.

(10) Ensure that all level of care assignments and recommendations are made by individuals experienced in working with chemical dependent persons and with the criminal justice system population.

Section 13. Applications and grants for program participation.

(a) Application procedure.--A county seeking to participate in the program shall submit an application to the department in the manner and at the time as the department may prescribe.

(b) Evaluation of applications.--The department shall consider the following criteria when evaluating applications for program participation:

1 (1) The scope of delivery of treatment services for
2 substance abuse and chemical dependency provided by private
3 and nonprofit treatment programs in the county.

4 (2) The prevalence of substance abuse and chemical
5 dependency in the county.

6 (3) The extent of drug and alcohol arrest and drug and
7 alcohol-related criminal activity in the county.

8 (4) The extent of demand for substance abuse and
9 chemical dependency treatment.

10 (5) The availability of matching funds, if the
11 department so requires.

12 (6) The ability of the county to secure technical
13 assistance available through the National Institute of
14 Justice for pretrial drug testing programs, if assistance is
15 available and if the department determines that assistance is
16 required.

17 (7) Any other information the department may consider
18 necessary to implement the provisions of this act.

19 (c) Grants.--The department shall award a grant not to
20 exceed \$800,000 to the county or counties selected to implement
21 a pretrial substance abuse and chemical dependency pilot
22 program. The funds awarded shall be used solely for the cost of
23 diagnostic assessments and chemical testing and to cover the
24 cost of program-related computer software equipment as approved
25 by the department.

26 Section 14. Reports.

27 On or before March 1 of each year, the department shall
28 submit a report to the General Assembly which shall include, but
29 not be limited to:

30 (1) The name of the county or counties selected to

1 implement the pilot program.

2 (2) The number of arrestees assessed for substance abuse
3 and drug and alcohol dependency in the county.

4 (3) The number of arrestees found to be chemically
5 dependent in the participating county or counties.

6 (4) A statistical measure of the level of substance
7 abuse and chemical dependency in the county or counties.

8 (5) The number of chemical tests ordered as a result of
9 positive assessments.

10 (6) An identification of the controlled substances
11 abused in the county, as determined from diagnostic
12 assessments and the administration of chemical tests.

13 (7) The number of arrestees ordered to undergo intensive
14 chemical testing while on pretrial release.

15 (8) The number of arrestees ordered to undergo treatment
16 as a condition to pretrial release.

17 (9) A comprehensive evaluation of the county's pretrial
18 substance abuse and chemical dependency assessment report.
19 The evaluation shall include, but not be limited to,
20 statistical data on the rate of recidivism and information on
21 the effectiveness of the program in monitoring the
22 availability of illegal drugs, tracking drug epidemics and
23 diagnosing health-related problems associated with drug use.

24 (10) Any other information the department may recommend
25 will enhance the management and operation of the program.

26 Section 15. Appropriation.

27 The sum of \$875,000, or as much thereof as may be necessary,
28 is hereby appropriated to the Department of Health for the
29 fiscal year July 1, 1995, to June 30, 1996, to carry out the
30 provisions of this act. The appropriation shall be allocated as

1 follows:

2 (1) Implementation - \$800,000.

3 (2) Administration of program - \$75,000.

4 Section 16. Effect on existing law.

5 The provisions of this act are not meant to supersede or
6 replace the provisions of 75 Pa.C.S. § 1552 (relating to
7 Accelerated Rehabilitative Disposition) or 3731 (relating to
8 driving under influence of alcohol or controlled substance), but
9 are intended to complement and supplement existing law.

10 Section 17. Effective date.

11 This act shall take effect in 60 days.