

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2969 Session of
1990

INTRODUCED BY BUSH, KOSINSKI, MOEHLMANN, GRUITZA, PICCOLA, DEMPSEY, MAIALE, DeLUCA, PETRONE, ALLEN, NAILOR, DURHAM, CARLSON, VROON, NOYE, WILSON, NAHILL, PHILLIPS, PITTS, FAIRCHILD, LEE, GRUPPO, BARLEY, E. Z. TAYLOR, TIGUE, CESSAR, STABACK, B. SMITH, COY, LAUGHLIN, FOX, PERZEL, HARPER, JOHNSON, DIETTERICK, TRELLO, BILLOW, BELARDI, KASUNIC AND J. TAYLOR, NOVEMBER 12, 1990

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, NOVEMBER 12, 1990

AN ACT

1 Amending the act of July 9, 1976 (P.L.817, No.143), entitled "An
2 act relating to mental health procedures; providing for the
3 treatment and rights of mentally disabled persons, for
4 voluntary and involuntary examination and treatment and for
5 determinations affecting those charged with crime or under
6 sentence," providing for involuntary treatment for sexually
7 dangerous persons.

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

10 Section 1. Section 102 of the act of July 9, 1976 (P.L.817,
11 No.143), known as the Mental Health Procedures Act, amended
12 November 26, 1978 (P.L.1362, No.324), is amended to read:

13 Section 102. Statement of Policy.--It is the policy of the
14 Commonwealth of Pennsylvania to seek to assure the availability
15 of adequate treatment to persons who are mentally ill, and it is
16 the purpose of this act to establish procedures whereby this
17 policy can be effected. The provisions of this act shall be
18 interpreted in conformity with the principles of due process to

1 make voluntary and involuntary treatment available where the
2 need is great and its absence could result in serious harm to
3 the mentally ill person or to others. Treatment on a voluntary
4 basis shall be preferred to involuntary treatment; and in every
5 case, the least restrictions consistent with adequate treatment
6 shall be employed. Sexually dangerous persons shall be treated
7 under conditions of institutional care that will adequately
8 protect the public. Persons who are mentally retarded, senile,
9 alcoholic, or drug dependent shall receive mental health
10 treatment only if they are also diagnosed as mentally ill, but
11 these conditions of themselves shall not be deemed to constitute
12 mental illness: Provided, however, That nothing in this act
13 shall prohibit underutilized State facilities for the mentally
14 ill to be made available for the treatment of alcohol abuse or
15 drug addiction pursuant to the act of April 14, 1972 (P.L.221,
16 No.63), known as the "Pennsylvania Drug and Alcohol Abuse
17 Control Act." Chronically disabled persons 70 years of age or
18 older who have been continuously hospitalized in a State
19 operated facility for at least ten years shall not be subject to
20 the procedures of this act. Such a person's inability to give a
21 rational, informed consent shall not prohibit the department
22 from continuing to provide all necessary treatment to such a
23 person. However, if such a person protests treatment or
24 residence at a State operated facility he shall be subject to
25 the provisions of Article III.

26 Section 2. Section 107 of the act is amended to read:

27 Section 107. Individualized Treatment Plan.--Individualized
28 treatment plan means a plan of treatment formulated for a
29 particular person in a program appropriate to his specific
30 needs. To the extent possible, the plan shall be made with the

1 cooperation, understanding and consent of the person in
2 treatment, and shall impose the least restrictive alternative
3 consistent with affording the person adequate treatment for his
4 condition. Sexually dangerous persons shall be treated under
5 conditions of institutional care that will adequately protect
6 the public.

7 Section 3. Section 109(a) of the act, amended November 26,
8 1978 (P.L.1362, No.324) and repealed in part October 5, 1980
9 (P.L.693, No.142), is amended to read:

10 Section 109. Mental Health Review Officer.--(a) Legal
11 proceedings concerning extended involuntary emergency treatment
12 under section 303(c), court-ordered involuntary treatment under
13 section 304, 304.1 or 305 or transfer hearings under section
14 306, may be conducted by a judge of the court of common pleas or
15 by a mental health review officer authorized by the court to
16 conduct the proceedings.

17 * * *

18 Section 4. The act is amended by adding a section to read:

19 Section 304.1. Court-ordered involuntary treatment for
20 sexually dangerous person not to exceed one year.--(a) Persons
21 for whom application may be made.--A person who suffers from a
22 mental disorder and is in need of treatment may be made subject
23 to court-ordered involuntary treatment upon a determination, by
24 clear and convincing evidence, that he is a sexually dangerous
25 person.

26 (b) Procedures for Initiating Court-ordered Involuntary
27 Treatment for Persons Already Subject to Involuntary
28 Treatment.--(1) Petition for court-ordered involuntary
29 treatment for persons already subject to treatment under
30 sections 303, 304, this section and section 305 may be made by

1 the county administrator or the director of the facility to the
2 court of common pleas.

3 (2) The petition shall be in writing upon a form adopted by
4 the department and shall include a statement of the facts
5 constituting reasonable grounds to believe that the person is a
6 sexually dangerous person and in need of treatment. The petition
7 shall state the name of any examining physician and the
8 substance of his opinion regarding the mental condition of the
9 person. It shall also state that the person has been given the
10 information required by subsection (b)(3).

11 (3) Upon the filing of the petition the county administrator
12 shall serve a copy on the person, his attorney, and those
13 designated to be kept informed, as provided in section 302(c),
14 including an explanation of the nature of the proceedings, the
15 person's right to an attorney and the services of an expert in
16 the field of mental health, as provided by subsection (d).

17 (4) A hearing on the petition shall be held in all cases,
18 not more than five days after the filing of the petition.

19 (5) Treatment shall be permitted to be maintained pending
20 the determination of the petition.

21 (c) Procedures for Initiating Court-ordered Involuntary
22 Treatment for Persons not in Involuntary Treatment.--(1) Any
23 responsible party may file a petition in the court of common
24 pleas requesting court-ordered involuntary treatment for any
25 person not already in involuntary treatment for whom application
26 could be made under subsection (a).

27 (2) The petition shall be in writing upon a form adopted by
28 the department and shall set forth facts constituting reasonable
29 grounds to believe that the person is a sexually dangerous
30 person. The petition shall state the name of any examining

1 physician and the substance of his opinion regarding the mental
2 condition of the person.

3 (3) Upon a determination that the petition sets forth such
4 reasonable cause, the court shall appoint an attorney to
5 represent the person and set a date for the hearing as soon as
6 practicable. The attorney shall represent the person unless it
7 shall appear that he can afford, and desires to have, private
8 representation.

9 (4) The court, by summons, shall direct the person to appear
10 for a hearing. The court may issue a warrant directing a person
11 authorized by the county administrator or a peace officer to
12 bring such person before the court at the time of the hearing if
13 there are reasonable grounds to believe that the person will not
14 appear voluntarily. A copy of the petition shall be served on
15 such person at least three days before the hearing together with
16 a notice advising him that an attorney has been appointed who
17 shall represent him unless he obtains an attorney himself, that
18 he has a right to be assisted in the proceedings by an expert in
19 the field of mental health, and that he may request or be made
20 subject to psychiatric examination under subsection (c)(5).

21 (5) Upon motion of either the petitioner or the person, or
22 upon its own motion, the court may order the person to be
23 examined by a psychiatrist appointed by the court. Such
24 examination shall be conducted on an outpatient basis, and the
25 person shall have the right to have counsel present. A report of
26 the examination shall be given to the court and counsel at least
27 48 hours prior to the hearing.

28 (6) Involuntary treatment shall not be authorized during the
29 pendency of a petition except in accordance with section 302 or
30 section 303.

1 (d) Professional Assistance.--A person with respect to whom
2 a hearing has been ordered under this section shall have and be
3 informed of a right to employ a physician, clinical psychologist
4 or other expert in mental health of his choice to assist him in
5 connection with the hearing and to testify on his behalf. If the
6 person cannot afford to engage such a professional, the court
7 shall, on application, allow a reasonable fee for such purpose.
8 The fee shall be a charge against the mental health and mental
9 retardation program of the locality.

10 (e) Hearings on Petition for Court-ordered Involuntary
11 Treatment.--A hearing on a petition for court-ordered
12 involuntary treatment shall be conducted according to the
13 following:

14 (1) The person shall have the right to counsel and to the
15 assistance of an expert in mental health.

16 (2) The person shall not be called as a witness without his
17 consent.

18 (3) The person shall have the right to confront and cross-
19 examine all witnesses and to present evidence in his own behalf.

20 (4) The hearing shall be public unless it is requested to be
21 private by the person or his counsel.

22 (5) A stenographic or other sufficient record shall be made,
23 which shall be impounded by the court and may be obtained or
24 examined only upon the request of the person or his counsel or
25 by order of the court on good cause shown.

26 (6) The hearing shall be conducted by a judge or by a mental
27 health review officer and may be held at a location other than a
28 courthouse when doing so appears to be in the best interest of
29 the person.

30 (7) A decision shall be rendered within 48 hours after the

1 close of evidence.

2 (f) Determination and Order.--Upon a finding by clear and
3 convincing evidence that the person is a sexually dangerous
4 person and in need of treatment, an order shall be entered
5 directing treatment of the person in an approved facility.
6 Sexually dangerous persons shall be treated at facilities with
7 an appropriate level of security as determined by the court.

8 (g) Duration of Court-ordered Involuntary Treatment.--A
9 person may be made subject to court-ordered involuntary
10 treatment under this section for a period not to exceed one
11 year.

12 (h) Discharge.--If at any time the director of a facility
13 concludes that the person is not a sexually dangerous person or
14 in need of treatment, he shall discharge the person in
15 accordance with the following procedure. Whenever the period of
16 court-ordered involuntary treatment is about to expire and
17 neither the director nor the county administrator intends to
18 apply for an additional period of court-ordered involuntary
19 treatment or at any time the director concludes that the person
20 is not a sexually dangerous person or in need of treatment, the
21 director shall petition the court which ordered the involuntary
22 treatment for the unconditional or conditional release of the
23 person. Notice of such petition shall be given to the person,
24 the county administrator and, if involved in the initial
25 commitment procedure, the district attorney. Within 15 days
26 after the petition has been filed, the court shall hold a
27 hearing to determine if the person is a sexually dangerous
28 person and in need of treatment. Petitions which must be filed
29 simply because the period of involuntary treatment will expire
30 shall be filed at least ten days prior to the expiration of the

1 court-ordered period of involuntary treatment. If the court
2 determines after hearing that the person is a sexually dangerous
3 person and in need of treatment, it may order additional
4 involuntary treatment not to exceed one year; if the court does
5 not so determine, it shall order the discharge of the person.
6 The determination of the court shall be made pursuant to the
7 standards and procedures prescribed in this section.

8 (i) Definitions.--The following words and phrases when used
9 in this section shall have, unless the context clearly indicates
10 otherwise, the meanings given to them in this subsection:

11 "Deviate sexual intercourse." Sexual intercourse per os or
12 per anus. The term includes penetration, however slight, of the
13 genitals or anus of another person with a foreign object for any
14 purpose other than good faith medical, hygienic or law
15 enforcement procedures.

16 "Indecent contact." Any touching of the sexual or other
17 intimate parts of the person for the purposes of arousing or
18 gratifying sexual desire, in either person.

19 "Serious bodily injury." Bodily injury which creates a
20 substantial risk of death or which causes serious, permanent
21 disfigurement, or protracted loss or impairment of the function
22 of any bodily member or organ.

23 "Sexually dangerous person." A person who:

24 (1) suffers from a mental disorder, at the time of the
25 filing of the petition, which creates a reasonable probability
26 that the person will take action resulting in the death or
27 serious bodily injury of another; and

28 (2) has committed or attempted an assault involving the
29 infliction or attempted infliction of death or serious bodily
30 injury in connection with the commission or attempted commission

1 of an act of intercourse, deviate sexual intercourse or indecent
2 assault.

3 Any determination that the person is a sexually dangerous person
4 shall be supported by the findings of:

5 (1) two psychiatrists; or

6 (2) one psychiatrist and one licensed clinical psychologist.

7 Section 5. This act shall take effect in 60 days.