

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1756 Session of
2003

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SOLOBAY, STABACK, TANGRETTI, TIGUE, TRUE, WASHINGTON,
WILLIAMS AND YOUNGBLOOD, JUNE 27, 2003

REFERRED TO COMMITTEE ON HEALTH AND HUMAN SERVICES,
JUNE 27, 2003

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 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.

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

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Short title.

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

18 Section 2. Legislative findings and intent.

19 The General Assembly finds and declares as follows:

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

25 (2) The General Assembly recognizes, and research
26 conducted over the last decade affirms, the correlation
27 between criminal behavior and drug and alcohol dependency.
28 Research studies have concluded that the chemical dependent
29 person commits more crimes during periods of active drug use
30 than periods of abstinence. A nationwide study initiated in

1 1986 by the Bureau of Justice Statistics of the National
2 Institute of Justice found that 75% of state prison inmates
3 and 82% of youth in long-term juvenile facilities have used
4 drugs at some point in their lives. Fifty-four percent of the
5 inmates reported that they were under the influence of drugs
6 or alcohol or both at the time they committed the offenses.

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

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

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

1 to determine drug and alcohol use or dependency.

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

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

20 Section 3. Definitions.

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

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

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

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

1 and aftercare.

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

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

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

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

27 "Court." All courts of the Commonwealth, magistrates and
28 district justices.

29 "Crimes of violence." An attempt, solicitation or conspiracy
30 to commit murder, assault and related offenses, rape, robbery,

1 involuntary deviate sexual intercourse, incest, sexual abuse,
2 extortion accompanied by threats of violence or any other crime
3 involving the use of a deadly weapon or which results in bodily
4 harm or death.

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

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

14 "Program." The Substance Abuse and Chemical Dependency
15 Assessment Program.

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

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

1 Section 4. Substance Abuse and Chemical Dependency Assessment
2 Program.

3 The department is hereby authorized to establish a pilot
4 program to be known as the Substance Abuse and Chemical
5 Dependency Assessment Program for the purpose of identifying
6 substance abusing and chemical dependent arrestees, monitoring
7 their behavior and controlling their drug and alcohol dependency
8 while under a court's jurisdiction in a way that reduces crime
9 associated with substance abuse and chemical dependency. The
10 department shall select a pilot county or counties to implement
11 the program and shall collaborate with the court and other
12 criminal justice agencies in the participating county or
13 counties to develop written guidelines and procedures governing
14 the operation of the program.

15 Section 5. Pretrial substance abuse and chemical dependency
16 assessment program.

17 (a) General rule.--Whenever a person is arrested in a
18 participating county for violation of the criminal laws of this
19 Commonwealth, the arresting police officer shall, at the time of
20 arrest or at the time of booking, inform the arrestee of the
21 pretrial substance abuse and chemical dependency assessment
22 program. The arresting police officer shall:

23 (1) Inform the arrested person of the availability of
24 drug and alcohol assessments and the consequences of
25 consenting to a voluntary assessment.

26 (2) Inform the arrested person of the right to counsel
27 before consenting to an assessment.

28 (3) Explain the voluntary nature of the assessment
29 program.

30 (4) Explain that any refusal to be assessed and the

1 results of an assessment will not be admissible in evidence
2 against the arrested person at trial.

3 (5) Obtain written consent for an assessment from the
4 arrestee. The written consent shall include a signed
5 statement authorizing the release of assessment and treatment
6 records to persons and agencies stipulated in section 543 of
7 the Public Health Service Act (58 Stat. 682, 42 U.S.C. §
8 290dd-2).

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

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

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

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

28 (c) Violent offenders and drug offenders.--Every person
29 arrested for a violation of the criminal statutes of this
30 Commonwealth which involves a crime of violence, and every

1 person arrested for a violation of the act of April 14, 1972
2 (P.L.233, No.64), known as The Controlled Substance, Drug,
3 Device and Cosmetic Act, shall be informed by the judge
4 presiding over the bail hearing of the pretrial substance abuse
5 and chemical dependency assessment program and of the
6 availability of assessments for drug and alcohol use and
7 dependency. Violent offenders and drug offenders shall not be
8 eligible for dismissal of any criminal charges as a result of
9 participation in the program and the results of any assessment
10 shall not be used to set conditions of pretrial release. If an
11 assessment reveals that a violent offender or drug offender is a
12 chemical dependent person, the offender may be eligible for a
13 modification in probation or parole for successful completion of
14 a drug and alcohol treatment program provided in a correctional
15 institution. Any correctional institution which provides drug
16 and alcohol detoxification, treatment or rehabilitation services
17 shall be accredited by the American Correctional Association as
18 a therapeutic community providing addiction treatment.

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

24 (1) Refrain from drug and alcohol use.

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

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

29 (4) Serve a term of imprisonment for continued violation
30 of the pretrial release conditions if such violations are

1 contrary to a judicial order. The term of imprisonment shall
2 not be for an extended duration as to result in dismissal of
3 a pending charge.

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

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

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

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

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

25 (2) Any oral or written statements made as part of an
26 assessment for substance abuse and chemical dependency.

27 (3) Any other information voluntarily provided by an
28 arrestee as part of an assessment for substance abuse and
29 chemical dependency.

30 (4) Any observations and conclusions of a health

1 professional or any other person derived as a result of an
2 assessment to determine substance abuse or chemical
3 dependency.

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

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

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

26 (1) Persons and agencies designated by the arrestee or,
27 if the arrested person is deceased, the person's guardian or
28 personal representative.

29 (2) Persons authorized by order of court.

30 (3) A qualified researcher for statistical and research

1 purposes if the information is abstracted in a way to protect
2 the identity of the arrestee.

3 (4) A court or law enforcement agency authorized to
4 receive the information.

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

10 Section 6. Treatment for substance abuse and chemical
11 dependency.

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

26 (b) Court-stipulated treatment.--Upon a request for
27 treatment as an alternative to incarceration, a hearing shall be
28 held in open court in the presence of the arrested person, the
29 defense attorney, the prosecuting attorney and any victim or
30 witness who may attend. At the hearing, the facts of the case

1 shall be presented as prescribed by law. When a person is
2 ordered to undergo a period of treatment, the judge shall
3 postpone proceedings on the pending charges during the term of
4 the treatment program. Treatment as an alternative to
5 proceedings on the pending charges may be ordered by the court,
6 provided that:

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

12 (2) An appropriate method has been established for
13 monitoring the progress of the arrestee toward achievement of
14 defined treatment goals.

15 (3) The arrestee understands that failure to
16 satisfactorily complete the treatment program will result in
17 proceeding with prosecution on pending charges as provided by
18 law.

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

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

27 (6) The arrestee agrees to waive the appropriate statute
28 of limitations and the right to a speedy trial under any
29 applicable Federal or State constitutional provisions,
30 statutes or rules of court during the period of enrollment in

1 the treatment program. The statement of consent shall include
2 a voluntary waiver of such rights.

3 (c) Eligibility criteria.--To determine an arrestee's
4 eligibility for treatment as an alternative to prosecution, the
5 court may consider the arrested person's:

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

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

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

10 (4) Tendency toward and degree of past and present
11 aggressive or violent behavior.

12 (5) Mental health symptoms.

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

14 (7) Willingness to cooperate and fully participate in
15 treatment programs.

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

27 (e) Right to refuse to admit.--An inpatient or outpatient
28 treatment facility shall have the right to refuse to admit an
29 arrestee for treatment.

30 (f) Cost of treatment.--When an arrestee, after a

1 comprehensive assessment for substance abuse and chemical
2 dependency, is determined to be a drug or alcohol dependent
3 person and is referred by court order to a drug and alcohol
4 treatment facility licensed by the department, that person shall
5 be assessed liability for the cost of such treatment which shall
6 include any public or private third party coverage for which the
7 arrestee is eligible or any combination of public or private
8 third party coverage for which the arrestee is or becomes
9 eligible during treatment. The cost of the treatment may be
10 covered by medical assistance payments under sections 2334(b)(1)
11 and 2335(a) of the act of April 9, 1929 (P.L.177, No.175), known
12 as The Administrative Code of 1929, provided the following:

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

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

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

1 rehabilitation services to persons eligible for medical
2 assistance. The department shall serve as an advocate for
3 participating counties seeking such medical assistance
4 payments in accordance with this section.

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

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

16 Section 7. Termination of treatment.

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

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

1 request initiated by the arrestee, prosecution shall be
2 immediately resumed.

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

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

26 Section 8. Probation as alternative or dismissal.

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

1 chemical dependent person and poses no apparent threat or danger
2 to the peace and safety of the public, the person or a
3 representative of the person may make an application to the
4 court for an order providing for probation as an alternative to
5 proceeding with prosecution on pending charges or dismissing the
6 charges related to the offense for which treatment was ordered.

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

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

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

1 contingent upon successful completion of a community-based drug
2 or alcohol rehabilitation program, or both. If objections to the
3 application are filed, the judge shall proceed in accordance
4 with section 7(d).

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

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

11 (i) Involve crimes of violence.

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

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

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

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

23 (2) Criminal history of the arrested person.

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

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

29 (5) Willingness of the arrested person to participate in
30 and successfully complete a community-based drug and/or

1 alcohol rehabilitation program as determined by the court.

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

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

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

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

21 Section 9. Alternative sentencing.

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

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

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

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

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

1 probation or parole.

2 (d) Violation of conditions.--If at any time during the term
3 of probation or parole the arrested person is found to be a
4 substance abuser, thereby violating the judicial condition, the
5 court shall issue an order revoking probation or parole and
6 shall order the person to immediately appear before the court
7 for breach of probation or parole.

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

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

30 Section 11. Duties of department.

1 The department shall administer the pretrial substance abuse
2 and chemical dependency assessment program and shall adopt and
3 promulgate any rules, regulations, guidelines, policy statements
4 and forms necessary to enforce the provisions of this act
5 relating to program administration. The department shall:

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

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

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

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

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

30 (6) Conduct an ongoing comprehensive evaluation program

1 to determine the effectiveness of the substance abuse
2 assessment program in reducing criminal behavior, recidivism,
3 arrest and commitments to correctional institutions.

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

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

23 (i) Eligibility guidelines for treatment.

24 (ii) Scope of treatment services offered.

25 (iii) Patient capacity.

26 (iv) Waiting period for admission.

27 (v) Facilities for emergency treatment.

28 (vi) Cost of treatment.

29 Section 12. Duties of participating county.

30 The county or counties selected by the department to

1 implement the program shall:

2 (1) Collaborate with the department in the planning and
3 implementation of a comprehensive substance abuse and
4 chemical dependence assessment program. The program shall be
5 designed to distinguish between incidental use and chronic
6 drug and alcohol abuse and dependency.

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

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

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

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

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

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

1 (8) Establish or cause to be established specific goals
2 for arrested persons referred to treatment for substance
3 abuse or chemical dependency as an alternative to proceeding
4 with prosecution on pending charges. Treatment goals shall
5 include, but may not be limited to:

6 (i) Reduction of criminal recidivism.

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

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

12 (iv) Development of educational skills.

13 (v) Development of parenting skills.

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

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

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

26 Section 13. Applications and grants for program participation.

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

30 (b) Evaluation of applications.--The department shall

consider the following criteria when evaluating applications for program participation:

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

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

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

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

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

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

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

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

Section 14. Reports.

On or before March 1 of each year, the department shall submit a report to the General Assembly which shall include, but

1 not be limited to:

2 (1) The name of the county or counties selected to
3 implement the pretrial substance abuse and chemical
4 dependency assessment program.

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

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

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

11 (5) The number of chemical tests ordered as a result of
12 positive assessments.

13 (6) An identification of the controlled substances
14 abused in the county, as determined from diagnostic
15 assessments and the administration of chemical tests.

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

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

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

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

29 Section 15. Appropriation.

30 The sum of \$875,000, or as much thereof as may be necessary,

1 is hereby appropriated to the Department of Health for the
2 fiscal year July 1, 2003, to June 30, 2004, to carry out the
3 provisions of this act. The appropriation shall be allocated as
4 follows:

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

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

7 Section 16. Effect on existing law.

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

13 Section 17. Effective date.

14 This act shall take effect in 60 days.