

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1613 Session of
2008

INTRODUCED BY PICCOLA, PILEGGI, ORIE, BRUBAKER, LOGAN, BOSCOLA,
WAUGH, WONDERLING, STACK, ARMSTRONG, BROWNE AND WOZNIAK,
OCTOBER 14, 2008

REFERRED TO JUDICIARY, OCTOBER 14, 2008

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 court-ordered involuntary treatment of certain sexually
4 violent persons; and making editorial changes.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Chapter 64 of Title 42 of the Pennsylvania
8 Consolidated Statutes is amended by adding a subchapter heading
9 to read:

10 SUBCHAPTER A

11 CIVIL COMMITMENT OF SEXUALLY

12 VIOLENT DELINQUENT CHILDREN

13 Section 2. Sections 6401, 6402, 6403(a), (b) and (c), 6405,
14 6406(a) and (b), 6407 and 6408 of Title 42 are amended to read:

15 § 6401. Scope of [chapter] subchapter.

16 This [chapter] subchapter establishes rights and procedures
17 for the civil commitment of sexually violent delinquent children
18 who, due to a mental abnormality or personality disorder, have

1 serious difficulty in controlling sexually violent behavior and
2 thereby pose a danger to the public and further provides for
3 additional periods of commitment for involuntary treatment for
4 said persons.

5 § 6402. Definitions.

6 The following words and phrases when used in this [chapter]
7 subchapter shall have the meanings given to them in this section
8 unless the context clearly indicates otherwise:

9 "Act of sexual violence." Any conduct prohibited under the
10 following provisions of law:

11 (1) 18 Pa.C.S. § 3121 (relating to rape).

12 (2) 18 Pa.C.S. § 3123 (relating to involuntary deviate
13 sexual intercourse).

14 (3) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

15 (4) 18 Pa.C.S. § 3125 (relating to aggravated indecent
16 assault).

17 (5) 18 Pa.C.S. § 3126 (relating to indecent assault).

18 (6) 18 Pa.C.S. § 4302 (relating to incest).

19 "Board." The board as defined in section 6302 (relating to
20 definitions).

21 "County solicitor." The solicitor appointed by the county
22 commissioners or a similar body in home rule counties.

23 "Department." The Department of Public Welfare of the
24 Commonwealth.

25 "Mental abnormality." A congenital or acquired condition of
26 a person affecting the person's emotional or volitional
27 capacity.

28 "Sexually violent delinquent child." A person who has been
29 found delinquent for an act of sexual violence which if
30 committed by an adult would be a violation of 18 Pa.C.S. § 3121

1 (relating to rape), 3123 (relating to involuntary deviate sexual
2 intercourse), 3124.1 (relating to sexual assault), 3125
3 (relating to aggravated indecent assault), 3126 (relating to
4 indecent assault) or 4302 (relating to incest) and who has been
5 determined to be in need of commitment for involuntary treatment
6 under this [chapter] subchapter.

7 § 6403. Court-ordered involuntary treatment.

8 (a) Persons subject to involuntary treatment.--A person may
9 be subject to court-ordered commitment for involuntary treatment
10 under this [chapter] subchapter if the person:

11 (1) Has been adjudicated delinquent for an act of sexual
12 violence which if committed by an adult would be a violation
13 of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to
14 involuntary deviate sexual intercourse), 3124.1 (relating to
15 sexual assault), 3125 (relating to aggravated indecent
16 assault), 3126 (relating to indecent assault) or 4302
17 (relating to incest).

18 (2) Has been committed to an institution or other
19 facility pursuant to section 6352 (relating to disposition of
20 delinquent child) and remains in the institution or other
21 facility upon attaining 20 years of age.

22 (3) Is in need of involuntary treatment due to a mental
23 abnormality or personality disorder which results in serious
24 difficulty in controlling sexually violent behavior that
25 makes the person likely to engage in an act of sexual
26 violence.

27 (b) Procedures for initiating court-ordered involuntary
28 commitment.--

29 (1) Where, pursuant to the provisions of section 6358(f)
30 (relating to assessment of delinquent children by the State

1 Sexual Offenders Assessment Board), the court determines that
2 a prima facie case has been presented that the child is in
3 need of involuntary treatment under the provisions of this
4 [chapter] subchapter, the court shall order that a petition
5 be filed by the county solicitor or a designee before the
6 court having jurisdiction of the person pursuant to Chapter
7 63 (relating to juvenile matters).

8 (2) The petition shall be in writing in a form adopted
9 by the department and shall set forth the facts constituting
10 reasonable grounds to believe the individual is within the
11 criteria for court-ordered involuntary treatment as set forth
12 in subsection (a). The petition shall include the assessment
13 of the person by the board as required in section 6358.

14 (3) The court shall set a date for the hearing which
15 shall be held within 30 days of the filing of the petition
16 pursuant to paragraph (1) and direct the person to appear for
17 the hearing. A copy of the petition and notice of the hearing
18 date shall be served on the person, the attorney who
19 represented the person at the most recent dispositional
20 review hearing pursuant to section 6358(e) and the county
21 solicitor or a designee. The person and the attorney who
22 represented the person shall, along with copies of the
23 petition, also be provided with written notice advising that
24 the person has the right to counsel and that, if he cannot
25 afford one, counsel shall be appointed for the person.

26 (4) The person shall be informed that the person has a
27 right to be assisted in the proceedings by an independent
28 expert in the field of sexually violent behavior. If the
29 person cannot afford to engage such an expert, the court
30 shall allow a reasonable fee for such purpose.

1 (c) Hearing.--A hearing pursuant to this [chapter]

2 subchapter shall be conducted as follows:

3 (1) The person shall not be called as a witness without
4 the person's consent.

5 (2) The person shall have the right to confront and
6 cross-examine all witnesses and to present evidence on the
7 person's own behalf.

8 (3) The hearing shall be public.

9 (4) A stenographic or other sufficient record shall be
10 made.

11 (5) The hearing shall be conducted by the court.

12 (6) A decision shall be rendered within five days after
13 the conclusion of the hearing.

14 * * *

15 § 6405. Right to counsel.

16 At each proceeding conducted pursuant to the provisions of
17 this [chapter] subchapter, the person who is the subject of the
18 proceeding shall have the right to assistance of counsel.

19 § 6406. Duty of Department of Public Welfare.

20 (a) General rule.--The department shall have the duty to
21 provide a separate, secure State-owned facility or unit utilized
22 solely for the control, care and treatment of persons committed
23 pursuant to this [chapter] subchapter. The department shall be
24 responsible for all costs relating to the control, care and
25 treatment of persons committed to custody pursuant to this
26 [chapter] subchapter.

27 [(b) Interim facility.--The department may designate a
28 State-owned facility or unit which currently receives children
29 who are adjudicated delinquent and committed under Chapter 63
30 (relating to juvenile matters) to receive individuals committed

1 under this chapter as long as these individuals are segregated
2 at all times from children committed under Chapter 63. This
3 subsection shall expire July 1, 2006.]

4 * * *

5 § 6407. Regulations.

6 The department shall adopt in consultation with the Juvenile
7 Court Judges' Commission and the board such regulations as are
8 necessary to effectuate the provisions of this [chapter]
9 subchapter.

10 § 6408. Jurisdiction.

11 The court of common pleas for the county which entered the
12 order for commitment of the person for a delinquent act pursuant
13 to Chapter 63 (relating to juvenile matters) shall have
14 jurisdiction for proceedings under this [chapter] subchapter,
15 including subsequent proceedings.

16 Section 3. Chapter 64 of Title 42 is amended by adding a
17 subchapter to read:

18 SUBCHAPTER B

19 CIVIL COMMITMENT OF

20 OTHER SEXUALLY VIOLENT PERSONS

21 Sec.

22 6421. Scope of subchapter.

23 6422. Definitions.

24 6423. Involuntary treatment.

25 6424. Assessments.

26 6425. Procedures for initiating court-ordered involuntary
27 commitment.

28 6426. Duration of commitment and review.

29 6427. Right to counsel.

30 6428. Duty of Department of Public Welfare.

1 6429. Regulations.

2 6430. Jurisdiction.

3 6431. Immunity for good faith conduct.

4 § 6421. Scope of subchapter.

5 This subchapter establishes rights and procedures for the
6 civil commitment of sexually violent persons who, due to a
7 mental abnormality or personality disorder, have serious
8 difficulty in controlling sexually violent behavior and thereby
9 pose a danger to the public and further provides for additional
10 periods of commitment for involuntary treatment for said
11 persons.

12 § 6422. Definitions.

13 The following words and phrases when used in this subchapter
14 shall have the meanings given to them in this section unless the
15 context clearly indicates otherwise:

16 "Act of sexual violence." Any conduct prohibited under the
17 following provisions of law:

18 18 Pa.C.S. § 3121 (relating to rape).

19 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
20 intercourse).

21 18 Pa.C.S. § 3124.1 (relating to sexual assault).

22 18 Pa.C.S. § 3125 (relating to aggravated indecent
23 assault).

24 18 Pa.C.S. § 3126 (relating to indecent assault).

25 18 Pa.C.S. § 4302 (relating to incest).

26 "Board." The board as defined in section 6302 (relating to
27 definitions).

28 "County solicitor." The solicitor appointed by the county
29 commissioners or a similar body in home rule counties.

30 "Court." The court of common pleas.

1 "Department." The Department of Public Welfare of the
2 Commonwealth.

3 "Mental abnormality." A congenital or acquired condition of
4 a person affecting the person's emotional or volitional
5 capacity.

6 "Sexually violent person." A person who has been convicted
7 for a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123
8 (relating to involuntary deviate sexual intercourse), 3124.1
9 (relating to sexual assault), 3125 (relating to aggravated
10 indecent assault), 3126 (relating to indecent assault) or 4302
11 (relating to incest) and who has been determined to be in need
12 of commitment for involuntary treatment under this subchapter.

13 § 6423. Involuntary treatment.

14 A person may be subject to court-ordered commitment for
15 involuntary treatment under this subchapter if the person:

16 (1) Has been convicted for a violation of 18 Pa.C.S. §
17 3121 (relating to rape), 3123 (relating to involuntary
18 deviate sexual intercourse), 3124.1 (relating to sexual
19 assault), 3125 (relating to aggravated indecent assault),
20 3126 (relating to indecent assault) or 4302 (relating to
21 incest) and has been sentenced to a term of imprisonment,
22 where the maximum sentence will expire in 18 months.

23 (2) Is in need of involuntary treatment due to a mental
24 abnormality or personality disorder which results in serious
25 difficulty in controlling sexually violent behavior that
26 makes the person likely to engage in an act of sexual
27 violence.

28 § 6424. Assessments.

29 (a) Duty of State Sexual Offender Assessment Board.--A
30 person who has been convicted for a violation of 18 Pa.C.S. §

1 3121 (relating to rape), 3123 (relating to involuntary deviate
2 sexual intercourse), 3124.1 (relating to sexual assault), 3125
3 (relating to aggravated indecent assault), 3126 (relating to
4 indecent assault) or 4302 (relating to incest) who has been
5 sentenced to a term of imprisonment, the maximum sentence of
6 which will expire in 18 months, shall be subject to an
7 assessment of the board for the purpose of determining whether
8 the person is in need of involuntary treatment due to mental
9 abnormality as defined in section 6422 (relating to definitions)
10 or a personality disorder, either of which results in serious
11 difficulty in controlling sexually violent behavior.

12 (b) Duty of Department of Corrections.--Eighteen months
13 prior to the expiration of the maximum sentence of the person,
14 the Department of Corrections shall have the duty to notify the
15 board of the status of the person, the treatment history of the
16 person and the institution where the person is incarcerated.

17 (c) Assessment.--The board shall conduct an assessment,
18 which shall include the board's determination of whether or not
19 the person is in need of commitment for involuntary treatment
20 due to a mental abnormality as defined in section 6422 or a
21 personality disorder, either of which results in serious
22 difficulty in controlling sexually violent behavior. Upon the
23 completion of the assessment pursuant to this section, the board
24 shall provide the assessment to the county solicitor of the
25 county from which the person was sentenced for the act of sexual
26 violence.

27 § 6425. Procedures for initiating court-ordered involuntary
28 commitment.

29 (a) Petition to be filed.--

30 (1) Where, upon review of the assessment provided

1 pursuant to section 6424 (relating to assessments), the
2 county solicitor determines that there is sufficient evidence
3 that the person is in need of involuntary treatment under the
4 provisions of this subchapter, the solicitor shall file a
5 petition pursuant to this section.

6 (2) The petition shall be in writing in a form adopted
7 by the department and shall set forth the facts constituting
8 reasonable grounds to believe the person is within the
9 criteria for court-ordered involuntary treatment as set forth
10 in subsection (a). The petition shall include the assessment
11 of the person by the board as required in section 6424.

12 (3) The court shall set a date for the hearing, which
13 shall be held within 30 days of the filing of the petition
14 pursuant to paragraph (1), and direct the person to appear
15 for the hearing. A copy of the petition and notice of the
16 hearing date shall be served on the person, the attorney who
17 represented the person and the county solicitor or a
18 designee. The person and the attorney who represented the
19 person shall, along with copies of the petition, also be
20 provided with written notice advising that the person has the
21 right to counsel and that, if the person cannot afford one,
22 counsel shall be appointed for the person.

23 (4) The person shall be informed that the person has a
24 right to be assisted in the proceedings by an independent
25 expert in the field of sexually violent behavior. If the
26 person cannot afford to engage such an expert, the court
27 shall allow a reasonable fee for such purpose.

28 (b) Hearing.--A hearing pursuant to this subchapter shall be
29 conducted as follows:

30 (1) The person shall not be called as a witness without

1 the person's consent.

2 (2) The person shall have the right to confront and
3 cross-examine all witnesses and to present evidence on the
4 person's own behalf.

5 (3) The hearing shall be public.

6 (4) A stenographic or other sufficient record shall be
7 made.

8 (5) The hearing shall be conducted by the court.

9 (6) A decision shall be rendered within five days after
10 the conclusion of the hearing.

11 (c) Determination and order.--Upon a finding by clear and
12 convincing evidence that the person has a mental abnormality or
13 personality disorder which results in serious difficulty in
14 controlling sexually violent behavior that makes the person
15 likely to engage in an act of sexual violence, an order shall be
16 entered directing the immediate commitment of the person for
17 inpatient involuntary treatment to a facility designated by the
18 department. The order shall be in writing and shall be
19 consistent with the protection of the public safety and the
20 appropriate control, care and treatment of the person. An appeal
21 shall not stay the execution of the order.

22 § 6426. Duration of commitment and review.

23 (a) Initial period of commitment.--The person shall be
24 subject to a period of commitment for inpatient treatment for
25 one year.

26 (b) Annual review.--

27 (1) Sixty days prior to the expiration of the one-year
28 commitment period, the director of the facility or a designee
29 shall submit an evaluation, and the board shall submit an
30 assessment of the person to the court.

1 (2) The court shall schedule a review hearing which
2 shall be conducted pursuant to section 6403(c) (relating to
3 court-ordered involuntary treatment) and which shall be held
4 no later than 30 days after receipt of both the evaluation
5 and the assessment under paragraph (1). Notice of the review
6 hearing shall be provided to the person, the attorney who
7 represented the person at the previous hearing held pursuant
8 to this subsection or section 6425 (relating to procedures
9 for initiating court-ordered involuntary commitment), the
10 district attorney and the county solicitor or a designee. The
11 person and the person's attorney shall also be provided with
12 written notice advising that the person has the right to
13 counsel and that, if the person cannot afford one, counsel
14 shall be appointed for the person. If the court determines by
15 clear and convincing evidence that the person continues to
16 have serious difficulty controlling sexually violent behavior
17 due to a mental abnormality or personality disorder that
18 makes the person likely to engage in an act of sexual
19 violence, the court shall order an additional period of
20 involuntary treatment of one year; otherwise, the court shall
21 order the discharge of the person. The order shall be in
22 writing and shall be consistent with the protection of the
23 public safety and appropriate control, care and treatment of
24 the person.

25 (c) Discharge.--

26 (1) If, at any time the director or a designee of the
27 facility to which the person was committed concludes that the
28 person no longer has serious difficulty in controlling
29 sexually violent behavior, the director shall petition the
30 court for a hearing. Notice of the petition shall be given to

1 the person, the attorney who represented the person at the
2 previous hearing held pursuant to subsection (b) or section
3 6403, the board, the district attorney and the county
4 solicitor. The person and the person's attorney shall also be
5 provided with written notice advising that the person has the
6 right to counsel and that, if the person cannot afford one,
7 counsel shall be appointed for the person.

8 (2) Upon receipt of notice under paragraph (1), the
9 board shall conduct a new assessment within 30 days and
10 provide that assessment to the court.

11 (3) Within 15 days after the receipt of the assessment
12 from the board, the court shall hold a hearing pursuant to
13 section 6425. If the court determines by clear and convincing
14 evidence that the person continues to have serious difficulty
15 controlling sexually violent behavior due to a mental
16 abnormality or personality disorder that makes the person
17 likely to engage in an act of sexual violence, the court
18 shall order that the person be subject to the remainder of
19 the period of commitment. Otherwise, the court shall order
20 the discharge of the person.

21 (4) The department shall provide the person with notice
22 of the person's right to petition the court for discharge
23 over the objection of the department. The court, after review
24 of the petition, may schedule a hearing pursuant to section
25 6425.

26 § 6427. Right to counsel.

27 At each proceeding conducted pursuant to the provisions of
28 this subchapter, the person who is the subject of the proceeding
29 shall have the right to assistance of counsel.

30 § 6428. Duty of Department of Public Welfare.

1 (a) General rule.--The department shall have the duty to
2 provide a separate, secure State-owned facility or unit utilized
3 solely for the control, care and treatment of persons committed
4 pursuant to this subchapter. The department shall be responsible
5 for all costs relating to the control, care and treatment of
6 persons committed to custody pursuant to this subchapter.

7 (b) Treatment plans.--The department, in consultation with
8 the board, shall develop policies and procedures for providing
9 individualized treatment and discharge plans based on clinical
10 guidelines and professional standards in the fields of sexual
11 offender treatment and mental health.

12 § 6429. Regulations.

13 The department shall adopt, in consultation with the board,
14 such regulations as are necessary to effectuate the provisions
15 of this subchapter.

16 § 6430. Jurisdiction.

17 The court of common pleas for the county which entered the
18 sentence of the person for the act of sexual violence shall have
19 jurisdiction for proceedings under this subchapter, including
20 subsequent proceedings.

21 § 6431. Immunity for good faith conduct.

22 The following entities shall be immune from liability for
23 good faith conduct under this subchapter:

24 (1) Members of the board and its agents and employees.

25 (2) The department and its agents and employees.

26 (3) County probation departments and their agents and
27 employees.

28 Section 4. This act shall take effect in 60 days.