

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 229 Session of 2011

INTRODUCED BY PICCOLA, ORIE, BROWNE, TARTAGLIONE, BOSCOLA,
EICHELBERGER, STACK, WOZNIAK AND RAFFERTY, JANUARY 24, 2011

REFERRED TO JUDICIARY, JANUARY 24, 2011

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:

SUBCHAPTER A

CIVIL COMMITMENT OF SEXUALLY

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
19 serious difficulty in controlling sexually violent behavior and

1 thereby pose a danger to the public and further provides for
2 additional periods of commitment for involuntary treatment for
3 said persons.

4 § 6402. Definitions.

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

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

10 (1) 18 Pa.C.S. § 3121 (relating to rape).

11 (2) 18 Pa.C.S. § 3123 (relating to involuntary deviate
12 sexual intercourse).

13 (3) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

14 (4) 18 Pa.C.S. § 3125 (relating to aggravated indecent
15 assault).

16 (5) 18 Pa.C.S. § 3126 (relating to indecent assault).

17 (6) 18 Pa.C.S. § 4302 (relating to incest).

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

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

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

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

27 "Sexually violent delinquent child." A person who has been
28 found delinquent for an act of sexual violence which if
29 committed by an adult would be a violation of 18 Pa.C.S. § 3121
30 (relating to rape), 3123 (relating to involuntary deviate sexual

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

§ 6403. Court-ordered involuntary treatment.

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

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

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

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

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

(1) Where, pursuant to the provisions of section 6358(f)
(relating to assessment of delinquent children by the State
Sexual Offenders Assessment Board), the court determines that

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

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

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

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

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

1 subchapter shall be conducted as follows:

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

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

7 (3) The hearing shall be public.

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

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

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

13 * * *

14 § 6405. Right to counsel.

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

18 § 6406. Duty of Department of Public Welfare.

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

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

1 at all times from children committed under Chapter 63. This
2 subsection shall expire July 1, 2006.]

3 * * *

4 § 6407. Regulations.

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

9 § 6408. Jurisdiction.

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

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

17 SUBCHAPTER B

18 CIVIL COMMITMENT OF

19 OTHER SEXUALLY VIOLENT PERSONS

20 Sec.

21 6421. Scope of subchapter.

22 6422. Definitions.

23 6423. Involuntary treatment.

24 6424. Assessments.

25 6425. Procedures for initiating court-ordered involuntary
26 commitment.

27 6426. Duration of commitment and review.

28 6427. Right to counsel.

29 6428. Duty of Department of Public Welfare.

30 6429. Regulations.

1 6430. Jurisdiction.

2 6431. Immunity for good faith conduct.

3 § 6421. Scope of subchapter.

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

11 § 6422. Definitions.

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

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

17 18 Pa.C.S. § 3121 (relating to rape).

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

20 18 Pa.C.S. § 3124.1 (relating to sexual assault).

21 18 Pa.C.S. § 3125 (relating to aggravated indecent
22 assault).

23 18 Pa.C.S. § 3126 (relating to indecent assault).

24 18 Pa.C.S. § 4302 (relating to incest).

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

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

29 "Court." The court of common pleas.

30 "Department." The Department of Public Welfare of the

1 Commonwealth.

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

5 "Sexually violent person." A person who has been convicted
6 for a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123
7 (relating to involuntary deviate sexual intercourse), 3124.1
8 (relating to sexual assault), 3125 (relating to aggravated
9 indecent assault), 3126 (relating to indecent assault) or 4302
10 (relating to incest) and who has been determined to be in need
11 of commitment for involuntary treatment under this subchapter.
12 § 6423. Involuntary treatment.

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

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

22 (2) 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 § 6424. Assessments.

28 (a) Duty of State Sexual Offender Assessment Board.--A
29 person who has been convicted for a violation of 18 Pa.C.S. §
30 3121 (relating to rape), 3123 (relating to involuntary deviate

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

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

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

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

(a) Petition to be filed.--

(1) If, upon review of the assessment provided pursuant
to section 6424 (relating to assessments), the county

1 solicitor determines that there is sufficient evidence that
2 the person is in need of involuntary treatment under this
3 subchapter, the solicitor shall file a petition under this
4 section.

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

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

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

27 (b) Hearing.--A hearing under this subchapter shall be
28 conducted as follows:

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

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

4 (3) The hearing shall be public.

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

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

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

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

21 § 6426. Duration of commitment and review.

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

25 (b) Annual review.--

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

30 (2) The court shall schedule a review hearing which

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

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

26 § 6427. Right to counsel.

27 At each proceeding conducted under the provisions of this
28 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 under this subchapter. The department shall be responsible for
5 all costs relating to the control, care and treatment of persons
6 committed to custody under 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.