

MENTAL HEALTH PROCEDURES ACT
Act of Jul. 9, 1976, P.L. 817, No. 143
AN ACT

Cl. 50

Relating to mental health procedures; providing for the treatment and rights of mentally disabled persons, for voluntary and involuntary examination and treatment and for determinations affecting those charged with crime or under sentence.

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

ARTICLE I
General Provisions

Section 101. Short Title.--This act shall be known and may be cited as the "Mental Health Procedures Act."

Section 102. Statement of Policy.--It is the policy of the Commonwealth of Pennsylvania to seek to assure the availability of adequate treatment to persons who are mentally ill, and it is the purpose of this act to establish procedures whereby this policy can be effected. The provisions of this act shall be interpreted in conformity with the principles of due process to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others. Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed. Persons who are mentally retarded, senile, alcoholic, or drug dependent shall receive mental health treatment only if they are also diagnosed as mentally ill, but these conditions of themselves shall not be deemed to constitute

mental illness: Provided, however, That nothing in this act shall prohibit underutilized State facilities for the mentally ill to be made available for the treatment of alcohol abuse or drug addiction pursuant to the act of April 14, 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act." Chronically disabled persons 70 years of age or older who have been continuously hospitalized in a State operated facility for at least ten years shall not be subject to the procedures of this act. Such a person's inability to give a rational, informed consent shall not prohibit the department from continuing to provide all necessary treatment to such a person. However, if such a person protests treatment or residence at a State operated facility he shall be subject to the provisions of Article III.

(102 amended Nov. 26, 1978, P.L.1362, No.324)

Section 103. Scope of Act.--This act establishes rights and procedures for all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and for all voluntary inpatient treatment of mentally ill persons.

(103 amended Oct. 24, 2018, P.L.690, No.106)

Section 103.1. Definitions.--The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assisted outpatient treatment." Community-based outpatient social, medical and behavioral health treatment services ordered by a court for a severely mentally disabled person, which may include one or more of the following services:

- (1) Community psychiatric supportive treatment.
- (2) Assertive community treatment.
- (3) Medications.
- (4) Individual or group therapy.
- (5) Peer support services.
- (6) Financial services.
- (7) Housing or supervised living services.
- (8) Alcohol or substance abuse treatments when the treatment is a co-occurring condition for a person with a primary diagnosis of mental health illness.
- (9) Any other service prescribed to treat the person's mental illness that either assists the person in living and functioning in the community or helps to prevent a relapse or a deterioration of the person's condition that would be likely to result in a substantial risk of serious harm to the person or others.

"Business associate." As defined in 45 CFR 160.103 (relating to definitions). (Def. added July 7, 2022, P.L.428, No.32)

"County local authority." The county commissioners of a county, or the city councils and the mayors of the first class cities, or two or more of these acting in concert.

"Covered entity." As defined in 45 CFR 160.103. (Def. added July 7, 2022, P.L.428, No.32)

"Department." The Department of Human Services of the Commonwealth.

"Disclosure." As defined in 45 CFR 160.103 and includes redisclosures and rereleases of information. (Def. added July 7, 2022, P.L.428, No.32)

"Facility." A mental health establishment, hospital, clinic, institution, center, day care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons, whether as outpatients or inpatients.

"Health care operations." As defined in 45 CFR 164.501 (relating to definitions). (Def. added July 7, 2022, P.L.428, No.32)

"Inpatient treatment." All treatment that requires full or part-time residence in a facility.

"Payment." As defined in 45 CFR 164.501. (Def. added July 7, 2022, P.L.428, No.32)

"Qualified professional." A mental health professional who:
(1) has a graduate degree, or the international equivalent, from an institution accredited or evaluated by an organization recognized by the department in a generally recognized clinical discipline that includes mental health clinical experience;
(2) has mental health clinical experience; and
(3) is licensed or certified by the Commonwealth.

"Secretary." The Secretary of Human Services of the Commonwealth.

"Treatment." As defined in 45 CFR 164.501. (Def. added July 7, 2022, P.L.428, No.32)

"Use." As defined in 45 CFR 160.103. (Def. added July 7, 2022, P.L.428, No.32)

(103.1 added Oct. 24, 2018, P.L.690, No.106)

Section 104. Provision for Treatment.--Adequate treatment means a course of treatment designed and administered to alleviate a person's pain and distress and to maximize the probability of his recovery from mental illness. It shall be provided to all persons in treatment who are subject to this act. It may include inpatient treatment, partial hospitalization, or outpatient treatment. Adequate inpatient treatment shall include such accommodations, diet, heat, light, sanitary facilities, clothing, recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions. Treatment shall include diagnosis, evaluation, therapy, or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person from mental illness and shall also include care and other services that supplement treatment and aid or promote such recovery.

Section 105. Treatment Facilities.--Involuntary treatment and voluntary treatment funded in whole or in part by public moneys shall be available at a facility approved for such purposes by the county administrator (who shall be the County Mental Health and Mental Retardation Administrator of a county or counties, or his duly authorized delegate), or by the department. Approval of facilities shall be made by the appropriate authority which can be the department pursuant to regulations adopted by the department. Treatment may be ordered at the Veterans Administration or other agency of the United States upon receipt of a certificate that the person is eligible for such hospitalization or treatment and that there is available space for his care. Mental health facilities operated under the direct control of the Veterans Administration or other Federal agency are exempt from obtaining State approval. The department's standards for approval shall be at least as stringent as those of the joint commission for accreditation of hospitals and those of the Federal Government pursuant to Titles 18 and 19 of the Federal Social Security Act to the extent that the type of facility is one in which those standards are intended to apply. An exemption from the standards may be granted by the department for a period not in excess of one year and may be renewed. Notice of each exemption and the rationale for allowing the exemption must be published pursuant to the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," and shall be prominently posted

at the entrance to the main office and in the reception areas of the facility.

(105 amended Oct. 24, 2018, P.L.690, No.106)

Compiler's Note: The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Section 106. Persons Responsible for Formulation and Review of Treatment Plan.--(a) Pursuant to sections 107 and 108 of this act, a treatment team shall formulate and review an individualized treatment plan for every person who is in treatment under this act.

(b) A treatment team must be under the direction of either a physician or a licensed clinical psychologist and may include other mental health professionals.

(c) A treatment team must be under the direction of a physician when:

(1) failure to do so would jeopardize Federal payments made on behalf of a patient; or

(2) the director of a facility requires the treatment to be under the direction of a physician.

(d) All treatment teams must include a physician and the administration of all drugs shall be controlled by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

Section 107. Individualized Treatment Plan.--(a)

Individualized treatment plan means a plan of treatment formulated for a particular person in a program appropriate to his specific needs, including an assisted outpatient treatment plan under subsection (b). To the extent possible, the plan shall be made with the cooperation, understanding and consent of the person in treatment, and shall impose the least restrictive alternative consistent with affording the person adequate treatment for his condition.

(b) Assisted outpatient treatment plan means an individualized treatment plan developed by a qualified professional or the treatment team that is ordered by a court for involuntary outpatient civil commitment of a person. The treatment plan shall be reviewed and approved by a psychiatrist or a licensed clinical psychologist prior to submission to the court. The treatment plan shall contain the reasonable objectives and goals for a person determined to be in need of assisted outpatient treatment. In addition to the requirements of subsection (a), the treatment plan shall include:

(1) Delineation of specific assisted outpatient treatment services to be provided based on the person's specific needs.

(2) Delineation of the providers that agree to provide assisted outpatient treatment services to the person.

(3) Documentation of how the person was involved in the initial development of the treatment plan and the process for involving the person in ongoing evaluation and, if appropriate, modifications to the treatment plan.

(c) A treatment plan developed in accordance with this section shall meet all of the requirements of this act.

(d) In the development and approval of an individualized treatment plan, nothing in this subsection shall be construed to require a county to include in a person's individual treatment plan for assisted outpatient treatment a service that is not available in that county or for which no funding source or provider is available to pay for or render the service.

(107 amended Oct. 24, 2018, P.L.690, No.106)

Section 108. Periodic Reexamination, Review and Redisposition.--(a) Reexamination and Review.--Every person who is in treatment under this act shall be examined by a treatment team and his treatment plan reviewed not less than once in every 30 days.

(b) Redisposition.--On the basis of reexamination and review, the treatment team may either authorize continuation of the existing treatment plan if appropriate, formulate a new individualized treatment plan, or recommend to the director the discharge of the person. A person shall not remain in treatment or under any particular mode of treatment for longer than such treatment is necessary and appropriate to his needs.

(c) Record of Reexamination and Review.--The treatment team responsible for the treatment plan shall maintain a record of each reexamination and review under this section for each person in treatment to include:

(1) a report of the reexamination, including a diagnosis and prognosis;

(2) a brief description of the treatment provided to the person during the period preceding the reexamination and the results of that treatment;

(3) a statement of the reason for discharge or for continued treatment;

(4) an individualized treatment plan for the next period, if any;

(5) a statement of the reasons that such treatment plan imposes the least restrictive alternative consistent with adequate treatment of his condition; and

(6) a certification that the adequate treatment recommended is available and will be afforded in the treatment program.

Section 109. Mental Health Review Officer.--(a) Legal proceedings concerning extended involuntary emergency treatment under section 303(c), court-ordered involuntary treatment under section 304 or 305 or transfer hearings under section 306, may be conducted by a judge of the court of common pleas or by a mental health review officer authorized by the court to conduct the proceedings. ((a) repealed in part Oct. 5, 1980, P.L.693, No.142)

(b) In all cases in which the hearing is conducted by a mental health review officer, a person made subject to treatment shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person's counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

(c) Notwithstanding any other provision of this act, no judge or mental health review officer shall specify to the treatment team the adoption of any treatment technique, modality, or drug therapy.

(d) Notwithstanding any statute to the contrary, judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under this act or who has been involuntarily treated as described under 18 Pa.C.S § 6105(c)(4) (relating to persons

not to possess, use, manufacture, control, sell or transfer firearms). The notification shall be transmitted by the judge, mental health review officer or county mental health and mental retardation administrator within seven days of the adjudication, commitment or treatment. Notwithstanding any statute to the contrary, county mental health and mental retardation administrators shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who before the effective date of this act had been adjudicated incompetent or had been involuntarily committed to a mental institution for inpatient care treatment under this act or had been involuntarily treated as described in 18 Pa.C.S. § 6105(c)(4). ((d) added July 2, 1996, P.L.481, No.77)

(109 repealed in part Apr. 28, 1978, P.L.202, No.53 and amended Nov. 26, 1978, P.L.1362, No.324)

Section 110. Written Applications, Petitions, Statements and Certifications.--(a) All written statements pursuant to section 302(a)(2), and all applications, petitions, and certifications required under the provisions of this act shall be made subject to the penalties provided under 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) and shall contain a notice to that effect.

(b) All such applications, petitions, statements and certifications shall be submitted to the county administrator in the county where the person was made subject to examination and treatment and such other county in the Commonwealth, if any, in which the person usually resides.

(c) Subsections (a) and (b) shall not apply to patients admitted pursuant to Article II when no part of the patient's care is provided with public funds provided that the department may require facilities to report clinical and statistical information so long as the data does not identify individual patients.

(d) ((d) repealed Oct. 5, 1980, P.L.693, No.142)

(110 amended Nov. 26, 1978, P.L.1362, No.324)

Section 111. Confidentiality of Records.--(a) All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

(1) those engaged in providing treatment for the person;

(2) the county administrator, pursuant to section 110;

(3) a court in the course of legal proceedings authorized by this act;

(4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency; and

(5) a covered entity or a covered entity's business associate that makes the use, disclosure or request for disclosure in accordance with 45 CFR Pt. 164 Subpt. E (relating to privacy of individually identifiable health information). In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent. This shall not restrict the collection and analysis of clinical or statistical data by the department, the county administrator or the facility so long as the use and dissemination of such data does not identify individual patients. Nothing herein shall be construed to conflict with section 8 of the act of April 14, 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act."

((a) amended July 7, 2022, P.L.428, No.32)

(b) This section shall not restrict judges of the courts of common pleas, mental health review officers and county mental

health and mental retardation administrators from disclosing information to the Pennsylvania State Police or the Pennsylvania State Police from disclosing information to any person, in accordance with the provisions of 18 Pa.C.S. § 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(111 amended July 2, 1996, P.L.481, No.77)

Compiler's Note: Section 3 of Act 32 of 2022 provided that for the purpose of implementing the amendment of subsec. (a) regarding access to confidential documents of persons in treatment for a covered entity or a covered entity's business associate, the Secretary of Human Services shall promulgate regulations in accordance with the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law, no later than 180 days after the effective date of section 3.

Compiler's Note: Section 111 was suspended by Pennsylvania Rule of Disciplinary Enforcement No.601, adopted February 2, 1984, insofar as it is inconsistent with the Rules of Disciplinary Enforcement.

Section 112. Rules, Regulations and Forms.--The department shall adopt such rules, regulations and forms as may be required to effectuate the provisions of this act. Rules and regulations adopted under the provisions of this act shall be adopted according to provisions of section 201 of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966," and the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

Section 113. Rights and Remedies of Persons in Treatment.--Every person who is in treatment shall be entitled to all other rights now or hereafter provided under the laws of this Commonwealth, in addition to any rights provided for in this act. Actions requesting damages, declaratory judgment, injunction, mandamus, writs of prohibition, habeas corpus, including challenges to the legality of detention or degree of restraint, and any other remedies or relief granted by law may be maintained in order to protect and effectuate the rights granted under this act.

Section 114. Immunity from Civil and Criminal Liability.--(a) In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, a peace officer or any other authorized person who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for voluntary treatment or for involuntary emergency examination and treatment, shall not be civilly or criminally liable for such decision or for any of its consequences.

(b) A judge or a mental health review officer shall not be civilly or criminally liable for any actions taken or decisions made by him pursuant to the authority conferred by this act.

(114 amended Nov. 26, 1978, P.L.1362, No.324)

Section 115. Venue and Location of Legal Proceedings.--(a) The jurisdiction of the courts of common pleas and juvenile courts conferred by Articles II and III shall be exercised initially by the court for the county in which the subject of the proceedings is or resides. Whenever involuntary

treatment is ordered, jurisdiction over any subsequent proceeding shall be retained by the court in which the initial proceedings took place, but may be transferred to the county of the person's usual residence. In all cases, a judge of the court of common pleas or a mental health review officer of the county of venue may conduct legal proceedings at a facility where the person is in treatment whether or not its location is within the county.

(b) Venue for actions instituted to effectuate rights under this act shall be as now or hereafter provided by law.

Section 116. Continuity of Care.--(a) It shall be the responsibility of the facility administration to refer those voluntary and involuntary patients discharged from State institutional programs to the appropriate county mental health and mental retardation program.

(b) The county mental health and mental retardation program shall, pursuant to Article III of the "Mental Health and Mental Retardation Act of 1966," receive referrals from State-operated facilities and shall be responsible for the treatment needs of county residents discharged from institutions pursuant to Articles II and III of this act.

(116 added Nov. 26, 1978, P.L.1362, No.324)

Section 117. Assisted Outpatient Treatment Implementation by Counties.--(a) (1) The county administrator of any county may determine annually that the county mental health and intellectual disabilities program will not provide assisted outpatient treatment pursuant to section 301(c). The county administrator making the determination shall:

(i) provide notice to the secretary that the county program will not provide assisted outpatient treatment in accordance with section 301(c); and

(ii) notify the county local authority of the decision not to offer assisted outpatient treatment in accordance with section 301(c).

(2) The notification to the secretary under clause (1) shall be submitted annually in a form determined by the secretary.

(b) The secretary shall grant an annual waiver to any county that has notified the secretary under subsection (a) of the county's decision not to offer assisted outpatient services pursuant to section 301(c).

(c) Nothing in this section shall be construed as permitting a county or the secretary to waive existing obligations of a county to serve seriously mentally ill residents in accordance with all other applicable provisions of law and regulation.

(117 added Oct. 24, 2018, P.L.690, No.106)

Section 118. Assisted Outpatient Treatment Implementation by Department.--(a) The department shall modify the standard involuntary commitment petition forms and other relevant educational documents used in conjunction with the involuntary commitment process to describe, define and incorporate assisted outpatient treatment.

(b) The department shall develop a separate involuntary assisted outpatient treatment commitment petition form which shall include:

(1) The eligibility criteria for assisted outpatient treatment.

(2) After consultation with the Pennsylvania College of Emergency Physicians, appropriate guidance and instructions to the petitioner on use of hospital emergency departments in conjunction with the petition process for involuntary inpatient commitment or assisted outpatient treatment.

(118 added Oct. 24, 2018, P.L.690, No.106)

ARTICLE II
Voluntary Examination and Treatment

Section 201. Persons Who May Authorize Voluntary Treatment.--Any person 14 years of age or over who believes that he is in need of treatment and substantially understands the nature of voluntary treatment may submit himself to examination and treatment under this act, provided that the decision to do so is made voluntarily. A parent, guardian, or person standing in loco parentis to a child less than 14 years of age may subject such child to examination and treatment under this act, and in so doing shall be deemed to be acting for the child. Except as otherwise authorized in this act, all of the provisions of this act governing examination and treatment shall apply.

(201 amended Nov. 26, 1978, P.L.1362, No.324)

Section 202. To Whom Application May be Made.--Application for voluntary examination and treatment shall be made to an approved facility or to the county administrator, Veterans Administration or other agency of the United States operating a facility for the care and treatment of mental illness. When application is made to the county administrator, he shall designate the approved facility for examination and for such treatment as may be appropriate.

Section 203. Explanation and Consent.--Before a person is accepted for voluntary inpatient treatment, an explanation shall be made to him of such treatment, including the types of treatment in which he may be involved, and any restraints or restrictions to which he may be subject, together with a statement of his rights under this act. Consent shall be given in writing upon a form adopted by the department. The consent shall include the following representations: That the person understands his treatment will involve inpatient status; that he is willing to be admitted to a designated facility for the purpose of such examination and treatment; and that he consents to such admission voluntarily, without coercion or duress; and, if applicable, that he has voluntarily agreed to remain in treatment for a specified period of no longer than 72 hours after having given written notice of his intent to withdraw from treatment. The consent shall be part of the person's record.

Section 204. Notice to Parents.--Upon the acceptance of an application for examination and treatment by a minor 14 years or over but less than 18 years of age, the director of the facility shall promptly notify the minor's parents, guardian, or person standing in loco parentis, and shall inform them of the right to be heard upon the filing of an objection. Whenever such objection is filed, a hearing shall be held within 72 hours by a judge or mental health review officer, who shall determine whether or not the voluntary treatment is in the best interest of the minor.

Section 205. Physical Examination and Formulation of Individualized Treatment Plan.--Upon acceptance of a person for voluntary examination and treatment he shall be given a physical examination. Within 72 hours after acceptance of a person an individualized treatment plan shall be formulated by a treatment team. The person shall be advised of the treatment plan, which shall become a part of his record. The treatment plan shall state whether inpatient treatment is considered necessary, and what restraints or restrictions, if any, will be administered, and shall set forth the bases for such conclusions.

Section 206. Withdrawal from Voluntary Inpatient Treatment.--(a) A person in voluntary inpatient treatment may withdraw at any time by giving written notice unless, as stated in section 203, he has agreed in writing at the time of his admission that his release can be delayed following such notice for a period to be specified in the agreement, provided that such period shall not exceed 72 hours. Any patient converted from involuntary treatment ordered pursuant to either section 304 or 305 to voluntary treatment status shall agree to remain in treatment for 72 hours after having given written notice of his intent to withdraw from treatment.

(b) If the person is under the age of 14, his parent, legal guardian, or person standing in loco parentis may effect his release. If any responsible party believes that it would be in the best interest of a person under 14 years of age in voluntary treatment to be withdrawn therefrom or afforded treatment constituting a less restrictive alternative, such party may file a petition in the Juvenile Division of the court of common pleas for the county in which the person under 14 years of age resides, requesting a withdrawal from or modification of treatment. The court shall promptly appoint an attorney for such minor person and schedule a hearing to determine what inpatient treatment, if any, is in the minor's best interest. The hearing shall be held within ten days of receipt of the petition, unless continued upon the request of the attorney for such minor. The hearing shall be conducted in accordance with the rules governing other Juvenile Court proceedings.

(c) Nothing in this act shall be construed to require a facility to continue inpatient treatment where the director of the facility determines such treatment is not medically indicated. Any dispute between a facility and a county administrator as to the medical necessity for voluntary inpatient treatment of a person shall be decided by the Commissioner of Mental Health or his designate.

(206 amended Nov. 26, 1978, P.L.1362, No.324)

Section 207. Transfer of Person in Voluntary Treatment.--A person who is in voluntary treatment may not be transferred from one facility to another without his written consent.

ARTICLE III Involuntary Examination and Treatment

Section 301. Persons Who May be Subject to Involuntary Emergency Examination and Treatment.--(a) Persons Subject.--Whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself, as defined in subsection (b), or the person is determined to be in need of assisted outpatient treatment as defined in subsection (c). ((a) amended Oct. 24, 2018, P.L.690, No.106)

(b) Determination of Clear and Present Danger.--(1) Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. If, however, the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal

responsibility on charges arising from conduct involving infliction of or attempt to inflict substantial bodily harm on another, such 30-day limitation shall not apply so long as an application for examination and treatment is filed within 30 days after the date of such determination or verdict. In such case, a clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm.

(2) Clear and present danger to himself shall be shown by establishing that within the past 30 days:

(i) the person has acted in such manner as to evidence that he would be unable, without care, supervision and the continued assistance of others, to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety, and that there is a reasonable probability that death, serious bodily injury or serious physical debilitation would ensue within 30 days unless adequate treatment were afforded under this act; or

(ii) the person has attempted suicide and that there is the reasonable probability of suicide unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger may be demonstrated by the proof that the person has made threats to commit suicide and has committed acts which are in furtherance of the threat to commit suicide; or

(iii) the person has substantially mutilated himself or attempted to mutilate himself substantially and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.

((b) amended Nov. 26, 1978, P.L.1362, No.324)

(c) Determination of Need for Assisted Outpatient Treatment.--(1) The need for assisted outpatient treatment shall be shown by establishing by clear and convincing evidence that the person would benefit from assisted outpatient treatment as manifested by evidence of behavior that indicates all of the following:

(i) The person is unlikely to survive safely in the community without supervision, based on a clinical determination.

(ii) The person has a history of lack of voluntary adherence to treatment for mental illness and one of the following applies:

(A) Within the 12 months prior to the filing of a petition seeking assisted outpatient treatment, the person's failure to adhere to treatment has been a significant factor in necessitating involuntary inpatient hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 12-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 12-month period.

(B) Within the 48 months prior to the filing of a petition seeking court-ordered assisted outpatient treatment, the person's failure to adhere to treatment resulted in one or more

acts of serious violent behavior toward others or himself or threats of, or attempts at, serious physical harm to others or himself, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 48-month period.

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment and the person previously has been offered voluntary treatment services but has not accepted or has refused to participate on a sustained basis in voluntary treatment, provided that voluntary agreement to enter into services by a person during the pendency of a petition for assisted outpatient treatment shall not preclude the court from ordering assisted outpatient treatment for that person if reasonable evidence exists to believe that the person is unlikely to make a voluntary sustained commitment to and remain in a treatment program.

(iv) Based on the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to others or himself.

(2) An individual who meets only the criteria described in clause (1) shall not be subject to involuntary inpatient hospitalization unless a separate determination is made that the individual poses a clear and present danger in accordance with subsection (b).

((c) added Oct. 24, 2018, P.L.690, No.106)

Section 302. Involuntary Emergency Examination and Treatment Authorized by a Physician - Not to Exceed One Hundred Twenty Hours.--(Hdg. amended Nov. 26, 1978, P.L.1362, No.324) (a)

Application for Examination.--Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.

(1) Warrant for Emergency Examination.--Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant.

(2) Emergency Examination Without a Warrant.--Upon personal observation of the conduct of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment, any physician or peace officer, or anyone authorized by the county administrator may take such person to an approved facility for an emergency examination. Upon arrival, he shall make a written statement setting forth the grounds for believing the person to be in need of such examination.

(b) Examination and Determination of Need for Emergency Treatment.--A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301(b) and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any

time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application. ((b) amended Oct. 24, 2018, P.L.690, No.106)

(c) Notification of Rights at Emergency Examination.--Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall be requested to furnish the names of parties whom he may want notified of his custody and kept informed of his status. The county administrator or the director of the facility shall:

(1) give notice to such parties of the whereabouts and status of the person, how and when he may be contacted and visited, and how they may obtain information concerning him while he is in inpatient treatment; and

(2) take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure.

(d) Duration of Emergency Examination and Treatment.--A person who is in treatment pursuant to this section shall be discharged whenever it is determined that he no longer is in need of treatment and in any event within 120 hours, unless within such period:

(1) he is admitted to voluntary treatment pursuant to section 202 of this act; or

(2) a certification for extended involuntary emergency treatment is filed pursuant to section 303 of this act.

((d) amended Nov. 26, 1978, P.L.1362, No.324)

Section 303. Extended Involuntary Emergency Treatment Certified by a Judge or Mental Health Review Officer - Not to Exceed Twenty Days.--(a) Persons Subject to Extended Involuntary Emergency Treatment.--Application for extended involuntary emergency treatment may be made for any person who is being treated pursuant to section 302 whenever the facility determines that the need for emergency treatment is likely to extend beyond 120 hours. The application shall be filed forthwith in the court of common pleas, and shall state the grounds on which extended emergency treatment is believed to be necessary. The application shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person. ((a) amended Nov. 26, 1978, P.L.1362, No.324)

(b) Appointment of Counsel and Scheduling of Informal Hearing.--Upon receiving such application, the court of common pleas shall appoint an attorney who shall represent the person unless it shall appear that the person can afford, and desires to have, private representation. Within 24 hours after the application is filed, an informal hearing shall be conducted by a judge or by a mental health review officer and, if practicable, shall be held at the facility.

(c) Informal Conference on Extended Emergency Treatment Application.--(1) At the commencement of the informal conference, the judge or the mental health review officer shall inform the person of the nature of the proceedings. Information relevant to whether the person is severely mentally disabled and in need of treatment shall be reviewed, including the

reasons that continued involuntary treatment is considered necessary. Such explanation shall be made by a physician who examined the person and shall be in terms understandable to a layman. The judge or mental health review officer may review any relevant information even if it would be normally excluded under rules of evidence if he believes that such information is reliable. The person or his representative shall have the right to ask questions of the physician and of any other witnesses and to present any relevant information. At the conclusion of the review, if the judge or the review officer finds that the person is severely mentally disabled and in need of continued involuntary treatment, either as an inpatient or through less restrictive assisted outpatient treatment, he shall so certify. Otherwise, he shall direct that the facility director or his designee discharge the person. ((1) amended Oct. 24, 2018, P.L.690, No.106)

(2) A record of the proceedings which need not be a stenographic record shall be made. Such record shall be kept by the court or mental health review officer for at least one year.

((c) amended Nov. 26, 1978, P.L.1362, No.324)

(d) Contents of Certification.--A certification for extended involuntary treatment shall be made in writing upon a form adopted by the department and shall include:

(1) findings by the judge or mental health review officer as to the reasons that extended involuntary emergency treatment is necessary;

(2) a description of the treatment to be provided together with an explanation of the adequacy and appropriateness of such treatment, based upon the information received at the hearing;

(3) any documents required by the provisions of section 302;

(4) the application as filed pursuant to section 303(a);

(5) a statement that the person is represented by counsel; and

(6) an explanation of the effect of the certification, the person's right to petition the court for release under subsection (g), and the continuing right to be represented by counsel.

(e) Filing and Service.--The certification shall be filed with the director of the facility and a copy served on the person, such other parties as the person requested to be notified pursuant to section 302(c), and on counsel.

(f) Effect of Certification.--Upon the filing and service of a certification for extended involuntary emergency treatment, the person may be given treatment in an approved facility for a period not to exceed 20 days.

(g) Petition to Common Pleas Court.--In all cases in which the hearing was conducted by a mental health review officer, a person made subject to treatment pursuant to this section shall have the right to petition the court of common pleas for review of the certification. A hearing shall be held within 72 hours after the petition is filed unless a continuance is requested by the person's counsel. The hearing shall include a review of the certification and such evidence as the court may receive or require. If the court determines that further involuntary treatment is necessary and that the procedures prescribed by this act have been followed, it shall deny the petition. Otherwise, the person shall be discharged.

(h) Duration of Extended Involuntary Emergency Treatment.--Whenever a person is no longer severely mentally disabled or in need of immediate treatment and, in any event,

within 20 days after the filing of the certification, he shall be discharged, unless within such period:

(1) he is admitted to voluntary treatment pursuant to section 202; or

(2) the court orders involuntary treatment pursuant to section 304.

Section 304. Court-ordered Involuntary Treatment Not to Exceed Ninety Days.--(a) Persons for Whom Application May be Made.--(1) A person who is severely mentally disabled and in need of treatment, as defined in section 301(a), may be made subject to court-ordered involuntary treatment upon a determination of clear and present danger under section 301(b)(1) (serious bodily harm to others), or section 301(b)(2)(i) (inability to care for himself, creating a danger of death or serious harm to himself), or 301(b)(2)(ii) (attempted suicide), or 301(b)(2)(iii) (self-mutilation), or upon determination that a person meets the requirements under section 301(c) (determination of need for assisted outpatient treatment).

(2) Where a petition is filed for a person already subject to involuntary treatment, it shall be sufficient to represent, and upon hearing to reestablish, that the conduct originally required by section 301(b) in fact occurred, and that his condition continues to evidence a clear and present danger to himself or others, or that the conduct originally required by section 301(c) in fact occurred and that his condition continues to evidence a need for assisted outpatient treatment. In such event, it shall not be necessary to show the reoccurrence of dangerous conduct, either harmful or debilitating, within the past 30 days.

((a) amended Oct. 24, 2018, P.L.690, No.106)

(b) Procedures for Initiating Court-ordered Involuntary Treatment for Persons Already Subject to Involuntary Treatment.--(1) Petition for court-ordered involuntary treatment for persons already subject to treatment under sections 303, 304 and 305 may be made by the county administrator or the director of the facility to the court of common pleas.

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

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

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

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

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

(2) The petition shall be in writing upon a form adopted by the department and shall set forth facts constituting reasonable grounds to believe that the person is within the criteria for court-ordered treatment set forth in subsection (a). The petition shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person.

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

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

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

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

(c.1) Procedures for Initiating Assisted Outpatient Treatment for Persons Already Subject to Involuntary Treatment.--(1) Petition for assisted outpatient treatment for persons already subject to involuntary treatment under section 301(b) (1) or (2), or persons with mental illness subject to treatment in a forensic facility or a correctional institution who are ready for release, may be made by the county administrator or the director of the facility to the court of common pleas.

(2) The petition shall be in writing upon a form adopted by the department and shall include a statement of the facts constituting reasonable grounds to believe that the person is:

(i) No longer determined to be in need of involuntary inpatient treatment under section 301(b) (1) or (2) or no longer subject to treatment in a forensic facility or correctional institution.

(ii) Determined to be in need of assisted outpatient treatment under section 301(c).

(3) The petition shall state the name of any examining psychiatrist or licensed clinical psychologist and the substance of his opinion regarding the mental condition of the person. It shall also state that the person has been given the information required by subsection (b) (3).

(4) Upon the filing of the petition, the county administrator shall serve a copy on the person, his attorney and those designated to be kept informed, as provided in section

302(c), including an explanation of the nature of the proceedings, the person's right to an attorney and the services of an expert in the field of mental health, as provided by subsection (d).

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

(6) Treatment shall be permitted to be maintained pending the determination of the petition.

((c.1) added Oct. 24, 2018, P.L.690, No.106)

(c.2) Procedures for Initiating Assisted Outpatient Treatment for Persons Not in Involuntary Treatment.--(1) Any responsible party may file a petition in the court of common pleas requesting assisted outpatient treatment for any person determined under section 301(c) to be in need of assisted outpatient treatment, who is not already in involuntary treatment and who is not already in assisted outpatient treatment for whom application could be made under subsection (a).

(2) The petition shall be in writing upon a form adopted by the department and shall set forth facts constituting reasonable grounds to believe that the person is within the criteria as defined under section 301(c) for a person in need of assisted outpatient treatment. The petition shall be accompanied by a statement of a psychiatrist, or a statement signed by a clinical licensed psychologist stating that the clinician who issued the statement has examined the person and is of the opinion that the person is in need of assisted outpatient treatment, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist or by a clinical licensed psychologist.

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

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

(5) Upon motion of either the petitioner or the person, or upon its own motion, the court may order the person to be examined by a psychiatrist or other qualified professional appointed by the court, provided that:

(i) a qualified professional who is appointed by the court and is not a psychiatrist or licensed clinical psychologist shall be selected from a panel of qualified professionals specifically designated by the county administrator for the qualified professional's demonstrated expertise and ability to conduct court-ordered examinations for assisted outpatient treatment consistent with the qualified professional's scope of practice;

(ii) the examination shall be conducted on an outpatient basis and the person shall have the right to have counsel present;

(iii) the written report prepared by the qualified professional under subclause (i) shall be reviewed and approved by a psychiatrist or a licensed clinical psychologist prior to submission to the court; and

(iv) the written report on the results of the examination shall be given to the court and counsel at least 48 hours prior to the hearing.

(6) Involuntary treatment shall not be authorized during the pendency of a petition except in accordance with sections 302 and 303.

((c.2) added Oct. 24, 2018, P.L.690, No.106)

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

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

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

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

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

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

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

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

(7) A decision shall be rendered within 48 hours after the close of evidence.

(8) If the person is believed to be in need of assisted outpatient treatment in accordance with section 301(c), a hearing on the petition shall be conducted in accordance with the following additional requirements:

(i) No later than the date of the hearing, a treatment team shall provide a written proposed assisted outpatient treatment plan to the court. The plan shall state all treatment services recommended for the person and, for each service, shall specify a provider that has agreed to provide the service.

(ii) In developing a written proposed assisted outpatient treatment plan, the treatment team shall take into account, if existing, an advance directive for mental health treatment and provide the following persons with an opportunity to participate:

(A) the person believed to be in need of court-ordered assistant outpatient treatment;

(B) all current treating providers;

(C) upon the request of the person believed to be in need of court-ordered assistant outpatient treatment, an individual significant to the person, including any relative, close friend or individual otherwise concerned with the welfare of the person; and

(D) any authorized guardian or other surrogate decision-maker.

(iii) The written proposed assisted outpatient treatment plan shall include case management services or an assertive community treatment team to provide care coordination and assisted outpatient treatment services recommended by the treatment team. If the plan includes medication, the prescribing physician's order shall state whether such medication should be self-administered or administered by a specified provider. In no event shall the plan recommend the use of physical force or restraints to administer medication to the person.

(iv) A qualified professional, who has personally examined the person within ten days of the filing of the petition, shall provide testimony in support of the finding that the person meets all of the criteria for assisted outpatient treatment and in support of a written proposed treatment plan developed pursuant to this section, including:

(A) the recommended assisted outpatient treatment, the rationale for the recommended assisted outpatient treatment and the facts that establish that such treatment is the least restrictive appropriate alternative;

(B) information regarding the person's access to, and the availability of, recommended assisted outpatient treatment in the community or elsewhere; and

(C) if the recommended assisted outpatient treatment includes medication, the types or classes of medication that should be authorized, the beneficial and detrimental physical and mental effects of such medication and whether such medication should be self-administered or administered by a specified provider and the ongoing process for management of such medications in response to changes in the person's medical condition.

(9) A decision shall be rendered within 48 hours after the close of evidence.

((e) amended Oct. 24, 2018, P.L.690, No.106)

(f) Determination and Order.--(1) Upon a finding by clear and convincing evidence that the person is severely mentally disabled and in need of treatment and subject to subsection (a), an order shall be entered directing treatment of the person in an approved facility as an inpatient or an outpatient, or a combination of such treatment as the director of the facility shall from time to time determine. Inpatient treatment shall be deemed appropriate only after full consideration has been given to less restrictive alternatives, including assisted outpatient treatment. Investigation of treatment alternatives shall include consideration of the person's relationship to his community and family, his employment possibilities, all available community resources, and guardianship services. An order for inpatient treatment shall include findings on this issue.

(2) If the person is found to be in need of assisted outpatient treatment in accordance with section 301(c) or as a result of consideration of less restrictive settings under clause (1), the court shall order the person to receive assisted

outpatient treatment for a period not to exceed 90 days from any provider or facility approved by the department or the county administrator for purposes of providing assisted outpatient treatment, provided that a jail or any other State or county correctional institution shall not be an authorized facility.

(3) The facility or provider shall examine and treat the person in accordance with the assisted outpatient treatment plan. If the person is receiving assisted outpatient treatment, or receives treatment in an outpatient setting during a subsequent period of continued commitment under section 305, the facility or provider to whom the person is ordered shall determine the appropriate assisted outpatient treatment plan for the person.

(4) If the approved court-ordered assisted outpatient treatment plan includes medications, the court order shall authorize the treatment team, in accordance with their professional judgment and under supervision of the prescribing physician, to perform routine medication management, including adjustment of specific medications and doses, in consultation with the person and as warranted by changes in the person's medical condition.

(5) The provider or facility responsible for the assisted outpatient treatment plan shall inform the court if the person fails materially to adhere to the treatment plan and comply with the court order. If the court receives information that a patient is not complying with the court's order, the court may take any of the following actions:

(i) set a modification hearing to assess the person's failure to adhere to the assisted outpatient treatment plan;

(ii) amend the assisted outpatient treatment plan to foster adherence to necessary treatment by the person; or

(iii) issue an order for the person to be examined in accordance with section 302 for purposes of evaluation and, if appropriate, file a petition that the person poses a clear and present danger under section 301(b), provided that a State or county correctional institution may not be considered an authorized treatment facility.

(6) If the court determines under clause (5) that the person has failed to adhere to the assisted outpatient treatment plan, the court may not hold that person in contempt or otherwise sanction the person solely based on the failure to comply with the assisted outpatient treatment plan.

(7) The person subject to assisted outpatient treatment may petition the court for enforcement of a service specifically contained in that person's individualized treatment plan, provided that the petition must include clear and convincing evidence demonstrating that the service is not being provided in accordance with that plan.

(8) A copy of the person's individualized treatment plan and related documents shall be made available to the court for purposes of proceedings under clause (5) or (7).

((f) amended Oct. 24, 2018, P.L.690, No.106)

(g) Duration of Court-ordered Involuntary Treatment.--(1)

A person may be made subject to court-ordered involuntary treatment under this section for a period not to exceed 90 days, excepting only that: Persons may be made subject to court-ordered involuntary treatment under this section for a period not to exceed one year if:

(i) the person meets the criteria established by clause (2); and

(ii) the person may be subject to assisted outpatient treatment for a period not to exceed 180 days if the person meets the criteria established by clause (5).

(2) A person may be subject to court-ordered involuntary treatment for a period not to exceed one year if:

(i) severe mental disability is based on acts giving rise to the following charges under the Pennsylvania Crimes Code: murder (§ 2502); voluntary manslaughter (§ 2503); aggravated assault (§ 2702); kidnapping (§ 2901); rape (§ 3121(1) and (2)); involuntary deviate sexual intercourse (§ 3123(1) and (2)); arson (§ 3301); and

(ii) a finding of incompetency to be tried or a verdict of acquittal because of lack of criminal responsibility has been entered.

(3) If at any time the director of a facility concludes that the person is not severely mentally disabled or in need of treatment pursuant to subsection (a), he shall discharge the person provided that no person subjected to involuntary treatment pursuant to clause (2) may be discharged without a hearing conducted pursuant to clause (4).

(4) In cases involving involuntary treatment pursuant to clause (2), whenever the period of court-ordered involuntary treatment is about to expire and neither the director nor the county administrator intends to apply for an additional period of court-ordered involuntary treatment pursuant to section 305 or at any time the director concludes that the person is not severely mentally disabled or in need of treatment, the director shall petition the court which ordered the involuntary treatment for the unconditional or conditional release of the person. Notice of such petition shall be given to the person, the county administrator and the district attorney. Within 15 days after the petition has been filed, the court shall hold a hearing to determine if the person is severely mentally disabled and in need of treatment. Petitions which must be filed simply because the period of involuntary treatment will expire shall be filed at least ten days prior to the expiration of the court-ordered period of involuntary treatment. If the court determines after hearing that the person is severely mentally disabled and in need of treatment, it may order additional involuntary treatment not to exceed one year; if the court does not so determine, it shall order the discharge of the person.

(5) A person may be subject to assisted outpatient treatment for a period of up to 180 days if the person continues to meet the requirements of section 301(c) or is being discharged from involuntary inpatient treatment under this article.

((g) amended Oct. 24, 2018, P.L.690, No.106)

(304 amended Nov. 26, 1978, P.L.1362, No.324)

Section 305. Additional Periods of Court-ordered Involuntary Treatment.--(a) At the expiration of a period of court-ordered involuntary treatment under section 304(g) or this section, the court may order treatment for an additional period upon the application of the county administrator or the director of the facility in which the person is receiving treatment. Such order shall be entered upon hearing on findings as required by sections 304(a) and (b), and the further finding of a need for continuing involuntary treatment as shown by conduct during the person's most recent period of court-ordered treatment. The additional period of involuntary treatment shall not exceed 180 days; provided that persons meeting the criteria of section 304(g)(2) may be subject to an additional period of up to one year of involuntary treatment. A person found dangerous to himself under section 301(b)(2)(i), (ii) or (iii) shall be

subject to an additional period of involuntary full-time inpatient treatment only if he has first been released to a less restrictive alternative. This limitation shall not apply where, upon application made by the county administrator or facility director, it is determined by a judge or mental health review officer that such release would not be in the person's best interest.

(b) The director of the facility in which the person is receiving treatment shall notify the county administrator at least ten days prior to the expiration of a period of involuntary commitment ordered under section 304 or this section.

(c) At the expiration of a period of assisted outpatient treatment under section 304(g) or this section, the court may order treatment for an additional period upon the application of the county administrator or the treatment team. Such order shall be entered upon hearing on findings as required by sections 304(a) and (b) and the further finding of a need for continuing assisted outpatient treatment. The additional period of involuntary treatment shall not exceed 180 days. ((c) added Oct. 24, 2018, P.L.690, No.106)

(305 amended Nov. 26, 1978, P.L.1362, No.324)

Section 306. Transfer of Persons in Involuntary Treatment.--(a) Subject to the provisions of subsections (b) and (c), persons in involuntary treatment pursuant to this act may be transferred to any approved facility.

(b) In the absence of an emergency, persons committed pursuant to section 304(g)(2) may not be transferred unless written notice is given to the committing judge and the district attorney in the committing county and no objection is noted from either within 20 days of receipt of said notice. If the court or the district attorney objects to said transfer, a hearing shall be held by the court within 20 days to review the commitment order. A decision shall be rendered within 48 hours after the close of evidence.

(c) Whenever such transfer will constitute a greater restraint, it shall not take place unless, upon hearing, a judge or mental health review officer finds it to be necessary and appropriate.

(306 amended Nov. 26, 1978, P.L.1362, No.324)

ARTICLE IV

Determinations Affecting Those Charged With Crime, or Under Sentence

Section 401. Examination and Treatment of a Person Charged with Crime or Serving Sentence.--(a) Examination and Treatment to be Pursuant to Civil Provisions.--Whenever a person who is charged with crime, or who is undergoing sentence, is or becomes severely mentally disabled, proceedings may be instituted for examination and treatment under the civil provisions of this act in the same manner as if he were not so charged or sentenced. Proceedings under this section shall not be initiated for examination and treatment at Veterans Administration facilities if such examination and treatment requires the preparation of competency reports and/or the facility is required to maintain custody and control over the person. Such proceedings, however, shall not affect the conditions of security required by his criminal detention or incarceration.

(b) Status in Voluntary and Involuntary Treatment.--Whenever a person who is detained on criminal charges or is incarcerated is made subject to inpatient examination or treatment, he shall

be transferred, for this purpose, to a mental health facility. Transfer may be made to a Veterans Administration facility provided that neither custody nor control are required in addition to examination and treatment. Such individuals transferred to the Veterans Administration are not subject to return by the Federal agency to the authority entitled to have them in custody. During such period, provisions for his security shall continue to be enforced, unless in the interim a pretrial release is effected, or the term of imprisonment expires or is terminated, or it is otherwise ordered by the court having jurisdiction over his criminal status. In those instances where a person is charged with offenses listed in section 304(g)(2) and where the court, after hearing, deems it desirable, security equivalent to the institution to which he is incarcerated must be provided. Upon discharge from treatment, a person who is or remains subject to a detainer or sentence shall be returned to the authority entitled to have him in custody. The period of involuntary treatment shall be credited as time served on account of any sentence to be imposed on pending charges or any unexpired term of imprisonment. ((b) amended Nov. 26, 1978, P.L.1362, No.324)

(c) Persons Subject to the Juvenile Act.--As to any person who is subject to a petition or who has been committed under the Juvenile Act, the civil provisions of this act applicable to children of his age shall apply to all proceedings for his examination and treatment. If such a person is in detention or is committed, the court having jurisdiction under the Juvenile Act shall determine whether such security conditions shall continue to be enforced during any period of involuntary treatment and to whom the person should be released thereafter.

Section 402. Incompetence to Proceed on Criminal Charges and Lack of Criminal Responsibility as Defense.--(a) Definition of Incompetency.--Whenever a person who has been charged with a crime is found to be substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense, he shall be deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues.

(b) Involuntary Treatment of Persons Found Incompetent to Stand Trial Who are Not Mentally Disabled.--Notwithstanding the provisions of Article III of this act, a court may order involuntary treatment of a person found incompetent to stand trial but who is not severely mentally disabled, such involuntary treatment not to exceed a specific period of 60 days. Involuntary treatment pursuant to this subsection may be ordered only if the court is reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial. The court may order outpatient treatment, partial hospitalization or inpatient treatment. ((b) amended Nov. 26, 1978, P.L.1362, No.324)

(c) Application for Incompetency Examination.--Application to the court for an order directing an incompetency examination may be presented by an attorney for the Commonwealth, a person charged with a crime, his counsel, or the warden or other official in charge of the institution or place in which he is detained. A person charged with crime shall be represented either by counsel of his selection or by court-appointed counsel.

(d) Hearing; When Required.--The court, either on application or on its own motion, may order an incompetency examination at any stage in the proceedings and may do so without a hearing unless the examination is objected to by the

person charged with a crime or by his counsel. In such event, an examination shall be ordered only after determination upon a hearing that there is a prima facie question of incompetency. Upon completion of the examination, a determination of incompetency shall be made by the court where incompetency is established by a preponderance of the evidence. ((d) amended July 2, 1996, P.L.481, No.77)

(e) Conduct of Examination; Report.--When ordered by the court, an incompetency examination shall take place under the following conditions:

(1) It shall be conducted as an outpatient examination unless an inpatient examination is, or has been, authorized under another provision of this act.

(2) It shall be conducted by at least one psychiatrist or licensed psychologist and may relate both to competency to proceed and to criminal responsibility for the crime charged.

(3) The person shall be entitled to have counsel present with him and shall not be required to answer any questions or to perform tests unless he has moved for or agreed to the examination. Nothing said or done by such person during the examination may be used as evidence against him in any criminal proceedings on any issue other than that of his mental condition.

(4) A report shall be submitted to the court and to counsel and shall contain a description of the examination, which shall include:

(i) diagnosis of the person's mental condition;

(ii) an opinion as to his capacity to understand the nature and object of the criminal proceedings against him and to assist in his defense;

(iii) when so requested, an opinion as to his mental condition in relation to the standards for criminal responsibility as then provided by law if it appears that the facts concerning his mental condition may also be relevant to the question of legal responsibility; and

(iv) when so requested, an opinion as to whether he had the capacity to have a particular state of mind, where such state of mind is a required element of the criminal charge.

((e) amended March 19, 2014, P.L.50, No.21)

(f) Experts.--The court may allow a psychiatrist or licensed psychologist retained by the defendant and a psychiatrist or licensed psychologist retained by the Commonwealth to witness and participate in the examination. Whenever a defendant who is financially unable to retain such expert has a substantial objection to the conclusions reached by the court-appointed psychiatrist or licensed psychologist, the court shall allow reasonable compensation for the employment of a psychiatrist or licensed psychologist of his selection, which amount shall be chargeable against the mental health and mental retardation program of the locality. ((f) amended March 19, 2014, P.L.50, No.21)

(g) Time Limit on Determination.--The determination of the competency of a person who is detained under a criminal charge shall be rendered by the court within 20 days after the receipt of the report of examination unless the hearing was continued at the person's request.

(h) Definition.--As used in this section, the term "licensed psychologist" means an individual licensed under the act of March 23, 1972 (P.L.136, No.52), known as the "Professional Psychologists Practice Act." ((h) added March 19, 2014, P.L.50, No.21)

Compiler's Note: Section 3 of Act 21 of 2014, which amended subsecs. (e) and (f), provided that the amendment shall apply to actions initiated on or after the effective date of section 3.

Section 403. Hearing and Determination of Incompetency to Proceed; Stay of Proceedings; Dismissal of Charges.--(a) Competency Determination and Burden of Proof.--Except for an incompetency examination ordered by the court on its own motion as provided for in section 402(d), the individual making an application to the court for an order directing an incompetency examination shall have the burden of establishing incompetency to proceed by a preponderance of the evidence. The determination shall be made by the court. ((a) amended July 2, 1996, P.L.481, No.77)

(b) Effect as Stay - Exception.--A determination of incompetency to proceed shall effect a stay of the prosecution for so long as such incapacity persists, excepting that any legal objections suitable for determination prior to trial and without the personal participation of the person charged may be raised and decided in the interim.

(c) Defendant's Right to Counsel; Reexamination.--A person who is determined to be incompetent to proceed shall have a continuing right to counsel so long as the criminal charges are pending. Following such determination, the person charged shall be reexamined not less than every 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel. ((c) amended Nov. 26, 1978, P.L.1362, No.324)

(d) Effect on Criminal Detention.--Whenever a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not for that reason alone be denied pretrial release. Nor shall he in any event be detained on the criminal charge longer than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If the court determines there is no such probability, it shall discharge the person. Otherwise, he may continue to be criminally detained so long as such probability exists but in no event longer than the period of time specified in subsection (f).

(e) Resumption of Proceedings or Dismissal.--When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

(f) Stay of Proceedings.--In no instance, except in cases of first and second degree murder, shall the proceedings be stayed for a period in excess of the maximum sentence of confinement that may be imposed for the crime or crimes charged, or ten years, whichever is less. In cases of a charge of first or second degree murder, there shall be no limit on the period during which proceedings may be stayed. ((f) amended Nov. 26, 1978, P.L.1362, No.324)

(g) Procedure When Person Is Discharged.--If the person of the defendant is discharged pursuant to subsection (d), but the charges remain open pursuant to subsection (f), the court discharging the defendant shall, on its own motion or on the motion of the Commonwealth or on the motion of the defense,

order the defendant to submit to a psychiatric examination every 12 months after said discharge of the person, to determine whether the defendant has become competent to proceed to trial. If such examination reveals that the defendant has regained competency to proceed, then a hearing shall be scheduled and the court shall determine, after a full and fair hearing, whether the defendant is competent to proceed. If the defendant is adjudged competent, then trial shall commence within 90 days of said adjudication. If such examination reveals that the defendant is incompetent to proceed, the court shall order the defendant to submit to a new competency examination in 12 months. ((g) added Nov. 26, 1978, P.L.1362, No.324)

Section 404. Hearing and Determination of Criminal Responsibility; Bifurcated Trial.--(a) Criminal Responsibility Determination by Court.--At a hearing under section 403 of this act the court may, in its discretion, also hear evidence on whether the person was criminally responsible for the commission of the crime charged. It shall do so in accordance with the rules governing the consideration and determination of the same issue at criminal trial. If the person is found to have lacked criminal responsibility, an acquittal shall be entered. If the person is not so acquitted, he may raise the defense at such time as he may be tried.

(b) Opinion Evidence on Mental Condition.--At a hearing under section 403 or upon trial, a psychiatrist or licensed psychologist appointed by the court may be called as a witness by the attorney for the Commonwealth or by the defendant and each party may also summon any other psychiatrist or licensed psychologist or other expert to testify.

(c) Bifurcation of Issues or Trial.--Upon trial, the court, in the interest of justice, may direct that the issue of criminal responsibility be heard and determined separately from the other issues in the case and, in a trial by jury, that the issue of criminal responsibility be submitted to a separate jury. Upon a request for bifurcation, the court shall consider the substantiality of the defense of lack of responsibility and its effect upon other defenses, and the probability of a fair trial.

(d) Definition.--As used in this section, the term "licensed psychologist" means an individual licensed under the act of March 23, 1972 (P.L.136, No.52), known as the "Professional Psychologists Practice Act."

(404 amended March 19, 2014, P.L.50, No.21)

Compiler's Note: Section 3 of Act 21 of 2014, which amended section 404, provided that the amendment shall apply to actions initiated on or after the effective date of section 3.

Section 405. Examination of Person Charged with Crime as Aid in Sentencing.--Examination Before Imposition of Sentence. Whenever a person who has been criminally charged is to be sentenced, the court may defer sentence and order him to be examined for mental illness to aid it in the determination of disposition. This action may be taken on the court's initiative or on the application of the attorney for the Commonwealth, the person charged, his counsel, or any other person acting in his interest. If at the time of sentencing the person is not in detention, examination shall be on an outpatient basis unless inpatient examination for this purpose is ordered pursuant to the civil commitment provisions of Article III.

Section 406. Civil Procedure for Court-ordered Involuntary Treatment Following a Determination of Incompetency, or

Acquittal by Reason of Lack of Criminal Responsibility or in Conjunction with Sentencing.--Upon a finding of incompetency to stand trial under section 403, after an acquittal by reason of lack of responsibility under section 404, or following an examination in aid of sentencing under section 405, the attorney for the Commonwealth, on his own or acting at the direction of the court, the defendant, his counsel, the county administrator, or any other interested party may petition the same court for an order directing involuntary treatment under section 304.

Section 407. Voluntary Treatment of a Person Charged with Crime or Serving Sentence.--(a) Whenever a person in criminal detention, whether in lieu of bail or serving a sentence, believes that he is in need of treatment and substantially understands the nature of voluntary treatment he may submit himself to examination and treatment under this act, provided that at least one physician certifies the necessity of such treatment and certifies further that such treatment cannot be adequately provided at the prison or correctional facility where the person then is detained. Such certificate shall set forth the specific grounds which make transfer to a mental health facility necessary. The correctional facility shall secure a written acceptance of the person for inpatient treatment from the mental health facility and shall forward such acceptance to the court.

(b) Before any inmate of a prison or correctional facility may be transferred to a mental health facility for the purpose of examination and treatment the district attorney shall be notified by the correctional facility and shall be given up to 14 days after receipt of notification to conduct an independent examination of the defendant. The court shall review the certification of the physician that such transfer is necessary and the recommendation of the physician for the Commonwealth and may request any other information concerning the necessity of such transfer. Upon the motion of the district attorney, a hearing shall be held on the question of the voluntary treatment of a person charged with a crime or serving a sentence. Upon such review the court shall either approve or disapprove the transfer.

(c) Where possible, the sentencing judge shall preside.

((c) repealed in part Oct. 5, 1980, P.L.693, No.142)

(d) A report of the person's mental condition shall be made by the mental health facility to the court within 30 days of the person's transfer to such facility. Such report shall also set forth the specific grounds which require continued treatment at a mental health facility. After the initial report the facility shall thereafter report to the court every 180 days.

(e) If at any time the person gives notice of his intent to withdraw from treatment at the mental health facility he shall be returned to the authority entitled to have him in custody, or proceedings may be initiated under section 304 of this act. During the pendency of any petition filed under section 304 concerning a person in treatment under this section the mental health facility shall have authority to detain the person regardless of the provisions of section 203, provided that the hearing under section 304 is conducted within seven days of the time the person gives notice of his intent to withdraw from treatment.

(f) The period of voluntary treatment under this section shall be credited as time served on account of any sentence to be imposed on pending charges or any unexpired term of imprisonment.

(407 added Nov. 26, 1978, P.L.1362, No.324)

Section 408. Costs of Treatment.--(408 repealed June 18, 1997, P.L.179, No.18)

ARTICLE V
Effective Date, Applicability,
Repeals and Severability

Section 501. Effective Date and Applicability.--This act shall take effect 60 days after its enactment and shall thereupon apply immediately to all persons receiving voluntary treatment. As to all persons who were made subject to involuntary treatment prior to the effective date, it shall become applicable 180 days thereafter.

Section 502. Repeals.--(a) The definition of "mental disability" in section 102, and sections 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 416, 418, 419, 420 and 426, act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966," are hereby repealed, except in so far as they relate to mental retardation or to persons who are mentally retarded.

Section 29 of the act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," except so far as it relates to mental retardation or to persons who are mentally retarded, is hereby repealed.

(b) All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 503. Severability.--If any provision of this act including, but not limited to, any provision relating to children or the application thereof including but not limited to an application thereof to a child is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared severable.