
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1025 Session of
1975

INTRODUCED BY COPPERSMITH, DOUGHERTY, REIBMAN, HILL, FRAME AND
FLEMING, SEPTEMBER 23, 1975

REFERRED TO PUBLIC HEALTH AND WELFARE, SEPTEMBER 23, 1975

AN ACT

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

6 TABLE OF CONTENTS

7 Article I. General Provisions

8 Section 101. Short Title.

9 Section 102. Statement of Policy.

10 Section 103. Scope of Act.

11 Section 104. Provision for Treatment.

12 Section 105. Treatment Facilities.

13 Section 106. Persons Responsible for Formulation and

14 Review of Treatment Plan.

15 Section 107. Individualized Treatment Plan.

16 Section 108. Periodic Reexamination, Review and

17 Redisposition.

18 Section 109. Mental Health Review Officer.

19 Section 110. Written Applications, Petitions, Statements
20 and Certifications.

- 1 Section 111. Confidentiality of Records.
- 2 Section 112. Rules, Regulations and Forms.
- 3 Section 113. Rights and Remedies of Persons in Treatment.
- 4 Section 114. Immunity from Civil and Criminal Liability.
- 5 Section 115. Venue and Location of Legal Proceedings.

6 Article II. Voluntary Examination and Treatment

- 7 Section 201. Persons Who May Authorize Voluntary Treatment.
- 8 Section 202. To Whom Application May be Made.
- 9 Section 203. Explanation and Consent.
- 10 Section 204. Notice to Parents.
- 11 Section 205. Formulation of Individualized Treatment Plan.
- 12 Section 206. Withdrawal from Voluntary Treatment.
- 13 Section 207. Transfer of Person in Voluntary Treatment.

14 Article III. Involuntary Examination and Treatment

- 15 Section 301. Persons Who May be Subject to Involuntary
16 Emergency Examination and Treatment.
- 17 Section 302. Involuntary Emergency Examination and Treatment
18 Authorized by a Physician - Not to Exceed
19 Seventy-two Hours.
- 20 Section 303. Extended Involuntary Emergency Treatment
21 Certified by a Judge or Mental Health Review
22 Officer - Not to Exceed Twenty Days.
- 23 Section 304. Court-ordered Involuntary Treatment.
- 24 Section 305. Additional Periods of Court-ordered Involuntary
25 Treatment.
- 26 Section 306. Transfer of Persons in Involuntary Treatment.

27 Article IV. Determinations Affecting Those Charged with Crime,
28 or Under Sentence

- 29 Section 401. Examination and Treatment of a Person Charged
30 with Crime or Serving Sentence.

1 Section 402. Incompetence to Proceed on Criminal Charges and
2 Lack of Criminal Responsibility as Defense.

3 Section 403. Hearing and Determination of Incompetency to
4 Proceed; Stay of Proceedings; Dismissal of
5 Charges.

6 Section 404. Hearing and Determination of Criminal
7 Responsibility; Bifurcated Trial.

8 Section 405. Examination of Person Charged with Crime as
9 Aid in Sentencing.

10 Section 406. Civil Procedure for Court-ordered Involuntary
11 Treatment Following a Determination of
12 Incompetency, or Acquittal by Reason of Lack of
13 Criminal Responsibility or in Conjunction with
14 Sentencing.

15 Article V. Effective Date and Applicability

16 Section 501. Effective Date and Applicability.

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

19 ARTICLE I

20 General Provisions

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

23 Section 102. Statement of Policy.--It is the policy of the
24 Commonwealth of Pennsylvania to assure the availability of
25 adequate treatment to persons who are mentally ill, and it is
26 the purpose of this act to establish procedures whereby this
27 policy can be effected. The Commonwealth assumes the ultimate
28 responsibility for providing such treatment, either directly or
29 through cooperation with other governmental or private agencies

1 or bodies, and through funding if necessary. Treatment on a
2 voluntary basis shall be preferred to involuntary treatment; and
3 in every case, the least restrictions consistent with adequate
4 treatment shall be employed. Persons who are mentally retarded,
5 senile, alcoholic, or drug dependent shall receive mental health
6 treatment only if they are also diagnosed as mentally ill, but
7 these conditions of themselves shall not be deemed to constitute
8 mental illness.

9 Section 103. Scope of Act.--This act establishes rights and
10 procedures for all involuntary treatment of mentally ill
11 persons, whether inpatient or outpatient, and for all voluntary
12 inpatient treatment of mentally ill persons. "Inpatient
13 treatment" shall include all treatment that requires full or
14 part-time residence in a facility. For the purpose of this act,
15 a "facility" means any mental health establishment, hospital,
16 clinic, institution, center, day care center, base service unit,
17 community mental health center, or part thereof, that provides
18 for the diagnosis, treatment, care or rehabilitation of mentally
19 ill persons, whether as outpatients or inpatients.

20 Section 104. Provision for Treatment.--Adequate treatment
21 means a course of treatment designed and administered to
22 alleviate a person's pain and distress and to maximize the
23 probability of his recovery from mental illness. It shall be
24 provided to all persons in treatment who are subject to this
25 act. It may include inpatient treatment, partial
26 hospitalization, or outpatient treatment. Adequate inpatient
27 treatment shall include such accommodations, diet, heat, light,
28 sanitary facilities, clothing, recreation, education and medical
29 care as are necessary to maintain decent, safe and healthful
30 living conditions.

1 Treatment shall include diagnosis, evaluation, therapy, or
2 rehabilitation needed to alleviate pain and distress and to
3 facilitate the recovery of a person from mental illness and
4 shall also include care and other services that supplement
5 treatment and aid or promote such recovery.

6 Section 105. Treatment Facilities.--Treatment shall be
7 available at a facility approved for such purposes by the county
8 administrator (who shall be the County Mental Health and Mental
9 Retardation Administrator of a county or counties, or his duly
10 authorized delegate), or by the Department of Public Welfare,
11 hereinafter cited as the "department." Approval of facilities
12 shall be made pursuant to regulations adopted by the department.
13 Use of any facility not approved by the Joint Commission for
14 Accreditation of Hospitals shall be prohibited, if the facility
15 is of a type to which standards established by the Joint
16 Commission are intended to apply. An exemption may be granted by
17 the department for a period not in excess of one year and may be
18 renewed in compelling circumstances. Notice of each exemption
19 and the rationale for allowing the exemption must be published
20 pursuant to the act of July 31, 1968 (P.L.769, No.240), known as
21 the "Commonwealth Documents Law," and shall be prominently
22 posted at the entrance to the main office and in the reception
23 areas of the facility.

24 Section 106. Persons Responsible for Formulation and Review
25 of Treatment Plan.--Pursuant to sections 107 and 108 of this
26 act, a physician or clinical psychologist shall formulate and
27 review an individualized treatment plan for every person who is
28 in treatment under this act. For this purpose, "physician" means
29 a person licensed to practice as such in Pennsylvania, and
30 "clinical psychologist," a person who has earned a doctoral

1 degree in psychology in an accredited clinical program.

2 Section 107. Individualized Treatment Plan.--Individualized
3 treatment plan means a plan of treatment formulated for a
4 particular person in a program appropriate to his specific
5 needs. To the extent possible, the plan shall be made with the
6 cooperation, understanding and consent of the person in
7 treatment, and shall impose the least restrictive alternative
8 consistent with affording the person adequate treatment for his
9 condition.

10 Section 108. Periodic Reexamination, Review and
11 Redisposition.--(a) Reexamination and Review. Every person who
12 is in treatment under this act shall be examined by a physician
13 or clinical psychologist and his treatment plan reviewed not
14 less than once in every 30 days. Examination shall be made by a
15 physician if the person is receiving prescribed medication.

16 (b) Redisposition. On the basis of reexamination and review,
17 the examining physician or clinical psychologist may either
18 authorize continuation of the existing treatment plan if
19 appropriate, formulate a new individualized treatment plan, or
20 discharge the person. A person shall not remain in treatment or
21 under any particular mode of treatment for longer than such
22 treatment is necessary and appropriate to his needs.

23 (c) Record of Reexamination and Review. The physician or
24 clinical psychologist responsible for the treatment plan shall
25 maintain a record of each reexamination and review under this
26 section for each person in treatment to include: (1) a report
27 of the reexamination, including a diagnosis and prognosis; (2) a
28 brief description of the treatment provided to the person during
29 the period preceding the reexamination and the results of that
30 treatment; (3) a statement of the reason for discharge or for

1 continued treatment; (4) an individualized treatment plan for
2 the next period, if any; (5) a statement of the reasons that
3 such treatment plan imposes the least restrictive alternative
4 consistent with adequate treatment of his condition; and (6) a
5 certification that the adequate treatment recommended is
6 available and will be afforded in the treatment program.

7 Section 109. Mental Health Review Officer.--Legal
8 proceedings concerning extended involuntary emergency treatment
9 under section 303(c), or court-ordered involuntary treatment
10 under section 304, may be conducted by a judge of the court of
11 common pleas or by a mental health review officer authorized by
12 the court to conduct the proceedings. Mental health review
13 officers shall be members of the bar of the Supreme Court of
14 Pennsylvania, without restriction as to the county of their
15 residence. They shall be appointed by the respective courts of
16 common pleas for terms not to exceed one year, and may be
17 reappointed to successive terms.

18 Section 110. Written Applications, Petitions, Statements and
19 Certifications.--(a) All written statements pursuant to section
20 302(a)(3), and all applications, petitions, and certifications
21 required under the provisions of this act shall be made subject
22 to the penalties provided under 18 P.C.S. §4904 (relating to
23 unsworn falsification to authorities) and shall contain a notice
24 to that effect.

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

30 Section 111. Confidentiality of Records.--All documents

1 concerning persons in treatment shall be kept confidential and,
2 without the person's written consent, may not be released or
3 their contents disclosed to anyone except: (1) those engaged in
4 providing treatment for the person; (2) the county
5 administrator, pursuant to section 110; and (3) a court in the
6 course of legal proceedings authorized by this act. In no event,
7 however, shall privileged communications, whether written or
8 oral, be disclosed to anyone without such written consent.

9 Section 112. Rules, Regulations and Forms.--The department
10 shall adopt such rules, regulations and forms as may be required
11 to effectuate the provisions of this act. Rules and regulations
12 adopted under the provisions of this act shall be adopted
13 according to provisions of section 201 of the act of October 20,
14 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health
15 and Mental Retardation Act of 1966," and the act of July 31,
16 1968 (P.L.769, No.240), known as the "Commonwealth Documents
17 Law."

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

28 Section 114. Immunity from Civil and Criminal Liability.--
29 (a) In the absence of willful misconduct or gross negligence, a
30 county administrator, a director of a facility, a physician or

1 any other authorized person who participates in a decision that
2 a person be examined or treated under this act, or that a person
3 be discharged, or placed under partial hospitalization,
4 outpatient care or leave of absence, or that the restraint upon
5 such person be otherwise reduced, or a county administrator or
6 other authorized person who denies an application for
7 involuntary emergency examination and treatment, shall not be
8 civilly or criminally liable for such decision or for any of its
9 consequences.

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

13 Section 115. Venue and Location of Legal Proceedings.--(a)
14 The jurisdiction of the courts of common pleas and juvenile
15 courts conferred by Articles II and III shall be exercised
16 initially by the court for the county in which the subject of
17 the proceedings is or resides. Whenever involuntary treatment is
18 ordered, jurisdiction over any subsequent proceeding shall be
19 retained by the court in which the initial proceedings took
20 place, but may be transferred to the county of the person's
21 usual residence. In all cases, a judge of the court of common
22 pleas or a mental health review officer of the county of venue
23 may conduct legal proceedings at a facility where the person is
24 in treatment whether or not its location is within the county.

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

27 ARTICLE II

28 Voluntary Examination and Treatment

29 Section 201. Persons Who May Authorize Voluntary
30 Treatment.--Any person 14 years of age or over who believes that

1 he is in need of treatment and substantially understands the
2 nature of voluntary commitment may submit himself to examination
3 and treatment under this act, provided that the decision to do
4 so is made voluntarily. A parent, guardian, or person standing
5 in loco parentis to a child less than 14 years of age may
6 subject such child to examination and treatment under this act,
7 and in so doing shall be deemed to be acting for the child.
8 Except as otherwise authorized in this act, all of the
9 provisions of this act governing examination and treatment shall
10 apply.

11 Section 202. To Whom Application May be Made.--Application
12 for voluntary examination and treatment shall be made to an
13 approved facility or to the county administrator. When
14 application is made to the county administrator, he shall
15 designate the approved facility for examination and for such
16 treatment as may be appropriate.

17 Section 203. Explanation and Consent.--Before a person is
18 accepted for voluntary inpatient treatment, an explanation shall
19 be made to him of such treatment, including the types of
20 treatment in which he may be involved, and any restraints or
21 restrictions to which he may be subject, together with a
22 statement of his rights under this act. Consent shall be given
23 in writing upon a form adopted by the department. The consent
24 shall include the following representations: That the person
25 understands his treatment will involve inpatient status; that he
26 is willing to be admitted to a designated facility for the
27 purpose of such examination and treatment; and that he consents
28 to such admission voluntarily, without coercion or duress; and,
29 if applicable, that he has voluntarily agreed to remain in
30 treatment for a specified period of no longer than 72 hours,

1 after having given written notice of his intent to withdraw from
2 treatment. The consent shall be part of the person's record.

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

13 Section 205. Formulation of Individualized Treatment Plan.--
14 Within 72 hours after acceptance of a person for voluntary
15 examination and treatment, an individualized treatment plan
16 shall be formulated by a physician or clinical psychologist, who
17 shall have examined the person within one week before his
18 admission. The person shall be advised of the treatment plan,
19 which shall become a part of his record. The treatment plan
20 shall state whether inpatient treatment is considered necessary,
21 and what restraints or restrictions, if any, will be
22 administered, and shall set forth the bases for such
23 conclusions.

24 Section 206. Withdrawal from Voluntary Treatment.--(a) A
25 person in voluntary treatment may withdraw at any time by giving
26 written notice unless, as stated in section 203, he has agreed
27 in writing at the time of his admission that his release can be
28 delayed following such notice for a period to be specified in
29 the agreement, provided that such period shall not exceed 72
30 hours.

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

17 (c) Nothing in this act shall be construed to require a
18 facility to continue inpatient treatment where the director of
19 the facility determines such treatment is not medically
20 indicated.

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

24 ARTICLE III

25 Involuntary Examination and Treatment

26 Section 301. Persons Who May be Subject to Involuntary
27 Emergency Examination and Treatment.--(a) Persons Subject.
28 Whenever a person is severely mentally disabled and in need of
29 immediate treatment, he may be made subject to involuntary
30 emergency examination and treatment. A person is severely

1 mentally disabled when, as a result of mental illness, his
2 capacity to exercise self-control, judgment and discretion in
3 the conduct of his affairs and social relations or to care for
4 his own personal needs is so lessened that he poses a clear and
5 present danger of harm to others or to himself.

6 (b) Determination of Clear and Present Danger. (1) Clear
7 and present danger to others shall be shown by establishing that
8 within the past 30 days the person has inflicted or attempted to
9 inflict serious bodily harm on another and that there is a
10 present likelihood that such conduct will be repeated. If,
11 however, the person has been found incompetent to be tried or
12 has been acquitted by reason of lack of criminal responsibility
13 on charges arising from conduct involving infliction of or
14 attempt to inflict substantial bodily harm on another, such 30-
15 day limitation shall not apply so long as an application for
16 examination and treatment is filed within 30 days after the date
17 of such determination or verdict. In such case, a clear and
18 present danger to others may be shown by establishing that the
19 conduct charged in the criminal proceeding did occur, and that
20 there is a present likelihood that such conduct will be
21 repeated.

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

24 (i) the person has acted in such manner as to
25 evidence that he is unable, without supervision and the
26 assistance of others, to satisfy his need for nourishment,
27 personal or medical care, shelter, or self-protection and
28 safety, and that there is a present likelihood that death,
29 serious bodily injury or serious physical debilitation will
30 ensue within 30 days unless adequate treatment is afforded

1 under this act;

2 (ii) the person has attempted suicide and that there
3 is the present likelihood of suicide unless adequate
4 treatment is afforded under this act;

5 (iii) the person has severely mutilated himself or
6 attempted to mutilate himself severely and that there is the
7 present likelihood of mutilation unless adequate treatment is
8 afforded under this act; or

9 (iv) the person's behavior, without rational
10 explanation, has abruptly changed in that he is recklessly
11 wasting his assets, and that there is the present likelihood
12 that he will continue such conduct unless adequate treatment
13 is afforded under this act.

14 Section 302. Involuntary Emergency Examination and Treatment
15 Authorized by a Physician - Not to Exceed Seventy-two Hours.--

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

23 (1) Physician's Certificate for Emergency Examination. Upon
24 certification by a physician to the county administrator that a
25 person should receive an emergency examination to determine
26 whether he is severely mentally disabled and in need of
27 immediate treatment, he may be taken to an approved facility by
28 the physician or any person designated by the physician or
29 authorized by the county administrator, or by any peace officer.
30 The certification shall set forth the facts and circumstances

1 constituting the need for such examination.

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

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

18 (b) Examination and Determination of Need for Emergency
19 Treatment. A person taken to a facility shall be examined by a
20 physician within two hours of arrival in order to determine if
21 the person is severely mentally disabled within the meaning of
22 section 301 and in need of immediate treatment. If it is
23 determined that the person is severely mentally disabled and in
24 need of emergency treatment, treatment shall be begun
25 immediately. If the physician does not so find, or if at any
26 time it appears there is no longer a need for immediate
27 treatment, the person shall be discharged and returned to such
28 place as he may reasonably direct. The physician shall make a
29 record of the examination and his findings. In no event shall a
30 person be accepted for involuntary emergency treatment if a

1 previous application was granted for such treatment and the new
2 application is not based on behavior occurring after the earlier
3 application.

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

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

16 (2) cause reasonable precautions to be taken to assure that
17 while the person is detained, the health and safety needs of any
18 of his dependents are met, and that his personal property and
19 the premises he occupies are secure.

20 (d) Duration of Emergency Examination and Treatment. A
21 person who is in treatment pursuant to this section shall be
22 discharged whenever it is determined that he no longer is in
23 need of treatment and in any event within 72 hours, unless
24 within such period:

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

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

29 Section 303. Extended Involuntary Emergency Treatment
30 Certified by a Judge or Mental Health Review Officer - Not to

1 Exceed Twenty Days.--(a) Persons Subject to Extended Involuntary
2 Emergency Treatment. Application for extended involuntary
3 emergency treatment may be made for any person who is being
4 treated pursuant to section 302 whenever the facility determines
5 that the need for emergency treatment is likely to extend beyond
6 72 hours. The application shall be filed forthwith in the court
7 of common pleas, and shall state the grounds on which extended
8 emergency treatment is believed to be necessary.

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

17 (c) Informal Hearing on Extended Emergency Treatment
18 Application. (1) At the commencement of the informal hearing,
19 the judge or the mental health review officer shall inform the
20 person of the nature of the proceedings. Information relevant to
21 whether the person is severely mentally disabled and in need of
22 treatment shall be reviewed, including the reasons that
23 continued involuntary treatment is considered necessary. Such
24 explanation shall be made by a physician who examined the person
25 and shall be in terms understandable to a layman. The person or
26 his representative shall have the right to ask questions of the
27 physician and of any other witnesses and to present any relevant
28 information. At the conclusion of the review, if the judge or
29 the review officer finds that the person is severely mentally
30 disabled and in need of continued involuntary treatment, he

1 shall so certify. Otherwise, he shall direct that the facility
2 director or his designee discharge the person.

3 (2) A stenographic or other sufficient record of the
4 proceedings shall be made. Such record shall be kept by the
5 court or mental health review officer for at least one year.

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

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

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

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

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

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

18 and

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

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

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

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

13 (h) Duration of Extended Involuntary Emergency Treatment.
14 Whenever a person is no longer severely mentally disabled or in
15 need of immediate treatment and, in any event, within 20 days
16 after the filing of the certification, he shall be discharged,
17 unless within such period:

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

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

22 Section 304. Court-ordered Involuntary Treatment.--(a)
23 Persons for Whom Application May be Made. (1) A person who is
24 severely mentally disabled and in need of treatment, as defined
25 in section 301(a), may be made subject to court-ordered
26 involuntary treatment upon a determination of clear and present
27 danger under section 301(b)(1) (serious bodily harm to others),
28 or section 302(b)(2) (inability to care for himself, creating a
29 danger of death or serious harm to himself), or 301(b)(2)(ii)
30 (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

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

9 (b) Procedures for Initiating Court-ordered Involuntary
10 Treatment for Persons Already Subject to Involuntary Treatment.

11 (1) Petition for court-ordered involuntary treatment for
12 persons already subject to treatment under sections 303 and 305
13 may be made by the county administrator to the court of common
14 pleas.

15 (2) The petition shall be in writing upon a form adopted by
16 the department and shall include a statement of the facts
17 constituting reasonable grounds to believe that the person is
18 severely mentally disabled and in need of treatment. It shall
19 also state that the person has been given the information
20 required by subsection (b)(3) and shall include copies of all
21 documents relating to examination and treatment of the person
22 under this act.

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

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

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

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

9 (2) The petition shall be in writing upon a form adopted by
10 the department and shall set forth facts constituting reasonable
11 grounds to believe that the person is within the criteria for
12 court-ordered treatment set forth in subsection (a).

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

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

1 (5) Upon motion of either the petitioner or the person, or
2 upon its own motion, the court may order the person to be
3 examined by a psychiatrist appointed by the court. Such
4 examination shall be conducted on an outpatient basis, and the
5 person shall have the right to have counsel present. A report of
6 the examination shall be given to the court and counsel at least
7 48 hours prior to the hearing.

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

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

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

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

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

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

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

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

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

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

11 (f) Determination and Order. Upon a finding by clear and
12 convincing evidence that the person is severely mentally
13 disabled and in need of treatment and subject to section 304(a),
14 an order shall be entered directing treatment of the person in
15 an approved facility as an inpatient or an outpatient. Inpatient
16 treatment shall be deemed appropriate only after full
17 consideration has been given to less restrictive alternatives.
18 Investigation of treatment alternatives shall include
19 consideration of the person's relationship to his community and
20 family, his employment possibilities, all available community
21 resources, and guardianship services. An order for inpatient
22 treatment shall include findings on this issue.

23 (g) Duration of Court-ordered Involuntary Treatment. (1) A
24 person may be made subject to court-ordered involuntary
25 treatment under this section for a period not to exceed 90 days,
26 excepting only that:

27 Persons may be made subject to court-ordered involuntary
28 treatment under this section for a period not to exceed one year
29 if:

30 (i) severe mental disability is based on acts giving

1 rise to the following charges under the Pennsylvania Crimes
2 Code: murder (§2502); voluntary manslaughter (§2503);
3 aggravated assault (§2702); kidnapping (§2901); rape
4 (§3121(1) and (2)); involuntary deviate sexual intercourse
5 (§3123(1) and (2)); and

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

9 (2) If at any time the director of a facility concludes that
10 the person is not severely mentally disabled or in need of
11 treatment pursuant to subsection (a), he shall discharge the
12 person.

13 Section 305. Additional Periods of Court-ordered Involuntary
14 Treatment.--At the expiration of a period of court-ordered
15 involuntary treatment under section 304(g), the court may order
16 treatment for an additional period upon the application of the
17 county administrator or the director of the facility in which
18 the person is receiving treatment. Such order shall be entered
19 upon hearing on findings as required by sections 304(a) and (b),
20 and the further finding of a need for continuing involuntary
21 treatment as shown by conduct during the person's most recent
22 period of court-ordered treatment. A person found dangerous to
23 himself under section 301(b)(2)(i),(ii) or (iii) shall be
24 subject to an additional period of involuntary full-time
25 inpatient treatment only if he has first been released to a less
26 restrictive alternative. This limitation shall not apply where,
27 upon application made by the county administrator or facility
28 director, it is determined by a judge or mental health review
29 officer that such release would not be in the person's best
30 interest.

1 Section 306. Transfer of Persons in Involuntary Treatment.--
2 Person in involuntary treatment pursuant to this act may be
3 transferred to any approved facility. Whenever such transfer
4 will constitute a greater restraint, it shall not take place
5 unless, upon hearing, a judge or mental health review officer
6 finds it to be necessary and appropriate.

7 ARTICLE IV

8 Determinations Affecting Those Charged With Crime,
9 Or Under Sentence

10 Section 401. Examination and Treatment of a Person Charged
11 with Crime or Serving Sentence.--(a) Examination and treatment
12 to be pursuant to civil provisions. Whenever a person who is
13 charged with crime, or who is undergoing sentence, is or becomes
14 severely mentally disabled, proceedings may be instituted for
15 examination and treatment under the civil provisions of this act
16 in the same manner as if he were not so charged or sentenced.
17 Such proceedings, however, shall not affect the conditions of
18 security required by his criminal detention or incarceration.

19 (b) Status in Involuntary Treatment. Whenever a person who
20 is detained on criminal charges or is incarcerated is made
21 subject to inpatient examination or treatment, he shall be
22 transferred, for this purpose, to a mental health facility.
23 During such period, provisions for his security shall continue
24 to be enforced, unless in the interim a pretrial release is
25 effected, or the term of imprisonment expires or is terminated,
26 or it is otherwise ordered by the court having jurisdiction over
27 his criminal status. Upon discharge from treatment, a person who
28 is or remains subject to a detainer or sentence shall be
29 returned to the authority entitled to have him in custody. The
30 period of involuntary treatment shall be credited as time served

1 on account of any sentence to be imposed on pending charges or
2 any unexpired term of imprisonment.

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

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

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

28 (c) Hearing; When Required. The court, either on application
29 or on its own motion, may order an incompetency examination at
30 any stage in the proceedings and may do so without a hearing

1 unless the examination is objected to by the person charged with
2 a crime or by his counsel. In such event, an examination shall
3 be ordered only after determination upon a hearing that there is
4 a prima facie question of incompetency.

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

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

11 (2) It shall be conducted by at least one psychiatrist and
12 shall relate both to competency to proceed and to criminal
13 responsibility for the crime charged.

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

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

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

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

28 (iii) an opinion as to his mental condition in
29 relation to the standards for criminal responsibility as
30 then provided by law if it appears that the facts

1 concerning his mental condition may also be relevant to
2 the question of legal responsibility; and

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

7 (e) Defendant's Expert. The court may allow a psychiatrist
8 retained by the defendant to witness and participate in the
9 examination. Whenever a defendant who is financially unable to
10 retain such expert has a substantial objection to the
11 conclusions reached by the court-appointed psychiatrist, the
12 court shall allow reasonable compensation for the employment of
13 a psychiatrist of his selection, which amount shall be
14 chargeable against the mental health and mental retardation
15 program of the locality.

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

21 Section 403. Hearing and Determination of Incompetency to
22 Proceed; Stay of Proceedings; Dismissal of Charges.--(a)
23 Competency Determination and Burden of Proof. The moving party
24 shall have the burden of establishing incompetency to proceed by
25 clear and convincing evidence. The determination shall be made
26 by the court.

27 (b) Effect as Stay - Exception. A determination of
28 incompetency to proceed shall effect a stay of the prosecution
29 for so long as such incapacity persists, excepting that any
30 legal objections suitable for determination prior to trial and

1 without the personal participation of the person charged may be
2 raised and decided in the interim.

3 (c) Defendant's Right to Counsel; Reexamination. A person
4 who is determined to be incompetent to proceed shall have a
5 continuing right to counsel so long as the criminal charges are
6 pending. Following such determination, the person charged shall
7 be reexamined not less than every 60 days by a psychiatrist
8 appointed by the court and a report of reexamination shall be
9 submitted to the court and to counsel.

10 (d) Effect on Criminal Detention. Whenever a person who has
11 been charged with a crime has been determined to be incompetent
12 to proceed, he shall not for that reason alone be denied
13 pretrial release. Nor shall he in any event be detained on the
14 criminal charge longer than the reasonable period of time
15 necessary to determine whether there is a substantial
16 probability that he will attain that capacity in the foreseeable
17 future. If the court determines there is no such probability, it
18 shall discharge the person. Otherwise, he may continue to be
19 criminally detained so long as such probability exists but in no
20 event longer than the period of time specified in subsection
21 403(f).

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

1 (f) Stay of Proceedings. In no instance shall the
2 proceedings be stayed for a period in excess of the maximum
3 sentence that may be imposed for the crime or crimes charged, or
4 ten years, whichever is less.

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

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

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

30 Section 405. Examination of Person Charged with Crime as Aid

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

12 Section 406. Civil Procedure for Court-ordered Involuntary
13 Treatment Following a Determination of Incompetency, or
14 Acquittal by Reason of Lack of Criminal Responsibility or in
15 Conjunction with Sentencing.--Upon a finding of incompetency to
16 stand trial under section 403, after an acquittal by reason of
17 lack of responsibility under section 404, or following an
18 examination in aid of sentencing under section 405, the attorney
19 for the Commonwealth, on his own or acting at the direction of
20 the court, the defendant, his counsel, the county administrator,
21 or any other interested party may petition the same court for an
22 order directing involuntary treatment under section 304.

23 ARTICLE V

24 Effective Date and Applicability

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