

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1025 Session of 1975

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

AS AMENDED ON SECOND CONSIDERATION, MARCH 8, 1976

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.

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18 Section 501. Effective Date and Applicability.

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

21 ARTICLE I

22 General Provisions

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

25 Section 102. Statement of Policy.--It is the policy of the  
26 Commonwealth of Pennsylvania to seek to assure the availability  
27 of adequate treatment to persons who are mentally ill, and it is  
28 the purpose of this act to establish procedures whereby this  
29 policy can be effected. Treatment on a voluntary basis shall be

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

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

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

29 Treatment shall include diagnosis, evaluation, therapy, or  
30 rehabilitation needed to alleviate pain and distress and to

1 facilitate the recovery of a person from mental illness and  
2 shall also include care and other services that supplement  
3 treatment and aid or promote such recovery.

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

25 Section 106. Persons Responsible for Formulation and Review  
26 of Treatment Plan.--Pursuant to sections 107 and 108 of this  
27 act, a physician or a treatment team under the supervision of a  
28 physician shall formulate and review an individualized treatment  
29 plan for every person who is in treatment under this act.

30 Section 107. Individualized Treatment Plan.--Individualized

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

8 Section 108. Periodic Reexamination, Review and

9 Redisposition.--(a) Reexamination and Review. Every person who  
10 is in treatment under this act shall be examined by a physician  
11 or a treatment team under the supervision of a physician and his  
12 treatment plan reviewed not less than once in every 30 days.

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

21 (c) Record of Reexamination and Review. The physician or  
22 clinical psychologist responsible for the treatment plan shall  
23 maintain a record of each reexamination and review under this  
24 section for each person in treatment to include: (1) a report  
25 of the reexamination, including a diagnosis and prognosis; (2) a  
26 brief description of the treatment provided to the person during  
27 the period preceding the reexamination and the results of that  
28 treatment; (3) a statement of the reason for discharge or for  
29 continued treatment; (4) an individualized treatment plan for  
30 the next period, if any; (5) a statement of the reasons that

1 such treatment plan imposes the least restrictive alternative  
2 consistent with adequate treatment of his condition; and (6) a  
3 certification that the adequate treatment recommended is  
4 available and will be afforded in the treatment program.

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

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

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

29 Section 111. Confidentiality of Records.--All documents  
30 concerning persons in treatment shall be kept confidential and,

1 without the person's written consent, may not be released or  
2 their contents disclosed to anyone except: (1) those engaged in  
3 providing treatment for the person; (2) the county  
4 administrator, pursuant to section 110; and (3) a court in the  
5 course of legal proceedings authorized by this act. In no event,  
6 however, shall privileged communications, whether written or  
7 oral, be disclosed to anyone without such written consent. This  
8 shall not restrict the collection and analysis of clinical or  
9 statistical data by the department, the county administrator or  
10 the facility so long as the use and dissemination of such data  
11 does not identify individual patients. Nothing herein shall be  
12 construed to conflict with section 8 of the act of April 14,  
13 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and  
14 Alcohol Abuse Control Act."

15 Section 112. Rules, Regulations and Forms.--The department  
16 shall adopt such rules, regulations and forms as may be required  
17 to effectuate the provisions of this act. Rules and regulations  
18 adopted under the provisions of this act shall be adopted  
19 according to provisions of section 201 of the act of October 20,  
20 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health  
21 and Mental Retardation Act of 1966," and the act of July 31,  
22 1968 (P.L.769, No.240), known as the "Commonwealth Documents  
23 Law."

24 Section 113. Rights and Remedies of Persons in Treatment.--  
25 Every person who is in treatment shall be entitled to all other  
26 rights now or hereafter provided under the laws of this  
27 Commonwealth, in addition to any rights provided for in this  
28 act. Actions requesting damages, declaratory judgment,  
29 injunction, mandamus, writs of prohibition, habeas corpus,  
30 including challenges to the legality of detention or degree of



1 restraint, and any other remedies or relief granted by law may  
2 be maintained in order to protect and effectuate the rights  
3 granted under this act.

4 Section 114. Immunity from Civil and Criminal Liability.--

5 (a) In the absence of willful misconduct or gross negligence, a  
6 county administrator, a director of a facility, a physician or  
7 any other authorized person who participates in a decision that  
8 a person be examined or treated under this act, or that a person  
9 be discharged, or placed under partial hospitalization,  
10 outpatient care or leave of absence, or that the restraint upon  
11 such person be otherwise reduced, or a county administrator or  
12 other authorized person who denies an application for  
13 involuntary emergency examination and treatment, shall not be  
14 civilly or criminally liable for such decision or for any of its  
15 consequences.

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

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

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

3 ARTICLE II

4 Voluntary Examination and Treatment

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

17 Section 202. To Whom Application May be Made.--Application  
18 for voluntary examination and treatment shall be made to an  
19 approved facility or to the county administrator. When  
20 application is made to the county administrator, he shall  
21 designate the approved facility for examination and for such  
22 treatment as may be appropriate.

23 Section 203. Explanation and Consent.--Before a person is  
24 accepted for voluntary inpatient treatment, an explanation shall  
25 be made to him of such treatment, including the types of  
26 treatment in which he may be involved, and any restraints or  
27 restrictions to which he may be subject, together with a  
28 statement of his rights under this act. Consent shall be given  
29 in writing upon a form adopted by the department. The consent  
30 shall include the following representations: That the person

1 understands his treatment will involve inpatient status; that he  
2 is willing to be admitted to a designated facility for the  
3 purpose of such examination and treatment; and that he consents  
4 to such admission voluntarily, without coercion or duress; and,  
5 if applicable, that he has voluntarily agreed to remain in  
6 treatment for a specified period of no longer than 72 hours  
7 after having given written notice of his intent to withdraw from  
8 treatment. The consent shall be part of the person's record.

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

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

30 Section 206. Withdrawal from Voluntary Inpatient

1 Treatment.--(a) A person in voluntary inpatient treatment may  
2 withdraw at any time by giving written notice unless, as stated  
3 in section 203, he has agreed in writing at the time of his  
4 admission that his release can be delayed following such notice  
5 for a period to be specified in the agreement, provided that  
6 such period shall not exceed 72 hours.

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

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

30 Section 207. Transfer of Person in Voluntary Treatment.--A

1 person who is in voluntary treatment may not be transferred from  
2 one facility to another without his written consent.

3 ARTICLE III

4 Involuntary Examination and Treatment

5 Section 301. Persons Who May be Subject to Involuntary  
6 Emergency Examination and Treatment.--(a) Persons Subject.

7 Whenever a person is severely mentally disabled and in need of  
8 immediate treatment, he may be made subject to involuntary  
9 emergency examination and treatment. A person is severely  
10 mentally disabled when, as a result of mental illness, his  
11 capacity to exercise self-control, judgment and discretion in  
12 the conduct of his affairs and social relations or to care for  
13 his own personal needs is so lessened that he poses a clear and  
14 present danger of harm to others or to himself.

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

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

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

11 (ii) the person has attempted suicide and that there  
12 is the reasonable probability of suicide unless adequate  
13 treatment is afforded under this act; or

14 (iii) the person has severely mutilated himself or  
15 attempted to mutilate himself severely and that there is the  
16 reasonable probability of mutilation unless adequate  
17 treatment is afforded under this act.

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

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

27 (1) Warrant for Emergency Examination. Upon written  
28 application by a physician or other responsible party setting  
29 forth facts constituting reasonable grounds to believe a person  
30 is severely mentally disabled and in need of immediate

1 treatment, the county administrator may issue a warrant  
2 requiring a person authorized by him, or any peace officer, to  
3 take such person to the facility specified in the warrant.

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

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

29 (c) Notification of Rights at Emergency Examination. Upon  
30 arrival at the facility, the person shall be informed of the

1 reasons for emergency examination and of his right to  
2 communicate immediately with others. He shall be given  
3 reasonable use of the telephone. He shall be requested to  
4 furnish the names of parties whom he may want notified of his  
5 custody and kept informed of his status. The county  
6 administrator or the director of the facility shall:

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

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

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

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

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

24 Section 303. Extended Involuntary Emergency Treatment  
25 Certified by a Judge or Mental Health Review Officer - Not to  
26 Exceed Twenty Days.--(a) Persons Subject to Extended Involuntary  
27 Emergency Treatment. Application for extended involuntary  
28 emergency treatment may be made for any person who is being  
29 treated pursuant to section 302 whenever the facility determines  
30 that the need for emergency treatment is likely to extend beyond



1 72 hours. The application shall be filed forthwith in the court  
2 of common pleas, and shall state the grounds on which extended  
3 emergency treatment is believed to be necessary.

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

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

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

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

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

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

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

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

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

13 and

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

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

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

26 (g) Petition to Common Pleas Court. In all cases in which  
27 the hearing was conducted by a mental health review officer, a  
28 person made subject to treatment pursuant to this section shall  
29 have the right to petition the court of common pleas for review  
30 of the certification. A hearing shall be held within 72 hours

1 after the petition is filed unless a continuance is requested by  
2 the person's counsel. The hearing shall include a review of the  
3 certification and such evidence as the court may receive or  
4 require. If the court determines that further involuntary  
5 treatment is necessary and that the procedures prescribed by  
6 this act have been followed, it shall deny the petition.  
7 Otherwise, the person shall be discharged.

8 (h) Duration of Extended Involuntary Emergency Treatment.

9 Whenever a person is no longer severely mentally disabled or in  
10 need of immediate treatment and, in any event, within 20 days  
11 after the filing of the certification, he shall be discharged,  
12 unless within such period:

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

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

17 Section 304. Court-ordered Involuntary Treatment Not to  
18 Exceed Ninety Days.--(a) Persons for Whom Application May be  
19 Made. (1) A person who is severely mentally disabled and in  
20 need of treatment, as defined in section 301(a), may be made  
21 subject to court-ordered involuntary treatment upon a  
22 determination of clear and present danger under section  
23 301(b)(1) (serious bodily harm to others), or section  
24 302(b)(2)(i) (inability to care for himself, creating a danger  
25 of death or serious harm to himself), or 301(b)(2)(ii)  
26 (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

27 (2) Where a petition is filed for a person already subject  
28 to involuntary treatment, it shall be sufficient to represent,  
29 and upon hearing to reestablish, that the conduct originally  
30 required by section 301 in fact occurred, and that his condition

1 continues to evidence a clear and present danger to himself or  
2 others. In such event, it shall not be necessary to show the  
3 reoccurrence of dangerous conduct, either harmful or  
4 debilitating, within the past 30 days.

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

7 (1) Petition for court-ordered involuntary treatment for  
8 persons already subject to treatment under sections 303 and 305  
9 may be made by the county administrator to the court of common  
10 pleas.

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

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

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

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

29 (c) Procedures for Initiating Court-ordered Involuntary  
30 Treatment for Persons not in Involuntary Treatment. (1) Any

1 responsible party may file a petition in the court of common  
2 pleas requesting court-ordered involuntary treatment for any  
3 person not already in involuntary treatment for whom application  
4 could be made under subsection (a).

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

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

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

27 (5) Upon motion of either the petitioner or the person, or  
28 upon its own motion, the court may order the person to be  
29 examined by a psychiatrist appointed by the court. Such  
30 examination shall be conducted on an outpatient basis, and the

1 person shall have the right to have counsel present. A report of  
2 the examination shall be given to the court and counsel at least  
3 48 hours prior to the hearing.

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

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

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

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

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

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

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

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

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

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

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

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

23 Persons may be made subject to court-ordered involuntary  
24 treatment under this section for a period not to exceed one year  
25 if:

26 (i) severe mental disability is based on acts giving  
27 rise to the following charges under the Pennsylvania Crimes  
28 Code: murder (§2502); voluntary manslaughter (§2503);  
29 aggravated assault (§2702); kidnapping (§2901); rape  
30 (§3121(1) and (2)); involuntary deviate sexual intercourse

1 (§3123(1) and (2)); and

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

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

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

27 Section 306. Transfer of Persons in Involuntary Treatment.--  
28 Person in involuntary treatment pursuant to this act may be  
29 transferred to any approved facility. Whenever such transfer  
30 will constitute a greater restraint, it shall not take place



1 unless, upon hearing, a judge or mental health review officer  
2 finds it to be necessary and appropriate.

3 ARTICLE IV

4 Determinations Affecting Those Charged With Crime,  
5 Or Under Sentence

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

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

29 (c) Persons Subject to the Juvenile Act. As to any person  
30 who is subject to a petition or who has been committed under the

1 Juvenile Act, the civil provisions of this act applicable to  
2 children of his age shall apply to all proceedings for his  
3 examination and treatment. If such a person is in detention or  
4 is committed, the court having jurisdiction under the Juvenile  
5 Act shall determine whether such security conditions shall  
6 continue to be enforced during any period of involuntary  
7 treatment and to whom the person should be released thereafter.

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

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

24 (c) Hearing; When Required. The court, either on application  
25 or on its own motion, may order an incompetency examination at  
26 any stage in the proceedings and may do so without a hearing  
27 unless the examination is objected to by the person charged with  
28 a crime or by his counsel. In such event, an examination shall  
29 be ordered only after determination upon a hearing that there is  
30 a prima facie question of incompetency.

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

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

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

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

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

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

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

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

29 (iv) when so requested, an opinion as to whether he  
30 had the capacity to have a particular state of mind,

1           where such state of mind is a required element of the  
2           criminal charge.

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

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

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

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

29          (c) Defendant's Right to Counsel; Reexamination. A person  
30 who is determined to be incompetent to proceed shall have a

1 continuing right to counsel so long as the criminal charges are  
2 pending. Following such determination, the person charged shall  
3 be reexamined not less than every 60 days by a psychiatrist  
4 appointed by the court and a report of reexamination shall be  
5 submitted to the court and to counsel.

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

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

27 (f) Stay of Proceedings. In no instance shall the  
28 proceedings be stayed for a period in excess of the maximum  
29 sentence that may be imposed for the crime or crimes charged, or  
30 five years, whichever is less.

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

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

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

26 Section 405. Examination of Person Charged with Crime as Aid  
27 in Sentencing.--Examination Before Imposition of Sentence.  
28 Whenever a person who has been criminally charged is to be  
29 sentenced, the court may defer sentence and order him to be  
30 examined for mental illness to aid it in the determination of

1 disposition. This action may be taken on the court's initiative  
2 or on the application of the attorney for the Commonwealth, the  
3 person charged, his counsel, or any other person acting in his  
4 interest. If at the time of sentencing the person is not in  
5 detention, examination shall be on an outpatient basis unless  
6 inpatient examination for this purpose is ordered pursuant to  
7 the civil commitment provisions of Article III.

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

19 ARTICLE V

20 Effective Date, Applicability,

21 Repeals and Severability

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

28 Section 502. Repeals.--(A) The definition of "mental  
29 disability" in section 102, and sections 401, 402, 403, 404,  
30 405, 406, 407, 408, 409, 410, 411, 412, 413, 416, 418, 419, and

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1 420 420 AND 426, act of October 20, 1966 (3rd Sp.Sess., P.L.96, <—  
2 No.6), known as the "Mental Health and Mental Retardation Act of  
3 1966," are hereby repealed, except in so far as they relate to  
4 mental retardation or to persons who are mentally retarded.

5 (B) ALL ACTS AND PARTS OF ACTS ARE REPEALED IN SO FAR AS <—  
6 THEY ARE INCONSISTENT HEREWITH.

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