
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 THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 22, 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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17 Criminal Responsibility or in Conjunction with
18 Sentencing.

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20 REPEALS AND SEVERABILITY.

21 Section 501. Effective Date and Applicability.

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

24 ARTICLE I

25 General Provisions

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

28 Section 102. Statement of Policy.--It is the policy of the
29 Commonwealth of Pennsylvania to seek to assure the availability

1 of adequate treatment to persons who are mentally ill, and it is
2 the purpose of this act to establish procedures whereby this
3 policy can be effected. Treatment on a voluntary basis shall be
4 preferred to involuntary treatment; and in every case, the least
5 restrictions consistent with adequate treatment shall be
6 employed. Persons who are mentally retarded, senile, alcoholic,
7 or drug dependent shall receive mental health treatment only if
8 they are also diagnosed as mentally ill, but these conditions of
9 themselves shall not be deemed to constitute mental illness.

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

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

1 living conditions.

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

7 Section 105. Treatment Facilities.--Involuntary treatment
8 and voluntary treatment funded in whole or in part by public
9 moneys shall be available at a facility approved for such
10 purposes by the county administrator (who shall be the County
11 Mental Health and Mental Retardation Administrator of a county
12 or counties, or his duly authorized delegate), or by the
13 Department of Public Welfare, hereinafter cited as the
14 "department." Approval of facilities shall be made by the
15 appropriate authority which can be the department pursuant to
16 regulations adopted by the department. ~~Use of any facility not~~ <—
17 ~~approved by the Joint Commission for Accreditation of Hospitals~~
18 ~~shall be prohibited, if the facility is of a type to which~~
19 ~~standards established by the Joint Commission are intended to~~
20 ~~apply.~~ TREATMENT MAY BE ORDERED AT THE VETERANS ADMINISTRATION <—
21 OR OTHER AGENCY OF THE UNITED STATES UPON RECEIPT OF A
22 CERTIFICATE THAT THE PERSON IS ELIGIBLE FOR SUCH HOSPITALIZATION
23 OR TREATMENT AND THAT THERE IS AVAILABLE SPACE FOR HIS CARE.
24 MENTAL HEALTH FACILITIES OPERATED UNDER THE DIRECT CONTROL OF
25 THE VETERANS ADMINISTRATION OR OTHER FEDERAL AGENCY ARE EXEMPT
26 FROM OBTAINING STATE APPROVAL. THE DEPARTMENT'S STANDARDS FOR <—
27 APPROVAL SHALL BE AT LEAST AS STRINGENT AS THOSE OF THE JOINT
28 COMMISSION FOR ACCREDITATION OF HOSPITALS AND THOSE OF THE
29 FEDERAL GOVERNMENT PURSUANT TO TITLES 18 AND 19 OF THE FEDERAL
30 SOCIAL SECURITY ACT TO THE EXTENT THAT THE TYPE OF FACILITY IS

1 ONE IN WHICH THOSE STANDARDS ARE INTENDED TO APPLY. An exemption
2 FROM THE STANDARDS may be granted by the department for a period <—
3 not in excess of one year and may be renewed. ~~in compelling~~ <—
4 ~~circumstances.~~ Notice of each exemption and the rationale for
5 allowing the exemption must be published pursuant to the act of
6 July 31, 1968 (P.L.769, No.240), known as the "Commonwealth
7 Documents Law," and shall be prominently posted at the entrance
8 to the main office and in the reception areas of the facility.

9 Section 106. Persons Responsible for Formulation and Review
10 of Treatment Plan.--(A) Pursuant to sections 107 and 108 of this <—
11 act, ~~a physician or a treatment team under the supervision of a~~ <—
12 ~~physician~~ shall formulate and review an individualized treatment
13 plan for every person who is in treatment under this act.

14 (B) A TREATMENT TEAM MUST BE UNDER THE DIRECTION OF EITHER A <—
15 PHYSICIAN OR A LICENSED CLINICAL PSYCHOLOGIST AND MAY INCLUDE
16 OTHER MENTAL HEALTH PROFESSIONALS.

17 (C) A TREATMENT TEAM MUST BE UNDER THE DIRECTION OF A
18 PHYSICIAN WHEN:

19 (1) FAILURE TO DO SO WOULD JEOPARDIZE FEDERAL PAYMENTS
20 MADE ON BEHALF OF A PATIENT; OR

21 (2) THE DIRECTOR OF A FACILITY REQUIRES THE TREATMENT TO
22 BE UNDER THE DIRECTION OF A PHYSICIAN.

23 (D) ALL TREATMENT TEAMS MUST INCLUDE A PHYSICIAN AND THE
24 ADMINISTRATION OF ALL DRUGS SHALL BE CONTROLLED BY THE ACT OF
25 APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS "THE CONTROLLED
26 SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT."

27 Section 107. Individualized Treatment Plan.--Individualized
28 treatment plan means a plan of treatment formulated for a
29 particular person in a program appropriate to his specific
30 needs. To the extent possible, the plan shall be made with the

1 cooperation, understanding and consent of the person in
2 treatment, and shall impose the least restrictive alternative
3 consistent with affording the person adequate treatment for his
4 condition.

5 Section 108. Periodic Reexamination, Review and
6 Redisposition.--(a) Reexamination and Review. Every person who
7 is in treatment under this act shall be examined by a ~~physician~~ <—
8 ~~or a treatment team under the supervision of a physician~~ and his <—
9 treatment plan reviewed not less than once in every 30 days.

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

18 (c) Record of Reexamination and Review. The ~~physician or~~ <—
19 ~~clinical psychologist~~ TREATMENT TEAM UNDER THE SUPERVISION OF A <—
20 PHYSICIAN responsible for the treatment plan shall maintain a
21 record of each reexamination and review under this section for
22 each person in treatment to include: (1) a report of the
23 reexamination, including a diagnosis and prognosis; (2) a brief
24 description of the treatment provided to the person during the
25 period preceding the reexamination and the results of that
26 treatment; (3) a statement of the reason for discharge or for
27 continued treatment; (4) an individualized treatment plan for
28 the next period, if any; (5) a statement of the reasons that
29 such treatment plan imposes the least restrictive alternative
30 consistent with adequate treatment of his condition; and (6) a

1 certification that the adequate treatment recommended is
2 available and will be afforded in the treatment program.

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

15 Section 110. Written Applications, Petitions, Statements and
16 Certifications.--(a) All written statements pursuant to section
17 302(a)~~(3)~~(2), and all applications, petitions, and ←
18 certifications required under the provisions of this act shall
19 be made subject to the penalties provided under 18 Pa.C.S. § 4904
20 (relating to unsworn falsification to authorities) and shall
21 contain a notice to that effect.

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

27 Section 111. Confidentiality of Records.--All documents
28 concerning persons in treatment shall be kept confidential and,
29 without the person's written consent, may not be released or
30 their contents disclosed to anyone except: (1) those engaged in

1 providing treatment for the person; (2) the county
2 administrator, pursuant to section 110; ~~and~~ (3) a court in the <—
3 course of legal proceedings authorized by this act; AND (4) <—
4 PURSUANT TO FEDERAL RULES, STATUTES AND REGULATIONS GOVERNING
5 DISCLOSURE OF PATIENT INFORMATION WHERE TREATMENT IS UNDERTAKEN
6 IN A FEDERAL AGENCY. In no event, however, shall privileged
7 communications, whether written or oral, be disclosed to anyone
8 without such written consent. This shall not restrict the
9 collection and analysis of clinical or statistical data by the
10 department, the county administrator or the facility so long as
11 the use and dissemination of such data does not identify
12 individual patients. Nothing herein shall be construed to
13 conflict with section 8 of the act of April 14, 1972 (P.L.221,
14 No.63), known as the "Pennsylvania Drug and Alcohol Abuse
15 Control Act."

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

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

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

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

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

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

20 Section 115. Venue and Location of Legal Proceedings.--(a)

21 The jurisdiction of the courts of common pleas and juvenile
22 courts conferred by Articles II and III shall be exercised
23 initially by the court for the county in which the subject of
24 the proceedings is or resides. Whenever involuntary treatment is
25 ordered, jurisdiction over any subsequent proceeding shall be
26 retained by the court in which the initial proceedings took
27 place, but may be transferred to the county of the person's
28 usual residence. In all cases, a judge of the court of common
29 pleas or a mental health review officer of the county of venue
30 may conduct legal proceedings at a facility where the person is

1 in treatment whether or not its location is within the county.

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

4 ARTICLE II

5 Voluntary Examination and Treatment

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

18 Section 202. To Whom Application May be Made.--Application
19 for voluntary examination and treatment shall be made to an
20 approved facility or to the county administrator, VETERANS <—
21 ADMINISTRATION OR OTHER AGENCY OF THE UNITED STATES OPERATING A
22 FACILITY FOR THE CARE AND TREATMENT OF MENTAL ILLNESS. When
23 application is made to the county administrator, he shall
24 designate the approved facility for examination and for such
25 treatment as may be appropriate.

26 Section 203. Explanation and Consent.--Before a person is
27 accepted for voluntary inpatient treatment, an explanation shall
28 be made to him of such treatment, including the types of
29 treatment in which he may be involved, and any restraints or
30 restrictions to which he may be subject, together with a

1 statement of his rights under this act. Consent shall be given
2 in writing upon a form adopted by the department. The consent
3 shall include the following representations: That the person
4 understands his treatment will involve inpatient status; that he
5 is willing to be admitted to a designated facility for the
6 purpose of such examination and treatment; and that he consents
7 to such admission voluntarily, without coercion or duress; and,
8 if applicable, that he has voluntarily agreed to remain in
9 treatment for a specified period of no longer than 72 hours
10 after having given written notice of his intent to withdraw from
11 treatment. The consent shall be part of the person's record.

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

22 Section 205. Physical Examination and Formulation of
23 Individualized Treatment Plan.--Upon acceptance of a person for
24 voluntary examination and treatment he shall be given a physical
25 examination. Within 72 hours after acceptance of a person an
26 individualized treatment plan shall be formulated by a ~~physician~~ <—
27 ~~or a treatment team. under the supervision of a physician.~~ <—
28 person shall be advised of the treatment plan, which shall
29 become a part of his record. The treatment plan shall state
30 whether inpatient treatment is considered necessary, and what

1 restraints or restrictions, if any, will be administered, and
2 shall set forth the bases for such conclusions.

3 Section 206. Withdrawal from Voluntary Inpatient
4 Treatment.--(a) A person in voluntary inpatient treatment may
5 withdraw at any time by giving written notice unless, as stated
6 in section 203, he has agreed in writing at the time of his
7 admission that his release can be delayed following such notice
8 for a period to be specified in the agreement, provided that
9 such period shall not exceed 72 hours.

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

26 (c) Nothing in this act shall be construed to require a
27 facility to continue inpatient treatment where the director of
28 the facility determines such treatment is not medically
29 indicated. Any dispute between a facility and a county
30 administrator as to the medical necessity for voluntary

1 impatient treatment of a person shall be decided by the
2 Commissioner of Mental Health or his designate.

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

6 ARTICLE III

7 Involuntary Examination and Treatment

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

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

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

1 conduct charged in the criminal proceeding did occur, and that
2 there is a reasonable probability that such conduct will be
3 repeated.

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

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

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

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

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

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

30 (1) Warrant for Emergency Examination. Upon written

1 application by a physician or other responsible party setting
2 forth facts constituting reasonable grounds to believe a person
3 is severely mentally disabled and in need of immediate
4 treatment, the county administrator may issue a warrant
5 requiring a person authorized by him, or any peace officer, to
6 take such person to the facility specified in the warrant.

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

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

1 application.

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

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

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

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

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

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

27 Section 303. Extended Involuntary Emergency Treatment
28 Certified by a Judge or Mental Health Review Officer - Not to
29 Exceed Twenty Days.--(a) Persons Subject to Extended Involuntary
30 Emergency Treatment. Application for extended involuntary

1 emergency treatment may be made for any person who is being
2 treated pursuant to section 302 whenever the facility determines
3 that the need for emergency treatment is likely to extend beyond
4 72 hours. The application shall be filed forthwith in the court
5 of common pleas, and shall state the grounds on which extended
6 emergency treatment is believed to be necessary. THE APPLICATION ←
7 SHALL STATE THE NAME OF ANY EXAMINING PHYSICIAN AND THE
8 SUBSTANCE OF HIS OPINION REGARDING THE MENTAL CONDITION OF THE
9 PERSON.

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

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

1 disabled and in need of continued involuntary treatment, he
2 shall so certify. Otherwise, he shall direct that the facility
3 director or his designee discharge the person.

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

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

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

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

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

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

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

19 and

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

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

28 (f) Effect of Certification. Upon the filing and service of
29 a certification for extended involuntary emergency treatment,
30 the person may be given treatment in an approved facility for a

1 period not to exceed 20 days.

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

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

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

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

23 Section 304. Court-ordered Involuntary Treatment Not to
24 Exceed Ninety Days.--(a) Persons for Whom Application May be
25 Made. (1) A person who is severely mentally disabled and in
26 need of treatment, as defined in section 301(a), may be made
27 subject to court-ordered involuntary treatment upon a
28 determination of clear and present danger under section
29 301(b)(1) (serious bodily harm to others), or section ~~302~~
30 301(b)(2)(i) (inability to care for himself, creating a danger

<—

1 of death or serious harm to himself), or 301(b)(2)(ii)
2 (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

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

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

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

17 (2) The petition shall be in writing upon a form adopted by
18 the department and shall include a statement of the facts
19 constituting reasonable grounds to believe that the person is
20 severely mentally disabled and in need of treatment. THE ←
21 PETITION SHALL STATE THE NAME OF ANY EXAMINING PHYSICIAN AND THE
22 SUBSTANCE OF HIS OPINION REGARDING THE MENTAL CONDITION OF THE
23 PERSON. It shall also state that the person has been given the
24 information required by subsection (b)(3) and shall include
25 copies of all documents relating to examination and treatment of
26 the person which are required under this act.

27 (3) Upon the filing of the petition the county administrator
28 shall serve a copy on the person, his attorney, and those
29 designated to be kept informed, as provided in section 302(c),
30 including an explanation of the nature of the proceedings, the

1 person's right to an attorney and the services of an expert in
2 the field of mental health, as provided by subsection (d).

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

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

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

13 (2) The petition shall be in writing upon a form adopted by
14 the department and shall set forth facts constituting reasonable
15 grounds to believe that the person is within the criteria for
16 court-ordered treatment set forth in subsection (a). THE ←
17 PETITION SHALL STATE THE NAME OF ANY EXAMINING PHYSICIAN AND THE
18 SUBSTANCE OF HIS OPINION REGARDING THE MENTAL CONDITION OF THE
19 PERSON.

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

26 (4) The court, by summons, shall direct the person to appear
27 for a hearing. The court may issue a warrant directing a person
28 authorized by the county administrator or a peace officer to
29 bring such person before the court at the time of the hearing if
30 there are reasonable grounds to believe that the person will not

1 appear voluntarily. A copy of the petition shall be served on
2 such person at least three days before the hearing together with
3 a notice advising him that an attorney has been appointed who
4 shall represent him unless he obtains an attorney himself, that
5 he has a right to be assisted in the proceedings by an expert in
6 the field of mental health, and that he may request or be made
7 subject to psychiatric examination under subsection (c)(5).

8 (5) Upon motion of either the petitioner or the person, or
9 upon its own motion, the court may order the person to be
10 examined by a psychiatrist appointed by the court. Such
11 examination shall be conducted on an outpatient basis, and the
12 person shall have the right to have counsel present. A report of
13 the examination shall be given to the court and counsel at least
14 48 hours prior to the hearing.

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

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

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

30 (1) The person shall have the right to counsel and to the

1 assistance of an expert in mental health.

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

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

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

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

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

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

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

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

5 Persons may be made subject to court-ordered involuntary
6 treatment under this section for a period not to exceed one year
7 if:

8 (i) severe mental disability is based on acts giving
9 rise to the following charges under the Pennsylvania Crimes
10 Code: murder (§ 2502); voluntary manslaughter (§ 2503);
11 aggravated assault (§ 2702); kidnapping (§ 2901); rape (§
12 3121(1) and (2)); involuntary deviate sexual intercourse (§
13 3123(1) and (2)); and

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

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

21 Section 305. Additional Periods of Court-ordered Involuntary
22 Treatment.--At the expiration of a period of court-ordered
23 involuntary treatment under section 304(g), the court may order
24 treatment for an additional period upon the application of the
25 county administrator or the director of the facility in which
26 the person is receiving treatment. Such order shall be entered
27 upon hearing on findings as required by sections 304(a) and (b),
28 and the further finding of a need for continuing involuntary
29 treatment as shown by conduct during the person's most recent
30 period of court-ordered treatment. A person found dangerous to

1 himself under section 301(b)(2)(i),(ii) or (iii) shall be
2 subject to an additional period of involuntary full-time
3 inpatient treatment only if he has first been released to a less
4 restrictive alternative. This limitation shall not apply where,
5 upon application made by the county administrator or facility
6 director, it is determined by a judge or mental health review
7 officer that such release would not be in the person's best
8 interest.

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

15 ARTICLE IV

16 Determinations Affecting Those Charged With Crime,
17 or Under Sentence

18 Section 401. Examination and Treatment of a Person Charged
19 with Crime or Serving Sentence.--(a) Examination and treatment
20 to be pursuant to civil provisions. Whenever a person who is
21 charged with crime, or who is undergoing sentence, is or becomes
22 severely mentally disabled, proceedings may be instituted for
23 examination and treatment under the civil provisions of this act
24 in the same manner as if he were not so charged or sentenced.

25 PROCEEDINGS UNDER THIS SECTION SHALL NOT BE INITIATED FOR
26 EXAMINATION AND TREATMENT AT VETERANS ADMINISTRATION FACILITIES
27 IF SUCH EXAMINATION AND TREATMENT REQUIRES THE PREPARATION OF
28 COMPETENCY REPORTS AND/OR THE FACILITY IS REQUIRED TO MAINTAIN
29 CUSTODY AND CONTROL OVER THE PERSON. Such proceedings, however,
30 shall not affect the conditions of security required by his

←

1 criminal detention or incarceration.

2 (b) Status in Involuntary Treatment. Whenever a person who
3 is detained on criminal charges or is incarcerated is made
4 subject to inpatient examination or treatment, he shall be
5 transferred, for this purpose, to a mental health facility.
6 TRANSFER MAY BE MADE TO A VETERANS ADMINISTRATION FACILITY ←
7 PROVIDED THAT NEITHER CUSTODY NOR CONTROL ARE REQUIRED IN
8 ADDITION TO EXAMINATION AND TREATMENT. SUCH INDIVIDUALS
9 TRANSFERRED TO THE VETERANS ADMINISTRATION ARE NOT SUBJECT TO
10 RETURN BY THE FEDERAL AGENCY TO THE AUTHORITY ENTITLED TO HAVE
11 THEM IN CUSTODY. During such period, provisions for his security
12 shall continue to be enforced, unless in the interim a pretrial
13 release is effected, or the term of imprisonment expires or is
14 terminated, or it is otherwise ordered by the court having
15 jurisdiction over his criminal status. Upon discharge from
16 treatment, a person who is or remains subject to a detainer or
17 sentence shall be returned to the authority entitled to have him
18 in custody. The period of involuntary treatment shall be
19 credited as time served on account of any sentence to be imposed
20 on pending charges or any unexpired term of imprisonment.

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

30 Section 402. Incompetence to Proceed on Criminal Charges and

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

8 (B) INVOLUNTARY TREATMENT OF PERSONS FOUND INCOMPETENT TO <—
9 STAND TRIAL WHO ARE NOT MENTALLY DISABLED. NOTWITHSTANDING THE
10 PROVISIONS OF ARTICLE III OF THIS ACT, A COURT MAY ORDER
11 INVOLUNTARY TREATMENT OF A PERSON FOUND INCOMPETENT TO STAND
12 TRIAL BUT WHO IS NOT SEVERELY MENTALLY DISABLED, SUCH
13 INVOLUNTARY TREATMENT NOT TO EXCEED A SPECIFIC PERIOD OF 30
14 DAYS. INVOLUNTARY TREATMENT PURSUANT TO THIS SUBSECTION MAY BE
15 ORDERED ONLY IF THE COURT IS REASONABLY CERTAIN THAT THE
16 INVOLUNTARY TREATMENT WILL PROVIDE THE DEFENDANT WITH THE
17 CAPACITY TO STAND TRIAL. THE COURT MAY ORDER OUTPATIENT
18 TREATMENT, PARTIAL HOSPITALIZATION OR INPATIENT TREATMENT.

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

27 ~~(e)~~ (D) Hearing; When Required. The court, either on <—
28 application or on its own motion, may order an incompetency
29 examination at any stage in the proceedings and may do so
30 without a hearing unless the examination is objected to by the

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

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

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

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

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

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

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

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

27 (iii) WHEN SO REQUESTED, an opinion as to his mental ←
28 condition in relation to the standards for criminal
29 responsibility as then provided by law if it appears that
30 the facts concerning his mental condition may also be

1 relevant to the question of legal responsibility; and
2 (iv) when so requested, an opinion as to whether he
3 had the capacity to have a particular state of mind,
4 where such state of mind is a required element of the
5 criminal charge.

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

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

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

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

1 raised and decided in the interim.

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

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

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

30 (f) Stay of Proceedings. In no instance shall the

1 proceedings be stayed for a period in excess of the maximum
2 sentence that may be imposed for the crime or crimes charged, or
3 five years, whichever is less.

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

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

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

29 Section 405. Examination of Person Charged with Crime as Aid
30 in Sentencing.--Examination Before Imposition of Sentence.

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

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

22 ARTICLE V

23 Effective Date, Applicability,

24 Repeals and Severability

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.

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

8 SECTION 29 OF THE ACT OF DECEMBER 6, 1972 (P.L.1464, NO.333), ←
9 KNOWN AS THE "JUVENILE ACT," EXCEPT SO FAR AS IT RELATES TO
10 MENTAL RETARDATION OR TO PERSONS WHO ARE MENTALLY RETARDED, IS
11 HEREBY REPEALED.

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

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