
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1105 Session of
1977

INTRODUCED BY COPPERSMITH AND DOUGHERTY, SEPTEMBER 27, 1977

REFERRED TO PUBLIC HEALTH AND WELFARE, SEPTEMBER 27, 1977

AN ACT

1 Amending the act of July 9, 1976 (P.L.817, No.143), entitled "An
2 act relating to mental health procedures; providing for the
3 treatment and rights of mentally disabled persons, for
4 voluntary and involuntary examination and treatment and for
5 determinations affecting those charged with crime or under
6 sentence," further providing for Mental Health Review
7 Officers, for the use of statistical data, for immunity and
8 for involuntary treatment; excluding Sundays from the
9 computation of time; and providing for a return to inpatient
10 status, for a stay of proceedings of a person charged with a
11 crime and for voluntary treatment of a person charged with a
12 crime or serving a sentence.

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

15 Section 1. Sections 109, 110, 114 and 206, subsection (d) of
16 section 302, subsection (c) of section 303 and sections 304 and
17 305, act of July 9, 1976 (P.L.817, No.143), known as the "Mental
18 Health Procedures Act," are amended to read:

19 Section 109. Mental Health Review Officer.--(a) Legal
20 proceedings concerning extended involuntary emergency treatment
21 under section 303(c), [or] court-ordered involuntary treatment
22 under section 304 or 305 or transfer hearings under section 306,
23 may be conducted by a judge of the court of common pleas or by a

1 mental health review officer authorized by the court to conduct
2 the proceedings. Mental health review officers shall be members
3 of the bar of the Supreme Court of Pennsylvania, without
4 restriction as to the county of their residence and where
5 possible should be familiar with the field of mental health.
6 They shall be appointed by the respective courts of common pleas
7 for terms not to exceed one year, and may be reappointed to
8 successive terms. Law-trained municipal court judges may be
9 appointed Mental Health Review Officers.

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

21 Section 110. Written Applications, Petitions, Statements and
22 Certifications.--(a) All written statements pursuant to section
23 302(a)(2), and all applications, petitions, and certifications
24 required under the provisions of this act shall be made subject
25 to the penalties provided under 18 Pa.C.S. § 4904 (relating to
26 unsworn falsification to authorities) and shall contain a notice
27 to that effect.

28 (b) All such applications, petitions, statements and
29 certifications shall be filed with the county administrator in
30 the county where the person was made subject to examination and

1 treatment and such other county in the Commonwealth, if any, in
2 which the person usually resides.

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

9 (d) No public official acting in an official capacity shall
10 be required to pay the court of common pleas any filing fee
11 which in the absence of this provision would be required upon
12 the filing of a petition for involuntary treatment under this
13 act.

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

15 (a) In the absence of willful misconduct or gross negligence, a
16 county administrator, a director of a facility, a physician, a
17 peace officer or any other authorized person who participates in
18 a decision that a person be examined or treated under this act,
19 or that a person be discharged, or placed under partial
20 hospitalization, outpatient care or leave of absence, or that
21 the restraint upon such person be otherwise reduced, or a county
22 administrator or other authorized person who denies an
23 application for involuntary emergency examination and treatment,
24 shall not be civilly or criminally liable for such decision or
25 for any of its consequences.

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

29 Section 206. Withdrawal from Voluntary Inpatient

30 Treatment.--(a) A person in voluntary inpatient treatment may

1 withdraw at any time by giving written notice unless, as stated
2 in section 203, he has agreed in writing at the time of his
3 admission that his release can be delayed following such notice
4 for a period to be specified in the agreement, provided that
5 such period shall not exceed 72 hours, not including a Sunday.

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

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

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

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2 * * *

3 (d) Duration of Emergency Examination and Treatment.--A
4 person who is in treatment pursuant to this section shall be
5 discharged whenever it is determined that he no longer is in
6 need of treatment and in any event within 72 hours, (not
7 including a Sunday) unless within such period:

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

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

12 Section 303. Extended Involuntary Emergency Treatment
13 Certified by a Judge or Mental Health Review Officer - Not to
14 Exceed Twenty Days.--* * *

15 (c) Informal [Hearing] Conference on Extended Emergency
16 Treatment Application.--(1) At the commencement of the informal
17 [hearing] conference, the judge or the mental health review
18 officer shall inform the person of the nature of the
19 proceedings. Information relevant to whether the person is
20 severely mentally disabled and in need of treatment shall be
21 reviewed, including the reasons that continued involuntary
22 treatment is considered necessary. Such explanation shall be
23 made by a physician who examined the person and shall be in
24 terms understandable to a layman. Ordinary rules of evidence
25 shall not necessarily apply. The person or his representative
26 shall have the right to ask questions of the physician and of
27 any other witnesses and to present any relevant information. At
28 the conclusion of the review, if the judge or the review officer
29 finds that the person is severely mentally disabled and in need
30 of continued involuntary treatment, he shall so certify.

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

3 (2) A [stenographic or other sufficient] record of the
4 proceedings which need not be a stenographic record shall be
5 made. Such record shall be kept by the court or mental health
6 review officer for at least one year.

7 * * *

8 Section 304. Court-ordered Involuntary Treatment Not to
9 Exceed Ninety Days.--(a) Persons for Whom Application May be
10 Made.--(1) A person who is severely mentally disabled and in
11 need of treatment, as defined in section 301(a), may be made
12 subject to court-ordered involuntary treatment upon a
13 determination of clear and present danger under section
14 301(b)(1) (serious bodily harm to others), or section
15 301(b)(2)(i) (inability to care for himself, creating a danger
16 of death or serious harm to himself), or 301(b)(2)(ii)
17 (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

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

26 (b) Procedures for Initiating Court-ordered Involuntary
27 Treatment for Persons Already Subject to Involuntary
28 Treatment.--(1) Petition for court-ordered involuntary
29 treatment for persons already subject to treatment under
30 sections 303, 304 and 305 may be made by the county

1 administrator or the director of the facility to the court of
2 common pleas.

3 (2) The petition shall be in writing upon a form adopted by
4 the department and shall include a statement of the facts
5 constituting reasonable grounds to believe that the person is
6 severely mentally disabled and in need of treatment. The
7 petition shall state the name of any examining physician and the
8 substance of his opinion regarding the mental condition of the
9 person. It shall also state that the person has been given the
10 information required by subsection (b)(3). [and shall include
11 copies of all documents relating to examination and treatment of
12 the person which are required under this act.]

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

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

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

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

29 (2) The petition shall be in writing upon a form adopted by
30 the department and shall set forth facts constituting reasonable

1 grounds to believe that the person is within the criteria for
2 court-ordered treatment set forth in subsection (a). The
3 petition shall state the name of any examining physician and the
4 substance of his opinion regarding the mental condition of the
5 person.

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

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

24 (5) Upon motion of either the petitioner or the person, or
25 upon its own motion, the court may order the person to be
26 examined by a psychiatrist appointed by the court. Such
27 examination shall be conducted on an outpatient basis, and the
28 person shall have the right to have counsel present. A report of
29 the examination shall be given to the court and counsel at least
30 48 hours prior to the hearing.

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

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

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

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

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

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

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

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

29 (6) The hearing shall be conducted by a judge or by a mental
30 health review officer and may be held at a location other than a

1 courthouse when doing so appears to be in the best interest of
2 the person.

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

5 (f) Determination and Order.--Upon a finding by clear and
6 convincing evidence that the person is severely mentally
7 disabled and in need of treatment and subject to subsection (a),
8 an order shall be entered directing treatment of the person in
9 an approved facility as an inpatient or an outpatient, or a
10 combination of such treatment as the director of the facility
11 shall from time to time determine. Inpatient treatment shall be
12 deemed appropriate only after full consideration has been given
13 to less restrictive alternatives. Investigation of treatment
14 alternatives shall include consideration of the person's
15 relationship to his community and family, his employment
16 possibilities, all available community resources, and
17 guardianship services. An order for inpatient treatment shall
18 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: Persons may be made subject to court-
23 ordered involuntary treatment under this section for a period
24 not to exceed one year if the person meets the criteria
25 established by clause (2).

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

28 (i) severe mental disability is based on acts giving rise to
29 the following charges under the Pennsylvania Crimes Code: murder
30 (§ 2502); voluntary manslaughter (§ 2503); aggravated assault (§

1 2702); kidnapping (§ 2901); rape (§ 3121(1) and (2));
2 involuntary deviate sexual intercourse (§ 3123(1) and (2));
3 arson (§ 3301); and

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

7 [(2)] (3) If at any time the director of a facility
8 concludes that the person is not severely mentally disabled or
9 in need of treatment pursuant to subsection (a), he shall
10 discharge the person provided that no person subjected to
11 involuntary treatment pursuant to clause (2) may be discharged
12 without a hearing conducted pursuant to clause (4).

13 (4) In cases involving involuntary treatment pursuant to
14 clause (2), whenever the period of court-ordered involuntary
15 treatment has expired and neither the director nor the county
16 administrator intends to apply for an additional period of
17 court-ordered involuntary treatment pursuant to section 305 or
18 at any time the director concludes that the person is not
19 severely mentally disabled or in need of treatment, the director
20 shall petition the court which ordered the involuntary treatment
21 for the unconditional or conditional release of the person.

22 Notice of such petition shall be given to the person, the county
23 administrator and the district attorney. Within 15 days after
24 the petition has been filed, the court shall hold a hearing to
25 determine if the person is severely mentally disabled and in
26 need of treatment. Petitions which must be filed simply because
27 the period of involuntary treatment will expire shall be filed
28 at least ten days prior to the expiration of the court-ordered
29 period of involuntary treatment. If the court determines after
30 hearing that the person is severely mentally disabled and in

1 need of treatment, it may order additional involuntary treatment
2 not to exceed one year; if the court does not so determine, it
3 shall order the discharge of the person.

4 Section 305. Additional Periods of Court-ordered Involuntary
5 Treatment.--At the expiration of a period of court-ordered
6 involuntary treatment under section 304(g), or this section the
7 court may order treatment for an additional period upon the
8 application of the county administrator or the director of the
9 facility in which the person is receiving treatment. Such order
10 shall be entered upon hearing on findings as required by
11 sections 304(a) and (b), and the further finding of a need for
12 continuing involuntary treatment as shown by conduct during the
13 person's most recent period of court-ordered treatment. The
14 additional period of involuntary treatment shall not exceed 180
15 days; provided that persons meeting the criteria of section
16 304(g)(2) may be subject to an additional period of up to one
17 year of involuntary treatment. A person found dangerous to
18 himself under section 301(b)(2)(i),(ii) or (iii) shall be
19 subject to an additional period of involuntary full-time
20 inpatient treatment only if he has first been released to a less
21 restrictive alternative. This limitation shall not apply where,
22 upon application made by the county administrator or facility
23 director, it is determined by a judge or mental health review
24 officer that such release would not be in the person's best
25 interest.

26 Section 2. The act is amended by adding a section to read:

27 Section 307. Return to Inpatient Status.--Where any
28 involuntary treatment is directed or authorized under this act
29 but thereafter is determined by the director of the facility to
30 have become inappropriate or ineffective, he may require the

1 treatment to be changed or the person to be returned to
2 inpatient immediately. Such inpatient treatment shall continue
3 as long as the director of the facility shall deem it necessary,
4 not to exceed the term originally ordered by the court. If, in
5 these circumstances, the person shall refuse inpatient
6 treatment, the court or mental health review officer or county
7 administrator, upon application of the director of the facility,
8 may issue a warrant directing a person authorized by him, or any
9 peace officer, to take such person to the facility. The
10 application shall set forth the reason for requiring inpatient
11 treatment and the grounds for believing that such treatment has
12 been refused.

13 Section 3. Subsection (b) of section 402 and subsections (c)
14 and (f) of section 403 of the act are amended to read:

15 Section 402. Incompetence to Proceed on Criminal Charges and
16 Lack of Criminal Responsibility as Defense.--* * *

17 (b) Involuntary Treatment of Persons Found Incompetent to
18 Stand Trial Who are Not Mentally Disabled.--Notwithstanding the
19 provisions of Article III of this act, a court may order
20 involuntary treatment of a person found incompetent to stand
21 trial but who is not severely mentally disabled, such
22 involuntary treatment not to exceed a specific period of [30] 60
23 days. Involuntary treatment pursuant to this subsection may be
24 ordered only if the court is reasonably certain that the
25 involuntary treatment will provide the defendant with the
26 capacity to stand trial. The court may order outpatient
27 treatment, partial hospitalization or inpatient treatment.

28 * * *

29 Section 403. Hearing and Determination of Incompetency to
30 Proceed; Stay of Proceedings; Dismissal of Charges.--* * *

1 (c) Defendant's Right to Counsel; Reexamination.--A person
2 who is determined to be incompetent to proceed shall have a
3 continuing right to counsel so long as the criminal charges are
4 pending. Following such determination, the person charged shall
5 be reexamined not less than every [60] 90 days by a psychiatrist
6 appointed by the court and a report of reexamination shall be
7 submitted to the court and to counsel.

8 * * *

9 (f) Stay of Proceedings.--In no instance shall the
10 proceedings be stayed for a period in excess of the maximum
11 sentence that may be imposed for the crime or crimes charged, or
12 [five] ten years, whichever is less.

13 Section 4. The act is amended by adding a section to read:

14 Section 407. Voluntary Treatment of A Person Charged With
15 Crime Or Serving Sentence.--(a) Whenever a person in criminal
16 detention, whether in lieu of bail or serving a sentence,
17 believes that he is in need of treatment and substantially
18 understands the nature of voluntary treatment he may submit
19 himself to examination and treatment under this act, provided
20 that at least one physician certifies the necessity of such
21 treatment and certifies further that such treatment cannot be
22 adequately provided at the prison or correctional facility where
23 the person then is detained. Such certificate shall set forth
24 the specific grounds which make transfer to a mental health
25 facility necessary.

26 (b) Before any inmate of a prison or correctional facility
27 may be transferred to a mental health facility for the purpose
28 of examination and treatment the court shall review the
29 certification of the physician that such transfer is necessary
30 and may request any other information concerning the necessity

1 of such transfer. Upon such review the court shall either
2 approve or disapprove the transfer.

3 (c) The court of common pleas for the judicial district in
4 which the prison or correctional facility is located shall have
5 jurisdiction for the purpose set forth in this section.

6 (d) Transfer to a mental health facility shall not affect
7 the condition of security required by the person's criminal
8 detention. However, the court shall not order maximum security
9 psychiatric care merely on the ground that the person has been
10 detained in a prison or correctional facility.

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

17 (f) If at any time the person gives notice of his intent to
18 withdraw from treatment at the mental health facility he shall
19 be returned to the authority entitled to have him in custody, or
20 proceedings may be initiated under section 304 of this act.

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

25 Section 5. This act shall take effect in 60 days.