

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1105 Session of
1977

INTRODUCED BY COPPERSMITH AND DOUGHERTY, SEPTEMBER 27, 1977

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 27, 1978

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; and providing for a return to
9 inpatient status, for a stay of proceedings of a person
10 charged with a crime and, for voluntary treatment of a person <—
11 charged with a crime or serving a sentence, FOR PAYMENT OF <—
12 COSTS FOR EXAMINATION AND TREATMENT, AND FOR REFERRAL TO
13 COUNTY MENTAL HEALTH AND MENTAL RETARDATION PROGRAMS.

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

16 Section 1. Sections 102, 109, 110, 114, 201 and ~~206~~, 206 AND <—
17 SUBSECTION (B) OF SECTION 301, subsection (d) of section 302,
18 subsections (a) and (c) of section 303 and sections 304 and ~~305~~, <—
19 305 AND 306, act of July 9, 1976 (P.L.817, No.143), known as the
20 "Mental Health Procedures Act," SECTION 109 REPEALED IN PART <—
21 APRIL 28, 1978 (NO.53), are amended, AND SECTIONS ARE ADDED to <—
22 read:

23 Section 102. Statement of Policy.--It is the policy of the

1 Commonwealth of Pennsylvania to seek to assure the availability
2 of adequate treatment to persons who are mentally ill, and it is
3 the purpose of this act to establish procedures whereby this
4 policy can be effected. THIS ACT SHALL BE INTERPRETED, ←
5 CONSISTENT WITH ITS WORDING AND SPIRIT, BOTH AS TO VOLUNTARY AND
6 INVOLUNTARY TREATMENT, SO AS TO MAKE TREATMENT AVAILABLE AND SO
7 AS NOT TO PREVENT OR TERMINATE TREATMENT FOR PERSONS WHERE THE
8 NEED IS GREAT AND IT IS LIKELY THAT THE LACK OF TREATMENT WOULD
9 RESULT IN SERIOUS CONSEQUENCES TO THE PERSON, HIS PROPERTY, OR
10 OTHERS. Treatment on a voluntary basis shall be preferred to
11 involuntary treatment; and in every case, the least restrictions
12 consistent with adequate treatment shall be employed. Persons
13 who are mentally retarded, senile, alcoholic, or drug dependent
14 shall receive mental health treatment only if they are also
15 diagnosed as mentally ill, but these conditions of themselves
16 shall not be deemed to constitute mental illness: PROVIDED, ←
17 HOWEVER, THAT NOTHING IN THIS ACT SHALL PROHIBIT THE UTILIZATION
18 OF STATE FACILITIES FOR THE MENTALLY ILL TO BE UTILIZED FOR THE
19 TREATMENT OF ALCOHOL ABUSE OR DRUG ADDICTION PURSUANT TO THE ACT
20 OF APRIL 14, 1972 (P.L.221, NO.63), KNOWN AS THE "PENNSYLVANIA
21 DRUG AND ALCOHOL ABUSE CONTROL ACT." Chronically disabled
22 persons 70 years of age or older who have been continuously
23 hospitalized in a State operated facility for at least ten years
24 shall not be subject to the procedures of this act. Such a
25 person's inability to give a rational, informed consent shall
26 not prohibit the department from continuing to provide all
27 necessary treatment to such a person. However, if such a person
28 protests treatment or residence at a State operated facility he
29 shall be subject to the provisions of Article III.

30 Section 109. Mental Health Review Officer.--(a) Legal

1 proceedings concerning extended involuntary emergency treatment
2 under section 303(c), [or] court-ordered involuntary treatment
3 under section 304 or 305 or transfer hearings under section 306,
4 may be conducted by a judge of the court of common pleas or by a
5 mental health review officer authorized by the court to conduct
6 the proceedings. Mental health review officers shall be members
7 of the bar of the Supreme Court of Pennsylvania, without
8 restriction as to the county of their residence and where
9 possible should be familiar with the field of mental health.
10 [They shall be appointed by the respective courts of common <—
11 pleas for terms not to exceed one year, and may be reappointed
12 to successive terms.] Law-trained municipal court judges may be <—
13 appointed mental health review officers.

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

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

29 Section 110. Written Applications, Petitions, Statements and
30 Certifications.--(a) All written statements pursuant to section

1 302(a)(2), and all applications, petitions, and certifications
2 required under the provisions of this act shall be made subject
3 to the penalties provided under 18 Pa.C.S. § 4904 (relating to
4 unsworn falsification to authorities) and shall contain a notice
5 to that effect.

6 (b) All such applications, petitions, statements and
7 certifications shall be [filed with] SUBMITTED TO the county ←
8 administrator in the county where the person was made subject to
9 examination and treatment and such other county in the
10 Commonwealth, if any, in which the person usually resides.

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

17 (d) No public official acting in an official capacity shall
18 be required to pay the court of common pleas any filing fee
19 which in the absence of this provision would be required upon
20 the filing of a petition for involuntary treatment under this
21 act.

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

23 (a) In the absence of willful misconduct or gross negligence, a
24 county administrator, a director of a facility, a physician, a
25 peace officer or any other authorized person who participates in
26 a decision that a person be examined or treated under this act,
27 or that a person be discharged, or placed under partial
28 hospitalization, outpatient care or leave of absence, or that
29 the restraint upon such person be otherwise reduced, or a county
30 administrator or other authorized person who denies an

1 application for voluntary treatment or for involuntary emergency
2 examination and treatment, shall not be civilly or criminally
3 liable for such decision or for any of its consequences.

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

7 SECTION 116. FINANCIAL STATUS OF SERVICES.--FOR THE PURPOSE ←
8 OF FINANCIAL RESPONSIBILITY, ALL AUTHORIZED SERVICES UNDER THIS
9 ACT ARE DEEMED TO BE PART OF THE COUNTY'S PROGRAM AS AUTHORIZED
10 BY SECTION 509(1) OF THE ACT OF OCTOBER 20, 1966 (3RD SP.SESS.,
11 P.L.96, NO.6), KNOWN AS THE "MENTAL HEALTH AND MENTAL
12 RETARDATION ACT OF 1966," AND IF SUCH ARE REIMBURSABLE BY THE
13 STATE FROM STATE AND FEDERAL MONEYS IN THE AMOUNT OF 90% OF THE
14 EXCESS OF ALL SUCH APPROVED EXPENDITURES.

15 SECTION 117. CONTINUITY OF CARE.--(A) IT SHALL BE THE
16 RESPONSIBILITY OF THE INSTITUTIONAL ADMINISTRATION TO REFER
17 THOSE PATIENTS DISCHARGED FROM STATE INSTITUTIONAL PROGRAMS TO
18 THE APPROPRIATE COUNTY MENTAL HEALTH AND MENTAL RETARDATION
19 PROGRAM.

20 (B) THE COUNTY MENTAL HEALTH AND MENTAL RETARDATION PROGRAM
21 SHALL, PURSUANT TO ARTICLE III OF THE "MENTAL HEALTH AND MENTAL
22 RETARDATION ACT OF 1966," RECEIVE REFERRALS FROM INSTITUTIONS
23 AND SHALL BE RESPONSIBLE FOR THE TREATMENT NEEDS OF COUNTY
24 RESIDENTS DISCHARGED FROM INSTITUTIONS PURSUANT TO ARTICLES II
25 AND III OF THIS ACT.

26 Section 201. Persons Who May Authorize Voluntary
27 Treatment.--Any person 14 years of age or over who believes that
28 he is in need of treatment and substantially understands the
29 nature of voluntary [commitment] treatment may submit himself to
30 examination and treatment under this act, provided that the

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

8 Section 206. Withdrawal from Voluntary Inpatient

9 Treatment.--(a) A person in voluntary inpatient treatment may
10 withdraw at any time by giving written notice unless, as stated
11 in section 203, he has agreed in writing at the time of his
12 admission that his release can be delayed following such notice
13 for a period to be specified in the agreement, provided that
14 such period shall not exceed 72 hours. Any patient converted
15 from involuntary treatment ordered pursuant to either section
16 304 or 305 to voluntary treatment status shall agree to remain
17 in treatment for 72 hours after having given written notice of
18 his intent to withdraw from treatment.

19 (b) If the person is under the age of 14, his parent, legal
20 guardian, or person standing in loco parentis may effect his
21 release. If any responsible party believes that it would be in
22 the best interest of a person under 14 years of age in voluntary
23 treatment to be withdrawn therefrom or afforded treatment
24 constituting a less restrictive alternative, such party may file
25 a petition in the Juvenile Division of the court of common pleas
26 for the county in which the person under 14 years of age
27 resides, requesting a withdrawal from or modification of
28 treatment. The court shall promptly appoint an attorney for such
29 minor person and schedule a hearing to determine what inpatient
30 treatment, if any, is in the minor's best interest. The hearing

1 shall be held within ten days of receipt of the petition, unless
2 continued upon the request of the attorney for such minor. The
3 hearing shall be conducted in accordance with the rules
4 governing other Juvenile Court proceedings.

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

12 (D) PERSONS RELEASED FROM VOLUNTARY TREATMENT SHALL BE ←
13 REFERRED TO THE COUNTY MENTAL HEALTH AND MENTAL RETARDATION
14 PROGRAM PURSUANT TO SECTION 301(D)(6) OF THE "MENTAL HEALTH AND
15 MENTAL RETARDATION ACT OF 1966."

16 SECTION 301. PERSONS WHO MAY BE SUBJECT TO INVOLUNTARY
17 EMERGENCY EXAMINATION AND TREATMENT.--* * *

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 INFLECT OR THREATENED TO INFLICT SERIOUS BODILY HARM ON ANOTHER
22 OR HAS ACTED IN SUCH A MANNER AS TO CREATE A SUBSTANTIAL RISK OF
23 SERIOUS BODILY HARM TO ANOTHER AND THAT THERE IS A REASONABLE
24 PROBABILITY THAT SUCH CONDUCT WILL BE REPEATED. IF, HOWEVER, THE
25 PERSON HAS BEEN FOUND INCOMPETENT TO BE TRIED OR HAS BEEN
26 ACQUITTED BY REASON OF LACK OF CRIMINAL RESPONSIBILITY ON
27 CHARGES ARISING FROM CONDUCT INVOLVING INFLECTION OF OR ATTEMPT
28 TO INFLICT SUBSTANTIAL BODILY HARM ON ANOTHER, SUCH 30-DAY
29 LIMITATION SHALL NOT APPLY SO LONG AS AN APPLICATION FOR
30 EXAMINATION AND TREATMENT IS FILED WITHIN 30 DAYS AFTER THE DATE

1 OF SUCH DETERMINATION OR VERDICT. IN SUCH CASE, A CLEAR AND
2 PRESENT DANGER TO OTHERS MAY BE SHOWN BY ESTABLISHING THAT THE
3 CONDUCT CHARGED IN THE CRIMINAL PROCEEDING DID OCCUR, AND THAT
4 THERE IS A REASONABLE PROBABILITY THAT SUCH CONDUCT WILL BE
5 REPEATED.

6 (2) CLEAR AND PRESENT DANGER TO HIMSELF SHALL BE SHOWN BY
7 ESTABLISHING THAT WITHIN THE PAST 30 DAYS:

8 (I) THE PERSON HAS ACTED IN SUCH MANNER AS TO EVIDENCE THAT
9 HE WOULD BE UNABLE, WITHOUT CARE, SUPERVISION AND THE CONTINUED
10 ASSISTANCE OF OTHERS, TO EXERCISE SELF-CONTROL, JUDGMENT AND
11 DISCRETION IN THE CONDUCT OF HIS DAILY RESPONSIBILITIES AND
12 SOCIAL RELATIONS, OR TO SATISFY HIS NEED FOR NOURISHMENT,
13 PERSONAL OR MEDICAL CARE, SHELTER, OR SELF-PROTECTION AND
14 SAFETY, AND THAT THERE IS A REASONABLE PROBABILITY THAT DEATH,
15 [SERIOUS] BODILY INJURY OR [SERIOUS] PHYSICAL DEBILITATION
16 [WOULD] OR GRAVE DISABILITY MAY ENSUE WITHIN 30 DAYS UNLESS
17 ADEQUATE TREATMENT WERE AFFORDED UNDER THIS ACT; A PERSON'S
18 INABILITY TO CARE FOR HIMSELF MAY BE SHOWN BY SEVERELY IMPAIRED
19 JUDGMENT AND INSIGHT WHICH RENDERS HIM GRAVELY DISABLED TO THAT
20 THE PERSON MANIFESTS GROSSLY IRRATIONAL BEHAVIOR, OR SPEECH, OR
21 ENGAGES IN ACTIONS GROSSLY INAPPROPRIATE TO THE SITUATION, WHICH
22 THE PERSON IS UNABLE TO CONTROL; OR

23 (II) THE PERSON HAS ATTEMPTED SUICIDE AND THAT THERE IS THE
24 REASONABLE PROBABILITY OF SUICIDE UNLESS ADEQUATE TREATMENT IS
25 AFFORDED UNDER THIS ACT; OR

26 (III) THE PERSON HAS [SEVERELY] MUTILATED HIMSELF OR
27 ATTEMPTED TO MUTILATE HIMSELF [SEVERELY] AND THAT THERE IS THE
28 REASONABLE PROBABILITY OF MUTILATION UNLESS ADEQUATE TREATMENT
29 IS AFFORDED UNDER THIS ACT.

30 Section 302. Involuntary Emergency Examination and Treatment

1 Authorized by a Physician - Not to Exceed [Seventy-two Hours]
2 One Hundred Twenty Hours.-- * * *

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,] 120 hours,
7 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.--(a) Persons Subject to Extended
15 Involuntary Emergency Treatment.--Application for extended
16 involuntary emergency treatment may be made for any person who
17 is being treated pursuant to section 302 whenever the facility
18 determines that the need for emergency treatment is likely to
19 extend beyond [72] 120 hours. The application shall be filed
20 forthwith in the court of common pleas, and shall state the
21 grounds on which extended emergency treatment is believed to be
22 necessary. The application shall state the name of any examining
23 physician and the substance of his opinion regarding the mental
24 condition of the person.

25 * * *

26 (c) Informal [Hearing] Conference on Extended Emergency
27 Treatment Application.--(1) At the commencement of the informal
28 [hearing] conference, the judge or the mental health review
29 officer shall inform the person of the nature of the
30 proceedings. Information relevant to whether the person is

1 severely mentally disabled and in need of treatment shall be
2 reviewed, including the reasons that continued involuntary
3 treatment is considered necessary. Such explanation shall be
4 made by a physician who examined the person and shall be in
5 terms understandable to a layman. The judge or mental health
6 review officer may review any relevant information even if it
7 would be normally excluded under rules of evidence if he
8 believes that such information is reliable. The person or his
9 representative shall have the right to ask questions of the
10 physician and of any other witnesses and to present any relevant
11 information. At the conclusion of the review, if the judge or
12 the review officer finds that the person is severely mentally
13 disabled and in need of continued involuntary treatment, he
14 shall so certify. Otherwise, he shall direct that the facility
15 director or his designee discharge the person.

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

20 * * *

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

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

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

16 (2) The petition shall be in writing upon a form adopted by
17 the department and shall include a statement of the facts
18 constituting reasonable grounds to believe that the person is
19 severely mentally disabled and in need of treatment. The
20 petition shall state the name of any examining physician and the
21 substance of his opinion regarding the mental condition of the
22 person. It shall also state that the person has been given the
23 information required by subsection (b)(3). [and shall include
24 copies of all documents relating to examination and treatment of
25 the person which are required under this act.]

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

1 the field of mental health, as provided by subsection (d).

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

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

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

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

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

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

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

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

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

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

26 (e) Hearings on Petition for Court-ordered Involuntary
27 Treatment.--A hearing on a petition for court-ordered
28 involuntary treatment shall be conducted according to the
29 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 subsection (a),
21 an order shall be entered directing treatment of the person in
22 an approved facility as an inpatient or an outpatient, or a
23 combination of such treatment as the director of the facility
24 shall from time to time determine. Inpatient treatment shall be
25 deemed appropriate only after full consideration has been given
26 to less restrictive alternatives. Investigation of treatment
27 alternatives shall include consideration of the person's
28 relationship to his community and family, his employment
29 possibilities, all available community resources, and
30 guardianship services. An order for inpatient treatment shall

1 include findings on this issue.

2 (g) Duration of Court-ordered Involuntary Treatment.--(1) A
3 person may be made subject to court-ordered involuntary
4 treatment under this section for a period not to exceed 90 days,
5 excepting only that: Persons may be made subject to court-
6 ordered involuntary treatment under this section for a period
7 not to exceed one year if the person meets the criteria
8 established by clause (2).

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

11 (i) severe mental disability is based on acts giving rise to
12 the following charges under the Pennsylvania Crimes Code: murder
13 (§ 2502); voluntary manslaughter (§ 2503); aggravated assault (§
14 2702); kidnapping (§ 2901); rape (§ 3121(1) and (2));
15 involuntary deviate sexual intercourse (§ 3123(1) and (2));
16 arson (§ 3301); and

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

20 [(2)] (3) If at any time the director of a facility
21 concludes that the person is not severely mentally disabled or
22 in need of treatment pursuant to subsection (a), he shall
23 discharge the person provided that no person subjected to
24 involuntary treatment pursuant to clause (2) may be discharged
25 without a hearing conducted pursuant to clause (4).

26 (4) In cases involving involuntary treatment pursuant to
27 clause (2), whenever the period of court-ordered involuntary
28 treatment is about to expire and neither the director nor the
29 county administrator intends to apply for an additional period
30 of court-ordered involuntary treatment pursuant to section 305

1 or at any time the director concludes that the person is not
2 severely mentally disabled or in need of treatment, the director
3 shall petition the court which ordered the involuntary treatment
4 for the unconditional or conditional release of the person.
5 Notice of such petition shall be given to the person, the county
6 administrator and the district attorney. Within 15 days after
7 the petition has been filed, the court shall hold a hearing to
8 determine if the person is severely mentally disabled and in
9 need of treatment. Petitions which must be filed simply because
10 the period of involuntary treatment will expire shall be filed
11 at least ten days prior to the expiration of the court-ordered
12 period of involuntary treatment. If the court determines after
13 hearing that the person is severely mentally disabled and in
14 need of treatment, it may order additional involuntary treatment
15 not to exceed one year; if the court does not so determine, it
16 shall order the discharge of the person.

17 Section 305. Additional Periods of Court-ordered Involuntary
18 Treatment.--(a) At the expiration of a period of court-ordered
19 involuntary treatment under section 304(g) or this section, the
20 court may order treatment for an additional period upon the
21 application of the county administrator or the director of the
22 facility in which the person is receiving treatment. Such order
23 shall be entered upon hearing on findings as required by
24 sections 304(a) and (b), and the further finding of a need for
25 continuing involuntary treatment as shown by conduct during the
26 person's most recent period of court-ordered treatment. The
27 additional period of involuntary treatment shall not exceed 180
28 days; provided that persons meeting the criteria of section
29 304(g)(2) may be subject to an additional period of up to one
30 year of involuntary 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 (b) The director of the facility in which the person is
10 receiving treatment shall notify the county administrator at
11 least ten days prior to the expiration of a period of
12 involuntary commitment ordered under section 304 or this
13 section.

14 SECTION 306. TRANSFER OF PERSONS IN INVOLUNTARY TREATMENT.-- <—
15 [PERSON] PERSONS IN INVOLUNTARY TREATMENT PURSUANT TO THIS ACT
16 MAY BE TRANSFERRED TO ANY APPROVED FACILITY EXCEPT IN THE CASE
17 OF PERSONS INITIALLY COMMITTED UNDER SECTION 304(G)(2)(I), SAID
18 TRANSFER SHALL NOT BE PERMITTED UNLESS WRITTEN NOTICE IS GIVEN
19 TO THE COMMITTING JUDGE AND THE DISTRICT ATTORNEY IN THE
20 COMMITTING COUNTY AND NO OBJECTION IS NOTED FROM EITHER WITHIN
21 20 DAYS OF RECEIPT OF SAID NOTICE. IF THE COURT OR THE DISTRICT
22 ATTORNEY OBJECTS TO SAID TRANSFER, A HEARING SHALL BE HELD BY
23 THE COURT WITHIN 20 DAYS TO REVIEW THE COMMITMENT ORDER.
24 WHENEVER SUCH TRANSFER WILL CONSTITUTE A GREATER RESTRAINT, IT
25 SHALL NOT TAKE PLACE UNLESS, UPON HEARING, A JUDGE OR MENTAL
26 HEALTH REVIEW OFFICER FINDS IT TO BE NECESSARY AND APPROPRIATE.

27 Section 2. The act is amended by adding a ~~section~~ SECTIONS <—
28 to read:

29 Section 307. Return to Inpatient Status of Persons on
30 Leave.--(a) Where any involuntary inpatient treatment has been

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

14 (b) Where a person is involuntarily committed pursuant to
15 either section 304 or section 305 because the court makes a
16 finding that the person is a clear and present danger to others
17 and the person is granted leave by a facility on the condition
18 that the person continues to take medication which tends to
19 reduce the likelihood of violent behavior by the person and
20 where the county administrator determines that the person
21 consistently fails to take the prescribed medication, such leave
22 may be rescinded by the director of the facility and the person
23 returned to treatment. The person may not be detained more than
24 20 days without a finding of severe mental disability and the
25 institution of appropriate legal proceedings. The right to
26 rescind a patient's leave pursuant to this section shall be
27 limited to a period ending 90 days after the expiration of the
28 period of court-ordered involuntary care.

29 SECTION 308. REFERRAL UPON DISCHARGE.--PERSONS DISCHARGED
30 FROM INVOLUNTARY TREATMENT SHALL BE REFERRED TO THE COUNTY

<—

1 MENTAL HEALTH AND MENTAL RETARDATION PROGRAM PURSUANT TO SECTION
2 301(D)(6) OF THE "MENTAL HEALTH AND MENTAL RETARDATION ACT OF
3 1966."

4 ~~Section 3. Subsection (b) of section 402 and subsections (c) <—~~
5 ~~and (f) of section 403 of the act are amended to read:~~

6 SECTION 3. SUBSECTION (B) OF SECTION 401 AND SUBSECTION (B) <—
7 AND CLAUSES (3) AND (4) OF SUBSECTION (E) AND SUBSECTION (F) OF
8 SECTION 402 ARE AMENDED TO READ:

9 SECTION 401. EXAMINATION AND TREATMENT OF A PERSON CHARGED
10 WITH CRIME OR SERVING SENTENCE.--* * *

11 (B) STATUS IN INVOLUNTARY TREATMENT.--WHENEVER A PERSON WHO
12 IS DETAINED ON CRIMINAL CHARGES OR IS INCARCERATED IS MADE
13 SUBJECT TO INPATIENT EXAMINATION OR TREATMENT, HE SHALL BE
14 TRANSFERRED, FOR THIS PURPOSE, TO A MENTAL HEALTH FACILITY WITH
15 SECURITY EQUIVALENT TO THE INSTITUTION TO WHICH INCARCERATED.
16 TRANSFER MAY BE MADE TO A VETERANS ADMINISTRATION FACILITY
17 PROVIDED THAT NEITHER CUSTODY NOR CONTROL ARE REQUIRED IN
18 ADDITION TO EXAMINATION AND TREATMENT. SUCH INDIVIDUALS
19 TRANSFERRED TO THE VETERANS ADMINISTRATION ARE NOT SUBJECT TO
20 RETURN BY THE FEDERAL AGENCY TO THE AUTHORITY ENTITLED TO HAVE
21 THEM IN CUSTODY. DURING SUCH PERIOD, PROVISIONS FOR HIS SECURITY
22 SHALL CONTINUE TO BE ENFORCED, UNLESS IN THE INTERIM A PRETRIAL
23 RELEASE IS EFFECTED, OR THE TERM OF IMPRISONMENT EXPIRES OR IS
24 TERMINATED, OR IT IS OTHERWISE ORDERED BY THE COURT HAVING
25 JURISDICTION OVER HIS CRIMINAL STATUS. UPON DISCHARGE FROM
26 TREATMENT, A PERSON WHO IS OR REMAINS SUBJECT TO A DETAINER OR
27 SENTENCE SHALL BE RETURNED TO THE AUTHORITY ENTITLED TO HAVE HIM
28 IN CUSTODY. THE PERIOD OF INVOLUNTARY TREATMENT SHALL BE
29 CREDITED AS TIME SERVED ON ACCOUNT OF ANY SENTENCE TO BE IMPOSED
30 ON PENDING CHARGES OR ANY UNEXPIRED TERM OF IMPRISONMENT.

1 * * *

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

4 (b) Involuntary Treatment of Persons Found Incompetent to
5 Stand Trial Who are Not Mentally Disabled.--Notwithstanding the
6 provisions of Article III of this act, a court may order
7 involuntary treatment of a person found incompetent to stand
8 trial but who is not severely mentally disabled, such
9 involuntary treatment not to exceed a specific period of [30] 60
10 days. Involuntary treatment pursuant to this subsection may be
11 ordered only if the court is reasonably certain that the
12 involuntary treatment will provide the defendant with the
13 capacity to stand trial. The court may order outpatient
14 treatment, partial hospitalization or inpatient treatment.

15 * * *

16 (E) CONDUCT OF EXAMINATION; REPORT.--WHEN ORDERED BY THE <—
17 COURT, AN INCOMPETENCY EXAMINATION SHALL TAKE PLACE UNDER THE
18 FOLLOWING CONDITIONS:

19 * * *

20 (3) THE PERSON SHALL BE ENTITLED TO HAVE COUNSEL PRESENT
21 WITH HIM [AND SHALL NOT BE REQUIRED TO ANSWER ANY QUESTIONS OR
22 TO PERFORM TESTS UNLESS HE HAS MOVED FOR OR AGREED TO THE
23 EXAMINATION. NOTHING SAID OR DONE BY SUCH PERSON DURING THE
24 EXAMINATION MAY BE USED AS EVIDENCE AGAINST HIM IN ANY CRIMINAL
25 PROCEEDINGS ON ANY ISSUE OTHER THAN THAT OF HIS MENTAL
26 CONDITION]. NO STATEMENT BY THE DEFENDANT IN ANY EXAMINATION
27 REGARDING HIS COMPETENCY SHALL BE ADMISSIBLE ON THE QUESTION OF
28 GUILT. IF, AT THE REQUEST OF THE DEFENDANT, AS PROVIDED FOR IN
29 402(D)(4), THE EXAMINATION RELATES TO CRIMINAL RESPONSIBILITY
30 FOR THE CRIME CHARGED, NOTHING SAID BY THE PERSON DURING THE

1 EXAMINATION MAY BE USED AS EVIDENCE ON ANY ISSUE OTHER THAN THAT
2 OF HIS MENTAL CONDITION.

3 (4) A REPORT SHALL BE SUBMITTED TO THE COURT AND TO COUNSEL
4 AND SHALL CONTAIN A DESCRIPTION OF THE EXAMINATION, WHICH SHALL
5 INCLUDE:

6 (I) DIAGNOSIS OF THE PERSON'S MENTAL CONDITION;

7 (II) AN OPINION AS TO HIS CAPACITY TO UNDERSTAND THE NATURE
8 AND OBJECT OF THE CRIMINAL PROCEEDINGS AGAINST HIM AND TO ASSIST
9 IN HIS DEFENSE;

10 (III) WHEN SO REQUESTED, AN OPINION AS TO HIS MENTAL
11 CONDITION IN RELATION TO THE STANDARDS FOR CRIMINAL
12 RESPONSIBILITY AS THEN PROVIDED BY LAW IF IT APPEARS THAT THE
13 FACTS CONCERNING HIS MENTAL CONDITION MAY ALSO BE RELEVANT TO
14 THE QUESTION OF LEGAL RESPONSIBILITY; AND

15 (IV) WHEN SO REQUESTED, AN OPINION AS TO WHETHER HE HAD THE
16 CAPACITY TO HAVE A PARTICULAR STATE OF MIND, WHERE SUCH STATE OF
17 MIND IS A REQUIRED ELEMENT OF THE CRIMINAL CHARGE. IF THE
18 EXAMINATION CANNOT BE CONDUCTED BY REASON OF THE DEFENDANT'S
19 UNWILLINGNESS TO PARTICIPATE THEREIN THE REPORT SHALL SO STATE
20 AND INCLUDE, IF POSSIBLE, AN OPINION AS TO WHETHER SUCH
21 UNWILLINGNESS WAS THE RESULT OF MENTAL DISEASE OR DEFECT.

22 (F) EXPERTS.--THE COURT MAY ALLOW A PSYCHIATRIST RETAINED BY
23 THE DEFENDANT [OR THE PROSECUTION] AND A PSYCHIATRIST RETAINED
24 BY THE COMMONWEALTH TO WITNESS AND PARTICIPATE IN THE
25 EXAMINATION. WHENEVER A DEFENDANT WHO IS FINANCIALLY UNABLE TO
26 RETAIN SUCH EXPERT HAS A SUBSTANTIAL OBJECTION TO THE
27 CONCLUSIONS REACHED BY THE COURT-APPOINTED PSYCHIATRIST, THE
28 COURT SHALL ALLOW REASONABLE COMPENSATION FOR THE EMPLOYMENT OF
29 A PSYCHIATRIST OF HIS SELECTION, WHICH AMOUNT SHALL BE
30 [CHARGEABLE AGAINST THE MENTAL HEALTH AND MENTAL RETARDATION

1 PROGRAM OF THE LOCALITY] PAYABLE BY THE COMMONWEALTH.

2 * * *

3 SECTION 4. SUBSECTIONS (C) AND (F) OF SECTION 403 ARE
4 AMENDED AND A SUBSECTION IS ADDED TO READ:

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

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

14 * * *

15 (f) Stay of Proceedings.--In no instance shall the
16 proceedings be stayed for a period in excess of the maximum
17 sentence of confinement that may be imposed for the crime or
18 crimes charged [or ~~† five~~ ~~ten~~ years, whichever is less].

19 (G) PROCEDURE WHEN PERSON IS DISCHARGED.--IF THE PERSON OF <—
20 THE DEFENDANT IS DISCHARGED PURSUANT TO SECTION 403 (D), BUT THE
21 CHARGES REMAIN OPEN PURSUANT TO SECTION 403 (F), THE COURT
22 DISCHARGING THE DEFENDANT SHALL, ON ITS OWN MOTION OR ON THE
23 MOTION OF THE COMMONWEALTH OR ON THE MOTION OF THE DEFENSE,
24 ORDER THE DEFENDANT TO SUBMIT TO A PSYCHIATRIC EXAMINATION EVERY
25 SIX MONTHS AFTER SAID DISCHARGE OF THE PERSON, TO DETERMINE
26 WHETHER THE DEFENDANT HAS BECOME COMPETENT TO PROCEED TO TRIAL.
27 IF SUCH EXAMINATION REVEALS THAT THE DEFENDANT HAS REGAINED
28 COMPETENCY TO PROCEED, THEN A HEARING SHALL BE SCHEDULED AND THE
29 COURT SHALL DETERMINE, AFTER A FULL AND FAIR HEARING, WHETHER
30 THE DEFENDANT IS COMPETENT TO PROCEED. IF THE DEFENDANT IS

1 ADJUDGED COMPETENT, THEN TRIAL SHALL COMMENCE WITHIN 90 DAYS OF
2 SAID ADJUDICATION. IF SUCH EXAMINATION REVEALS THAT THE
3 DEFENDANT IS INCOMPETENT TO PROCEED, THE COURT SHALL ORDER THE
4 DEFENDANT TO SUBMIT TO A NEW COMPETENCY EXAMINATION IN SIX
5 MONTHS.

6 Section 4 5. The act is amended by adding a ~~section~~ SECTIONS <—
7 to read:

8 SECTION 407. SENTENCING OF SEVERELY MENTALLY DISABLED <—
9 DEFENDANT.--IF, FOLLOWING AN EXAMINATION IN AID OF SENTENCING
10 UNDER SECTION 405, THE COURT IS OF THE OPINION THAT THE
11 DEFENDANT IS SEVERELY MENTALLY DISABLED AS DEFINED IN SECTION
12 301, HE MAY SENTENCE THE DEFENDANT AS IF NO QUESTION OF MENTAL
13 ILLNESS WERE INVOLVED AND THEREAFTER HOLD A HEARING UNDER
14 SECTION 304. UPON MOTION, SUCH HEARING MAY BE CONTINUED FOR UP
15 TO SEVEN DAYS, DURING WHICH TIME THE DEFENDANT SHALL BE TREATED
16 AS A SENTENCED PERSON. IF, AFTER THE HEARING, THE COURT, FINDS
17 BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT IS
18 SEVERELY MENTALLY DISABLED AND IN NEED OF TREATMENT AND SUBJECT
19 TO COMMITMENT UNDER SECTION 304, HE MAY SO COMMIT HIM AND DIRECT
20 THAT HE BEGIN TO SERVE HIS SENTENCE AT A MENTAL HEALTH FACILITY
21 UNDER SUCH COMMITMENT. THEREAFTER SUCH PERSON SHALL BE TREATED
22 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 401.

23 SECTION 408. SENTENCING OF A CONVICTED DEFENDANT.--A
24 CONVICTED DEFENDANT WHO IS NOT SEVERELY MENTALLY DISABLED AND IS
25 NOT IN NEED OF TREATMENT DOES NOT HAVE THE RIGHT TO VOLUNTARILY
26 COMMIT HIMSELF TO A HOSPITAL UNDER ARTICLE II OF THE ACT IN LIEU
27 OF SERVING A SENTENCE IMPOSED BY A COURT.

28 Section 407 409. Voluntary Treatment of A Person Charged <—
29 With Crime Or Serving Sentence.--(a) Whenever a person in
30 criminal detention, whether in lieu of bail or serving a

1 sentence, believes that he is in need of treatment and
2 substantially understands the nature of voluntary treatment he
3 may submit himself to examination and treatment under this act,
4 provided that at least one ~~physician certifies the necessity of~~ <—
5 ~~such treatment~~ PSYCHIATRIST CERTIFIES THAT THE DEFENDANT IS <—
6 SEVERELY MENTALLY DISABLED AND IN NEED OF HOSPITALIZATION AS
7 DEFINED IN SECTION 301 and certifies further that such treatment
8 cannot be adequately provided at the prison or correctional
9 facility where the person then is detained. Such certificate
10 shall set forth the specific grounds which make transfer to a
11 mental health facility necessary. The correctional facility
12 shall secure a written acceptance of the person for inpatient
13 treatment from the mental health facility WHICH SHALL MEET THE <—
14 SECURITY REQUIREMENTS SET FORTH IN SUBSECTION (D) and shall
15 forward such acceptance to the court.

16 (b) Before any inmate of a prison or correctional facility
17 may be transferred to a mental health facility for the purpose
18 of examination and treatment the ATTORNEY FOR THE COMMONWEALTH <—
19 SHALL BE NOTIFIED AND SHALL BE GIVEN AN OPPORTUNITY TO CONDUCT
20 AN INDEPENDENT EXAMINATION OF THE DEFENDANT. THE court shall
21 review the certification of the physician that such transfer is
22 necessary AND THE RECOMMENDATION OF THE PHYSICIAN FOR THE <—
23 COMMONWEALTH and may request any other information concerning
24 the necessity of such transfer. UPON THE MOTION OF THE DISTRICT <—
25 ATTORNEY, A FULL ADVERSARY HEARING SHALL BE HELD ON THE QUESTION
26 OF THE VOLUNTARY TREATMENT OF A PERSON CHARGED WITH A CRIME OR
27 SERVING A SENTENCE. Upon such review the court shall either
28 approve or disapprove the transfer.

29 ~~(c) The court of common pleas for the judicial district in <—~~
30 ~~which the person is charged or was sentenced shall have~~

1 ~~jurisdiction for the purpose set forth in this section.~~

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

7 ~~(C) THE PRESIDENT JUDGE OF THE COURT OF COMMON PLEAS FOR THE~~ <—
8 ~~COUNTY IN WHICH THE DEFENDANT WAS CONVICTED OR THE SENTENCING~~
9 ~~JUDGE SHALL HAVE JURISDICTION FOR THE PURPOSE SET FORTH IN THIS~~
10 ~~SECTION.~~

11 ~~(D) THE MENTAL HEALTH FACILITY TO WHICH A PERSON IS~~
12 ~~TRANSFERRED PURSUANT TO THIS SECTION SHALL HAVE SECURITY~~
13 ~~EQUIVALENT TO THAT PROVIDED BY THE CORRECTIONAL FACILITY FROM~~
14 ~~WHICH HE IS TRANSFERRED.~~

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

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

1 treatment.

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

6 SECTION 410. COSTS OF EXAMINATION AND TREATMENT.--THE <—
7 COMMONWEALTH SHALL PAY ALL COSTS, PAYMENTS OR EXPENDITURES MADE
8 ON BEHALF OF ANY PERSON RECEIVING EXAMINATION OR TREATMENT UNDER
9 THE PROVISIONS OF THIS ARTICLE.

10 SECTION 6. SECTION 505, ACT OF OCTOBER 20, 1966 (3RD
11 SP.SESS., P.L.96, NO.6), KNOWN AS THE "MENTAL HEALTH AND MENTAL
12 RETARDATION ACT OF 1966," IS REPEALED.

13 Section ~~5~~ 7. This act shall take effect in 60 days. <—