

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 1105 Session of  
1977

---

Report of the Committee of Conference

---

To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 1105, entitled:  
"An act amending the act of July 9, 1976 (P.L.817, No.143), entitled 'An act relating to mental health procedures; providing for the treatment and rights of mentally disabled persons, for voluntary and involuntary examination and treatment and for determinations affecting those charged with crime or under sentence,' further providing for mental health review officers, for the use of statistical data, for immunity and for involuntary treatment; and providing for a return to inpatient status, for a stay of proceedings of a person charged with a crime ~~and~~, for voluntary treatment of a person charged with a crime of serving a sentence, FOR PAYMENT OF COSTS FOR EXAMINATION AND TREATMENT, AND FOR REFERRAL TO COUNTY MENTAL HEALTH AND MENTAL RETARDATION PROGRAMS."

respectfully submit the following bill as our report:

W. LOUIS COPPERSMITH

JAMES R. KELLEY

RALPH W. HESS

(Committee on the part of the Senate.)

NORMAN S. BERSON

DAVID C. DiCARLO

RICHARD A. McCLATCHY, Jr.

(Committee on the part of the House of Representatives.)

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; for a stay of proceedings of a  
9 person charged with a crime, for voluntary treatment of a  
10 person charged with a crime or serving a sentence, for  
11 payment of costs for treatment, and for referral to county  
12 mental health and mental retardation programs.

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

15 Section 1. Sections 102, 109, 110, 114, 201, 206 and  
16 subsection (b) of section 301, the section heading and  
17 subsection (d) of section 302, subsections (a) and (c) of  
18 section 303 and sections 304, 305 and 306, act of July 9, 1976  
19 (P.L.817, No.143), known as the "Mental Health Procedures Act,"  
20 section 109 repealed in part April 28, 1978 (No.53), are  
21 amended, and a section is added to read:

22 Section 102. Statement of Policy.--It is the policy of the  
23 Commonwealth of Pennsylvania to seek to assure the availability  
24 of adequate treatment to persons who are mentally ill, and it is  
25 the purpose of this act to establish procedures whereby this  
26 policy can be effected. The provisions of this act shall be  
27 interpreted in conformity with the principles of due process to  
28 make voluntary and involuntary treatment available where the  
29 need is great and its absence could result in serious harm to  
30 the mentally ill person or to others. Treatment on a voluntary  
31 basis shall be preferred to involuntary treatment; and in every  
32 case, the least restrictions consistent with adequate treatment  
33 shall be employed. Persons who are mentally retarded, senile,  
34 alcoholic, or drug dependent shall receive mental health

1 treatment only if they are also diagnosed as mentally ill, but  
2 these conditions of themselves shall not be deemed to constitute  
3 mental illness: Provided, however, That nothing in this act  
4 shall prohibit underutilized State facilities for the mentally  
5 ill to be made available for the treatment of alcohol abuse or  
6 drug addiction pursuant to the act of April 14, 1972 (P.L.221,  
7 No.63), known as the "Pennsylvania Drug and Alcohol Abuse  
8 Control Act." Chronically disabled persons 70 years of age or  
9 older who have been continuously hospitalized in a State  
10 operated facility for at least ten years shall not be subject to  
11 the procedures of this act. Such a person's inability to give a  
12 rational, informed consent shall not prohibit the department  
13 from continuing to provide all necessary treatment to such a  
14 person. However, if such a person protests treatment or  
15 residence at a State operated facility he shall be subject to  
16 the provisions of Article III.

17 Section 109. Mental Health Review Officer.--(a) Legal  
18 proceedings concerning extended involuntary emergency treatment  
19 under section 303(c), [or] court-ordered involuntary treatment  
20 under section 304 or 305 or transfer hearings under section 306,  
21 may be conducted by a judge of the court of common pleas or by a  
22 mental health review officer authorized by the court to conduct  
23 the proceedings. Mental health review officers shall be members  
24 of the bar of the Supreme Court of Pennsylvania, without  
25 restriction as to the county of their residence and where  
26 possible should be familiar with the field of mental health.  
27 [They shall be appointed by the respective courts of common  
28 pleas for terms not to exceed one year, and may be reappointed  
29 to successive terms.] Law-trained municipal court judges may be  
30 appointed mental health review officers.

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

12       (c) Notwithstanding any other provision of this act, no  
13 judge or mental health review officer shall specify to the  
14 treatment team the adoption of any treatment technique,  
15 modality, or drug therapy.

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

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

28       (c) Subsections (a) and (b) shall not apply to patients  
29 admitted pursuant to Article II when no part of the patient's  
30 care is provided with public funds provided that the department

1 may require facilities to report clinical and statistical  
2 information so long as the data does not identify individual  
3 patients.

4 (d) No public official acting in an official capacity shall  
5 be required to pay the court of common pleas any filing fee  
6 which in the absence of this provision would be required upon  
7 the filing of a petition for involuntary treatment under this  
8 act.

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

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

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

24 Section 116. Continuity of Care.--(a) It shall be the  
25 responsibility of the facility administration to refer those  
26 voluntary and involuntary patients discharged from State  
27 institutional programs to the appropriate county mental health  
28 and mental retardation program.

29 (b) The county mental health and mental retardation program  
30 shall, pursuant to Article III of the "Mental Health and Mental

1 Retardation Act of 1966," receive referrals from State-operated  
2 facilities and shall be responsible for the treatment needs of  
3 county residents discharged from institutions pursuant to  
4 Articles II and III of this act.

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

17 Section 206. Withdrawal from Voluntary Inpatient  
18 Treatment.--(a) A person in voluntary inpatient treatment may  
19 withdraw at any time by giving written notice unless, as stated  
20 in section 203, he has agreed in writing at the time of his  
21 admission that his release can be delayed following such notice  
22 for a period to be specified in the agreement, provided that  
23 such period shall not exceed 72 hours. Any patient converted  
24 from involuntary treatment ordered pursuant to either section  
25 304 or 305 to voluntary treatment status shall agree to remain  
26 in treatment for 72 hours after having given written notice of  
27 his intent to withdraw from treatment.

28 (b) If the person is under the age of 14, his parent, legal  
29 guardian, or person standing in loco parentis may effect his  
30 release. If any responsible party believes that it would be in

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

14 (c) Nothing in this act shall be construed to require a  
15 facility to continue inpatient treatment where the director of  
16 the facility determines such treatment is not medically  
17 indicated. Any dispute between a facility and a county  
18 administrator as to the medical necessity for voluntary  
19 inpatient treatment of a person shall be decided by the  
20 Commissioner of Mental Health or his designate.

21 Section 301. Persons Who May be Subject to Involuntary  
22 Emergency Examination and Treatment.--\* \* \*

23 (b) Determination of Clear and Present Danger.--(1) Clear  
24 and present danger to others shall be shown by establishing that  
25 within the past 30 days the person has inflicted or attempted to  
26 inflict serious bodily harm on another and that there is a  
27 reasonable probability that such conduct will be repeated. If,  
28 however, the person has been found incompetent to be tried or  
29 has been acquitted by reason of lack of criminal responsibility  
30 on charges arising from conduct involving infliction of or

1 attempt to inflict substantial bodily harm on another, such 30-  
2 day limitation shall not apply so long as an application for  
3 examination and treatment is filed within 30 days after the date  
4 of such determination or verdict. In such case, a clear and  
5 present danger to others may be shown by establishing that the  
6 conduct charged in the criminal proceeding did occur, and that  
7 there is a reasonable probability that such conduct will be  
8 repeated. For the purpose of this section, a clear and present  
9 danger of harm to others may be demonstrated by proof that the  
10 person has made threats of harm and has committed acts in  
11 furtherance of the threat to commit harm.

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

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

22 (ii) the person has attempted suicide and that there is the  
23 reasonable probability of suicide unless adequate treatment is  
24 afforded under this act. For the purposes of this subsection, a  
25 clear and present danger may be demonstrated by the proof that  
26 the person has made threats to commit suicide and has committed  
27 acts which are in furtherance of the threat to commit suicide;  
28 or

29 (iii) the person has [severely] substantially mutilated  
30 himself or attempted to mutilate himself [severely]



1 substantially and that there is the reasonable probability of  
2 mutilation unless adequate treatment is afforded under this act.  
3 For the purposes of this subsection, a clear and present danger  
4 shall be established by proof that the person has made threats  
5 to commit mutilation and has committed acts which are in  
6 furtherance of the threat to commit mutilation.

7 Section 302. Involuntary Emergency Examination and Treatment  
8 Authorized by a Physician - Not to Exceed [Seventy-two Hours]  
9 One Hundred Twenty Hours.-- \* \* \*

10 (d) Duration of Emergency Examination and Treatment.--A  
11 person who is in treatment pursuant to this section shall be  
12 discharged whenever it is determined that he no longer is in  
13 need of treatment and in any event within [72 hours,] 120 hours,  
14 unless within such period:

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

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

19 Section 303. Extended Involuntary Emergency Treatment  
20 Certified by a Judge or Mental Health Review Officer - Not to  
21 Exceed Twenty Days.--(a) Persons Subject to Extended  
22 Involuntary Emergency Treatment.--Application for extended  
23 involuntary emergency treatment may be made for any person who  
24 is being treated pursuant to section 302 whenever the facility  
25 determines that the need for emergency treatment is likely to  
26 extend beyond [72] 120 hours. The application shall be filed  
27 forthwith in the court of common pleas, and shall state the  
28 grounds on which extended emergency treatment is believed to be  
29 necessary. The application shall state the name of any examining  
30 physician and the substance of his opinion regarding the mental

1 condition of the person.

2 \* \* \*

3 (c) Informal [Hearing] Conference on Extended Emergency  
4 Treatment Application.--(1) At the commencement of the informal  
5 [hearing] conference, the judge or the mental health review  
6 officer shall inform the person of the nature of the  
7 proceedings. Information relevant to whether the person is  
8 severely mentally disabled and in need of treatment shall be  
9 reviewed, including the reasons that continued involuntary  
10 treatment is considered necessary. Such explanation shall be  
11 made by a physician who examined the person and shall be in  
12 terms understandable to a layman. The judge or mental health  
13 review officer may review any relevant information even if it  
14 would be normally excluded under rules of evidence if he  
15 believes that such information is reliable. The person or his  
16 representative shall have the right to ask questions of the  
17 physician and of any other witnesses and to present any relevant  
18 information. At the conclusion of the review, if the judge or  
19 the review officer finds that the person is severely mentally  
20 disabled and in need of continued involuntary treatment, he  
21 shall so certify. Otherwise, he shall direct that the facility  
22 director or his designee discharge the person.

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

27 \* \* \*

28 Section 304. Court-ordered Involuntary Treatment Not to  
29 Exceed Ninety Days.--(a) Persons for Whom Application May be  
30 Made.--(1) A person who is severely mentally disabled and in

1 need of treatment, as defined in section 301(a), may be made  
2 subject to court-ordered involuntary treatment upon a  
3 determination of clear and present danger under section  
4 301(b)(1) (serious bodily harm to others), or section  
5 301(b)(2)(i) (inability to care for himself, creating a danger  
6 of death or serious harm to himself), or 301(b)(2)(ii)  
7 (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

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

16 (b) Procedures for Initiating Court-ordered Involuntary  
17 Treatment for Persons Already Subject to Involuntary  
18 Treatment.--(1) Petition for court-ordered involuntary  
19 treatment for persons already subject to treatment under  
20 sections 303, 304 and 305 may be made by the county  
21 administrator or the director of the facility to the court of  
22 common pleas.

23 (2) The petition shall be in writing upon a form adopted by  
24 the department and shall include a statement of the facts  
25 constituting reasonable grounds to believe that the person is  
26 severely mentally disabled and in need of treatment. The  
27 petition shall state the name of any examining physician and the  
28 substance of his opinion regarding the mental condition of the  
29 person. It shall also state that the person has been given the  
30 information required by subsection (b)(3). [and shall include

1 copies of all documents relating to examination and treatment of  
2 the person which are required under this act.]

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

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

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

13 (c) Procedures for Initiating Court-ordered Involuntary  
14 Treatment for Persons not in Involuntary Treatment.--(1) Any  
15 responsible party may file a petition in the court of common  
16 pleas requesting court-ordered involuntary treatment for any  
17 person not already in involuntary treatment for whom application  
18 could be made under subsection (a).

19 (2) The petition shall be in writing upon a form adopted by  
20 the department and shall set forth facts constituting reasonable  
21 grounds to believe that the person is within the criteria for  
22 court-ordered treatment set forth in subsection (a). The  
23 petition shall state the name of any examining physician and the  
24 substance of his opinion regarding the mental condition of the  
25 person.

26 (3) Upon a determination that the petition sets forth such  
27 reasonable cause, the court shall appoint an attorney to  
28 represent the person and set a date for the hearing as soon as  
29 practicable. The attorney shall represent the person unless it  
30 shall appear that he can afford, and desires to have, private

1 representation.

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

14 (5) Upon motion of either the petitioner or the person, or  
15 upon its own motion, the court may order the person to be  
16 examined by a psychiatrist appointed by the court. Such  
17 examination shall be conducted on an outpatient basis, and the  
18 person shall have the right to have counsel present. A report of  
19 the examination shall be given to the court and counsel at least  
20 48 hours prior to the hearing.

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

24 (d) Professional Assistance.--A person with respect to whom  
25 a hearing has been ordered under this section shall have and be  
26 informed of a right to employ a physician, clinical psychologist  
27 or other expert in mental health of his choice to assist him in  
28 connection with the hearing and to testify on his behalf. If the  
29 person cannot afford to engage such a professional, the court  
30 shall, on application, allow a reasonable fee for such purpose.

1 The fee shall be a charge against the mental health and mental  
2 retardation program of the locality.

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

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

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

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

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

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

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

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

25 (f) Determination and Order.--Upon a finding by clear and  
26 convincing evidence that the person is severely mentally  
27 disabled and in need of treatment and subject to subsection (a),  
28 an order shall be entered directing treatment of the person in  
29 an approved facility as an inpatient or an outpatient, or a  
30 combination of such treatment as the director of the facility

1 shall from time to time determine. Inpatient treatment shall be  
2 deemed appropriate only after full consideration has been given  
3 to less restrictive alternatives. Investigation of treatment  
4 alternatives shall include consideration of the person's  
5 relationship to his community and family, his employment  
6 possibilities, all available community resources, and  
7 guardianship services. An order for inpatient treatment shall  
8 include findings on this issue.

9 (g) Duration of Court-ordered Involuntary Treatment.--(1) A  
10 person may be made subject to court-ordered involuntary  
11 treatment under this section for a period not to exceed 90 days,  
12 excepting only that: Persons may be made subject to court-  
13 ordered involuntary treatment under this section for a period  
14 not to exceed one year if the person meets the criteria  
15 established by clause (2).

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

18 (i) severe mental disability is based on acts giving rise to  
19 the following charges under the Pennsylvania Crimes Code: murder  
20 (§ 2502); voluntary manslaughter (§ 2503); aggravated assault (§  
21 2702); kidnapping (§ 2901); rape (§ 3121(1) and (2));  
22 involuntary deviate sexual intercourse (§ 3123(1) and (2));  
23 arson (§ 3301); and

24 (ii) a finding of incompetency to be tried or a verdict of  
25 acquittal because of lack of criminal responsibility has been  
26 entered.

27 [(2)] (3) If at any time the director of a facility  
28 concludes that the person is not severely mentally disabled or  
29 in need of treatment pursuant to subsection (a), he shall  
30 discharge the person provided that no person subjected to

1 involuntary treatment pursuant to clause (2) may be discharged  
2 without a hearing conducted pursuant to clause (4).

3 (4) In cases involving involuntary treatment pursuant to  
4 clause (2), whenever the period of court-ordered involuntary  
5 treatment is about to expire and neither the director nor the  
6 county administrator intends to apply for an additional period  
7 of court-ordered involuntary treatment pursuant to section 305  
8 or at any time the director concludes that the person is not  
9 severely mentally disabled or in need of treatment, the director  
10 shall petition the court which ordered the involuntary treatment  
11 for the unconditional or conditional release of the person.

12 Notice of such petition shall be given to the person, the county  
13 administrator and the district attorney. Within 15 days after  
14 the petition has been filed, the court shall hold a hearing to  
15 determine if the person is severely mentally disabled and in  
16 need of treatment. Petitions which must be filed simply because  
17 the period of involuntary treatment will expire shall be filed  
18 at least ten days prior to the expiration of the court-ordered  
19 period of involuntary treatment. If the court determines after  
20 hearing that the person is severely mentally disabled and in  
21 need of treatment, it may order additional involuntary treatment  
22 not to exceed one year; if the court does not so determine, it  
23 shall order the discharge of the person.

24 Section 305. Additional Periods of Court-ordered Involuntary  
25 Treatment.--(a) At the expiration of a period of court-ordered  
26 involuntary treatment under section 304(g) or this section, the  
27 court may order treatment for an additional period upon the  
28 application of the county administrator or the director of the  
29 facility in which the person is receiving treatment. Such order  
30 shall be entered upon hearing on findings as required by



1 sections 304(a) and (b), and the further finding of a need for  
2 continuing involuntary treatment as shown by conduct during the  
3 person's most recent period of court-ordered treatment. The  
4 additional period of involuntary treatment shall not exceed 180  
5 days; provided that persons meeting the criteria of section  
6 304(g)(2) may be subject to an additional period of up to one  
7 year of involuntary treatment. A person found dangerous to  
8 himself under section 301(b)(2)(i),(ii) or (iii) shall be  
9 subject to an additional period of involuntary full-time  
10 inpatient treatment only if he has first been released to a less  
11 restrictive alternative. This limitation shall not apply where,  
12 upon application made by the county administrator or facility  
13 director, it is determined by a judge or mental health review  
14 officer that such release would not be in the person's best  
15 interest.

16 (b) The director of the facility in which the person is  
17 receiving treatment shall notify the county administrator at  
18 least ten days prior to the expiration of a period of  
19 involuntary commitment ordered under section 304 or this  
20 section.

21 Section 306. Transfer of Persons in Involuntary Treatment.--  
22 [Person] (a) Subject to the provisions of subsections (b) and  
23 (c), persons in involuntary treatment pursuant to this act may  
24 be transferred to the approved facility.

25 (b) In the absence of an emergency, persons committed  
26 pursuant to section 304 (g)(2) may not be transferred unless  
27 written notice is given to the committing judge and the district  
28 attorney in the committing county and no objection is noted from  
29 either within 20 days of receipt of said notice. If the court or  
30 the district attorney objects to said transfer, a hearing shall

1 be held by the court within 20 days to review the commitment  
2 order. A decision shall be rendered within 48 hours after the  
3 close of evidence.

4 (c) Whenever such transfer will constitute a greater  
5 restraint, it shall not take place unless, upon hearing, a judge  
6 or mental health review officer finds it to be necessary and  
7 appropriate.

8 Section 2. Subsection (b) of section 401 and subsections (b)  
9 and (f) of section 402 are amended to read:

10 Section 401. Examination and Treatment of a Person Charged  
11 with Crime or Serving Sentence.--\* \* \*

12 (b) Status in Voluntary and Involuntary Treatment.--Whenever  
13 a person who is detained on criminal charges or is incarcerated  
14 is made subject to inpatient examination or treatment, he shall  
15 be transferred, for this purpose, to a mental health facility.  
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. In those instances where  
26 a person is charged with offenses listed in section 304(g)(2)  
27 and where the court, after hearing, deems it desirable, security  
28 equivalent to the institution to which he is incarcerated must  
29 be provided. Upon discharge from treatment, a person who is or  
30 remains subject to a detainer or sentence shall be returned to

1 the authority entitled to have him in custody. The period of  
2 involuntary treatment shall be credited as time served on  
3 account of any sentence to be imposed on pending charges or any  
4 unexpired term of imprisonment.

5 \* \* \*

6 Section 402. Incompetence to Proceed on Criminal Charges and  
7 Lack of Criminal Responsibility as Defense.--\* \* \*

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] 60  
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 \* \* \*

20 (f) Experts.--The court may allow a psychiatrist retained by  
21 the defendant [or the prosecution] and a psychiatrist retained  
22 by the Commonwealth to witness and participate in the  
23 examination. Whenever a defendant who is financially unable to  
24 retain such expert has a substantial objection to the  
25 conclusions reached by the court-appointed psychiatrist, the  
26 court shall allow reasonable compensation for the employment of  
27 a psychiatrist of his selection, which amount shall be  
28 chargeable against the mental health and mental retardation  
29 program of the locality.

30 \* \* \*

1 Section 3. Subsections (c) and (f) of section 403 are  
2 amended and a subsection is added to read:

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

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

12 \* \* \*

13 (f) Stay of Proceedings.--In no instance, except in cases of  
14 first and second degree murder, shall the proceedings be stayed  
15 for a period in excess of the maximum sentence of confinement  
16 that may be imposed for the crime or crimes charged or [five]  
17 ten years, whichever is less. In cases of a charge of first or  
18 second degree murder, there shall be no limit on the period  
19 during which proceedings may be stayed.

20 (g) Procedure When Person Is Discharged.--If the person of  
21 the defendant is discharged pursuant to subsection (d), but the  
22 charges remain open pursuant to subsection (f), the court  
23 discharging the defendant shall, on its own motion or on the  
24 motion of the Commonwealth or on the motion of the defense,  
25 order the defendant to submit to a psychiatric examination every  
26 12 months after said discharge of the person, to determine  
27 whether the defendant has become competent to proceed to trial.  
28 If such examination reveals that the defendant has regained  
29 competency to proceed, then a hearing shall be scheduled and the  
30 court shall determine, after a full and fair hearing, whether

1 the defendant is competent to proceed. If the defendant is  
2 adjudged competent, then trial shall commence within 90 days of  
3 said adjudication. If such examination reveals that the  
4 defendant is incompetent to proceed, the court shall order the  
5 defendant to submit to a new competency examination in 12  
6 months.

7 Section 4. The act is amended by adding sections to read:

8 Section 407. Voluntary Treatment of a Person Charged with  
9 Crime or Serving Sentence.--(a) Whenever a person in criminal  
10 detention, whether in lieu of bail or serving a sentence,  
11 believes that he is in need of treatment and substantially  
12 understands the nature of voluntary treatment he may submit  
13 himself to examination and treatment under this act, provided  
14 that at least one physician certifies the necessity of such  
15 treatment and certifies further that such treatment cannot be  
16 adequately provided at the prison or correctional facility where  
17 the person then is detained. Such certificate shall set forth  
18 the specific grounds which make transfer to a mental health  
19 facility necessary. The correctional facility shall secure a  
20 written acceptance of the person for inpatient treatment from  
21 the mental health facility and shall forward such acceptance to  
22 the court.

23 (b) Before any inmate of a prison or correctional facility  
24 may be transferred to a mental health facility for the purpose  
25 of examination and treatment the district attorney shall be  
26 notified by the correctional facility and shall be given up to  
27 14 days after receipt of notification to conduct an independent  
28 examination of the defendant. The court shall review the  
29 certification of the physician that such transfer is necessary  
30 and the recommendation of the physician for the Commonwealth and

1 may request any other information concerning the necessity of  
2 such transfer. Upon the motion of the district attorney, a  
3 hearing shall be held on the question of the voluntary treatment  
4 of a person charged with a crime or serving a sentence. Upon  
5 such review the court shall either approve or disapprove the  
6 transfer.

7 (c) The court of common pleas for the judicial district in  
8 which the person is charged or was sentenced shall have  
9 jurisdiction for the purpose set forth in this section. Where  
10 possible, the sentencing judge shall preside.

11 (d) 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 (e) 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 During the pendency of any petition filed under section 304  
22 concerning a person in treatment under this section the mental  
23 health facility shall have authority to detain the person  
24 regardless of the provisions of section 203, provided that the  
25 hearing under section 304 is conducted within seven days of the  
26 time the person gives notice of his intent to withdraw from  
27 treatment.

28 (f) The period of voluntary treatment under this section  
29 shall be credited as time served on account of any sentence to  
30 be imposed on pending charges or any unexpired term of

1 imprisonment.

2 Section 408. Costs of Treatment.--The Commonwealth shall pay  
3 for the costs, payments or expenditures in excess of \$120 per  
4 day made on behalf of any person who is a resident of a county  
5 located within the Commonwealth and who receives treatment and  
6 for whom liability is imposed on the county pursuant to section  
7 505(a) of the act of October 20, 1966 (3rd Sp.Sess., P.L.96,  
8 No.6), known as the "Mental Health and Mental Retardation Act of  
9 1966." All costs up to and including \$120 per day shall be  
10 imposed upon the county of his residence. In the event that a  
11 residency cannot be determined to be in a county within the  
12 Commonwealth by the court that convicted or sentenced the  
13 person, all liability for treatment imposed by section 505(a) of  
14 the "Mental Health and Mental Retardation Act of 1966" shall be  
15 borne by the Commonwealth.

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