

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 521 Session of  
2003

INTRODUCED BY BRIGHTBILL, PICCOLA, CONTI, JUBELIRER, MUSTO,  
LEMOND, WENGER, M. WHITE, DENT, TARTAGLIONE, RAFFERTY,  
COSTA, ERICKSON, TOMLINSON, WONDERLING, MOWERY, GREENLEAF,  
RHOADES, WAUGH, ORIE, BOSCOLA, STACK, C. WILLIAMS AND  
THOMPSON, MARCH 18, 2003

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JULY 2, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for assessment  
3 and commitment of ~~sexually violent delinquent children and~~ <—  
4 ~~young adults~~. CERTAIN SEXUALLY VIOLENT PERSONS. <—

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 ~~Section 1. Title 42 of the Pennsylvania Consolidated~~ <—  
8 ~~Statutes is amended by adding a section to read:~~

9 SECTION 1. SECTION 6302 OF TITLE 42 OF THE PENNSYLVANIA <—  
10 CONSOLIDATED STATUTES IS AMENDED BY ADDING A DEFINITION TO READ:  
11 § 6302. DEFINITIONS.

12 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER  
13 SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE, THE  
14 MEANINGS GIVEN TO THEM IN THIS SECTION:

15 \* \* \*

16 "BOARD." THE STATE SEXUAL OFFENDERS ASSESSMENT BOARD.

\* \* \*

SECTION 2. SECTION 6307 OF TITLE 42 IS AMENDED BY ADDING A  
PARAGRAPH TO READ:

§ 6307. INSPECTION OF COURT FILES AND RECORDS.

ALL FILES AND RECORDS OF THE COURT IN A PROCEEDING UNDER THIS  
CHAPTER ARE OPEN TO INSPECTION ONLY BY:

\* \* \*

(6.4) THE BOARD FOR USE IN COMPLETING ASSESSMENTS.

\* \* \*

SECTION 3. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:

§ 6358. Assessment of delinquent children by the State Sexual  
Offenders Assessment Board.

(a) General rule.--A child who has been found to be  
delinquent for an act or acts of sexual violence which if  
committed by an adult would be a violation of 18 Pa.C.S. § 3121  
(relating to rape), 3123 (relating to involuntary deviate sexual  
intercourse), 3124.1 (relating to sexual assault), 3125  
(relating to aggravated indecent assault), 3126 (relating to  
indecent assault) or 4302 (relating to incest) who is committed  
to an institution or other facility pursuant to section 6352  
(relating to disposition of delinquent child) and who remains in  
such facility upon attaining 20 years of age shall be subject to  
an assessment by the State Sexual Offenders Assessment Board  
BOARD.

(b) Duty of probation officer.--Ninety days prior to the  
20th birthday of the child, the probation officer shall have the  
duty to notify the State Sexual Offenders Assessment Board BOARD  
of the status of the delinquent child and the institution or  
other facility where the child is presently committed. The  
probation officer shall assist the board in obtaining access to

1 the child and any information required by the board to perform  
2 the assessment.

3 ~~(c) Report. The State Sexual Offenders Assessment Board~~ <—  
4 (B.1) NOTIFICATION TO BOARD.--THE PROBATION OFFICER SHALL, <—  
5 WITHIN FIVE DAYS OF THE EFFECTIVE DATE OF THIS SUBSECTION,  
6 NOTIFY THE BOARD OF ANY CHILD WHOSE AGE PRECLUDES COMPLIANCE  
7 WITH SUBSECTION (B) PROVIDED THE CHILD HAS NOT YET ATTAINED 21  
8 YEARS OF AGE.

9 (C) ASSESSMENT.--THE BOARD shall conduct an assessment,  
10 which shall include the board's determination of whether or not  
11 the child is in need of commitment FOR INVOLUNTARY TREATMENT due <—  
12 to a mental abnormality, as defined in § 6402 (relating to  
13 definitions), or a personality disorder which results in serious  
14 difficulty in controlling sexually violent behavior. Upon the  
15 completion of the assessment pursuant to this section, the State <—  
16 ~~Sexual Offenders Assessment Board~~ BOARD shall provide the <—  
17 assessment to the court. In no case shall the board file the  
18 ~~report~~ ASSESSMENT later than 90 days after the offender's <—  
19 CHILD'S 20th birthday UNLESS NOTIFICATION OF THE BOARD WAS <—  
20 DELAYED UNDER SUBSECTION (B.1), IN WHICH CASE THE ASSESSMENT  
21 SHALL BE FILED NO LATER THAN 180 DAYS AFTER THE CHILD'S 20TH  
22 BIRTHDAY.

23 (d) Duty of court.--The court shall provide a copy of the  
24 assessment by the State Sexual Offenders Assessment Board <—  
25 to the probation officer, the district attorney, county  
26 solicitor OR DESIGNEE and the child's attorney. <—

27 (e) Dispositional review hearing.--Where the board has  
28 concluded that the child is in need of commitment INVOLUNTARY <—  
29 TREATMENT pursuant to the provisions of Chapter 64 (relating to  
30 commitment of sexually violent delinquent children and young <—

1 ~~adults~~ COURT-ORDERED INVOLUNTARY TREATMENT OF CERTAIN SEXUALLY <—  
2 VIOLENT PERSONS), the court shall conduct a hearing at which the  
3 county solicitor or ~~deputy county solicitor~~ A DESIGNEE, the <—  
4 probation officer and the child's attorney are present. The  
5 court shall consider the assessment, treatment information and  
6 any other relevant information regarding the delinquent child at  
7 the dispositional review hearing pursuant to section 6353  
8 (relating to limitation on and change in place of commitment),  
9 which shall be held no later than 180 days before the 21st  
10 birthday of the child. WHERE THE SUBMISSION OF THE REPORT WAS <—  
11 DELAYED PURSUANT TO SUBSECTION (C), THE DISPOSITIONAL REVIEW  
12 HEARING SHALL BE HELD NO LATER THAN 90 DAYS BEFORE THE 21ST  
13 BIRTHDAY OF THE CHILD.

14 (f) Subsequent proceeding.--If, at the conclusion of the  
15 dispositional review hearing required in subsection (e), the  
16 court finds there is a prima facie case that the child is  
17 ~~subject to commitment~~ IN NEED OF INVOLUNTARY TREATMENT under the <—  
18 provisions of Chapter 64, the court shall direct that the county  
19 solicitor OR A DESIGNEE file a petition to initiate proceedings <—  
20 under the provisions of that chapter.

21 Section 2 4. Title 42 is amended by adding a chapter to <—  
22 read:

23 CHAPTER 64  
24 ~~COMMITMENT OF SEXUALLY VIOLENT DELINQUENT CHILDREN AND YOUNG <—~~  
25 ADULTS  
26 COURT-ORDERED INVOLUNTARY TREATMENT OF CERTAIN SEXUALLY <—  
27 VIOLENT PERSONS

28 Sec.

29 6401. Scope of chapter.

30 6402. Definitions.

1 6403. Court-ordered involuntary ~~commitment~~ TREATMENT. <—

2 6404. Duration of commitment and review.

3 6405. Right to counsel.

4 6406. Duty of Department of Public Welfare.

5 6407. Regulations.

6 6408. Jurisdiction.

7 6409. IMMUNITY FOR GOOD FAITH CONDUCT. <—

8 § 6401. Scope of chapter.

9 This chapter establishes rights and procedures for the civil  
10 commitment of sexually violent delinquent children ~~and young~~ <—

11 ~~adults~~ who due to a mental abnormality or personality disorder  
12 have serious difficulty in controlling sexually violent behavior  
13 and thereby pose a danger to the public AND FURTHER PROVIDES FOR <—  
14 ADDITIONAL PERIODS OF COMMITMENT FOR INVOLUNTARY TREATMENT FOR  
15 SAID PERSONS.

16 § 6402. Definitions.

17 The following words and phrases when used in this chapter  
18 shall have the meanings given to them in this section unless the  
19 context clearly indicates otherwise:

20 "BOARD." THE BOARD AS DEFINED IN SECTION 6302 (RELATING TO <—  
21 DEFINITIONS).

22 "COUNTY SOLICITOR." THE SOLICITOR APPOINTED BY THE COUNTY  
23 COMMISSIONERS OR A SIMILAR BODY IN HOME RULE COUNTIES.

24 "Department." The Department of Public Welfare of the  
25 Commonwealth.

26 "Mental abnormality." A congenital or acquired condition of  
27 a person affecting the emotional or volitional capacity which  
28 predisposes the person to commit sexually violent offenses to a  
29 degree making the person a menace to the health and safety of  
30 others.

1 "Sexually violent delinquent child ~~or young adult~~." A person <—  
2 who has been found delinquent for an act or acts of sexual  
3 violence which if committed by an adult would be a violation of  
4 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to  
5 involuntary deviate sexual intercourse), 3124.1 (relating to  
6 sexual assault), 3125 (relating to aggravated indecent assault),  
7 3126 (relating to indecent assault) or 4302 (relating to incest)  
8 and who has been determined to be in need of commitment FOR <—  
9 INVOLUNTARY TREATMENT under this chapter.

10 § 6403. Court-ordered involuntary ~~commitment~~ TREATMENT. <—

11 (a) Persons subject to ~~commitment~~ INVOLUNTARY TREATMENT.--A <—  
12 person may be subject to court-ordered ~~involuntary commitment~~ <—  
13 COMMITMENT FOR INVOLUNTARY TREATMENT under this chapter if the <—  
14 person:

15 (1) Has been adjudicated delinquent for an act or acts  
16 of sexual violence which if committed by an adult would be a  
17 violation of 18 Pa.C.S. § 3121 (relating to rape), 3123  
18 (relating to involuntary deviate sexual intercourse), 3124.1  
19 (relating to sexual assault), 3125 (relating to aggravated  
20 indecent assault), 3126 (relating to indecent assault) or  
21 4302 (relating to incest).

22 (2) Has been committed to an institution or other  
23 facility pursuant to section 6352 (relating to disposition of  
24 delinquent child) and remains in the institution or other  
25 facility upon attaining 20 years of age.

26 (3) Is in need of ~~commitment~~ INVOLUNTARY TREATMENT due <—  
27 to a mental abnormality or personality disorder which results  
28 in serious difficulty in controlling sexually violent  
29 behavior.

30 (b) Procedures for initiating court-ordered involuntary

1 commitment.--

2 (1) Where, pursuant to the provisions of section 6358(f)  
3 (relating to assessment of delinquent children by the State  
4 Sexual Offenders Assessment Board), the court determines that  
5 a prima facie case has been presented that the child is  
6 ~~subject to commitment~~ IN NEED OF INVOLUNTARY TREATMENT under <—  
7 the provisions of this chapter, the court shall order that a  
8 petition be filed by the county solicitor before the court  
9 having jurisdiction of the person pursuant to Chapter 63  
10 (relating to juvenile matters).

11 (2) The petition shall be in writing in a form adopted  
12 by the department and shall set forth the facts constituting  
13 reasonable grounds to believe the individual is within the  
14 criteria for court-ordered ~~commitment~~ INVOLUNTARY TREATMENT <—  
15 as set forth in subsection (a). The petition shall include  
16 the assessment of the person by the ~~State Sexual Offenders~~ <—  
17 ~~Assessment Board~~ BOARD as required in section 6358. <—

18 (3) The court shall set a date for the hearing which  
19 shall be held within 30 days of the filing of the petition  
20 pursuant to paragraph (1) and direct the person to appear for  
21 the hearing. A copy of the petition and notice of the hearing  
22 date shall be served on the person, the attorney who  
23 represented the person at the most recent dispositional  
24 review hearing pursuant to section 6358(e), and the county  
25 solicitor OR A DESIGNEE. The person and the attorney who <—  
26 represented the person shall, along with copies of the  
27 petition, also be provided with written notice advising that  
28 the person has the right to counsel and that, if he cannot  
29 afford one, counsel shall be appointed for the person.

30 (4) The person shall be informed that the person has a

1 right to be assisted in the proceedings by an independent  
2 expert in the field of sexually violent behavior. If the  
3 person cannot afford to engage such an expert, the court  
4 shall allow a reasonable fee for such purpose.

5 (c) Hearing.--A hearing pursuant to this chapter shall be  
6 conducted as follows:

7 (1) The person shall not be called as a witness without  
8 the person's consent.

9 (2) The person shall have the right to confront and  
10 cross-examine all witnesses and to present evidence on the  
11 person's own behalf.

12 (3) The hearing shall be public.

13 (4) A stenographic or other sufficient record shall be  
14 made.

15 (5) The hearing shall be conducted by the court.

16 (6) A decision shall be rendered within five days after  
17 the conclusion of the hearing.

18 (d) Determination and order.--Upon a finding by clear and  
19 convincing evidence that the person has a mental abnormality or  
20 personality disorder which results in serious difficulty in  
21 controlling sexually violent behavior, an order shall be entered  
22 directing ~~commitment of the person to an institution~~ THE <—  
23 IMMEDIATE COMMITMENT OF THE PERSON FOR INPATIENT INVOLUNTARY  
24 TREATMENT TO A FACILITY designated by the department. The order  
25 shall be in writing and shall be consistent with the protection  
26 of the public safety and the appropriate control, care and  
27 treatment of the person. AN APPEAL SHALL NOT STAY THE EXECUTION <—  
28 OF THE ORDER.

29 § 6404. Duration of commitment and review.

30 (a) Initial period of commitment.--The person shall be

1 subject to a period of commitment FOR INPATIENT TREATMENT for <—  
2 one year.

3 (b) Annual review.--

4 (1) Sixty days prior to the expiration of the one-year  
5 commitment period, the ~~department and the State Sexual~~ <—  
6 ~~Offenders Assessment Board shall each submit an evaluation of~~  
7 DIRECTOR OF THE FACILITY OR A DESIGNEE SHALL SUBMIT AN <—  
8 EVALUATION AND THE BOARD SHALL SUBMIT AN ASSESSMENT OF the  
9 person to the court.

10 (2) The court shall schedule a review hearing which  
11 shall be conducted pursuant to section 6403(c) (relating to  
12 court-ordered involuntary ~~commitment~~ TREATMENT) and which <—  
13 shall be held no later than 30 days after receipt of the <—  
14 ~~evaluations~~ BOTH THE EVALUATION AND THE ASSESSMENT under <—  
15 paragraph (1). Notice of the review hearing shall be provided  
16 to the person, the attorney who represented the person at the  
17 previous hearing held pursuant to this subsection or section  
18 6403, the ~~juvenile probation office, the county administrator~~ <—  
19 ~~and the county~~ DISTRICT ATTORNEY AND THE COUNTY solicitor OR <—  
20 A DESIGNEE. The person and the person's attorney shall also  
21 be provided with written notice advising that the person has  
22 the right to counsel and that, if he cannot afford one,  
23 counsel shall be appointed for the person. If the court  
24 determines by clear and convincing evidence that the person  
25 continues to have serious difficulty controlling sexually  
26 violent behavior due to a mental abnormality or personality  
27 disorder, the court ~~may~~ SHALL order an additional period of <—  
28 ~~commitment~~ INVOLUNTARY TREATMENT of one year, OTHERWISE THE <—  
29 COURT SHALL ORDER THE DISCHARGE OF THE PERSON. The order  
30 shall be in writing and shall be consistent with the

1 protection of the public safety and appropriate control, care  
2 and treatment of the person.

3 (c) Discharge.--

4 (1) If at any time the director OR A DESIGNEE of the <—  
5 facility to which the person was committed ~~and the State~~ <—  
6 ~~Sexual Offenders Assessment Board conclude~~ CONCLUDES the <—  
7 person no longer has serious difficulty in controlling  
8 sexually violent behavior, the director shall petition the  
9 court for a hearing. Notice of the petition shall be given to  
10 the person, the attorney who represented the person at the  
11 previous hearing held pursuant to subsection (b) or section  
12 6403, the ~~county administrator and the~~ BOARD, THE DISTRICT <—  
13 ATTORNEY AND THE county solicitor. The person and the  
14 person's attorney shall also be provided with written notice  
15 advising that the person has the right to counsel and that,  
16 if he cannot afford one, counsel shall be appointed for the  
17 person.

18 (2) UPON RECEIPT OF NOTICE UNDER PARAGRAPH (1), THE <—  
19 BOARD SHALL CONDUCT A NEW ASSESSMENT WITHIN 30 DAYS AND  
20 PROVIDE THAT ASSESSMENT TO THE COURT.

21 ~~(2)~~ (3) Within 15 days after the petition has been <—  
22 filed, the court shall hold a hearing pursuant to section  
23 6403(c). If the court determines the person no longer has  
24 serious difficulty controlling sexually violent behavior, the  
25 court shall order the discharge of the person. If the court  
26 denies the petition, the person shall be subject to the  
27 remainder of the ~~original~~ period of commitment. <—

28 ~~(3)~~ (4) The department shall provide the person with <—  
29 notice of the person's right to petition the court for  
30 discharge over the objection of the department. The court,

after review of the petition, may schedule a hearing pursuant to section 6403(c).

~~(d) Limitation of total period of commitment. In no case shall a person subject to additional one year commitment periods be confined for more than ten years.~~

§ 6405. Right to counsel.

At each proceeding conducted pursuant to the provisions of this chapter, the person who is the subject of the proceeding shall have the right to assistance of counsel.

§ 6406. Duty of Department of Public Welfare.

(A) GENERAL RULE.--The department shall have the duty to provide a SEPARATE, secure facility OR UNIT UTILIZED solely for the SEGREGATION, control, care and treatment in consultation with the Juvenile Court Judges' Commission and the ~~State Sexual Offenders Assessment Board~~ BOARD of persons committed pursuant to this chapter. THE DEPARTMENT SHALL BE RESPONSIBLE FOR ALL COSTS RELATING TO THE CONTROL, CARE AND TREATMENT OF PERSONS COMMITTED TO CUSTODY PURSUANT TO THIS CHAPTER.

(B) ADJUDICATED DELINQUENT CHILDREN.--A STATE-OWNED FACILITY OR UNIT WHICH RECEIVES CHILDREN WHO ARE ADJUDICATED DELINQUENT AND COMMITTED UNDER CHAPTER 63 (RELATING TO JUVENILE MATTERS) MAY RECEIVE INDIVIDUALS COMMITTED UNDER THIS CHAPTER AS LONG AS THESE INDIVIDUALS ARE SEGREGATED AT ALL TIMES FROM CHILDREN COMMITTED UNDER CHAPTER 63. THIS SUBSECTION SHALL EXPIRE JULY 1, 2006.

§ 6407. Regulations.

(A) GENERAL RULE.--The department shall adopt in consultation with the Juvenile Court Judges' Commission and the ~~State Sexual Offenders Assessment Board~~ BOARD such regulations as are necessary to effectuate the provisions of this chapter.

1 (B) PROFESSIONAL CLINICAL GUIDELINES.--THE DEPARTMENT, IN <—  
2 CONSULTATION WITH THE JUVENILE COURT JUDGES COMMISSION AND THE  
3 BOARD, SHALL DEVELOP PROFESSIONAL CLINICAL GUIDELINES CONSISTENT  
4 WITH STANDARDS FOR THE TREATMENT AND MANAGEMENT OF PERSONS  
5 SUBJECT TO THIS CHAPTER THAT SHALL INCLUDE INDIVIDUALIZED  
6 DISCHARGE PLANS.

7 § 6408. Jurisdiction.

8 The court of common pleas for the county which entered the  
9 order for commitment of the person for a delinquent act pursuant  
10 to Chapter 63 (relating to juvenile matters) shall have  
11 jurisdiction for proceedings under this chapter including  
12 subsequent proceedings.

13 § 6409. IMMUNITY FOR GOOD FAITH CONDUCT. <—

14 THE FOLLOWING ENTITIES SHALL BE IMMUNE FROM LIABILITY FOR  
15 GOOD FAITH CONDUCT UNDER THIS SUBCHAPTER:

16 (1) MEMBERS OF THE BOARD AND ITS AGENTS AND EMPLOYEES.

17 (2) THE DEPARTMENT AND ITS AGENTS AND EMPLOYEES.

18 (3) COUNTY PROBATION DEPARTMENTS AND THEIR AGENTS AND  
19 EMPLOYEES.

20 ~~Section 3. Section 9795.4 of Title 42 is amended by adding~~ <—

21 SECTION 5. SECTION 9795.4(C) OF TITLE 42 IS AMENDED AND THE <—  
22 SECTION IS AMENDED BY ADDING a subsection to read:

23 § 9795.4. Assessments.

24 \* \* \*

25 (C) RELEASE OF INFORMATION.--ALL STATE, COUNTY, INCLUDING <—  
26 JUVENILE PROBATION OFFICES AND LOCAL AGENCIES, OFFICES OR  
27 ENTITIES IN THIS COMMONWEALTH SHALL COOPERATE BY PROVIDING  
28 COPIES OF RECORDS AND INFORMATION AS REQUESTED BY THE BOARD IN  
29 CONNECTION WITH THE COURT-ORDERED ASSESSMENT AND THE ASSESSMENT  
30 REQUESTED BY THE PENNSYLVANIA BOARD OF PROBATION AND PAROLE.

1       \* \* \*

2       ~~(h) Delinquent children or young adults. The probation~~ <—  
3 ~~officer shall notify the board~~

4       (H) DELINQUENT CHILDREN.--EXCEPT WHERE SECTION 6358(B.1) <—

5 (RELATING TO ASSESSMENT OF DELINQUENT CHILDREN BY THE STATE  
6 SEXUAL OFFENDERS ASSESSMENT BOARD) IS APPLICABLE, THE PROBATION  
7 OFFICER SHALL NOTIFY THE BOARD 90 days prior to the 20th  
8 birthday of the child of the status of the delinquent child who  
9 is committed to an institution or other facility pursuant to  
10 section 6352 (relating to disposition of delinquent child) after  
11 having been found delinquent for an act or acts of sexual  
12 violence which if committed by an adult would be a violation of  
13 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to  
14 involuntary deviate sexual intercourse), 3124.1 (relating to  
15 sexual assault), 3125 (relating to aggravated indecent assault),  
16 3126 (relating to indecent assault) or 4302 (relating to incest)  
17 together with the location of the facility where the child is  
18 committed. The board shall conduct an assessment of the child,  
19 which shall include the board's determination of whether or not  
20 the child is in need of commitment due to a mental abnormality,  
21 as defined in § 6402 (relating to definitions), or a personality  
22 disorder which results in serious difficulty in controlling  
23 sexually violent behavior, and provide a report to the court  
24 ~~within 90 days after receiving notice of~~ NO LATER THAN 90 DAYS <—  
25 AFTER the child's 20th birthday. The probation officer shall  
26 assist the board in obtaining access to the child and any  
27 records or information as requested by the board in connection  
28 with the assessment. The assessment shall be conducted pursuant  
29 to subsection (b).

30       Section 4 6. This act shall take effect in 180 days. <—