
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 391 Session of
2017

INTRODUCED BY COSTA, FONTANA, RAFFERTY, YUDICHAK, BOSCOLA,
MENSCH, BREWSTER AND VULAKOVICH, FEBRUARY 28, 2017

REFERRED TO JUDICIARY, FEBRUARY 28, 2017

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," in general provisions, further providing for
7 statement of policy and for mental health review officer; and
8 adding provisions relating to involuntary examination and
9 treatment of alcohol and other drug abuse.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Sections 102 and 109 of the act of July 9, 1976
13 (P.L.817, No.143), known as the Mental Health Procedures Act,
14 are amended to read:

15 Section 102. Statement of Policy.--It is the policy of the
16 Commonwealth of Pennsylvania to seek to assure the availability
17 of adequate treatment to persons who are mentally ill, and it is
18 the purpose of this act to establish procedures whereby this
19 policy can be effected. The provisions of this act shall be
20 interpreted in conformity with the principles of due process to
21 make voluntary and involuntary treatment available where the

1 need is great and its absence could result in serious harm to
2 the mentally ill person or to others. Treatment on a voluntary
3 basis shall be preferred to involuntary treatment; and in every
4 case, the least restrictions consistent with adequate treatment
5 shall be employed. Persons who are mentally retarded, senile,
6 alcoholic, or drug dependent shall receive mental health
7 treatment only if they are also diagnosed as mentally ill, but
8 these conditions of themselves shall not be deemed to constitute
9 mental illness: Provided, however, That nothing in this act
10 shall prohibit underutilized State facilities for the mentally
11 ill to be made available for the treatment of alcohol abuse or
12 drug addiction pursuant to the act of April 14, 1972 (P.L.221,
13 No.63), known as the "Pennsylvania Drug and Alcohol Abuse
14 Control Act." However, if such persons suffer from alcohol and
15 other drug abuse, they shall be subject to the provisions of
16 Article III-A. Chronically disabled persons 70 years of age or
17 older who have been continuously hospitalized in a State
18 operated facility for at least ten years shall not be subject to
19 the procedures of this act. Such a person's inability to give a
20 rational, informed consent shall not prohibit the department
21 from continuing to provide all necessary treatment to such a
22 person. However, if such a person protests treatment or
23 residence at a State operated facility he shall be subject to
24 the provisions of Article III.

25 Section 109. Mental Health Review Officer.--(a) Legal
26 proceedings concerning extended involuntary emergency treatment
27 under section 303(c), court-ordered involuntary treatment under
28 section 304 or 305 or transfer hearings under section 306[,] or
29 court-ordered involuntary treatment under Article III-A may be
30 conducted by a judge of the court of common pleas or by a mental

1 health review officer authorized by the court to conduct the
2 proceedings.

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

14 (c) [Notwithstanding any other provision of this act] Except
15 as provided under Article III-A, no judge or mental health
16 review officer shall specify to the treatment team the adoption
17 of any treatment technique, modality, or drug therapy.

18 (d) Notwithstanding any statute to the contrary, judges of
19 the courts of common pleas, mental health review officers and
20 county mental health and mental retardation administrators shall
21 notify the Pennsylvania State Police on a form developed by the
22 Pennsylvania State Police of the identity of any individual who
23 has been adjudicated incompetent or who has been involuntarily
24 committed to a mental institution for inpatient care and
25 treatment under this act or who has been involuntarily treated
26 as described under 18 [Pa.C.S.] Pa.C.S. § 6105(c)(4) (relating to
27 persons not to possess, use, manufacture, control, sell or
28 transfer firearms). The notification shall be transmitted by the
29 judge, mental health review officer or county mental health and
30 mental retardation administrator within seven days of the

1 adjudication, commitment or treatment. Notwithstanding any
2 statute to the contrary, county mental health and mental
3 retardation administrators shall notify the Pennsylvania State
4 Police on a form developed by the Pennsylvania State Police of
5 the identity of any individual who before the effective date of
6 this act had been adjudicated incompetent or had been
7 involuntarily committed to a mental institution for inpatient
8 care treatment under this act or had been involuntarily treated
9 as described in 18 Pa.C.S. § 6105(c)(4).

10 Section 2. The act is amended by adding an article to read:

11 ARTICLE III-A

12 INVOLUNTARY EXAMINATION AND TREATMENT

13 OF ALCOHOL AND OTHER DRUG ABUSE

14 Section 301-A. Definitions.

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

18 "Alcohol and other drug abuse." Alcoholism or drug
19 addiction.

20 "Another drug." A controlled substance as defined in section
21 2 of the act of April 14, 1972 (P.L.233, No.64), known as The
22 Controlled Substance, Drug, Device and Cosmetic Act.

23 "Danger" or "threat of danger to self, family or others."
24 Substantial physical harm or threat of substantial physical harm
25 upon self, family or others.

26 "Hospital." A facility licensed as a hospital under 28 Pa.
27 Code Pt. IV Subpt. B (relating to general and special
28 hospitals). The term does not include either a hospital operated
29 by the Department of Health and Department of Drug and Alcohol
30 Programs or an inpatient unit licensed by the Department of

1 Health and Department of Drug and Alcohol Programs.

2 "Intoxicated." Being under the influence of alcohol, another
3 drug or both alcohol and another drug and, as a result, having a
4 significantly impaired ability to function.

5 "Petition." A petition filed under this article.

6 "Petitioner." An individual who institutes a proceeding
7 under this article.

8 "Qualified health professional." An individual who is
9 properly credentialed or licensed to conduct a drug and alcohol
10 assessment and diagnosis under the laws of this Commonwealth.

11 "Residence." The legal residence of an individual as
12 determined by applicable principles governing conflicts of law.

13 "Respondent." An individual who is alleged in a petition
14 filed or hearing under this article to be suffering from alcohol
15 and other drug abuse and who may be ordered to undergo
16 treatment.

17 "Treatment." Services and programs for the care and
18 rehabilitation of intoxicated individuals and individuals
19 suffering from alcohol and other drug abuse. The term includes
20 residential treatment, a halfway house setting and an intensive
21 outpatient or outpatient level of care.

22 Section 302-A. Authorization.

23 A court of common pleas may order involuntary treatment for
24 an individual suffering from alcohol and other drug abuse
25 pursuant to the procedures stated in this article.

26 Section 303-A. Persons who may be subject to involuntary
27 examination and treatment of alcohol and other drug
28 abuse.

29 No individual may be ordered to undergo treatment under this
30 article unless all of the following apply:

1 (1) The individual suffers from alcohol and other drug
2 abuse.

3 (2) The individual presents an imminent danger or
4 imminent threat of danger to self, family or others as a
5 result of alcohol and other drug abuse or there exists a
6 substantial likelihood of such a threat in the near future.

7 (3) The individual can reasonably benefit from
8 treatment.

9 Section 304-A. Initiation of proceedings and petition.

10 (a) General rule.--An individual may initiate proceedings
11 for treatment for an individual suffering from alcohol and other
12 drug abuse by filing a petition with the county administrator
13 for an examination. A spouse, relative or guardian of the
14 respondent must file the petition.

15 (b) Contents of petition.--The petition shall state the
16 following:

17 (1) The petitioner's relationship to the respondent.

18 (2) The respondent's name, residence and current
19 location, if known.

20 (3) The name and residence of the respondent's parents,
21 living and known, or of the respondent's legal guardian, if
22 any and known.

23 (4) The name and residence of the respondent's spouse,
24 if any and if known.

25 (5) The name and residence of the individual having
26 custody of the respondent, if any, or, if no such individual
27 is known, the name and residence of a near relative or a
28 statement that the individual is unknown.

29 (6) The petitioner's belief, including the factual basis
30 for the belief, that the respondent is suffering from alcohol

1 and other drug abuse and presents an imminent danger or
2 imminent threat of danger to self, family or others, or that
3 there exists a substantial likelihood of such a threat in the
4 near future, if the respondent is not treated for alcohol or
5 other drug abuse.

6 (c) Certificate and statement.--The following shall apply:

7 (1) A petition shall be accompanied by a certificate of
8 a physician who has examined the respondent within two days
9 prior to the day that the petition is filed with the county
10 administrator. The physician must be authorized to practice
11 medicine and surgery or osteopathic medicine and surgery
12 under the act of December 20, 1985 (P.L.457, No.112), known
13 as the Medical Practice Act of 1985, or the act of October 5,
14 1978 (P.L.1109, No.261), known as the Osteopathic Medical
15 Practice Act. The physician's certificate shall state:

16 (i) The physician's findings in support of the need
17 to treat the respondent for alcohol and other drug abuse.

18 (ii) If the respondent presents an imminent danger
19 or imminent threat of danger to self, family or others if
20 not treated.

21 (iii) The type and length of treatment required and
22 if the respondent can reasonably benefit from treatment.

23 (iv) If the physician's certificate indicates that
24 inpatient treatment is required.

25 (v) Any inpatient facilities known to the physician
26 that are able and willing to provide the recommended
27 inpatient treatment.

28 (2) If the respondent refuses to undergo an examination
29 with a physician concerning the respondent's possible need
30 for treatment for alcohol or other drug abuse, the petition

1 shall state that the respondent has refused all requests made
2 by the petitioner to undergo a physician's examination. In
3 that case, the petitioner shall not be required to provide a
4 physician's certificate with the petition.

5 (3) The petition shall contain:

6 (i) A statement that the petitioner has arranged for
7 treatment of the respondent.

8 (ii) A statement from the individual or facility
9 that has agreed to provide the treatment that verifies
10 that the individual or facility has agreed to provide the
11 treatment and the estimated cost of the treatment.

12 (d) Deposit and guarantee.--A petition shall be accompanied
13 by both of the following:

14 (1) A security deposit to be deposited with the clerk of
15 the court of common pleas of which the respondent is a
16 resident that will cover half of the estimated cost of
17 treatment of the respondent.

18 (2) A guarantee, signed by the petitioner or another
19 individual authorized to file the petition obligating the
20 guarantor to pay the costs of:

21 (i) The examinations of the respondent conducted by
22 the physician and qualified health professional under
23 subsection (c).

24 (ii) The respondent that is associated with a
25 hearing conducted in accordance with section 305-A and
26 that the judge or mental health review officer determines
27 to be appropriate.

28 (iii) Treatment ordered by the judge or mental
29 health review officer.

30 Section 305-A. Warrant and notifications.

1 (a) General rule.--Upon petition by an individual under
2 section 304-A(a) stating facts constituting probable cause to
3 believe a person is suffering from alcohol and other drug abuse
4 and may reasonably benefit from treatment, the county
5 administrator may issue a warrant requiring a person authorized
6 by the county administrator, or a peace officer, to take the
7 person to the facility specified in the warrant no earlier than
8 two hours prior to a hearing conducted pursuant to section 305-
9 A, provided the respondent does not agree to appear voluntarily.

10 (b) Notifications and examination.--Upon issuance of a
11 warrant, the county court of common pleas or mental health
12 review officer authorized to conduct a hearing under section
13 306-A shall:

14 (1) Schedule the hearing within seven days after the
15 warrant is issued.

16 (2) Notify the respondent, the legal guardian, if any
17 and known, and the spouse, parents or nearest relative or
18 friend of the respondent concerning the allegations and
19 contents of the petition and of the date and purpose of the
20 hearing.

21 (3) Notify the respondent that the respondent may retain
22 counsel and that, if the respondent is unable to obtain an
23 attorney, the respondent may be represented by court-
24 appointed counsel at public expense if the respondent is
25 indigent. Upon the appointment of an attorney to represent an
26 indigent respondent, the court or mental health review
27 officer shall notify the respondent of the name, address and
28 telephone number of the attorney appointed to represent the
29 respondent.

30 (4) Notify the respondent that the court or mental

1 health review officer shall cause the respondent to be
2 examined not later than 24 hours before the hearing date by a
3 physician for the purpose of a physical examination and by a
4 qualified health professional for the purpose of a drug and
5 alcohol addiction assessment and diagnosis. The court or
6 mental health review officer shall notify the respondent that
7 the respondent may have an independent expert evaluation of
8 the individual's physical and mental condition conducted at
9 the respondent's own expense.

10 (5) Cause the respondent to be examined not later than
11 24 hours before the hearing date by a physician for the
12 purpose of a physical examination and by a qualified health
13 professional for the purpose of a drug and alcohol addiction
14 assessment and diagnosis.

15 (c) Findings.--The physician and qualified health
16 professional who examine the respondent pursuant to subsection
17 (b) or who are obtained by the respondent at the respondent's
18 own expense shall certify the findings of the examination to the
19 judge or mental health review officer within 24 hours of the
20 examinations. The findings of each qualified health professional
21 shall include a recommendation for treatment, if the qualified
22 health professional determines that treatment is necessary.

23 Section 306-A. Hearing and disposition.

24 (a) Persons who may conduct the hearing.--Within seven days
25 after the warrant is issued, a hearing shall be conducted by a
26 judge of the court of common pleas or a mental health review
27 officer and, if practicable, shall be held at the facility
28 specified in the warrant.

29 (b) Appointment of counsel and scheduling of hearing.--Upon
30 receiving the respondent for purposes of a hearing, the judge or

1 mental health review officer shall appoint an attorney to
2 represent the respondent unless it appears that the respondent
3 can afford and desires to be privately represented.

4 (c) Hearing on petition.--

5 (1) (i) At the commencement of the hearing, the judge
6 or the mental health review officer shall inform the
7 respondent of the nature of the proceedings. Information
8 relevant to whether the respondent is suffering from
9 alcohol and other drug abuse and in need of treatment
10 shall be reviewed, including the reasons that involuntary
11 treatment is considered necessary. The information shall
12 be provided by a physician who examined the respondent
13 and shall be presented in terms understandable to a
14 layperson.

15 (ii) The judge or mental health review officer may
16 review any relevant information even if it would be
17 normally excluded under rules of evidence if the judge or
18 mental health review officer believes that the
19 information is reliable.

20 (iii) The respondent or the respondent's
21 representative shall have the right to ask questions of
22 the physician and of any other witnesses and to present
23 any relevant information.

24 (2) A record of the proceedings, which need not be a
25 stenographic record, shall be made. The record shall be kept
26 by the court or mental health review officer for at least one
27 year.

28 (3) (i) Upon a finding by clear and convincing evidence
29 that the respondent is suffering from alcohol and drug
30 abuse and may reasonably benefit from treatment, an order

1 shall be entered directing treatment of the respondent in
2 an approved facility as an inpatient or an outpatient, or
3 a combination of such treatment, for a duration as
4 determined by the judge or mental health review officer
5 after considering the recommendations of the qualified
6 health professionals submitted under subsection 305-A(c).

7 (ii) Inpatient treatment shall be deemed appropriate
8 only after full consideration has been given to less
9 restrictive alternatives.

10 (iii) Investigation of treatment alternatives shall
11 include consideration of the respondent's relationship to
12 the respondent's community and family, the respondent's
13 employment possibilities, all available community
14 resources, and guardianship services. An order for
15 inpatient treatment shall include findings on those
16 considerations.

17 (4) If the judge or mental health review officer directs
18 the treatment, the judge or mental health review officer
19 shall direct the treatment to be provided by a certified
20 addiction counselor, an individual licensed or certified
21 under the act of December 20, 1985 (P.L.457, No.112), known
22 as the Medical Practice Act of 1985, or an individual
23 licensed or certified under the act of July 9, 1987 (P.L.220,
24 No.39), known as the Social Workers, Marriage and Family
25 Therapists and Professional Counselors Act, or a similar
26 board of another state authorized to provide alcohol and
27 other drug abuse treatment.

28 (5) (i) Failure of a respondent to undergo and complete
29 treatment required by the order is contempt of court.

30 (ii) An alcohol and drug addiction program or

1 individual providing treatment under this article shall
2 notify the court or mental health review officer of a
3 respondent's failure to undergo or complete treatment.

4 (6) If, at any time after a petition is filed, the judge
5 or mental health review officer finds no probable cause to
6 continue treatment or if the petitioner withdraws the
7 petition, then the court or mental health review officer
8 shall dismiss the proceedings against the respondent.

9 (d) Contents of order.--An order for involuntary treatment
10 shall be made in writing on a form adopted by the Department of
11 Health and shall include:

12 (1) Findings by the judge or mental health review
13 officer as to the reasons that involuntary treatment is
14 necessary.

15 (2) A description of the treatment to be provided
16 together with an explanation of the adequacy and
17 appropriateness of the treatment, based upon the information
18 received at the hearing.

19 (3) The petition and any documents required by the
20 provisions of this article.

21 (4) A statement that the respondent is represented by
22 counsel.

23 (5) An explanation of the effect of the certification,
24 the respondent's right to petition the court for release
25 under subsection (g) and the continuing right to be
26 represented by counsel.

27 (e) Filing and service.--The order shall be filed with the
28 director of the facility providing the treatment and a copy
29 served on the respondent, such other parties as the respondent
30 may request to be notified and on the counsel representing the

1 respondent.

2 (f) Petition to court of common pleas.--

3 (1) In a case in which the hearing is conducted by a
4 mental health review officer, the respondent made subject to
5 treatment pursuant to this section shall have the right to
6 petition the court of common pleas for review of the order.

7 (2) A hearing shall be held within 72 hours after the
8 order is entered unless a continuance is requested by the
9 respondent's counsel.

10 (3) The hearing shall include a review of the order and
11 such evidence as the court may receive or require.

12 (4) If the court determines that further involuntary
13 treatment is necessary and the procedures prescribed by this
14 article have been followed, the court shall deny the petition
15 of the respondent. Otherwise, the respondent shall be
16 discharged.

17 (g) Discharge during duration of treatment.--If a respondent
18 is no longer suffering from alcohol and other drug abuse or in
19 need of immediate treatment as determined by the director of the
20 facility providing the treatment, the respondent shall be
21 discharged.

22 Section 307-A. Emergency involuntary treatment.

23 (a) Authority of court.--

24 (1) Following an examination by a qualified health
25 professional and a certification by that professional that a
26 respondent meets the criteria specified in section 303-A, a
27 court of common pleas or mental health review officer may
28 order the respondent hospitalized for a period not to exceed
29 72 hours if the judge or mental health review officer finds
30 by clear and convincing evidence that the respondent presents

1 an imminent threat of danger to self, family or others as a
2 result of alcohol and other drug abuse.

3 (2) If the hearing under section 306-A cannot be held
4 within 72 hours, the court may order the respondent
5 hospitalized until the hearing.

6 (3) In making its order, the court shall inform the
7 respondent that the respondent may immediately make a
8 reasonable number of telephone calls or use other reasonable
9 means to contact an attorney, a licensed physician or a
10 qualified health professional, to contact a person to secure
11 representation by counsel or to obtain medical or
12 psychological assistance and that the respondent will be
13 provided assistance in making telephone calls if the
14 assistance is needed and requested.

15 (b) Release.--A respondent who has been admitted to a
16 hospital under subsection (a) shall be released from the
17 hospital immediately upon expiration of the time period
18 established by the judge or mental health review officer for the
19 hospitalization.

20 (c) Prohibition.--No respondent ordered hospitalized under
21 this section shall be held in jail pending transportation to the
22 hospital or evaluation unless the court of common pleas or
23 mental health review officer previously has found the respondent
24 to be in contempt of court for either failure to undergo
25 treatment or failure to appear at the evaluation ordered under
26 section 305-A.

27 Section 308-A. Summons.

28 (a) General rule.--When a court of common pleas or mental
29 health review officer is authorized to issue an order that the
30 respondent be transported to a hospital, the judge or mental

1 health review officer may issue a summons. If the respondent
2 fails to attend an examination scheduled before the hearing
3 under section 305-A, the judge or mental health review officer
4 shall issue a summons. A summons so issued shall be directed to
5 the respondent and shall command the respondent to appear at a
6 time and place specified in the summons.

7 (b) Transportation of respondent.--

8 (1) If a respondent who has been summoned fails to
9 appear at the hospital or the examination, the court or
10 mental health review officer may order the sheriff or any
11 other peace officer to transport the respondent to a hospital
12 on the list provided under section 309-A for treatment.

13 (2) The transportation costs of the sheriff or other
14 peace officer shall be included in the costs of treatment for
15 alcohol and other drug abuse to be paid by the petitioner.

16 Section 309-A. Lists of qualified hospitals and treatment
17 providers.

18 The Department of Health and the Department of Drug and
19 Alcohol Programs on at least an annual basis shall submit each
20 of the following lists to the clerk of the court of common pleas
21 in each county:

22 (1) A list of all hospitals in the county that are able
23 and willing to take respondents ordered to undergo 72 hours
24 of treatment and observation pursuant to section 307-A.

25 (2) A list of hospitals and treatment providers in the
26 county that are able and willing to provide treatment for
27 alcohol and other drug abuse ordered pursuant to section 307-
28 A.

29 Section 310-A. Civil rights and liberties of respondents.

30 An individual treated under this article shall retain the

1 individual's civil rights and liberties, including:

2 (1) The right not to be experimented upon with treatment
3 not accepted as good medical practice without the
4 individual's fully informed consent.

5 (2) The right as an individual receiving services to
6 maintain the confidentiality of health and medical records.

7 (3) The right as an individual detained for medical
8 purposes to receive adequate and appropriate treatment.

9 (4) The right to vote.

10 Section 311-A. Confidentiality of records pertaining to
11 identity, diagnosis or treatment.

12 (a) General rule.--Records or information, other than court
13 journal entries or court docket entries, pertaining to the
14 identity, diagnosis or treatment of an individual receiving
15 treatment under this article shall be kept confidential, may be
16 disclosed only for the purposes and under the circumstances
17 expressly authorized under this section and may not otherwise be
18 divulged in any civil, criminal, administrative or legislative
19 proceeding.

20 (b) Consent.--If an individual with respect to whom a record
21 or information referred to in subsection (a) is maintained gives
22 consent in the form of a written release signed by the
23 individual, the content of the record or information may be
24 disclosed if the written release:

25 (1) Specifically identifies the individual, official or
26 entity to whom the information is to be provided.

27 (2) Describes with reasonable specificity the record,
28 records or information to be disclosed.

29 (3) Describes with reasonable specificity the purposes
30 of the disclosure and the intended use of the disclosed

1 information.

2 (c) Exceptions.--

3 (1) Disclosure of the records or information referred to
4 under subsection (a) may be made without the individual's
5 consent to qualified personnel for the purpose of conducting
6 scientific research, management, financial audits or program
7 evaluation, but these personnel may not identify, directly or
8 indirectly, the individual in a report of the research, audit
9 or evaluation or otherwise disclose the individual's identity
10 in any manner.

11 (2) Upon the request of a prosecuting attorney or the
12 director of mental health and addiction services, a court of
13 competent jurisdiction may order the disclosure of records or
14 information referred to under subsection (a) if the court has
15 reason to believe that a treatment program or facility is
16 being operated or used in a manner contrary to law.

17 (3) The use of any information or record disclosed under
18 paragraph (2) shall be limited to the prosecution of persons
19 who are or may be charged with an offense related to the
20 illegal operation or use of the drug treatment program or
21 facility or to the decision to withdraw the authority of a
22 drug treatment program or facility to continue operation. In
23 such case, the court shall:

24 (i) Limit disclosure to those parts of the
25 individual's record considered essential to fulfill the
26 objective for which the order was granted.

27 (ii) Require, where appropriate, that all
28 information be disclosed in chambers.

29 (iii) Include any other appropriate measures to keep
30 disclosure to a minimum, consistent with the protection

1 of the individual receiving services, the physician-
2 patient relationship and the administration of the drug
3 treatment and rehabilitation program.

4 Section 3. This act shall take effect in 60 days.