
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 743 Session of
2017

INTRODUCED BY GREENLEAF, RAFFERTY, SCHWANK AND MENSCH,
JUNE 5, 2017

REFERRED TO HEALTH AND HUMAN SERVICES, JUNE 5, 2017

AN ACT

1 Amending Title 50 (Mental Health) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to mental
3 health procedures and the treatment of individuals with
4 mental illness in the criminal justice system; making
5 conforming amendments to Titles 18, 20, 23, 42 and 61; and
6 repealing the Mental Health Procedures Act.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 50 of the Pennsylvania Consolidated
10 Statutes is amended by adding a part to read:

11 PART III

12 MENTAL HEALTH PROCEDURES

13 Chapter

14 31. Preliminary Provisions

15 32. Voluntary Inpatient Examination and Treatment

16 33. Involuntary Examination and Treatment

17 34. Determinations Affecting Those Charged With Crime or
18 Under Sentence

19 CHAPTER 31

20 PRELIMINARY PROVISIONS

- 1 Subchapter
- 2 A. General Provisions
- 3 B. Administrative Matters
- 4 C. General Treatment Provisions
- 5 D. Rights and Immunities

6 SUBCHAPTER A

7 GENERAL PROVISIONS

8 Sec.

9 3101. Short title of part.

10 3102. Definitions.

11 3103. Statement of policy.

12 § 3101. Short title of part.

13 This part shall be known and may be cited as the Mental
14 Health Procedures Code.

15 § 3102. Definitions.

16 Subject to additional definitions contained in subsequent
17 provisions of this part which are applicable to specific
18 provisions of this part, the following words and phrases when
19 used in this part shall have the meanings given to them in this
20 section unless the context clearly indicates otherwise:

21 "Adequate treatment." A course of treatment designed and
22 administered to maximize the probability of the person's
23 recovery from mental illness.

24 "Assisted outpatient treatment." Community-based outpatient
25 social, medical and behavioral health treatment services ordered
26 by a court for a severely mentally disabled person, which
27 services may include, but need not be limited to:

28 (1) Community psychiatric supportive treatment.

29 (2) Assertive community treatment.

30 (3) Medications.

1 (4) Individual or group therapy.

2 (5) Peer support services.

3 (6) Financial services.

4 (7) Housing or supervised living services.

5 (8) Alcohol or substance abuse treatments when the
6 treatment is a co-occurring condition for a person with a
7 primary diagnosis of mental health illness.

8 (9) Any other service prescribed to treat the person's
9 mental illness that either assists the person in living and
10 functioning in the community or helps to prevent a relapse or
11 a deterioration of the person's condition that would be
12 likely to result in a substantial risk of serious harm to the
13 person or others.

14 "Authorized person." A person authorized by a county
15 administrator to perform a specific duty required under this
16 part.

17 "Client." A person receiving behavioral or mental health
18 treatment from a mental health professional.

19 "County administrator." The administrator of a county
20 program or the designee of the administrator.

21 "County program." A mental health and intellectual
22 disability program established under Article III of the act of
23 October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the
24 Mental Health and Intellectual Disability Act of 1966.

25 "Department." The Department of Human Services of the
26 Commonwealth.

27 "Facility." A mental health establishment, hospital, clinic,
28 institution, center, day-care center, base service unit, or
29 community mental health center, or part thereof, that provides
30 for the diagnosis, treatment, care or rehabilitation of mentally

1 ill persons, whether as outpatients or inpatients.

2 "Incompetent to proceed on criminal charges." A person who
3 has been charged with a crime who is found to be substantially
4 unable to understand the nature or object of the proceedings
5 against the person or to participate and assist in the person's
6 own defense.

7 "Individualized treatment plan" or "treatment plan." A plan
8 of treatment formulated for a particular person in a program
9 appropriate to the person's specific needs.

10 "Inpatient treatment." Includes all treatment that requires
11 full-time or part-time residence in a facility.

12 "Licensed clinical psychologist." A psychologist licensed
13 under the act of March 23, 1972 (P.L.136, No.52), known as the
14 Professional Psychologists Practice Act, who holds a doctoral
15 degree from an accredited university and is duly trained and
16 experienced in the delivery of direct preventive assessment and
17 therapeutic intervention services to individuals whose growth,
18 adjustment or functioning is actually impaired or demonstrably
19 at risk of impairment.

20 "Licensed psychologist." An individual licensed under the
21 Professional Psychologists Practice Act.

22 "Mental health professional." A person licensed or certified
23 in this Commonwealth in a mental health-related field to whom
24 the confidentiality provisions of this part apply.

25 "Mental health review officer." A person authorized by a
26 court of common pleas to conduct proceedings under this part.

27 "Qualified professional." A physician, licensed clinical
28 psychologist, licensed psychologist, prescribing psychologist,
29 certified nurse practitioner, clinical nurse specialist with a
30 specialty in mental health or a physician assistant with a

1 specialty in mental health, or other mental health professional
2 who by years of education, training and experience in mental
3 health settings has:

4 (1) achieved professional recognition and standing as
5 defined by their respective discipline, including, but not
6 limited to, medicine, social work, psychology, nursing,
7 occupational therapy, recreational therapy and vocational
8 rehabilitation; and

9 (2) obtained, if applicable, licensure, registration or
10 certification.

11 "Serious mental illness." As defined by the department in
12 regulations.

13 "Severely mentally disabled." A condition in which, as a
14 result of mental illness, a person's capacity to exercise self-
15 control, judgment and discretion in the conduct of the person's
16 affairs and social relations or to care for the person's own
17 personal needs is so lessened that the person poses a clear and
18 present danger of harm to self or others as determined in
19 section 3301 (relating to persons who may be subject to
20 involuntary emergency examination and treatment).

21 "Treatment." Includes the following:

22 (1) Diagnosis, evaluation, therapy or rehabilitation
23 needed to alleviate pain or distress and to facilitate the
24 recovery of a person from mental illness.

25 (2) Care and other services that supplement treatment
26 described in paragraph (1) and aid or promote the recovery of
27 a person from mental illness.

28 § 3103. Statement of policy.

29 The purpose of this part is to establish procedures whereby
30 the Commonwealth can seek to assure the availability of adequate

1 treatment to persons with mental illness. The provisions of this
2 part shall be interpreted in conformity with the principles of
3 due process to make voluntary and involuntary treatment
4 available where the need is great and the absence of treatment
5 could result in serious harm to the person with mental illness
6 or to others.

7 SUBCHAPTER B

8 ADMINISTRATIVE MATTERS

9 Sec.

10 3111. Rules and regulations.

11 3112. Forms.

12 3113. Confidentiality of records.

13 3114. Jurisdiction and venue.

14 3115. Conduct of proceedings.

15 3116. Reporting requirements for firearms background checks.

16 § 3111. Rules and regulations.

17 The department shall adopt any rules and regulations
18 necessary to effectuate the provisions of this part. Rules and
19 regulations adopted under the provisions of this part shall be
20 adopted according to the provisions of section 201 of the act of
21 October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the
22 Mental Health and Intellectual Disability Act of 1966, and the
23 act of July 31, 1968 (P.L.769, No.240), referred to as the
24 Commonwealth Documents Law.

25 § 3112. Forms.

26 (a) Development.--The department shall establish and adopt
27 forms necessary to effectuate the provisions of this part.

28 (b) Verification.--A warrant under section 3302(a)(2)
29 (relating to involuntary emergency examination and treatment)
30 and each application, petition and certification required under

1 this part shall be subject to the penalties provided under 18
2 Pa.C.S. § 4904 (relating to unsworn falsification to
3 authorities) and must contain a notice to that effect.

4 (c) Submission.--Each warrant, application, petition or
5 certification under subsection (b) must be submitted to the
6 county administrator in:

7 (1) The county where the person was made subject to
8 examination and treatment.

9 (2) Any other county in this Commonwealth in which the
10 person is domiciled.

11 (d) Applicability to voluntary treatment.--Subsections (a)
12 and (b) shall not apply to a person admitted to a treatment
13 facility under Chapter 32 (relating to voluntary inpatient
14 examination and treatment) when no part of the person's care is
15 provided for with public funds. The department may require
16 facilities to report clinical and statistical information, but
17 the information must not directly or indirectly identify any
18 person who is the subject of the information reported.

19 § 3113. Confidentiality of records.

20 (a) Documents in general.--All documents concerning persons
21 in treatment shall be kept confidential and, without the written
22 consent of the person, may not be released or their contents
23 disclosed to anyone except:

24 (1) Those engaged in providing treatment for the person.

25 (2) The county administrator, as required under section
26 3112(c) (relating to forms).

27 (3) A court in the course of legal proceedings
28 authorized by this part.

29 (4) Pursuant to Federal statutes, rules or regulations
30 governing disclosure of patient information where treatment

1 is undertaken by a Federal agency.

2 (b) Privileged communications.--A privileged communication,
3 whether written or oral, may not be disclosed to anyone without
4 written consent of the person who made the communication.

5 (c) Statistical analysis.--Nothing in this section prohibits
6 the collection or analysis of clinical or statistical data by
7 the department, the county administrator or the facility if the
8 use or dissemination of the data does not directly or indirectly
9 identify a person who is the subject of the information
10 reported.

11 (d) Other law.--Nothing in this section shall be construed
12 to conflict with section 8 of the act of April 14, 1972
13 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol
14 Abuse Control Act.

15 § 3114. Jurisdiction and venue.

16 (a) Initial jurisdiction.--The jurisdiction of a court of
17 common pleas or juvenile court conferred by Chapters 32
18 (relating to voluntary inpatient examination and treatment) and
19 33 (relating to involuntary examination and treatment) shall be
20 exercised initially by the court for the county in which the
21 subject of the proceedings is located or resides.

22 (b) Subsequent proceedings.--If involuntary treatment is
23 ordered, jurisdiction over a subsequent proceeding shall be
24 retained by the court in which the initial proceeding occurred,
25 but jurisdiction may be transferred to the county where the
26 person is domiciled.

27 (c) Proceedings at facility.--The court or a mental health
28 review officer of the county having jurisdiction over the
29 proceedings may conduct legal proceedings at a facility where
30 the person is in treatment whether or not the facility is

1 located within the county where the court or mental health
2 review officer normally conducts business.

3 (d) Venue for actions involving statutory rights.--Venue for
4 actions instituted to effectuate rights under this part shall be
5 provided by law.

6 § 3115. Conduct of proceedings.

7 A proceeding under sections 3303(c) (relating to extended
8 involuntary emergency treatment), 3304 (relating to court-
9 ordered involuntary treatment), 3305 (relating to additional
10 periods of court-ordered involuntary treatment) and 3306
11 (relating to transfer of persons in involuntary treatment) may
12 be conducted by the court or a mental health review officer.

13 § 3116. Reporting requirements for firearms background checks.

14 (a) Disclosure for firearms background check purposes.--
15 Notwithstanding any other law to the contrary, the court, a
16 mental health review officer and a county administrator shall
17 notify the Pennsylvania State Police on a form developed by the
18 Pennsylvania State Police of the identity of any of the
19 following persons:

20 (1) A person who has been adjudicated incompetent to
21 proceed on criminal charges under Chapter 34 (relating to
22 determinations affecting those charged with crime or under
23 sentence).

24 (2) A person who has been involuntarily committed to a
25 facility for inpatient care and treatment under this part.

26 (b) Timing of notification.--The notification under
27 subsection (a) shall be transmitted within seven days of the
28 adjudication, commitment or treatment.

29 (c) Confidentiality provisions waived.--Section 3113
30 (relating to confidentiality of records) shall not restrict the

1 disclosure of information:

2 (1) To the Pennsylvania State Police under this section.

3 (2) By the Pennsylvania State Police to a person in
4 accordance with 18 Pa.C.S. § 6105.

5 SUBCHAPTER C

6 GENERAL TREATMENT PROVISIONS

7 Sec.

8 3121. Applicability.

9 3122. Referral of persons discharged from treatment.

10 3123. Basic treatment requirements.

11 3124. Facilities.

12 3125. Treatment team.

13 3126. Individualized treatment plan.

14 3127. Periodic reexamination, review and redispotion.

15 3128. Duty to protect.

16 § 3121. Applicability.

17 (a) Treatment covered.--This part establishes rights and
18 procedures for:

19 (1) All involuntary inpatient treatment of persons with
20 mental illness.

21 (2) All involuntary outpatient treatment of persons with
22 mental illness.

23 (3) All voluntary inpatient treatment of persons with
24 mental illness.

25 (b) Limitations on treatment.--Treatment shall be delivered
26 subject to the following:

27 (1) Treatment on a voluntary basis shall be preferred to
28 involuntary treatment.

29 (2) The least restrictions consistent with adequate
30 treatment standards shall be employed.

1 (c) Treatment of individuals with multiple diagnoses.--
2 Individuals who are intellectually disabled, senile or alcohol
3 or drug dependent shall receive treatment only if they are also
4 diagnosed as mentally ill, but each of these conditions alone
5 shall not constitute mental illness.

6 (d) Treatment of alcohol abuse or drug addiction.--Nothing
7 in this part shall prohibit underutilized State facilities for
8 individuals with serious mental illness to be made available for
9 the treatment of alcohol abuse or drug addiction under the act
10 of April 14, 1972 (P.L.221, No.63), known as the Pennsylvania
11 Drug and Alcohol Abuse Control Act.

12 (e) Treatment of chronically disabled elderly persons.--A
13 chronically disabled person who is 70 years of age or older and
14 who has been continuously hospitalized in a State-operated
15 facility for at least 10 years is not subject to the procedures
16 of this part. The person's inability to give a rational and
17 informed consent does not prohibit the department from
18 continuing to provide all necessary treatment to the person. If
19 the person protests treatment or residence at a State-operated
20 facility, the person shall be subject to the provisions of
21 Chapter 33 (relating to involuntary examination and treatment).
22 § 3122. Referral of persons discharged from treatment.

23 (a) Discharge from State facility.--The facility
24 administration shall refer voluntary and involuntary persons
25 discharged from State facility programs to the appropriate
26 county program.

27 (b) County program responsibilities.--In accordance with
28 Article III of the act of October 20, 1966 (3rd Sp.Sess.,
29 P.L.96, No.6), known as the Mental Health and Intellectual
30 Disability Act of 1966, county programs shall receive referrals

1 from State-operated facilities and shall be responsible for the
2 treatment needs of county residents discharged from institutions
3 under Chapters 32 (relating to voluntary inpatient examination
4 and treatment) and 33 (relating to involuntary examination and
5 treatment).

6 § 3123. Basic treatment requirements.

7 (a) Adequacy.--Adequate treatment shall be provided to all
8 persons in treatment who are subject to this part.

9 (b) Forms of treatment.--Adequate treatment may include
10 inpatient treatment, partial hospitalization or outpatient
11 treatment.

12 (c) Adequacy of inpatient treatment.--Adequate inpatient
13 treatment shall include accommodations, diet, heat, light,
14 sanitary facilities, clothing, recreation, education and medical
15 care as necessary to maintain decent, safe and healthy living
16 conditions.

17 § 3124. Facilities.

18 (a) Approved facilities.--Involuntary and voluntary
19 treatment funded in whole or in part by public money shall be
20 available at a facility approved for treatment by the county
21 administrator or the department. Approval of facilities shall be
22 made by the appropriate authority which may be the department
23 pursuant to regulations adopted by the department.

24 (b) Veterans facilities.--Treatment may be ordered at the
25 United States Department of Veterans Affairs or other Federal
26 agency upon receipt of a certificate that the person is eligible
27 for hospitalization or treatment and that there is available
28 space for the person's care. Facilities operated under the
29 direct control of the United States Department of Veterans
30 Affairs or other Federal agency are exempt from obtaining State

1 approval.

2 (c) Standards for approval.--The department standards for
3 approval shall be at least as stringent as those of the
4 following, to the extent that the type of facility is one in
5 which the standards are intended to apply:

6 (1) The Joint Commission on Accreditation of Hospitals.

7 (2) Titles XVIII and XIX of the Social Security Act (49
8 Stat. 620, 42 U.S.C. § 301 et seq.).

9 (d) Exemption.--An exemption from the standards may be
10 granted by the department under the following conditions:

11 (1) The exemption may be for a period not in excess of
12 one year, which may be renewed.

13 (2) Notice of each exemption and the rationale for
14 allowing the exemption must be published pursuant to the act
15 of July 31, 1968 (P.L.769, No.240), referred to as the
16 Commonwealth Documents Law.

17 (3) Notice of each exemption shall be prominently posted
18 at the entrance to the main office and in the reception areas
19 of the facility.

20 § 3125. Treatment team.

21 (a) Leadership.--A treatment team must be under the
22 direction of either of the following:

23 (1) A licensed clinical psychologist.

24 (2) A physician if:

25 (i) failure to do so would jeopardize Federal
26 payments made on behalf of a person; or

27 (ii) the director of a facility requires the
28 treatment to be under the direction of a physician.

29 (b) Composition.--A treatment team must include a physician
30 and may include other mental health professionals.

1 (c) Independence of professional judgment.--Notwithstanding
2 any other provision of this part, the court or mental health
3 review officer may not specify to the treatment team the
4 adoption of any treatment techniques, modality or drug therapy.
5 § 3126. Individualized treatment plan.

6 (a) Formulation.--A treatment team shall formulate and
7 review an individualized treatment plan for each person who is
8 in treatment under this part.

9 (b) Basic criteria.--To the extent possible, an
10 individualized treatment plan shall be made with the
11 cooperation, understanding and consent of the person in
12 treatment, and the least restrictions consistent with adequate
13 treatment standards shall be employed.

14 (c) Administration of drugs.--The administration of drugs
15 shall be controlled by the act of April 14, 1972 (P.L.233,
16 No.64), known as The Controlled Substance, Drug, Device and
17 Cosmetic Act.

18 (d) Assisted outpatient treatment plan.--When a court orders
19 involuntary outpatient treatment of a person, a treatment team
20 shall develop an assisted outpatient treatment plan. The
21 assisted outpatient treatment plan shall contain the reasonable
22 objectives and goals for a person determined to be in need of
23 assisted outpatient treatment. In addition to the requirements
24 of subsection (b), the assisted outpatient treatment plan shall
25 include:

26 (1) The delineation of specific assisted outpatient
27 treatment services to be provided based on the person's
28 specific needs.

29 (2) The delineation of the providers that agree to
30 provide assisted outpatient treatment services to the person.

1 (3) The documentation of how the person was involved in
2 the initial development of the treatment plan and the process
3 for involving the person in ongoing evaluation and, if
4 appropriate, modifications to the treatment plan.

5 § 3127. Periodic reexamination, review and redispotion.

6 (a) Reexamination and review.--

7 (1) Each person who is in treatment under this part
8 shall be examined by a treatment team.

9 (2) The person's individualized treatment plan shall be
10 reviewed at least every 30 days.

11 (b) Redispotion.--On the basis of reexamination and
12 review, the treatment team may:

13 (1) authorize continuation of the existing treatment
14 plan if appropriate;

15 (2) formulate a new treatment plan; or

16 (3) recommend to the director of the facility the
17 discharge of the person.

18 (c) Duration or modality of treatment.--A person shall not
19 remain in treatment or under articular mode of treatment for
20 longer than the treatment is necessary and appropriate to the
21 person's needs.

22 (d) Record.--The treatment team responsible for the
23 treatment plan shall maintain a record of each reexamination and
24 review under this section for each person in treatment, which
25 shall include all of the following:

26 (1) A report of the reexamination, including a diagnosis
27 and prognosis.

28 (2) A brief description of the treatment provided to the
29 person during the period preceding the reexamination and the
30 results of that treatment.

1 (3) A statement of the reason for discharge or for
2 continued treatment.

3 (4) A treatment plan for the next period, if any.

4 (5) A statement of the reasons that the treatment plan
5 imposes the least restrictions consistent with adequate
6 treatment standards.

7 (6) A certification that the adequate treatment
8 recommended is available and will be afforded in the
9 treatment plan.

10 § 3128. Duty to protect.

11 (a) Criteria for duty to apply.--In accordance with the
12 procedures under subsection (b), a mental health professional
13 shall attempt to protect each potential victim from a threat of
14 danger from a client of the mental health professional if all of
15 the following apply:

16 (1) The client has communicated to the mental health
17 professional an explicit threat of imminent serious physical
18 harm or death to a clearly identified or identifiable victim
19 or the general public, or a mental health professional
20 reasonably believes, after considering the totality of the
21 circumstances, that a client of the mental health
22 professional presents an imminent threat of serious physical
23 harm or death to a clearly identified or identifiable victim
24 or the general public.

25 (2) The mental health professional reasonably believes,
26 or by the standards of his profession should believe, that
27 the client has the intent and ability to carry out the
28 threat.

29 (3) The threat has been communicated to the mental
30 health professional by the client while the mental health

1 professional is engaged in carrying out his professional
2 duties.

3 (b) Actions necessary to discharge duty.--A mental health
4 professional may:

5 (1) use therapeutic interventions or take therapeutic
6 precautions that a reasonable prudent mental health
7 professional would take under the circumstances to diffuse
8 the danger;

9 (2) communicate the threat to all identified or
10 identifiable victims;

11 (3) communicate the threat to any individual whose
12 knowledge is likely to protect the health and life of a third
13 party or the public;

14 (4) notify a law enforcement agency in the vicinity
15 where the client or any potential victim resides; or

16 (5) take reasonable steps to initiate proceedings for
17 voluntary or involuntary treatment if appropriate.

18 (c) Immunity from civil liability.--No cause of action shall
19 exist against a mental health professional, and no legal
20 liability may be imposed for breaching a duty to warn of a
21 threat of danger by a client, unless the mental health
22 professional:

23 (1) fails to comply with this section; and

24 (2) the failure to comply is the result of an
25 intentional or grossly negligent act or omission that results
26 in harm to a potential victim of the client's threats.

27 (d) Confidentiality.--

28 (1) A disclosure made in good faith under this section
29 may not be considered a breach of confidentiality between the
30 mental health professional and the client.

1 (2) For a mental health professional who is a covered
2 entity under the Health Insurance Portability and
3 Accountability Act of 1996 (Public Law 104-191, 110 Stat.
4 1936), disclosures authorized under this section are declared
5 to be disclosures authorized without the consent of the
6 client under 45 CFR 164.512(j)(1) (relating to uses and
7 disclosures for which an authorization or opportunity to
8 agree or object is not required).

9 SUBCHAPTER D

10 RIGHTS AND IMMUNITIES

11 Sec.

12 3131. Rights and remedies of persons in treatment.

13 3132. Immunity from civil and criminal liability.

14 § 3131. Rights and remedies of persons in treatment.

15 Each person who is in treatment shall be entitled to all
16 other rights provided under the laws of this Commonwealth in
17 addition to any rights provided for in this part. Actions
18 requesting damages, declaratory judgment, injunction, mandamus,
19 writs of prohibition, habeas corpus, including challenges to the
20 legality of detention or degree of restraint, and any other
21 remedies or relief granted by law, may be maintained in order to
22 protect and effectuate the rights granted under this part.

23 § 3132. Immunity from civil and criminal liability.

24 (a) Treatment decisions in general.--In the absence of
25 willful misconduct or gross negligence, a county administrator,
26 director of a facility, physician, law enforcement personnel or
27 any other authorized person may not be held civilly or
28 criminally liable for any of the following decisions or the
29 consequences of the decision:

30 (1) To examine or treat a person under this part.

1 (3) The person substantially understands the nature of
2 voluntary treatment.

3 (4) The decision is voluntary.

4 (b) Parental authorization.--A parent, guardian or person
5 standing in loco parentis to a child who is less than 14 years
6 of age may subject the child to examination and treatment under
7 this part and in so doing shall be deemed to be acting for the
8 child.

9 (c) Applicability.--Except as otherwise authorized in this
10 part, all of the provisions of this part governing examination
11 and treatment shall apply.

12 § 3202. Application for voluntary treatment.

13 (a) To whom application may be made.--An application for
14 voluntary examination and treatment may be made to any of the
15 following entities:

16 (1) An approved facility.

17 (2) A county administrator.

18 (3) The United States Department of Veterans Affairs.

19 (4) Any other Federal agency operating a facility for
20 the care and treatment of mental illness.

21 (b) Designation of treatment facility.--When application is
22 made to the county administrator, the county administrator shall
23 designate the approved facility for examination and treatment as
24 may be appropriate.

25 § 3203. Explanation and consent.

26 (a) Explanation to be given.--Before a person is accepted
27 for voluntary inpatient treatment, an explanation shall be given
28 to the person that includes the following information:

29 (1) The nature of the treatment, including the types of
30 treatment in which the person may be involved.

1 (2) Any restraints or restrictions to which the person
2 may be subject.

3 (3) A statement of the person's rights under this part.

4 (b) Form of consent.--Consent shall be given in writing upon
5 a form adopted by the department.

6 (c) Contents of consent.--The consent shall include the
7 following representations:

8 (1) That the person understands treatment will involve
9 inpatient status.

10 (2) That the person is willing to be admitted to a
11 designated facility for the purpose of examination and
12 treatment.

13 (3) That the person consents to the admission
14 voluntarily without coercion or duress.

15 (4) If applicable, that the person has voluntarily
16 agreed to remain in treatment for a specified period of no
17 more than 72 hours after having given written notice of the
18 intent to withdraw from treatment.

19 (d) Record of consent.--The consent shall be part of the
20 person's record.

21 § 3204. Notice to parent, guardian or others.

22 (a) Notice.--Upon the acceptance of an application for
23 examination and treatment by a child who is more than 14 years
24 of age but less than 18 years of age, the director of the
25 facility shall promptly notify the child's parents, guardians or
26 persons standing in loco parentis to the child of the right to
27 be heard upon the filing of an objection to the examination and
28 treatment.

29 (b) Objection to treatment by parent, guardian or others.--
30 If an objection is filed by a parent, guardian or person

1 standing in loco parentis of the child, a hearing shall be held
2 within 72 hours by the court or mental health review officer to
3 determine whether or not the voluntary treatment is in the best
4 interest of the child.

5 § 3205. Physical examination and individualized treatment plan.

6 (a) Physical examination.--Upon acceptance of a person for
7 voluntary examination and treatment, the person shall be given a
8 physical examination.

9 (b) Individualized treatment plan.--Within 72 hours after
10 acceptance of a person, a treatment team shall formulate an
11 individualized treatment plan, subject to the following
12 requirements:

13 (1) The person shall be advised of the treatment plan,
14 which shall become a part of the person's record.

15 (2) The treatment plan shall state the following:

16 (i) Whether inpatient treatment is considered
17 necessary.

18 (ii) What restraints or restrictions, if any, will
19 be administered.

20 (iii) The bases for the conclusions under
21 subparagraphs (i) and (ii).

22 § 3206. Withdrawal from voluntary treatment.

23 (a) Written notice.--Except as provided in subsections (b)
24 and (c), a person in voluntary inpatient treatment may withdraw
25 at any time by giving written notice of the intent to withdraw
26 from treatment.

27 (b) Waiting period.--

28 (1) A person in voluntary inpatient treatment who, under
29 section 3203(c)(4) (relating to explanation and consent),
30 agreed in writing at the time of admission that release could

1 be delayed for a period specified in the agreement, not to
2 exceed 72 hours, may have that release delayed.

3 (2) A person converted from involuntary treatment
4 ordered under section 3304 (relating to court-ordered
5 involuntary treatment) or 3305 (relating to additional
6 periods of court-ordered involuntary treatment) to voluntary
7 treatment status shall agree to remain in treatment for 72
8 hours after giving notice.

9 (c) Release of children less than 14 years of age.--If the
10 child is less than 14 years of age, the parent, legal guardian
11 or person standing in loco parentis to the child may affect the
12 child's release. If a responsible party believes it would be in
13 the best interest of a child less than 14 years of age in
14 voluntary treatment to be withdrawn or afforded treatment
15 constituting the least restrictions consistent with adequate
16 treatment standards, that party may file a petition, in the
17 juvenile division of the court of common pleas for the county in
18 which the child less than 14 years of age resides, requesting a
19 withdrawal from or modification of treatment.

20 (d) Appointment of counsel and hearing for child less than
21 14 years of age.--The court shall promptly appoint an attorney
22 for a child for whom a petition was filed under subsection (b)
23 and schedule a hearing to determine what inpatient treatment, if
24 any, is in the best interest of the child. The hearing shall be
25 held within 10 days of receipt of the petition, unless continued
26 upon the request of the attorney for the child. The hearing
27 shall be conducted in accordance with the rules governing other
28 juvenile court proceedings.

29 (e) Lack of medical necessity.--Nothing in this part shall
30 be construed to require a facility to continue inpatient

1 treatment where the director of the facility determines the
2 treatment is not medically indicated. A dispute between a
3 facility and a county administrator as to the medical necessity
4 for voluntary inpatient treatment of a person shall be decided
5 by the Commissioner of Mental Health or the designee of the
6 commissioner.

7 § 3207. Transfer of person in voluntary treatment.

8 A person who is in voluntary treatment may not be transferred
9 from one facility to another without the written consent of the
10 person.

11 CHAPTER 33

12 INVOLUNTARY EXAMINATION AND TREATMENT

13 Sec.

14 3301. Persons who may be subject to involuntary emergency
15 examination and treatment.

16 3302. Involuntary emergency examination and treatment.

17 3303. Extended involuntary emergency treatment.

18 3304. Court-ordered involuntary treatment.

19 3305. Additional periods of court-ordered involuntary
20 treatment.

21 3306. Transfer of persons in involuntary treatment.

22 3307. Appeal of mental health review officer findings.

23 § 3301. Persons who may be subject to involuntary emergency
24 examination and treatment.

25 (a) Applicability.--

26 (1) A person who is severely mentally disabled and in
27 need of:

28 (i) immediate treatment may be subject to
29 involuntary emergency examination and treatment; or

30 (ii) assisted outpatient treatment as provided in

1 subsection (i) may be subject to assisted outpatient
2 treatment.

3 (2) In order to be severely mentally disabled there must
4 be a determination of clear and present danger, as specified
5 in subsections (b), (c), (d), (e) and (f).

6 (b) Determination of clear and present danger of harm to
7 others.--Clear and present danger to others shall be shown by
8 establishing that within the past 30 days the person has
9 inflicted or attempted to inflict serious bodily harm on another
10 or caused substantial property damage and that there is a
11 reasonable probability that the conduct will be repeated.

12 (c) Determination of clear and present danger of harm to
13 self by neglect.--Clear and present danger of harm to self by
14 neglect shall be shown by both of the following criteria:

15 (1) Within the past 30 days the person has acted in a
16 manner as to evidence that the person would be unable,
17 without care, supervision and the continued assistance of
18 others, to satisfy the person's need for nourishment,
19 personal or medical care, shelter, self-protection and
20 safety.

21 (2) There is a reasonable probability that death,
22 serious bodily injury or serious physical or mental
23 debilitation would ensue within 30 days unless adequate
24 treatment were afforded under this part.

25 (d) Determination of clear and present danger to self by
26 reoccurrence and relapse.--Clear and present danger of harm to
27 self by reoccurrence and relapse shall be shown by establishing
28 all of the following criteria:

29 (1) The person has a serious mental illness that has
30 been diagnosed and documented by a licensed psychiatrist.

1 (2) Within the past 24 months the person has been
2 involuntarily examined and treated under the provisions of
3 this chapter in an approved inpatient facility at least two
4 times.

5 (3) The person is exhibiting symptoms or behavior
6 substantially similar to those that preceded and led to one
7 or more of the inpatient placements referred to in paragraph
8 (2).

9 (4) There is a reasonable probability that death,
10 serious bodily injury or serious physical or mental
11 debilitation would ensue within 30 days unless adequate
12 treatment were afforded under this part.

13 (e) Determination of clear and present danger to self by
14 suicide.--Clear and present danger of harm to self by suicide
15 shall be shown by establishing that within the past 30 days the
16 person has attempted suicide and that there is the reasonable
17 probability of suicide unless adequate treatment is afforded
18 under this part.

19 (f) Determination of clear and present danger to self by
20 self-mutilation.--Clear and present danger to self by self-
21 mutilation shall be shown by establishing that within the past
22 30 days the person has committed substantial self-mutilation or
23 attempted to commit substantial self-mutilation and that there
24 is the reasonable probability of self-mutilation unless adequate
25 treatment is afforded under this part.

26 (g) Special rule for persons involved in criminal justice
27 system.--

28 (1) If a person has been found incompetent to proceed on
29 criminal charges or has been acquitted by reason of lack of
30 criminal responsibility on charges arising from conduct

1 involving infliction of or attempt to inflict substantial
2 bodily harm on another, the 30-day period specified in
3 subsection (b) shall not apply so long as an application for
4 examination and treatment is filed within 30 days after the
5 date of the incompetency determination or verdict of
6 acquittal.

7 (2) In such case, a clear and present danger to others
8 may be shown by establishing that the conduct charged in the
9 criminal proceeding did occur and that there is a reasonable
10 probability that such conduct will be repeated.

11 (h) Threats of harm as clear and present danger.--For the
12 purpose of determining a clear and present danger under
13 subsections (b), (e) and (f), a clear and present danger of harm
14 may be demonstrated by proof that the person has made threats of
15 harm and has committed acts in furtherance of the threat to
16 commit harm.

17 (i) Determination of need for assisted outpatient
18 treatment.--

19 (1) The need for assisted outpatient treatment shall be
20 shown by establishing by clear and convincing evidence that
21 the person would benefit from assisted outpatient treatment
22 as manifested by evidence of behavior that indicates all of
23 the following:

24 (i) The person is unlikely to survive safely in the
25 community without supervision, based on a clinical
26 determination.

27 (ii) The person has a history of lack of voluntary
28 adherence to treatment for mental illness and one of the
29 following applies:

30 (A) At least twice within the 36 months prior to

1 the filing of a petition seeking assisted outpatient
2 treatment, the person's failure to adhere to
3 treatment has been a significant factor in
4 necessitating inpatient hospitalization or receipt of
5 services in a forensic or other mental health unit of
6 a correctional facility, provided that the 36-month
7 period shall be extended by the length of
8 hospitalization or incarceration of the person in a
9 correctional institution that occurred within the 36-
10 month period.

11 (B) Within the 48 months prior to the filing of
12 a petition seeking assisted outpatient treatment, the
13 person's failure to adhere to treatment resulted in
14 one or more acts of serious violent behavior toward
15 others or himself or threats of, or attempts at,
16 serious physical harm to others or himself, provided
17 that the 48-month period shall be extended by the
18 length of hospitalization or incarceration of the
19 person in a correctional institution that occurred
20 within the 48-month period.

21 (iii) The person, as a result of the person's mental
22 illness, is unlikely to voluntarily participate in
23 necessary treatment.

24 (iv) Based on the person's treatment history and
25 current behavior, the person is in need of treatment in
26 order to prevent a relapse or deterioration that would be
27 likely to result in substantial risk of serious harm to
28 the others or himself.

29 (2) An individual who meets only the criteria described
30 in paragraph (1) shall not be subject to involuntary

1 inpatient hospitalization unless a separate determination is
2 made that the individual poses a clear and present danger in
3 accordance with this section.

4 § 3302. Involuntary emergency examination and treatment.

5 (a) Application for examination.--Emergency examination may
6 be undertaken at a facility based upon any of the following:

7 (1) A certification of a physician stating the need for
8 an examination.

9 (2) A warrant issued by the county administrator after
10 receipt of a written application by a physician, a licensed
11 clinical psychologist or other responsible party specifying
12 facts constituting reasonable grounds to believe a person is
13 severely mentally disabled and in need of immediate
14 treatment. The warrant may require an authorized person or
15 law enforcement personnel to take the person to the facility
16 specified in the warrant.

17 (3) Upon personal observation of conduct constituting
18 reasonable grounds to believe that a person is severely
19 mentally disabled and in need of immediate treatment, a
20 physician, licensed clinical psychologist, law enforcement
21 personnel or an authorized person may take the person to an
22 approved facility for an emergency examination. Upon arrival,
23 the person who observed the conduct shall make a written
24 statement specifying the grounds for believing the person to
25 be in need of an examination.

26 (b) Examination and determination of need for treatment.--
27 Emergency examination and treatment shall be conducted as
28 follows:

29 (1) A person taken to a facility shall be examined by a
30 physician within two hours of arrival in order to determine

1 if the person is severely mentally disabled and in need of
2 immediate treatment.

3 (2) If it is determined that the person is severely
4 mentally disabled and in need of emergency treatment,
5 treatment shall be initiated immediately.

6 (3) If the physician does not find the person to be
7 severely mentally disabled and in need of immediate
8 treatment, or if at any time it appears there is no longer a
9 need for immediate treatment, the person shall be discharged
10 and returned to a reasonable location that the person
11 directs.

12 (4) The physician shall make a record of the examination
13 and findings.

14 (5) A person may not be accepted for involuntary
15 emergency treatment if a previous application was granted for
16 involuntary emergency treatment and the new application is
17 not based on behavior occurring after the previous
18 application.

19 (c) Enforcement of rights at emergency examination.--Upon
20 arrival at a facility of a person subject to this section, the
21 following shall apply:

22 (1) The person shall be informed of the reasons for the
23 emergency examination and the right to communicate
24 immediately with others.

25 (2) The person shall be given reasonable use of a
26 telephone.

27 (3) The person shall be requested to furnish the names
28 of parties whom he may want notified of his custody and kept
29 informed of his status.

30 (4) The county administrator or the director of the

1 facility shall:

2 (i) Give notice to the parties identified in
3 paragraph (3) of the whereabouts and status of the
4 person, how and when contact and visits may be made and
5 how the parties may obtain information concerning the
6 person while in inpatient treatment.

7 (ii) Take reasonable steps to assure that while the
8 person is detained, the health and safety needs of the
9 person's dependents are met and that the person's
10 personal property and the premises the person occupies
11 are secure.

12 (d) Duration of emergency examination and treatment.--A
13 person who is in treatment under this section shall be
14 discharged whenever it is determined that the person no longer
15 is in need of treatment, but in all cases within 120 hours of
16 the commencement of treatment, unless within this period either
17 of the following occurs:

18 (1) The person is admitted to voluntary treatment under
19 section 3202 (relating to application for voluntary
20 treatment).

21 (2) A certification for extended involuntary emergency
22 treatment is filed in accordance with section 3303 (relating
23 to extended involuntary emergency treatment).

24 § 3303. Extended involuntary emergency treatment.

25 (a) Application.--Application for extended involuntary
26 emergency treatment may be made in accordance with the
27 following:

28 (1) A facility determines that the need for emergency
29 treatment is likely to extend beyond 120 hours for a person
30 who is being treated under section 3302 (relating to

1 involuntary emergency examination and treatment).

2 (2) The application shall be filed in the court of
3 common pleas.

4 (3) The application shall state the grounds on which
5 extended emergency treatment is believed to be necessary.

6 (4) The application shall state the name of an examining
7 physician and the substance of the physician's opinion
8 regarding the mental condition of the person.

9 (b) Appointment of counsel.--Upon receipt of an application
10 under subsection (a), the court shall appoint counsel to
11 represent the person unless it appears that the person can
12 afford, and desires to have, private representation.

13 (c) Procedures.--An informal conference shall be conducted
14 by the court or a mental health review officer within 24 hours,
15 if practicable, after the application is filed, at the facility
16 and shall be subject to the following requirements:

17 (1) At the commencement of the informal conference, the
18 court or a mental health review officer shall inform the
19 person of the nature of the proceedings.

20 (2) Information relevant to whether the person is
21 severely mentally disabled and in need of treatment shall be
22 reviewed, including the reasons that continued involuntary
23 treatment is considered necessary.

24 (3) The information presented in paragraph (2) shall be
25 made by a physician who examined the person and shall be in
26 terms understandable to a layperson.

27 (4) The court or mental health review officer may review
28 relevant information regardless of whether the information
29 would be normally excluded under rules of evidence, if the
30 court or mental health review officer believes that the

1 information is reliable.

2 (5) The person subject to the proceeding or the person's
3 representative shall have the right to ask questions of the
4 physician and witnesses and to present relevant information.

5 (6) A record of the proceedings, which need not be a
6 stenographic record, shall be made. The record shall be kept
7 by the court or mental health review officer for at least one
8 year.

9 (d) Determination.--At the conclusion of the conference
10 under subsection (c), the court or mental health review officer
11 shall make a determination as to whether the person is severely
12 mentally disabled and in need of continued involuntary
13 treatment, either as an inpatient or through less restrictive
14 assisted outpatient treatment subject to the following:

15 (1) If the person is not determined to be severely
16 mentally disabled and in need of continued involuntary
17 treatment, the judge of the court of common pleas or mental
18 health review officer shall direct the director of the
19 facility or the director's designee to discharge the person.

20 (2) If the judge of the court of common pleas or mental
21 health review officer determines that the person is severely
22 mentally disabled and in need of continued involuntary
23 treatment, a certification for extended involuntary treatment
24 shall be made subject to the following requirements:

25 (i) The certification shall be filed with the
26 director of the facility and a copy served on the person,
27 counsel for the person and other parties as the person
28 requested to be notified under section 3302(c)(3).

29 (ii) Upon the filing and service of a certification
30 for extended involuntary emergency treatment, the person

1 may be given treatment in an approved facility for a
2 period of not more than 20 days.

3 (e) Form and contents of certification.--The certification
4 shall be made in writing upon a form adopted by the department
5 and shall include the following information:

6 (1) Findings by the court or mental health review
7 officer as to the reasons that extended involuntary emergency
8 treatment is necessary.

9 (2) A description of the treatment to be provided,
10 together with an explanation of the adequacy and
11 appropriateness of the treatment, based upon the information
12 received at the informal conference under subsection (c).

13 (3) Any documents required under section 3302.

14 (4) The application filed under subsection (a).

15 (5) A statement that the person is represented by
16 counsel.

17 (6) An explanation of the effect of the certification,
18 the person's right to petition the court for release and the
19 continuing right to be represented by counsel.

20 (f) Duration.--When a person is no longer determined to be
21 severely mentally disabled or in need of immediate treatment and
22 within 20 days after the filing of the certification under
23 subsection (d), the person shall be discharged, unless within
24 this period either of the following occurs:

25 (1) The person is admitted to voluntary treatment under
26 section 3202 (relating to application for voluntary
27 treatment).

28 (2) The court orders involuntary treatment under section
29 3304 (relating to court-ordered involuntary treatment).

30 § 3304. Court-ordered involuntary treatment.

1 (a) Application.--A petition for court-ordered involuntary
2 treatment may be made for any of the following persons:

3 (1) A person already subject to treatment under this
4 section or section 3303 (relating to extended involuntary
5 emergency treatment) or 3305 (relating to additional periods
6 of court-ordered involuntary treatment).

7 (2) A person who is severely mentally disabled, in need
8 of treatment and determined to be a clear and present danger
9 of harm to self or others under section 3301 (relating to
10 persons who may be subject to involuntary emergency
11 examination and treatment) or upon determination that a
12 person meets the requirements under section 3301(i).

13 (b) Procedures for person already in involuntary
14 treatment.--A petition for court-ordered involuntary treatment
15 under this section may be filed for a person described in
16 subsection (a)(1), subject to the following conditions:

17 (1) The petition may be made to the court by the county
18 administrator or the director of the facility.

19 (2) The petition shall be in writing upon a form adopted
20 by the department and shall include the following:

21 (i) A statement of the facts constituting reasonable
22 grounds to believe that the person is severely mentally
23 disabled and in need of treatment.

24 (ii) The name of an examining physician and the
25 substance of the physician's opinion regarding the mental
26 condition of the person.

27 (iii) A statement that the person has been given the
28 information required under paragraph (3).

29 (3) Upon the filing of the petition the county
30 administrator shall serve a copy on the person, counsel for

1 the person and those designated to be kept informed as
2 provided in section 3302(c) (relating to involuntary
3 emergency examination and treatment), including an
4 explanation of the nature of the proceedings, the person's
5 right to counsel and the services of an expert in the field
6 of mental health, as provided under subsection (d).

7 (4) A hearing on the petition, shall be held in all
8 cases within five days after the filing of the petition.

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

11 (6) It shall be sufficient to represent, and upon
12 hearing to reestablish, that the conduct originally required
13 by section 3301 occurred and that the person's condition
14 continues to evidence a clear and present danger of harm to
15 self or others. In such event, it shall not be necessary to
16 show the reoccurrence of dangerous conduct, either harmful or
17 debilitating, within the past 30 days.

18 (b.1) Procedures for initiating assisted outpatient
19 treatment for persons already subject to involuntary
20 treatment.--

21 (1) Petition for assisted outpatient treatment for
22 persons already subject to involuntary treatment under
23 section 3301, or persons with serious mental illness subject
24 to treatment in a forensic facility or a correctional
25 institution who are ready for release, may be made by the
26 county administrator or the director of the facility to the
27 court of common pleas.

28 (2) The petition shall be in writing upon a form adopted
29 by the department and include a statement of the facts
30 constituting reasonable grounds to believe that the person

1 is:

2 (i) No longer determined to be in need of
3 involuntary inpatient treatment under section 3301, or no
4 longer subject to treatment in a forensic facility or
5 correctional institution.

6 (ii) Determined to be in need of assisted outpatient
7 treatment under section 3301(i).

8 (3) The petition shall state the name of an examining
9 physician and the substance of his opinion regarding the
10 mental condition of the person. It shall also state that the
11 person has been given the information required under
12 paragraph (4).

13 (4) Upon the filing of the petition, the county
14 administrator shall serve a copy on the person, his attorney
15 and those designated to be kept informed, as provided in
16 section 3302(c), including an explanation of the nature of
17 the proceedings, the person's right to an attorney and the
18 services of an expert in the field of mental health, as
19 provided by subsection (d).

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

22 (6) Treatment shall be permitted to be maintained
23 pending the determination of the petition.

24 (b.2) Procedures for initiating assisted outpatient
25 treatment for persons not in involuntary treatment.--

26 (1) A responsible party may file a petition in the court
27 of common pleas requesting assisted outpatient treatment for
28 a person determined under section 3301(i) to be in need of
29 assisted outpatient treatment and in involuntary treatment,
30 and who is not already in involuntary treatment or assisted

1 outpatient treatment, for whom application could be made
2 under subsection (a).

3 (2) The petition shall be in writing upon a form adopted
4 by the department and shall state facts constituting
5 reasonable grounds to believe that the person meets the
6 criteria under section 3301(i) for a person in need of
7 assisted outpatient treatment. The petition shall state the
8 name of an examining physician and shall be accompanied by a
9 statement of a psychiatrist, or a statement signed by a
10 clinical psychologist and a statement signed by a physician,
11 stating that the person who issued the petition has examined
12 the person and is of the opinion that the person is in need
13 of assisted outpatient treatment, or shall be accompanied by
14 a written statement by the applicant, under oath, that the
15 person has refused to submit to an examination by a
16 psychiatrist, or by a clinical psychologist and physician.

17 (3) Upon a determination that the petition states
18 reasonable cause, the court shall appoint an attorney to
19 represent the person and set a date for the hearing as soon
20 as practicable. The attorney shall represent the person
21 unless it appears the person can afford, and desires to have,
22 private representation.

23 (4) The court, by summons, shall direct the person to
24 appear for a hearing. The court may issue a warrant directing
25 an individual authorized by the county administrator or law
26 enforcement personnel to bring the person before the court at
27 the time of the hearing if there are reasonable grounds to
28 believe that the person will not appear voluntarily. A copy
29 of the petition shall be served on the person at least three
30 days before the hearing together with a notice advising him

1 that an attorney has been appointed who shall represent him
2 unless he obtains an attorney himself, that he has a right to
3 be assisted in the proceedings by an expert in the field of
4 mental health and that he may request or be made subject to
5 psychiatric examination under paragraph (5).

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

13 (6) Involuntary treatment shall not be authorized during
14 the pendency of a petition except in accordance with sections
15 3302 and 3303.

16 (c) Procedures for persons not already in involuntary
17 treatment.--A petition for court-ordered involuntary treatment
18 for a person not already in involuntary treatment shall be
19 subject to the following conditions:

20 (1) A responsible party may file a petition in the court
21 of common pleas requesting court-ordered involuntary
22 treatment.

23 (2) The petition shall be in writing upon a form adopted
24 by the department and shall state the following:

25 (i) The facts constituting reasonable grounds to
26 believe that the person meets the criteria for court-
27 ordered treatment under subsection (a).

28 (ii) The name of an examining physician and the
29 substance of the physician's opinion regarding the mental
30 condition of the person.

1 (3) Upon a determination that the petition states
2 reasonable cause, the court shall appoint counsel to
3 represent the person and set a date for the hearing as soon
4 as practicable. The attorney shall represent the person
5 unless it appears the person can afford, and desires to have,
6 private representation.

7 (4) The court, by summons, shall direct the person to
8 appear for a hearing. The following requirements shall apply
9 to the person's appearance for the hearing:

10 (i) The court may issue a warrant directing an
11 authorized person or law enforcement personnel to bring
12 the person before the court at the time of the hearing if
13 there are reasonable grounds to believe that the person
14 will not appear voluntarily.

15 (ii) A copy of the petition shall be served on the
16 person at least three days before the hearing, together
17 with a notice informing the person of the following:

18 (A) That counsel has been appointed who shall
19 represent the person unless the person obtains other
20 counsel.

21 (B) That the person has a right to be assisted
22 in the proceedings by a mental health professional
23 under subsection (d).

24 (C) That the person may request or be made
25 subject to psychiatric examination under paragraph

26 (5).

27 (5) Upon motion of either the petitioner or the person,
28 or upon its own motion, the court may order the person to be
29 examined by a licensed psychiatrist appointed by the court,
30 subject to the following conditions:

1 (i) The examination shall be conducted on an
2 outpatient basis.

3 (ii) The person shall have the right to have counsel
4 present.

5 (iii) A report of the examination shall be given to
6 the court and counsel at least 48 hours prior to the
7 hearing.

8 (6) Involuntary treatment may not be authorized during
9 the pendency of a petition except in accordance with section
10 3302 or 3303.

11 (d) Professional assistance.--A person with respect to whom
12 a hearing has been ordered under this section shall be informed
13 of the right to employ a physician, licensed clinical
14 psychologist or other expert in mental health of the person's
15 choice to assist the person in connection with the hearing and
16 testify on the person's behalf. If the person cannot afford to
17 engage a mental health professional, the court shall, on
18 application, allow a reasonable fee for that purpose. The fee
19 shall be a charge against the mental health and intellectual
20 disability program of the county.

21 (e) Conduct of hearing.--A hearing on a petition for court-
22 ordered involuntary treatment shall be conducted in accordance
23 with the following:

24 (1) The person shall have the right to counsel and the
25 assistance of a mental health professional under subsection
26 (d).

27 (2) The person shall not be called as a witness without
28 the person's consent.

29 (3) The person shall have the right to confront and
30 cross-examine all witnesses and to present evidence on the

1 person's own behalf.

2 (4) The hearing shall be public unless it is requested
3 to be private by the person or the person's counsel.

4 (5) A stenographic record or other sufficient record
5 shall be made, which shall be impounded by the court and may
6 be obtained or examined only upon the request of the person
7 or the person's counsel or by order of the court on good
8 cause shown.

9 (6) The hearing shall be conducted by the court or a
10 mental health review officer and may be held at a location
11 other than a courthouse when doing so appears to be in the
12 best interest of the person.

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

15 (8) If the person is believed to be in need of assisted
16 outpatient treatment under section 3301(i), a hearing on the
17 petition shall be conducted in accordance with the following:

18 (i) No later than the date of the hearing, a mental
19 health professional shall provide a written proposed
20 assisted outpatient treatment plan to the court. The plan
21 shall state all treatment services recommended for the
22 person and, for each service, shall specify a provider
23 that has agreed to provide the service.

24 (ii) In developing a written proposed assisted
25 outpatient treatment plan, the qualified mental health
26 professional shall take into account, if existing, an
27 advance directive for adequate treatment and provide the
28 following persons with an opportunity to participate:

29 (A) the person believed to be in need of
30 assisted outpatient treatment;

1 (B) all current treating providers;

2 (C) upon the request of the person believed to
3 be in need of assisted outpatient treatment, an
4 individual significant to the person, including any
5 relative, close friend or individual otherwise
6 concerned with the welfare of the person; and

7 (D) an authorized guardian or other surrogate
8 decision maker.

9 (iii) The written proposed assisted outpatient
10 treatment plan shall include case management services or
11 an assertive community treatment team to provide care
12 coordination and assisted outpatient treatment services
13 recommended by the mental health professional. If the
14 plan includes medication, it shall state whether the
15 medication should be self-administered or administered by
16 a specified provider and shall specify type and dosage
17 range of medication. In no event shall the plan recommend
18 the use of physical force or restraints to administer
19 medication to the person.

20 (iv) A mental health professional, who has
21 personally examined the person within 10 days of the
22 filing of the petition, shall provide testimony in
23 support of the finding that the person meets all of the
24 criteria for assisted outpatient treatment and in support
25 of a written proposed treatment plan developed pursuant
26 to this section including:

27 (A) the recommended assisted outpatient
28 treatment, the rationale for the recommended assisted
29 outpatient treatment and the facts that establish
30 that the assisted outpatient treatment is the least

1 restrictive appropriate alternative;

2 (B) information regarding the person's access
3 to, and the availability of, recommended assisted
4 outpatient treatment in the community or elsewhere;
5 and

6 (C) if the recommended assisted outpatient
7 treatment includes medication, the types or classes
8 of medication that should be authorized, the
9 beneficial and detrimental physical and mental
10 effects of the medication and whether the medication
11 should be self-administered or administered by a
12 specified provider and the ongoing process for
13 management of the medication in response to changes
14 in the person's medical condition.

15 (9) A decision shall be rendered within 48 hours after
16 the close of evidence.

17 (f) Standard of proof and treatment alternatives.--

18 (1) Upon a finding by clear and convincing evidence that
19 the person is severely mentally disabled and in need of
20 adequate treatment and subject to subsection (a), an order
21 shall be entered directing treatment of the person in an
22 approved facility as an inpatient or outpatient, or a
23 combination of such treatment as the director of the facility
24 shall determine.

25 (2) Inpatient treatment shall be deemed appropriate only
26 after full consideration has been given to less restrictive
27 alternatives, including assisted outpatient treatment. An
28 order for inpatient treatment shall include findings on the
29 investigation of treatment alternatives, which shall include
30 consideration of the person's relationship to community and

1 family, employment possibilities, all available community
2 resources and guardianship services.

3 (3) If the person is found to be in need of assisted
4 outpatient treatment in accordance with section 3301(i) or as
5 a result of consideration of less restrictive alternatives
6 under paragraph (2), the court shall order the person to
7 receive assisted outpatient treatment for a period not to
8 exceed 90 days from a provider or facility approved by the
9 department or the county administrator for purposes of
10 providing assisted outpatient treatment. A jail or any other
11 State or county correctional institution shall not be an
12 authorized facility under this paragraph.

13 (4) The provider or facility shall examine and treat the
14 person in accordance with the assisted outpatient treatment
15 plan. If the person is receiving assisted outpatient
16 treatment, or receives treatment in an outpatient setting
17 during a subsequent period of continued commitment under
18 section 3305, the facility or provider to whom the person is
19 ordered shall determine the appropriate assisted outpatient
20 treatment plan for the person.

21 (5) If the approved court-ordered assisted outpatient
22 treatment plan includes medication, the court order shall
23 authorize the treatment team, in accordance with the
24 treatment team's professional judgment, to perform routine
25 medication management, including adjustment of specific
26 medications and doses, in consultation with the person and as
27 warranted by changes in the person's medical condition.

28 (6) The provider or facility responsible for the
29 assisted outpatient treatment plan shall inform the court if
30 the person materially fails to adhere to the treatment plan

1 and comply with the court order. If the court receives
2 information that a patient is not complying with the court's
3 order, the court may take any of the following actions:

4 (i) set a modification hearing to assess the
5 person's failure to adhere to the assisted outpatient
6 treatment plan;

7 (ii) amend the assisted outpatient treatment plan to
8 foster adherence to necessary treatment by the person; or

9 (iii) issue an order for temporary detention if a
10 petition is filed under subsection (b). A State or county
11 correctional institution may not be considered an
12 authorized treatment facility under this paragraph.

13 (7) If the court determines under paragraph (5) that the
14 person has failed to adhere to the assisted outpatient
15 treatment plan, the court may not hold that person in
16 contempt or otherwise sanction the person solely based on the
17 failure to comply with the assisted outpatient treatment
18 plan.

19 (g) Duration.--

20 (1) Except as provided in paragraph (2), a person may be
21 made subject to court-ordered involuntary treatment under
22 this section for a period of not more than 90 days.

23 (2) A person may be made subject to court-ordered
24 involuntary treatment under this section for a period of not
25 more than one year if the person meets both of the following
26 criteria:

27 (i) The finding of severe mental disability is based
28 on the following offenses:

29 18 Pa.C.S. § 2502 (relating to murder).

30 18 Pa.C.S. § 2503 (relating to voluntary

1 manslaughter).

2 18 Pa.C.S. § 2702 (relating to aggravated
3 assault).

4 18 Pa.C.S. § 2901 (relating to kidnapping).

5 18 Pa.C.S. § 3121(a)(1) and (2) (relating to
6 rape).

7 18 Pa.C.S. § 3123(a)(1) and (2) (relating to
8 involuntary deviate sexual intercourse).

9 18 Pa.C.S. § 3301 (relating to arson and related
10 offenses).

11 (ii) A finding of incompetency to proceed on
12 criminal charges or a verdict of acquittal because of
13 lack of criminal responsibility has been entered.

14 (3) Subject to paragraph (4), if at any time the
15 director of a facility concludes that the person is not
16 severely mentally disabled or in need of treatment under
17 subsection (a), the director shall discharge the person.

18 (4) No person subjected to involuntary treatment under
19 paragraph (2) may be discharged without a hearing conducted
20 under subsection (h).

21 (5) A person may be subject to assisted outpatient
22 treatment for a period not to exceed 180 days if the person
23 meets the criteria established under paragraph (6).

24 (6) A person may be subject to assisted outpatient
25 treatment for a period of up to 180 days if the person
26 continues to meet the requirements of section 3301(i) or is
27 being discharged from involuntary inpatient treatment under
28 this chapter.

29 (h) Hearing.--In cases involving involuntary treatment under
30 subsection (g)(2), the following shall apply:

1 (1) The director of a facility shall petition the court
2 which ordered the involuntary treatment for the unconditional
3 or conditional release of the person when either of the
4 following occurs:

5 (i) The period of court-ordered involuntary
6 treatment is about to expire and neither the director nor
7 the county administrator intends to apply for an
8 additional period of court-ordered involuntary treatment
9 under section 3305.

10 (ii) At any time the director concludes that the
11 person is not severely mentally disabled or in need of
12 treatment.

13 (2) Notice of the petition shall be given to the person,
14 the county administrator and the district attorney of the
15 county where the criminal charges under subsection (g)(2)
16 were filed.

17 (3) Within 15 days after the petition has been filed,
18 the court shall hold a hearing to determine if the person is
19 severely mentally disabled and in need of treatment.

20 (4) Petitions which must be filed because the period of
21 involuntary treatment will expire shall be filed at least 10
22 days prior to the expiration of the court-ordered period of
23 involuntary treatment.

24 (5) If the court determines after the hearing that the
25 person is severely mentally disabled and in need of
26 treatment, the court may order additional involuntary
27 treatment not to exceed one year. If the court does not so
28 determine, it shall order the discharge of the person.

29 § 3305. Additional periods of court-ordered involuntary
30 treatment.

1 (a) Application.--Upon the application of the county
2 administrator or the director of a facility in which a person is
3 receiving treatment at the expiration of a period of court-
4 ordered involuntary treatment under section 3304(g) (relating to
5 court-ordered involuntary treatment) or this section, the court
6 may order treatment for an additional period.

7 (b) Basis of order.--The order under subsection (a) shall be
8 entered upon a hearing on findings as required for persons
9 already in involuntary treatment under section 3304(a) and (b)
10 and the further finding of a need for continuing involuntary
11 treatment as shown by conduct during the person's most recent
12 period of court-ordered treatment.

13 (c) Duration.--

14 (1) Except as provided in paragraph (2), the additional
15 period of involuntary treatment shall be not more than 180
16 days.

17 (2) Persons meeting the criteria of section 3304(g) (2)
18 may be subject to an additional period of up to one year of
19 involuntary treatment.

20 (d) Less restrictive alternative placements.--A person found
21 dangerous to self under section 3301(c), (d), (e) or (f)
22 (relating to persons who may be subject to involuntary emergency
23 examination and treatment) shall be subject to an additional
24 period of involuntary full-time inpatient treatment only if the
25 person has first been released to a less restrictive
26 alternative. This limitation shall not apply where, upon
27 application made by the county administrator or the director of
28 a facility, it is determined by the court or mental health
29 review officer that the release would not be in the best
30 interests of the person.

1 (e) Assisted outpatient treatment.--At the expiration of a
2 period of assisted outpatient treatment under section 3304(g) or
3 this section, the court may order treatment for an additional
4 period upon the application of the county administrator or the
5 treatment team. The order of treatment shall be entered upon a
6 hearing as required under section 3304 and the further finding
7 of a need for continuing assisted outpatient treatment. The
8 additional period of involuntary treatment shall not exceed 180
9 days.

10 (f) Notice.--The director of the facility in which the
11 person is receiving treatment shall notify the county
12 administrator at least 10 days prior to the expiration of a
13 period of involuntary treatment ordered under section 3304 or
14 this section.

15 § 3306. Transfer of persons in involuntary treatment.

16 (a) Transfer permitted.--Subject to subsections (b) and (c),
17 a person in involuntary treatment under this part may be
18 transferred to an approved facility.

19 (b) Notice.--In the absence of an emergency, persons
20 committed under section 3304(g) (2) (relating to court-ordered
21 involuntary treatment) may not be transferred unless written
22 notice is given to the court and the district attorney in the
23 committing county and no objection is noted from either the
24 court or the district attorney within 20 days of receipt of the
25 notice. If the court or district attorney objects to the
26 transfer, a hearing shall be held by the court within 20 days to
27 review the commitment order. A decision shall be rendered within
28 48 hours after the close of evidence.

29 (c) Necessity of transfer.--When a transfer will constitute
30 a greater restraint, it shall not take place unless, upon

1 hearing, the court or mental health review officer finds it to
2 be necessary and appropriate.

3 § 3307. Appeal of mental health review officer findings.

4 In all cases in which a proceeding under section 3303(c)
5 (relating to extended involuntary emergency treatment), 3304
6 (relating to court-ordered involuntary treatment), 3305
7 (relating to additional periods of court-ordered involuntary
8 treatment) or 3306 (relating to transfer of persons in
9 involuntary treatment) was conducted by a mental health review
10 officer, a person made subject to treatment under those sections
11 shall have the right to petition the court for review of the
12 certification, subject to the following requirements:

13 (1) A hearing shall be held within 72 hours after the
14 petition is filed unless a continuance is requested by the
15 person's counsel.

16 (2) The hearing shall include a review of the
17 certification and any evidence as the court may receive or
18 require.

19 (3) If the court determines that further involuntary
20 treatment is necessary and that the procedures prescribed by
21 this part have been followed, it shall deny the petition.
22 Otherwise, the court shall order the discharge of the person.

23 CHAPTER 34

24 DETERMINATIONS AFFECTING THOSE CHARGED

25 WITH CRIME OR UNDER SENTENCE

26 Sec.

27 3401. Examination and treatment of person charged with crime or
28 serving sentence.

29 3402. Incompetence to proceed on criminal charges.

30 3403. Incompetency hearing procedures and effect and dismissal

1 of charges.

2 3404. Determination of criminal responsibility.

3 3405. Examination of person charged with crime in aid of
4 sentencing.

5 3406. Application for court-ordered involuntary treatment.

6 3407. Voluntary treatment of person charged with crime or
7 serving sentence.

8 § 3401. Examination and treatment of person charged with crime
9 or serving sentence.

10 (a) Persons subject to civil provisions.--If a person who is
11 charged with a crime or serving a sentence is or becomes
12 severely mentally disabled, proceedings may be instituted under
13 Chapter 32 (relating to voluntary inpatient examination and
14 treatment) or 33 (relating to involuntary examination and
15 treatment), except that the proceedings shall not affect the
16 conditions of security required by the person's criminal
17 detention or incarceration.

18 (b) Persons in United States Department of Veterans Affairs
19 facilities.--Proceedings under this section shall not be
20 initiated for examination and treatment at a Department of
21 Veterans Affairs facility if either of the following apply:

22 (1) The examination and treatment require the
23 preparation of competency reports.

24 (2) The facility is required to maintain custody and
25 control over the person.

26 (c) Transfer for examination and treatment.--A person who is
27 detained on criminal charges or incarcerated and made subject to
28 inpatient examination or treatment shall be transferred to a
29 facility for that purpose. Transfer may be made to a Department
30 of Veterans Affairs facility if custody or control is not

1 required in addition to examination and treatment. Individuals
2 transferred to a Department of Veterans Affairs facility are not
3 subject to return by the agency to the authority entitled to
4 have the individuals in custody.

5 (d) Security provisions.--The following shall apply:

6 (1) During the period of examination and treatment,
7 provisions for the person's security shall continue to be
8 enforced, unless any of the following occurs in the interim:

9 (i) A pretrial release is effected.

10 (ii) The term of imprisonment expires or is
11 terminated.

12 (iii) It is otherwise ordered by the court having
13 jurisdiction over the person's criminal status.

14 (2) In instances where a person is charged with offenses
15 listed under section 3304(g) (2) (relating to court-ordered
16 involuntary treatment) and the court deems it desirable after
17 the hearing, security equivalent to the institution to which
18 the person is incarcerated shall be provided.

19 (e) Effect of discharge.--Upon discharge from treatment, a
20 person who is or remains subject to a detainer or sentence shall
21 be returned to the authority entitled to have the person in
22 custody. The period of involuntary treatment shall be credited
23 as time served on account of a sentence to be imposed on pending
24 charges or an unexpired term of imprisonment.

25 (f) Persons subject to Juvenile Act.--The provisions of
26 Chapter 33 which are applicable to the person's age shall apply
27 to all proceedings for examination and treatment of a person who
28 is subject to a petition or who has been committed under 42
29 Pa.C.S. Ch. 63 (relating to juvenile matters). If the person is
30 in detention or is committed, the court having jurisdiction

1 under 42 Pa.C.S. Ch. 63 shall determine whether the security
2 conditions shall continue to be enforced during any period of
3 involuntary treatment and to whom the person should be released.
4 § 3402. Incompetence to proceed on criminal charges.

5 (a) Person incompetent but not severely mentally disabled.--
6 Notwithstanding the provisions of Chapter 33 (relating to
7 involuntary examination and treatment), a court may order
8 involuntary treatment of a person found incompetent to proceed
9 on criminal charges who is not severely mentally disabled
10 subject to the following:

11 (1) The involuntary treatment shall not exceed 60 days.

12 (2) Involuntary treatment under this subsection may be
13 ordered only if the court is reasonably certain that the
14 involuntary treatment will provide the person with the
15 capacity to proceed on criminal charges.

16 (3) The court may order assisted outpatient treatment or
17 inpatient treatment.

18 (b) Application for incompetency examination.--Application
19 to the court for an order directing an incompetency examination
20 may be presented by any of the following:

21 (1) An attorney for the Commonwealth.

22 (2) A person charged with a crime.

23 (3) Counsel to a person charged with a crime.

24 (4) The director or a facility in which the person is
25 detained.

26 (c) Hearing.--The following shall apply:

27 (1) The court, either upon an application under
28 subsection (b) or on its own motion, may order an
29 incompetency examination at any stage in the proceedings and
30 may do so without a hearing unless the person charged with a

1 crime or the person's counsel objects to the examination.

2 (2) If the person or the person's counsel objects to the
3 examination, an examination shall be ordered only after
4 determination at a hearing that there is a prima facie
5 question of incompetency.

6 (d) Conduct of examination and report.--When the court
7 orders an incompetency examination:

8 (1) The examination shall be conducted:

9 (i) as an outpatient examination unless an inpatient
10 examination is, or has been, authorized under another
11 provision of this part; and

12 (ii) by at least one licensed psychiatrist or
13 licensed clinical psychologist and may relate both to
14 competency to proceed on criminal charges and to criminal
15 responsibility for the crime charged.

16 (2) The person shall be entitled to have counsel present
17 and may not be required to answer any questions or to perform
18 tests unless the person has moved for or agreed to the
19 examination. Nothing said or done by the person during the
20 examination may be used as evidence against the person in any
21 criminal proceedings on any issue other than that of the
22 person's mental condition.

23 (3) A report shall be submitted to the court and counsel
24 for the person and shall contain a description of the
25 examination, which shall include all of the following:

26 (i) Diagnosis of the person's mental condition.

27 (ii) An opinion as to the person's capacity to
28 understand the nature and object of the criminal
29 proceedings against the person and to assist in the
30 person's own defense.

1 (iii) When so requested, an opinion as to the
2 person's mental condition in relation to the standards
3 for criminal responsibility as then provided by law if it
4 appears that the facts concerning the person's mental
5 condition may also be relevant to the question of legal
6 responsibility.

7 (iv) When so requested, an opinion as to whether the
8 person had the capacity to have a particular state of
9 mind, where such state of mind is a required element of
10 the criminal charge.

11 (e) Experts.--The court may allow a licensed psychiatrist or
12 licensed clinical psychologist retained by the person and a
13 licensed psychiatrist or licensed clinical psychologist retained
14 by the Commonwealth to witness and participate in the
15 examination of the person. When a person who is financially
16 unable to retain an expert has a substantial objection to the
17 conclusions reached by the court-appointed licensed psychiatrist
18 or licensed clinical psychologist, the court shall allow
19 reasonable compensation for the employment of a licensed
20 psychiatrist or licensed clinical psychologist of the person's
21 selection, which amount shall be chargeable against the mental
22 health and intellectual disability program of the county.

23 (f) Time limit on determination.--The determination of the
24 competency of a person who is detained under a criminal charge
25 shall be rendered by the court within 20 days after the receipt
26 of the report of examination unless the hearing was continued at
27 the person's request.

28 § 3403. Incompetency hearing procedures and effect and
29 dismissal of charges.

30 (a) Standard and burden of proof.--Except for an

1 incompetency examination ordered by the court on its own motion
2 as provided for in section 3402(c) (relating to incompetence to
3 proceed on criminal charges), the individual making an
4 application to the court for an order directing an incompetency
5 examination shall have the burden of establishing incompetency
6 to proceed by a preponderance of the evidence. Upon completion
7 of the examination, a determination of incompetency shall be
8 made by the court where incompetency is established by a
9 preponderance of the evidence.

10 (b) Stay of proceedings.--A determination of incompetency to
11 proceed on criminal charges shall effect a stay of the
12 prosecution for so long as the incompetency persists, subject to
13 the following exceptions:

14 (1) Any legal objections suitable for determination
15 prior to trial and without the participation of the person
16 charged may be raised and decided in the interim.

17 (2) Except in cases of first and second degree murder,
18 in no instance shall the proceedings be stayed for a period
19 in excess of the maximum sentence of confinement that may be
20 imposed for a crime charged or 10 years, whichever is less.

21 (3) In cases of a charge of first or second degree
22 murder, there shall be no limit on the period during which
23 proceedings may be stayed.

24 (c) Right to counsel.--A person who is determined to be
25 incompetent to proceed on criminal charges shall have a
26 continuing right to counsel so long as the criminal charges are
27 pending.

28 (d) Periodic reexamination.--Following a determination of
29 incompetence to proceed on criminal charges, the person charged
30 shall be reexamined not less than every 90 days by a licensed

1 psychiatrist appointed by the court. A report of reexamination
2 shall be submitted to the court and counsel for the person.

3 (e) Effect on criminal detention.--A determination that a
4 person is incompetent to proceed on criminal charges shall
5 affect criminal detention as follows:

6 (1) Incompetency to proceed on criminal charges is not
7 sufficient reason on its own to deny the person pretrial
8 release.

9 (2) The person shall not be detained on the criminal
10 charge longer than the reasonable period of time necessary to
11 determine whether there is a substantial probability that the
12 person will attain competency in the foreseeable future.

13 (3) If the court determines there is no substantial
14 probability that the person will attain competency, it shall
15 discharge the person.

16 (4) A person may continue to be criminally detained so
17 long as substantial probability exists that the person will
18 attain competency, but in no event longer than the period of
19 time specified in subsection (b).

20 (f) Resumption of proceedings or dismissal.--When the court,
21 on its own motion or upon the application of the attorney for
22 the Commonwealth or counsel for the person, determines that the
23 person has regained competency to proceed on criminal
24 charges, the proceedings shall be resumed. If the court is of
25 the opinion that, by reason of the passage of time and its
26 effect upon the criminal proceedings, it would be unjust to
27 resume the prosecution, the court may dismiss the charge and
28 order the person discharged.

29 (g) Reexamination following discharge.--If the person is
30 discharged under subsection (e), but the charges remain open

1 under subsection (b) (2) and (3), the following shall apply:

2 (1) The court discharging the person shall, on its own
3 motion or on the motion of the Commonwealth or on the motion
4 of the defense, order the person to submit to a psychiatric
5 examination every 12 months after the discharge of the person
6 to determine whether the person has become competent to
7 proceed to trial.

8 (2) If the examination under paragraph (1) reveals that
9 the person has regained competency to proceed, a hearing
10 shall be scheduled, after which the court shall determine
11 whether the person is competent to proceed on criminal
12 charges.

13 (3) If the person is adjudged competent, then trial
14 shall commence within 90 days of the adjudication.

15 (4) If the examination under paragraph (1) reveals that
16 the person is incompetent to proceed, the court shall order
17 the person to submit to a new competency examination in 12
18 months.

19 § 3404. Determination of criminal responsibility.

20 (a) Criminal responsibility determination by court.--At a
21 hearing under section 3403 (relating to incompetency hearing
22 procedures and effect and dismissal of charges), the court may
23 also hear evidence on whether the person was criminally
24 responsible for the commission of the crime charged in
25 accordance with the rules governing the consideration and
26 determination of the same issue at criminal trial. If the person
27 is found to have lacked criminal responsibility, an acquittal
28 shall be entered. If the person is not acquitted, the person may
29 raise the defense when the person is tried.

30 (b) Opinion evidence on mental condition.--At a hearing

1 under section 3403 or upon trial, a licensed psychiatrist or
2 licensed psychologist appointed by the court may be called as a
3 witness by the attorney for the Commonwealth or by the
4 defense. Each party may also summon any other licensed
5 psychiatrist or licensed psychologist or other expert to
6 testify.

7 (c) Bifurcation of issues or trial.--Upon trial and in the
8 interest of justice, the court may direct that the issue of
9 criminal responsibility be heard and determined separately from
10 the other issues in the case and, in a trial by jury, that the
11 issue of criminal responsibility be submitted to a separate
12 jury. Upon a request for bifurcation, the court shall consider
13 the substantiality of the defense of lack of responsibility, its
14 effect upon other defenses and the probability of a fair trial.
15 § 3405. Examination of person charged with crime in aid of
16 sentencing.

17 (a) Examination before sentencing.--If a person who has been
18 criminally charged is to be sentenced, the court may defer
19 sentence and order the person to be examined for mental illness
20 to aid in the determination of disposition.

21 (b) Application for examination.--The action under
22 subsection (a) may be taken on the court's initiative or on the
23 application of the attorney for the Commonwealth, the person
24 charged, the person's counsel or any other person acting in the
25 person's interest.

26 (c) Type of examination.--If at the time of sentencing the
27 person is not in detention, examination shall be on an
28 outpatient basis unless inpatient examination for this purpose
29 is ordered under Chapter 33 (relating to involuntary examination
30 and treatment).

1 § 3406. Application for court-ordered involuntary treatment.

2 The attorney for the Commonwealth, the defendant, the
3 defendant's counsel, the county administrator or any other
4 interested party may petition the same court for an order
5 directing involuntary treatment under section 3304 (relating to
6 court-ordered involuntary treatment) after the occurrence of any
7 of the following:

8 (1) A finding of incompetency to proceed on criminal
9 charges under section 3403 (relating to incompetency hearing
10 procedures and effect and dismissal of charges).

11 (2) An acquittal by reason of lack of criminal
12 responsibility under section 3404 (relating to determination
13 of criminal responsibility).

14 (3) An examination in aid of sentencing under section
15 3405 (relating to examination of person charged with crime
16 in aid of sentencing).

17 § 3407. Voluntary treatment of person charged with crime or
18 serving sentence.

19 (a) Certification of need.--Whether in lieu of bail or
20 serving a sentence, a person in criminal detention who believes
21 that the person is in need of treatment and substantially
22 understands the nature of voluntary treatment may submit to
23 examination and treatment under this part, subject to the
24 following certification requirements:

25 (1) At least one physician shall certify the necessity
26 of treatment and that treatment cannot be adequately provided
27 at the prison or correctional facility where the person is
28 detained.

29 (2) The physician's certificate shall specify the
30 grounds that make transfer to a mental health facility

1 necessary.

2 (3) The correctional facility shall secure a written
3 acceptance of the person for inpatient treatment from the
4 facility and shall forward the acceptance to the court.

5 (b) Independent examination.--Before an inmate of a prison
6 or correctional facility may be transferred to a facility for
7 the purpose of examination and treatment, the correctional
8 facility shall notify the district attorney, who shall be given
9 up to 14 days after receipt of notification to conduct an
10 independent examination of the defendant.

11 (c) Court review and approval.--The court shall review the
12 certification of the physician that the transfer is necessary
13 and the recommendation of the physician for the Commonwealth and
14 either approves or disapproves the transfer, subject to
15 subsection (d) and the following conditions:

16 (1) The court may request information it needs
17 concerning the necessity of the transfer.

18 (2) Where possible, the sentencing judge shall preside.

19 (d) Hearing.--Upon the motion of the district attorney, a
20 hearing shall be held on the question of the voluntary treatment
21 of a person charged with a crime or serving a sentence.

22 (e) Reports.--A report of the person's mental condition
23 shall be made by the facility to the court within 30 days of the
24 person's transfer to the facility. The report shall also specify
25 the grounds which require continued treatment at a facility.
26 After the initial report, the facility shall report to the court
27 every 180 days.

28 (f) Withdrawal from treatment.--If, at any time, the person
29 gives notice of intent to withdraw from treatment at the
30 facility, the person shall be returned to the authority entitled

1 to have the person in custody, or proceedings may be initiated
2 under section 3304 (relating to court-ordered involuntary
3 treatment). During the pendency of a petition filed under
4 section 3304 concerning a person in treatment under this
5 section, the facility shall have authority to detain the person
6 regardless of the provisions of section 3203 (relating to
7 explanation and consent), provided that the hearing under
8 section 3304 is conducted within seven days of the time the
9 person gives notice of his intent to withdraw from treatment.

10 (g) Time served.--The period of voluntary treatment under
11 this section shall be credited as time served on account of a
12 sentence to be imposed on pending charges or an unexpired term
13 of imprisonment.

14 Section 2. Sections 6105(c)(4), 6109(i.1) and 6111.1(f), (g)
15 and (k) of Title 18 are amended to read:

16 § 6105. Persons not to possess, use, manufacture, control, sell
17 or transfer firearms.

18 * * *

19 (c) Other persons.--In addition to any person who has been
20 convicted of any offense listed under subsection (b), the
21 following persons shall be subject to the prohibition of
22 subsection (a):

23 * * *

24 (4) A person who has been adjudicated as an incompetent
25 or who has been involuntarily committed to a mental
26 institution for inpatient care and treatment under [section
27 302, 303 or 304 of the provisions of the act of July 9, 1976
28 (P.L.817, No.143), known as the Mental Health Procedures
29 Act.] 50 Pa.C.S. § 3302 (relating to involuntary emergency
30 examination and treatment), 3303 (relating to extended

1 involuntary emergency treatment) or 3304 (relating to court-
2 ordered involuntary treatment). This paragraph shall not
3 apply to any proceeding under [section 302 of the Mental
4 Health Procedures Act] 50 Pa.C.S. § 3302 unless the examining
5 physician has issued a certification that inpatient care was
6 necessary or that the person was committable.

7 * * *

8 § 6109. Licenses.

9 * * *

10 (i.1) Notice to sheriff.--Notwithstanding any statute to the
11 contrary:

12 (1) Upon conviction of a person for a crime specified in
13 section 6105(a) or (b) or upon conviction of a person for a
14 crime punishable by imprisonment exceeding one year or upon a
15 determination that the conduct of a person meets the criteria
16 specified in section 6105(c) (1), (2), (3), (5), (6) or (9),
17 the court shall determine if the defendant has a license to
18 carry firearms issued pursuant to this section. If the
19 defendant has such a license, the court shall notify the
20 sheriff of the county in which that person resides, on a form
21 developed by the Pennsylvania State Police, of the identity
22 of the person and the nature of the crime or conduct which
23 resulted in the notification. The notification shall be
24 transmitted by the judge within seven days of the conviction
25 or determination.

26 (2) Upon adjudication that a person is incompetent or
27 upon the involuntary commitment of a person to a mental
28 institution for inpatient care and treatment under [the act
29 of July 9, 1976 (P.L.817, No.143), known as the Mental Health
30 Procedures Act] 50 Pa.C.S. Pt. III (relating to mental health

1 procedures), or upon involuntary treatment of a person as
2 described under section 6105(c)(4), the judge of the court of
3 common pleas, mental health review officer or county mental
4 health and mental retardation administrator shall notify the
5 sheriff of the county in which that person resides, on a form
6 developed by the Pennsylvania State Police, of the identity
7 of the person who has been adjudicated, committed or treated
8 and the nature of the adjudication, commitment or treatment.
9 The notification shall be transmitted by the judge, mental
10 health review officer or county mental health and mental
11 retardation administrator within seven days of the
12 adjudication, commitment or treatment.

13 * * *

14 § 6111.1. Pennsylvania State Police.

15 * * *

16 (f) Notification of mental health adjudication, treatment,
17 commitment, drug use or addiction.--

18 (1) Notwithstanding any statute to the contrary, judges
19 of the courts of common pleas shall notify the Pennsylvania
20 State Police, on a form developed by the Pennsylvania State
21 Police, of:

22 (i) the identity of any individual who has been
23 adjudicated as an incompetent or as a mental defective or
24 who has been involuntarily committed to a mental
25 institution under [the act of July 9, 1976 (P.L.817,
26 No.143), known as the Mental Health Procedures Act] 50
27 Pa.C.S. Pt. III (relating to mental health procedures),
28 or who has been involuntarily treated as described in
29 section 6105(c)(4) (relating to persons not to possess,
30 use, manufacture, control, sell or transfer firearms) or

1 as described in 18 U.S.C. § 922(g)(4) (relating to
2 unlawful acts) and its implementing Federal regulations;
3 and

4 (ii) any finding of fact or court order related to
5 any person described in 18 U.S.C. § 922(g)(3).

6 (2) The notification shall be transmitted by the judge
7 to the Pennsylvania State Police within seven days of the
8 adjudication, commitment or treatment.

9 (3) Notwithstanding any law to the contrary, the
10 Pennsylvania State Police may disclose, electronically or
11 otherwise, to the United States Attorney General or a
12 designee, any record relevant to a determination of whether a
13 person is disqualified from possessing or receiving a firearm
14 under 18 U.S.C. § 922 (g) (3) or (4) or an applicable state
15 statute.

16 (g) Review by court.--

17 (1) Upon receipt of a copy of the order of a court of
18 competent jurisdiction which vacates a final order or an
19 involuntary certification issued by a mental health review
20 officer, the Pennsylvania State Police shall expunge all
21 records of the involuntary treatment received under
22 subsection (f).

23 (2) A person who is involuntarily committed [pursuant to
24 section 302 of the Mental Health Procedures Act] under 50
25 Pa.C.S. § 3302 (relating to involuntary emergency examination
26 and treatment) may petition the court to review the
27 sufficiency of the evidence upon which the commitment was
28 based. If the court determines that the evidence upon which
29 the involuntary commitment was based was insufficient, the
30 court shall order that the record of the commitment submitted

1 to the Pennsylvania State Police be expunged. A petition
2 filed under this subsection shall toll the 60-day period set
3 forth under section 6105(a)(2).

4 (3) The Pennsylvania State Police shall expunge all
5 records of an involuntary commitment of an individual who is
6 discharged from a mental health facility based upon the
7 initial review by the physician occurring within two hours of
8 arrival under [section 302(b) of the Mental Health Procedures
9 Act] 50 Pa.C.S. § 3302(b) and the physician's determination
10 that no severe mental disability existed [pursuant to section
11 302(b) of the Mental Health Procedures Act] under 50 Pa.C.S.
12 § 3302(b). The physician shall provide signed confirmation of
13 the determination of the lack of severe mental disability
14 following the initial examination under [section 302(b) of
15 the Mental Health Procedures Act] 50 Pa.C.S. § 3302(b) to the
16 Pennsylvania State Police.

17 * * *

18 (k) Definitions.--As used in this section, the following
19 words and phrases shall have the meanings given to them in this
20 subsection:

21 "Firearm." The term shall have the same meaning as in
22 section 6111.2 (relating to firearm sales surcharge).

23 "Physician." Any licensed psychiatrist or licensed clinical
24 psychologist as defined in [the act of July 9, 1976 (P.L.817,
25 No.143), known as the Mental Health Procedures Act] 50 Pa.C.S. §
26 3102 (relating to definitions).

27 Section 3. Sections 5463(f), 5822(a), 5825(b), 5826(b),
28 5832(a), 5839(b) and 5843(a) and (b) of Title 20 are amended to
29 read:

30 § 5463. Effect on other State law.

1 * * *

2 (f) Disclosure.--The disclosure requirements of section
3 5456(d) (relating to authority of health care agent) supersede
4 any provision in any other State statute or regulation that
5 requires the principal to consent to disclosure or which
6 otherwise conflicts with section 5456(d), including, but not
7 limited to, the following:

8 (1) Section 8 of the act of April 14, 1972 (P.L.221,
9 No.63), known as the Pennsylvania Drug and Alcohol Abuse
10 Control Act.

11 (2) [Section 111 of the act of July 9, 1976 (P.L.817,
12 No.143), known as the Mental Health Procedures Act.] 50
13 Pa.C.S. §§ 3113 (relating to confidentiality of records) and
14 3116(c) (relating to reporting requirements for firearms
15 background checks).

16 (3) Section 15 of the act of October 5, 1978 (P.L.1109,
17 No.261), known as the Osteopathic Medical Practice Act.

18 (4) Section 41 of the act of December 20, 1985 (P.L.457,
19 No.112), known as the Medical Practice Act of 1985.

20 (5) Section 7 of the act of November 29, 1990 (P.L.585,
21 No.148), known as the Confidentiality of HIV-Related
22 Information Act.

23 § 5822. Execution.

24 (a) Who may make.--An individual who is at least 18 years of
25 age or an emancipated minor and has not been deemed
26 incapacitated pursuant to section 5511 (relating to petition and
27 hearing; independent evaluation) or severely mentally disabled
28 [pursuant to Article III of the act of July 9, 1976 (P.L.817,
29 No.143), known as the Mental Health Procedures Act] under 50
30 Pa.C.S. Ch. 33 (relating to involuntary examination and

1 treatment), may make a declaration governing the initiation,
2 continuation, withholding or withdrawal of mental health
3 treatment.

4 * * *

5 § 5825. Revocation.

6 * * *

7 (b) Capacity to revoke.--Subsection (a) notwithstanding,
8 during a period of involuntary commitment [pursuant to Article
9 III of the act of July 9, 1976 (P.L.817, No.143), known as the
10 Mental Health Procedures Act] under 50 Pa.C.S. Ch. 33 (relating
11 to involuntary examination and treatment), a declarant may
12 revoke the declaration only if found to be capable of making
13 mental health decisions after examination by a psychiatrist and
14 one of the following: another psychiatrist, a psychologist, a
15 family physician, an attending physician or a mental health
16 treatment professional. Whenever possible, at least one of the
17 decision makers shall be a treating professional of the
18 declarant or principal.

19 * * *

20 § 5826. Amendment.

21 * * *

22 (b) Determination of capacity.--During the period of
23 involuntary treatment [pursuant to Article III of the act of
24 July 9, 1976 (P.L.817, No.143), known as the Mental Health
25 Procedures Act] under 50 Pa.C.S. Ch. 33 (relating to involuntary
26 examination and treatment), a declarant may amend the
27 declaration if the individual is found to be capable of making
28 mental health decisions after examination by a psychiatrist and
29 one of the following: another psychiatrist, a psychologist,
30 family physician, attending physician or mental health treatment

1 professional. Whenever possible, at least one of the decision
2 makers shall be a treating professional of the declarant or
3 principal.

4 § 5832. Execution.

5 (a) Who may make.--An individual who is at least 18 years of
6 age or an emancipated minor and who has not been deemed
7 incapacitated pursuant to section 5511 (relating to petition and
8 hearing; independent evaluation) or found to be severely
9 mentally disabled [pursuant to Article III of the act of July 9,
10 1976 (P.L.817, No.143), known as the Mental Health Procedures
11 Act] under 50 Pa.C.S. Ch. 33 (relating to involuntary
12 examination and treatment), may make a mental health power of
13 attorney governing the initiation, continuation, withholding or
14 withdrawal of mental health treatment.

15 * * *

16 § 5839. Revocation.

17 * * *

18 (b) Capacity to revoke.--Notwithstanding subsection (a),
19 during a period of involuntary commitment [pursuant to Article
20 III of the act of July 9, 1976 (P.L.817, No.143), known as the
21 Mental Health Procedures Act] under 50 Pa.C.S. Ch. 33 (relating
22 to involuntary examination and treatment), a principal may
23 revoke the mental health power of attorney only if found to be
24 capable of making mental health decisions after examination by a
25 psychiatrist and one of the following: another psychiatrist, a
26 psychologist, a family physician, an attending physician or a
27 mental health treatment professional. Whenever possible, at
28 least one of the decision makers shall be a treating
29 professional of the declarant or principal.

30 * * *

1 § 5843. Construction.

2 (a) General rule.--Nothing in this subchapter shall be
3 construed to:

4 (1) Affect the requirements of other laws of this
5 Commonwealth regarding consent to observation, diagnosis,
6 treatment or hospitalization for a mental illness.

7 (2) Authorize a mental health care agent to consent to
8 any mental health care prohibited by the laws of this
9 Commonwealth.

10 (3) Affect the laws of this Commonwealth regarding any
11 of the following:

12 (i) The standard of care of a mental health care
13 provider required in the administration of mental health
14 care or the clinical decision-making authority of the
15 mental health care provider.

16 (ii) When consent is required for mental health
17 care.

18 (iii) Informed consent for mental health care.

19 (4) Affect the ability to admit a person to a mental
20 health facility under the voluntary and involuntary
21 commitment provisions of [the act of July 9, 1976 (P.L.817,
22 No.143), known as the Mental Health Procedures Act] 50
23 Pa.C.S. Pt. III (relating to mental health procedures).

24 (b) Disclosure.--

25 (1) The disclosure requirements of section 5836(e)
26 (relating to authority of mental health care agent) shall
27 supersede any provision in any other State statute or
28 regulation that requires a principal to consent to disclosure
29 or which otherwise conflicts with section 5836(e), including,
30 but not limited to, the following:

1 (i) The act of April 14, 1972 (P.L.221, No.63),
2 known as the Pennsylvania Drug and Alcohol Abuse Control
3 Act.

4 (ii) [Section 111 of the act of July 9, 1976
5 (P.L.817, No.143), known as the Mental Health Procedures
6 Act.] 50 Pa.C.S. §§ 3113 (relating to confidentiality of
7 records) and 3116(c) (relating to reporting requirements
8 for firearms background checks).

9 (iii) The act of October 5, 1978 (P.L.1109, No.261),
10 known as the Osteopathic Medical Practice Act.

11 (iv) Section 41 of the act of December 20, 1985
12 (P.L.457, No.112), known as the Medical Practice Act of
13 1985.

14 (v) The act of November 29, 1990 (P.L.585, No.148),
15 known as the Confidentiality of HIV-Related Information
16 Act.

17 (2) The disclosure requirements under section 5836(e)
18 shall not apply to the extent that the disclosure would be
19 prohibited by Federal law and implementing regulations.

20 * * *

21 Section 4. Section 5336(b) of Title 23 is amended to read:
22 § 5336. Access to records and information.

23 * * *

24 (b) Nondisclosure of confidential information.--The court
25 shall not order the disclosure of any of the following
26 information to any parent or party granted custody:

27 (1) The address of a victim of abuse.

28 (2) Confidential information from an abuse counselor or
29 shelter.

30 (3) Information protected under Chapter 67 (relating to

1 domestic and sexual violence victim address confidentiality).

2 (4) Information independently protected from disclosure
3 by the child's right to confidentiality under [the act of
4 July 9, 1976 (P.L.817, No.143), known as the Mental Health
5 Procedures Act] 50 Pa.C.S. Pt. III (relating to mental health
6 procedures), or any other statute.

7 * * *

8 Section 5. Sections 6356 and 9727 of Title 42 are amended to
9 read:

10 § 6356. Disposition of mentally ill or mentally retarded child.

11 If, at a dispositional hearing of a child found to be a
12 delinquent or at any hearing, the evidence indicates that the
13 child may be subject to commitment or detention under the
14 provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96,
15 No.6), known as the ["Mental Health and [Mental Retardation]
16 Intellectual Disability Act of 1966,[" or [the act of July 9,
17 1976 (P.L.817, No.143), known as the "Mental Health Procedures
18 Act,"] 50 Pa.C.S. Pt. III (relating to mental health
19 procedures), the court shall proceed under the provisions of the
20 appropriate statute.

21 § 9727. Disposition of persons found guilty but mentally ill.

22 (a) Imposition of sentence.--A defendant found guilty but
23 mentally ill or whose plea of guilty but mentally ill is
24 accepted under the provisions of 18 Pa.C.S. § 314 (relating to
25 guilty but mentally ill) may have any sentence imposed on him
26 which may lawfully be imposed on any defendant convicted of the
27 same offense. Before imposing sentence, the court shall hear
28 testimony and make a finding on the issue of whether the
29 defendant at the time of sentencing is severely mentally
30 disabled and in need of treatment [pursuant to] under the

1 provisions of [the act of July 9, 1976 (P.L.817, No.143), known
2 as the "Mental Health Procedures Act."] 50 Pa.C.S. Pt. III
3 (relating to mental health procedures).

4 (b) Treatment.--

5 (1) An offender who is severely mentally disabled and in
6 need of treatment at the time of sentencing shall, consistent
7 with available resources, be provided such treatment as is
8 psychiatrically or psychologically indicated for his mental
9 illness. Treatment may be provided by the [Bureau of
10 Correction] Department of Corrections, by the county or by
11 the Department of [Public Welfare] Human Services in
12 accordance with [the "Mental Health Procedures Act."] 50
13 Pa.C.S. Pt. III.

14 (2) The cost for treatment of offenders found guilty but
15 mentally ill, committed to the custody of the [Bureau of
16 Correction] Department of Corrections and transferred to a
17 mental health facility, shall be borne by the Commonwealth.

18 * * *

19 Section 6. Section 1101(a) of Title 61 is amended to read:

20 § 1101. Benefits to injured employees of State correctional
21 institutions.

22 (a) General rule.--An employee of a State correctional
23 institution who is injured during the course of that employment
24 by an act of an inmate or by any person who has been committed
25 to the State correctional institution by any court of the
26 Commonwealth or by any provision of [the act of July 9, 1976
27 (P.L.817, No.143), known as the Mental Health Procedures Act] 50
28 Pa.C.S. Pt. III (relating to mental health procedures), shall be
29 paid by the Commonwealth the employee's full salary until the
30 disability arising from the injury no longer prevents the

1 employee's return as an employee of the department at a salary
2 equal to that earned by the employee at the time of the injury.

3 * * *

4 Section 7. The addition of 50 Pa.C.S. Pt. III is a
5 continuation of the act of July 9, 1976 (P.L.817, No.143), known
6 as the Mental Health Procedures Act. The following apply:

7 (1) Except as otherwise provided in 50 Pa.C.S. Pt. III,
8 all activities initiated under the Mental Health Procedures
9 Act shall continue and remain in full force and effect and
10 may be completed under 50 Pa.C.S. Pt. III. Resolutions,
11 orders, regulations, rules and decisions which were made
12 under the Mental Health Procedures Act and which are in
13 effect on the effective date of this section shall remain in
14 full force and effect until revoked, vacated or modified
15 under 50 Pa.C.S. Pt. III. Contracts, obligations and
16 agreements entered into under the Mental Health Procedures
17 Act are not affected nor impaired by the repeal of the Mental
18 Health Procedures Act.

19 (2) A reference in any other act or regulation to the
20 Mental Health Procedures Act shall be deemed to be a
21 reference to 50 Pa.C.S. Pt. III (relating to mental health
22 procedures).

23 Section 8. Repeals are as follows:

24 (1) The General Assembly finds that the repeal under
25 paragraph (2) is necessary to effectuate this act.

26 (2) The act of July 9, 1976 (P.L.817, No.143), known as
27 the Mental Health Procedures Act, is repealed.

28 Section 9. This act shall take effect in 60 days.