
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 750 Session of
2015

INTRODUCED BY GREENLEAF, SCHWANK, RAFFERTY, VULAKOVICH, TEPLITZ,
KITCHEN, BROWNE AND MENSCH, JUNE 18, 2015

REFERRED TO PUBLIC HEALTH AND WELFARE, JUNE 18, 2015

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 "Authorized person." A person authorized by the county
25 administrator to perform a specific duty set forth in this part.

26 "Client." A person receiving behavioral or mental health
27 treatment from a mental health professional.

28 "County administrator." The administrator of a county
29 program or the designee of the administrator.

30 "County program." A mental health and intellectual

1 disability program established under Article III of the act of
2 October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the
3 Mental Health and Intellectual Disability Act of 1966.

4 "Department." The Department of Human Services of the
5 Commonwealth.

6 "Facility." A mental health establishment, hospital, clinic,
7 institution, center, day-care center, base-service unit,
8 community mental health center or a part of such facility that
9 provides for the diagnosis, treatment, care or rehabilitation of
10 persons with mental illness.

11 "Incompetent to proceed on criminal charges." A person who
12 has been charged with a crime who is found to be substantially
13 unable to understand the nature or object of the proceedings
14 against the person or to participate and assist in the person's
15 own defense.

16 "Individualized treatment plan" or "treatment plan." A plan
17 of treatment formulated for a particular person in a program
18 appropriate to the person's specific needs.

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

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

29 "Licensed psychologist." An individual licensed under the
30 Professional Psychologists Practice Act.

1 "Mental health professional." A person licensed or certified
2 in this Commonwealth in any mental health-related field to whom
3 the confidentiality provisions of this part apply.

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

6 "Review officer." A mental health review officer.

7 "Serious mental illness." As defined by the department in
8 its regulations.

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

17 "Treatment." Includes the following:

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

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

24 § 3103. Statement of policy.

25 The purpose of this part is to establish procedures whereby
26 the Commonwealth can seek to assure the availability of adequate
27 treatment to persons with mental illness. The provisions of this
28 part shall be interpreted in conformity with the principles of
29 due process to make voluntary and involuntary treatment
30 available where the need is great and its absence could result

1 in serious harm to the person with mental illness or to others.

2 SUBCHAPTER B

3 ADMINISTRATIVE MATTERS

4 Sec.

5 3111. Rules and regulations.

6 3112. Forms.

7 3113. Confidentiality of records.

8 3114. Jurisdiction and venue.

9 3115. Conduct of proceedings.

10 3116. Reporting requirements for firearms background checks.

11 § 3111. Rules and regulations.

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

20 § 3112. Forms.

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

23 (b) Verification.--A warrant or application under section
24 3302(a)(2) (relating to involuntary emergency examination and
25 treatment) and each application, petition and certification
26 required under this part shall be made subject to the penalties
27 provided under 18 Pa.C.S. § 4904 (relating to unsworn
28 falsification to authorities) and must contain a notice to that
29 effect.

30 (c) Submission.--Each warrant, application, petition or

1 certification under subsection (b) must be submitted to the
2 county administrator in the following counties:

3 (1) Where the person was made subject to examination and
4 treatment.

5 (2) Any other county in this Commonwealth in which the
6 person is domiciled.

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

15 § 3113. Confidentiality of records.

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

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

21 (2) The county administrator, pursuant to section
22 3112(c) (relating to forms).

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

25 (4) Pursuant to Federal rules, statutes or regulations
26 governing disclosure of patient information where treatment
27 is undertaken by a Federal agency.

28 (b) Privileged communications.--Privileged communications,
29 whether written or oral, may not be disclosed to anyone without
30 written consent of the person who made the communication.

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

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

11 § 3114. Jurisdiction and venue.

12 (a) Initial jurisdiction.--The jurisdiction of a court of
13 common pleas or juvenile court conferred by Chapters 32
14 (relating to voluntary inpatient examination and treatment) and
15 33 (relating to involuntary examination and treatment) shall be
16 exercised initially by the court for the county in which the
17 subject of the proceedings is located or resides.

18 (b) Subsequent proceedings.--If involuntary treatment is
19 ordered, jurisdiction over any subsequent proceeding shall be
20 retained by the court in which the initial proceeding occurred,
21 but jurisdiction may be transferred to the county where the
22 person is domiciled.

23 (c) Proceedings at treatment facility.--The court or a
24 mental health review officer of the county having jurisdiction
25 over the proceedings may conduct legal proceedings at a facility
26 where the person is in treatment, whether or not the facility is
27 located within the county where the court or mental health
28 review officer normally conducts business.

29 (d) Venue for actions involving statutory rights.--Venue for
30 actions instituted to effectuate rights under this part shall be

1 as now or hereafter provided by law.

2 § 3115. Conduct of proceedings.

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

9 § 3116. Reporting requirements for firearms background checks.

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

16 (1) A person who has been adjudicated incompetent to
17 proceed on criminal charges under Chapter 34 (relating to
18 determinations affecting those charged with crime or under
19 sentence).

20 (2) A person who has been involuntarily committed to a
21 mental institution for inpatient care and treatment under
22 this part.

23 (3) A person who has been involuntarily treated as
24 described under 18 Pa.C.S. § 6105(c) (4) (relating to persons
25 not to possess, use, manufacture, control, sell or transfer
26 firearms).

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

30 (c) Confidentiality provisions waived.--Section 3113

1 (relating to confidentiality of records) shall not restrict the
2 disclosure of information:

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

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

6 SUBCHAPTER C

7 GENERAL TREATMENT PROVISIONS

8 Sec.

9 3121. Applicability.

10 3122. Referral of persons discharged from treatment.

11 3123. Basic treatment requirements.

12 3124. Treatment facilities.

13 3125. Treatment team.

14 3126. Individualized treatment plan.

15 3127. Periodic reexamination, review and redistribution.

16 3128. Duty to protect.

17 § 3121. Applicability.

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

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

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

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

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

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

30 (2) In every case, the least restrictions consistent

1 with adequate treatment standards shall be employed.

2 (c) Treatment of individuals with multiple diagnoses.--

3 Individuals who are intellectually disabled, senile or alcohol
4 or drug dependent shall receive mental health treatment only if
5 they are also diagnosed as mentally ill, but each of these
6 conditions alone may not be deemed to constitute mental illness.

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

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

24 § 3122. Referral of persons discharged from treatment.

25 (a) Discharge from State institutions.--The facility
26 administration shall refer those voluntary and involuntary
27 patients discharged from State institutional programs to the
28 appropriate county program.

29 (b) County program responsibilities.--Pursuant to Article
30 III of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6),

1 known as the Mental Health and Intellectual Disability Act of
2 1966, county programs shall receive referrals from State-
3 operated facilities and shall be responsible for the treatment
4 needs of county residents discharged from institutions pursuant
5 to Chapters 32 (relating to voluntary inpatient examination and
6 treatment) and 33 (relating to involuntary examination and
7 treatment).

8 § 3123. Basic treatment requirements.

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

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

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

19 § 3124. Treatment facilities.

20 (a) Approved facilities.--All involuntary and voluntary
21 treatment funded in whole or in part by public money shall be
22 available at a facility approved for such purposes by the county
23 administrator or the department. Approval of facilities shall be
24 made by the appropriate authority which can be the department
25 pursuant to regulations adopted by the department.

26 (b) Veterans facilities.--Treatment may be ordered at the
27 United States Department of Veterans Affairs or other Federal
28 agency upon receipt of a certificate that the person is eligible
29 for such hospitalization or treatment and that there is
30 available space for the person's care. Mental health facilities

1 operated under the direct control of the United States
2 Department of Veterans Affairs or other Federal agency are
3 exempt from obtaining State approval.

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

8 (1) The joint commission for accreditation of hospitals.

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

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

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

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

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

22 § 3125. Treatment team.

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

25 (1) A licensed clinical psychologist.

26 (2) A physician if:

27 (i) failure to do so would jeopardize Federal
28 payments made on behalf of a patient; or

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

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

3 (c) Independence of professional judgment.--Notwithstanding
4 any other provision of this part, the court or mental health
5 review officer may not specify to the treatment team the
6 adoption of any treatment techniques, modality or drug therapy.
7 § 3126. Individualized treatment plan.

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

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

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

20 § 3127. Periodic reexamination, review and redistribution.

21 (a) Reexamination and review.--

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

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

26 (b) Redistribution.--On the basis of reexamination and
27 review, the treatment team may:

28 (1) authorize continuation of the existing treatment
29 plan if appropriate;

30 (2) formulate a new individualized treatment plan; or

1 (3) recommend to the director of the facility the
2 discharge of the person.

3 (c) Duration or modality of treatment.--A person shall not
4 remain in treatment or under any particular mode of treatment
5 for longer than the treatment is necessary and appropriate to
6 the person's needs.

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

11 (1) A report of the reexamination, including a diagnosis
12 and prognosis.

13 (2) A brief description of the treatment provided to the
14 person during the period preceding the reexamination and the
15 results of that treatment.

16 (3) A statement of the reason for discharge or for
17 continued treatment.

18 (4) An individualized treatment plan for the next
19 period, if any.

20 (5) A statement of the reasons that the treatment plan
21 imposes the least restrictions consistent with adequate
22 treatment standards.

23 (6) A certification that the adequate treatment
24 recommended is available and will be afforded in the
25 treatment program.

26 § 3128. Duty to protect.

27 (a) Criteria for duty to apply.--In accordance with the
28 procedures under subsection (b), a mental health professional
29 shall attempt to protect each potential victim from a threat of
30 danger from a client of the mental health professional if all of

1 the following apply:

2 (1) The client has communicated to the mental health
3 professional an explicit threat of imminent serious physical
4 harm or death to a clearly identified or identifiable victim
5 or the general public or a mental health professional
6 reasonably believes after considering the totality of the
7 circumstances that a client of the mental health professional
8 presents an imminent threat of serious physical harm or death
9 to a clearly identified or identifiable victim or the general
10 public.

11 (2) The mental health professional reasonably believes,
12 or by the standards of the professional's profession should
13 believe, that the client has the intent and ability to carry
14 out the threat.

15 (3) The threat has been communicated to the professional
16 by the threatening client while the professional is engaged
17 in his professional duties.

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

20 (1) use therapeutic interventions or take therapeutic
21 precautions that a reasonable prudent mental health
22 professional would take under the circumstances to diffuse
23 the danger;

24 (2) communicate the threat to all identified or
25 identifiable victims;

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

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

1 other rights now or hereafter provided under the laws of this
2 Commonwealth, in addition to any rights provided for in this
3 part. Actions requesting damages, declaratory judgment,
4 injunction, mandamus, writs of prohibition, habeas corpus,
5 including challenges to the legality of detention or degree of
6 restraint, and any other remedies or relief granted by law, may
7 be maintained in order to protect and effectuate the rights
8 granted under this part.

9 § 3132. Immunity from civil and criminal liability.

10 (a) Treatment decisions in general.--In the absence of
11 willful misconduct or gross negligence, a county administrator,
12 director of a facility, physician, peace officer or any other
13 authorized person may not be held civilly or criminally liable
14 for any of the following decisions or the consequences of the
15 decision:

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

17 (2) To discharge a person under this part.

18 (3) To place a person subject to this part under partial
19 hospitalization, outpatient care or leave of absence.

20 (4) To reduce a restraint upon a person subject to this
21 part.

22 (b) Denial of treatment.--A county administrator or other
23 authorized person who denies an application for voluntary
24 treatment or involuntary emergency examination and treatment may
25 not be civilly or criminally liable for the decision or any of
26 its consequences.

27 (c) Judicial immunity.--A court officer or a mental health
28 review officer shall not be civilly or criminally liable for an
29 action taken or decision made pursuant to the authority
30 conferred by this part.

1 following entities:

2 (1) An approved facility.

3 (2) A county administrator.

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

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

7 (b) Designation of treatment facility.--When application is
8 made to the county administrator, the county administrator shall
9 designate the approved facility for examination and treatment as
10 may be appropriate.

11 § 3203. Explanation and consent.

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

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

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

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

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

22 (c) Contents of consent.--The consent shall include the
23 following representations:

24 (1) That the person understands treatment will involve
25 inpatient status.

26 (2) That the person is willing to be admitted to a
27 designated facility for the purpose of examination and
28 treatment.

29 (3) That the person consents to the admission
30 voluntarily, without coercion or duress.

1 (4) If applicable, that the person has voluntarily
2 agreed to remain in treatment for a specified period of no
3 longer than 72 hours after having given written notice of the
4 intent to withdraw from treatment.

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

7 § 3204. Notice to parents.

8 (a) Notice.--Upon the acceptance of an application for
9 examination and treatment by a child who is 14 years of age or
10 older and younger than 18 years of age, the director of the
11 facility shall promptly notify the child's parents, guardian or
12 person standing in loco parentis to the child to inform them of
13 the right to be heard upon the filing of an objection to the
14 examination and treatment.

15 (b) Objection to treatment by parent.--Whenever an objection
16 is filed by the parents, guardian or person standing in loco
17 parentis of a child, a hearing shall be held within 72 hours by
18 the court or mental health review officer, to determine whether
19 or not the voluntary treatment is in the best interest of the
20 child.

21 § 3205. Physical examination and individualized treatment plan.

22 (a) Physical examination.--Upon acceptance of a person for
23 voluntary examination and treatment, the person shall be given a
24 physical examination.

25 (b) Individualized treatment plan.--Within 72 hours after
26 acceptance of a person, a treatment team shall formulate an
27 individualized treatment plan, subject to the following
28 requirements:

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

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

2 (i) Whether inpatient treatment is considered
3 necessary.

4 (ii) What restraints or restrictions, if any, will
5 be administered.

6 (iii) The bases for the conclusions under
7 subparagraphs (i) and (ii).

8 § 3206. Withdrawal from voluntary treatment.

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

13 (b) Waiting period.--

14 (1) A person in voluntary inpatient treatment who,
15 pursuant to section 3203(c)(4) (relating to explanation and
16 consent), agreed in writing at the time of admission that
17 release could be delayed for a period specified in the
18 agreement, not to exceed 72 hours, may have that release so
19 delayed.

20 (2) A person converted from involuntary treatment
21 ordered pursuant to section 3304 (relating to court-ordered
22 involuntary treatment) or 3305 (relating to additional
23 periods of court-ordered involuntary treatment) to voluntary
24 treatment status shall agree to remain in treatment for 72
25 hours after giving notice.

26 (c) Release of children younger than 14 years of age; who
27 may initiate.--If the child is younger than 14 years of age, the
28 parent, legal guardian, or person standing in loco parentis to
29 the child may affect the child's release. If any responsible
30 party believes that it would be in the best interest of a child

1 younger than 14 years of age in voluntary treatment to be
2 withdrawn therefrom or afforded treatment constituting the least
3 restrictions consistent with adequate treatment standards, that
4 party may file a petition in the juvenile division of the court
5 of common pleas for the county in which the child younger than
6 14 years of age resides, requesting a withdrawal from or
7 modification of treatment.

8 (d) Appointment of counsel; hearing for child younger than
9 14 years of age.--The court shall promptly appoint an attorney
10 for a child for whom a petition was filed under subsection (b)
11 and schedule a hearing to determine what inpatient treatment, if
12 any, is in the best interest of the child. The hearing shall be
13 held within 10 days of receipt of the petition, unless continued
14 upon the request of the attorney for the child. The hearing
15 shall be conducted in accordance with the rules governing other
16 juvenile court proceedings.

17 (e) Lack of medical necessity.--Nothing in this part shall
18 be construed to require a facility to continue inpatient
19 treatment where the director of the facility determines such
20 treatment is not medically indicated. Any dispute between a
21 facility and a county administrator as to the medical necessity
22 for voluntary inpatient treatment of a person shall be decided
23 by the Commissioner of Mental Health or the designee of the
24 commissioner.

25 § 3207. Transfer of person in voluntary treatment.

26 A person who is in voluntary treatment may not be transferred
27 from one facility to another without the written consent of the
28 person.

29 CHAPTER 33

30 INVOLUNTARY EXAMINATION AND TREATMENT

1 Subchapter

2 A. Inpatient or Outpatient Involuntary Examination and
3 Treatment

4 B. Assisted Outpatient Treatment

5 SUBCHAPTER A

6 INPATIENT OR OUTPATIENT INVOLUNTARY

7 EXAMINATION AND TREATMENT

8 Sec.

9 3301. Persons who may be subject to involuntary emergency
10 examination and treatment.

11 3302. Involuntary emergency examination and treatment.

12 3303. Extended involuntary emergency treatment.

13 3304. Court-ordered involuntary treatment.

14 3305. Additional periods of court-ordered involuntary
15 treatment.

16 3306. Transfer of persons in involuntary treatment.

17 3307. Appeal of mental health review officer findings.

18 § 3301. Persons who may be subject to involuntary emergency
19 examination and treatment.

20 (a) Applicability.--A person who is severely mentally
21 disabled and in need of immediate treatment may be subject to
22 involuntary emergency examination and treatment. Severely
23 mentally disabled shall include a determination of clear and
24 present danger, as set forth in subsections (b), (c), (d), (e)
25 and (f).

26 (b) Determination of clear and present danger of harm to
27 others.--Clear and present danger to others shall be shown by
28 establishing that within the past 30 days the person has
29 inflicted or attempted to inflict serious bodily harm on another
30 or caused substantial property damage and that there is a

1 reasonable probability that such conduct will be repeated.

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

5 (1) Within the past 30 days the person has acted in such
6 manner as to evidence that the person would be unable,
7 without care, supervision and the continued assistance of
8 others, to satisfy the person's need for nourishment,
9 personal or medical care, shelter or self-protection and
10 safety.

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

15 (d) Determination of clear and present danger to self by
16 reoccurrence and relapse.--Clear and present danger of harm to
17 self by reoccurrence and relapse shall be shown by establishing
18 all of the following criteria:

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

21 (2) Within the past 24 months the person has twice been
22 involuntarily examined and treated under the provisions of
23 this chapter in an approved inpatient facility.

24 (3) The person is exhibiting symptoms or behavior
25 substantially similar to those that preceded and led to one
26 or more of the inpatient placements referred to in paragraph
27 (2).

28 (4) There is a reasonable probability that death,
29 serious bodily injury or serious physical or mental
30 debilitation would ensue within 30 days unless adequate

1 treatment were afforded under this part.

2 (e) Determination of clear and present danger to self by
3 suicide.--Clear and present danger of harm to self by suicide
4 shall be shown by establishing that within the past 30 days the
5 person has attempted suicide and that there is the reasonable
6 probability of suicide unless adequate treatment is afforded
7 under this part.

8 (f) Determination of clear and present danger to self by
9 self-mutilation.--Clear and present danger to self by self-
10 mutilation shall be shown by establishing that within the past
11 30 days the person has committed substantial self-mutilation or
12 attempted to commit substantial self-mutilation and that there
13 is the reasonable probability of self-mutilation unless adequate
14 treatment is afforded under this part.

15 (g) Special rule for persons involved in criminal justice
16 system.--If a person has been found incompetent to proceed on
17 criminal charges or has been acquitted by reason of lack of
18 criminal responsibility on charges arising from conduct
19 involving infliction of or attempt to inflict substantial bodily
20 harm on another, the 30-day limitation set forth in subsection
21 (b) shall not apply so long as an application for examination
22 and treatment is filed within 30 days after the date of the
23 incompetency determination or verdict of acquittal. In those
24 cases, a clear and present danger to others may be shown by
25 establishing that the conduct charged in the criminal proceeding
26 did occur and that there is a reasonable probability that such
27 conduct will be repeated.

28 (h) Threats of harm as clear and present danger.--For the
29 purpose of determining a clear and present danger under
30 subsections (b), (e) and (f), a clear and present danger of harm

1 may be demonstrated by proof that the person has made threats of
2 harm and has committed acts in furtherance of the threat to
3 commit harm.

4 § 3302. Involuntary emergency examination and treatment.

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

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

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

18 (3) Without warrant.--Upon personal observation of
19 conduct constituting reasonable grounds to believe that a
20 person is severely mentally disabled and in need of immediate
21 treatment, a physician, licensed clinical psychologist, peace
22 officer or an authorized person may take the person to an
23 approved facility for an emergency examination. Upon arrival,
24 the person who personally observed the conduct shall make a
25 written statement setting forth the grounds for believing the
26 person to be in need of an examination.

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

30 (1) A person taken to a facility shall be examined by a

1 physician within two hours of arrival in order to determine
2 if the person is severely mentally disabled and in need of
3 immediate treatment.

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

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

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

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

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

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

26 (2) The person shall be given reasonable use of the
27 telephone.

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

1 (4) The county administrator or the director of the
2 facility shall:

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

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

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

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

22 (2) A certification for extended involuntary emergency
23 treatment is filed pursuant to section 3303 (relating to
24 extended involuntary emergency treatment).

25 § 3303. Extended involuntary emergency treatment.

26 (a) Application.--Application for extended involuntary
27 emergency treatment may be made under the following
28 circumstances:

29 (1) An application may be made for any person who is
30 being treated pursuant to section 3302 (relating to

1 involuntary emergency examination and treatment) when the
2 facility determines that the need for emergency treatment is
3 likely to extend beyond 120 hours.

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

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

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

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

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

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

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

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

29 (4) The court or mental health review officer may review
30 any relevant information even if it would be normally

1 excluded under rules of evidence if the court or mental
2 health review officer believes that the information is
3 reliable.

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

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

12 (d) Determination.--At the conclusion of the review set
13 forth in subsection (c), the court or mental health review
14 officer shall make a determination as to whether or not the
15 person is severely mentally disabled and in need of continued
16 involuntary treatment, subject to the following:

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

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

27 (i) The certification shall be filed with the
28 director of the facility and a copy served on the person,
29 counsel for the person and such other parties as the
30 person requested to be notified pursuant to section

1 3302(c)(3).

2 (ii) Upon the filing and service of a certification
3 for extended involuntary emergency treatment, the person
4 may be given treatment in an approved facility for a
5 period of not more than 20 days.

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

9 (1) Findings by the court or mental health review
10 officer as to the reasons that extended involuntary emergency
11 treatment is necessary.

12 (2) A description of the treatment to be provided,
13 together with an explanation of the adequacy and
14 appropriateness of the treatment, based upon the information
15 received at the informal conference.

16 (3) Any documents required by section 3302.

17 (4) The application as filed pursuant to subsection (a).

18 (5) A statement that the person is represented by
19 counsel.

20 (6) An explanation of the effect of the certification,
21 the person's right to petition the court for release under
22 subsection (f) and the continuing right to be represented by
23 counsel.

24 (f) Duration.--Whenever a person is no longer severely
25 mentally disabled or in need of immediate treatment and, in any
26 event, within 20 days after the filing of the certification, the
27 person shall be discharged, unless within this period either of
28 the following occurs:

29 (1) The person is admitted to voluntary treatment
30 pursuant to section 3202 (relating to application for

1 voluntary treatment).

2 (2) The court orders involuntary treatment pursuant to
3 section 3304 (relating to court-ordered involuntary
4 treatment).

5 § 3304. Court-ordered involuntary treatment.

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

8 (1) A person already subject to treatment under this
9 section or section 3303 (relating to extended involuntary
10 emergency treatment) or 3305 (relating to additional periods
11 of court-ordered involuntary treatment).

12 (2) A person who is severely mentally disabled, in need
13 of treatment and determined to be a clear and present danger
14 of harm to self or others under section 3301 (relating to
15 persons who may be subject to involuntary emergency
16 examination and treatment).

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

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

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

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

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

1 (iii) A statement that the person has been given the
2 information required by paragraph (3).

3 (3) Upon the filing of the petition the county
4 administrator shall serve a copy on the person, counsel for
5 the person and those designated to be kept informed as
6 provided in section 3302(c) (relating to involuntary
7 emergency examination and treatment), including an
8 explanation of the nature of the proceedings, the person's
9 right to counsel and the services of an expert in the field
10 of mental health, as provided by subsection (d).

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

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

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

22 (c) Procedures for persons not already in involuntary
23 treatment.--A petition for court-ordered involuntary treatment
24 for a person not already in involuntary treatment shall be
25 subject to the following conditions:

26 (1) Any responsible party may file a petition in the
27 court of common pleas requesting court-ordered involuntary
28 treatment.

29 (2) The petition shall be in writing upon a form adopted
30 by the department and shall set forth the following:

1 (i) The facts constituting reasonable grounds to
2 believe that the person is within the criteria for court-
3 ordered treatment set forth in subsection (a).

4 (ii) The name of an examining physician and the
5 substance of the physician's opinion regarding the mental
6 condition of the person.

7 (3) Upon a determination that the petition sets forth
8 such reasonable cause, the court shall appoint counsel to
9 represent the person and set a date for the hearing as soon
10 as practicable. The attorney shall represent the person
11 unless it appears that the person can afford, and desires to
12 have, private representation.

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

16 (i) The court may issue a warrant directing an
17 authorized person or a peace officer to bring the person
18 before the court at the time of the hearing if there are
19 reasonable grounds to believe that the person will not
20 appear voluntarily.

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

24 (A) That counsel has been appointed who shall
25 represent the person unless the person obtains other
26 counsel.

27 (B) That the person has a right to be assisted
28 in the proceedings by an expert in the field of
29 mental health under subsection (d).

30 (C) That the person may request or be made

1 subject to psychiatric examination under paragraph
2 (5).

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

7 (i) The examination shall be conducted on an
8 outpatient basis.

9 (ii) The person shall have the right to have counsel
10 present.

11 (iii) A report of the examination shall be given to
12 the court and counsel at least 48 hours prior to the
13 hearing.

14 (6) Involuntary treatment may not be authorized during
15 the pendency of a petition except in accordance with section
16 3302 or 3303.

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

27 (e) Conduct of hearing.--A hearing on a petition for court-
28 ordered involuntary treatment shall be conducted according to
29 the following:

30 (1) The person shall have the right to counsel and the

1 assistance of an expert in mental health under subsection
2 (d).

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

5 (3) The person shall have the right to confront and
6 cross-examine all witnesses and to present evidence on the
7 person's own behalf.

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

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

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

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

21 (f) Standard of proof; treatment alternatives.--

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

29 (2) Inpatient treatment shall be deemed appropriate only
30 after full consideration has been given to less restrictive

1 alternatives. An order for inpatient treatment shall include
2 findings on the investigation of treatment alternatives,
3 which shall include consideration of the person's
4 relationship to community and family, employment
5 possibilities, all available community resources and
6 guardianship services.

7 (g) Duration.--

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

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

15 (i) The finding of severe mental disability is based
16 on acts giving rise to the following offenses:

17 18 Pa.C.S. § 2502 (relating to murder).

18 18 Pa.C.S. § 2503 (relating to voluntary
19 manslaughter).

20 18 Pa.C.S. § 2702 (relating to aggravated
21 assault).

22 18 Pa.C.S. § 2901 (relating to kidnapping).

23 18 Pa.C.S. § 3121(a)(1) and (2) (relating to
24 rape).

25 18 Pa.C.S. § 3123(a)(1) and (2) (relating to
26 involuntary deviate sexual intercourse).

27 18 Pa.C.S. § 3301 (relating to arson and related
28 offenses).

29 (ii) A finding of incompetency to proceed on
30 criminal charges or a verdict of acquittal because of

1 lack of criminal responsibility has been entered.

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

6 (4) No person subjected to involuntary treatment
7 pursuant to paragraph (2) may be discharged without a hearing
8 conducted pursuant to subsection (h).

9 (h) Hearing.--In cases involving involuntary treatment
10 pursuant to subsection (g) (2), the following shall apply:

11 (1) The director shall petition the court which ordered
12 the involuntary treatment for the unconditional or
13 conditional release of the person when either of the
14 following occurs:

15 (i) The period of court-ordered involuntary
16 treatment is about to expire and neither the director nor
17 the county administrator intends to apply for an
18 additional period of court-ordered involuntary treatment
19 pursuant to section 3305.

20 (ii) At any time the director concludes that the
21 person is not severely mentally disabled or in need of
22 treatment.

23 (2) Notice of the petition shall be given to the person,
24 the county administrator and the district attorney of the
25 county where the criminal charges under subsection (g) (2)
26 were filed.

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

30 (4) Petitions which must be filed simply because the

1 period of involuntary treatment will expire shall be filed at
2 least 10 days prior to the expiration of the court-ordered
3 period of involuntary treatment.

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

9 § 3305. Additional periods of court-ordered involuntary
10 treatment.

11 (a) Application.--Upon the application of the county
12 administrator or the director of the facility in which the
13 person is receiving treatment at the expiration of a period of
14 court-ordered involuntary treatment under section 3304(g)
15 (relating to court-ordered involuntary treatment) or this
16 section, the court may order treatment for an additional period.

17 (b) Basis of order.--The order under subsection (a) shall be
18 entered upon hearing on findings as required for persons already
19 in involuntary treatment by section 3304(a) and (b) and the
20 further finding of a need for continuing involuntary treatment
21 as shown by conduct during the person's most recent period of
22 court-ordered treatment.

23 (c) Duration.--

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

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

30 (d) Less restrictive alternative placements.--A person found

1 dangerous to self under section 3301(c), (d), (e) or (f)
2 (relating to persons who may be subject to involuntary emergency
3 examination and treatment) shall be subject to an additional
4 period of involuntary full-time inpatient treatment only if the
5 person has first been released to a less restrictive
6 alternative. This limitation shall not apply where, upon
7 application made by the county administrator or facility
8 director, it is determined by the court or mental health review
9 officer that such release would not be in the best interests of
10 the person.

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

16 § 3306. Transfer of persons in involuntary treatment.

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

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

1 (c) Necessity of transfer.--When a transfer will constitute
2 a greater restraint, it shall not take place unless, upon
3 hearing, the court or review officer finds it to be necessary
4 and appropriate.

5 § 3307. Appeal of mental health review officer findings.

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

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

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

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

25 SUBCHAPTER B

26 ASSISTED OUTPATIENT TREATMENT

27 Sec.

28 3311. Definitions.

29 3312. Program coordinators to be appointed.

30 3313. Duties of county administrators.

1 3314. Directors of assisted outpatient treatment programs.

2 3315. Assisted outpatient treatment program.

3 § 3311. Definitions.

4 The following words and phrases when used in this subchapter
5 shall have the meanings given to them in this section unless the
6 context clearly indicates otherwise:

7 "Assisted outpatient" or "patient." A person under a court
8 order to receive assisted outpatient treatment.

9 "Assisted outpatient treatment." Any of the following
10 categories of outpatient services which have been ordered by the
11 court pursuant to section 3315 (relating to assisted outpatient
12 treatment program):

13 (1) Case management services or assertive community
14 treatment team services to provide care coordination.

15 (2) Medication.

16 (3) Periodic blood tests or urinalysis to determine
17 compliance with prescribed medications.

18 (4) Individual or group therapy.

19 (5) Day or partial programming activities.

20 (6) Educational and vocational training or activities.

21 (7) Alcohol or substance abuse treatment and counseling
22 and periodic tests for the presence of alcohol or illegal
23 drugs for persons with a history of alcohol or substance
24 abuse.

25 (8) Supervision of living arrangements.

26 (9) Any other services within an individualized
27 treatment plan developed pursuant to section 3126 (relating
28 to individualized treatment plan) prescribed to treat the
29 person's mental illness and to assist the person in living
30 and functioning in the community, or to attempt to prevent a

1 relapse or deterioration that may reasonably be predicted to
2 result in suicide or the need for hospitalization.

3 "Assisted outpatient treatment program" or "program." A
4 system to do all of the following:

5 (1) Arrange for and coordinate the provision of assisted
6 outpatient treatment.

7 (2) Monitor treatment compliance by assisted
8 outpatients.

9 (3) Evaluate the condition or needs of assisted
10 outpatients.

11 (4) Take appropriate steps to address the needs of
12 assisted outpatients.

13 (5) Ensure compliance with court orders.

14 "Director." The director of a hospital licensed or operated
15 by the department who operates, directs and supervises an
16 assisted outpatient treatment program, or the county
17 administrator who operates, directs and supervises an assisted
18 outpatient treatment program.

19 "Program coordinator." An individual appointed under section
20 3312 (relating to program coordinators to be appointed) who is
21 responsible for the oversight and monitoring of assisted
22 outpatient treatment programs.

23 "Secretary." The Secretary of Human Services of the
24 Commonwealth.

25 "Subject of the petition" or "subject." A person who is
26 alleged in a petition, filed pursuant to the provisions of
27 section 3315 (relating to assisted outpatient treatment
28 program), to meet the criteria for assisted outpatient
29 treatment.

30 § 3312. Program coordinators to be appointed.

1 (a) Duty of secretary.--The secretary shall appoint program
2 coordinators of assisted outpatient treatment who shall be
3 responsible for the oversight and monitoring of assisted
4 outpatient treatment programs established pursuant to section
5 3315 (relating to assisted outpatient treatment program). County
6 administrators shall work in conjunction with the program
7 coordinators to coordinate the implementation of assisted
8 outpatient treatment programs.

9 (b) Oversight and monitoring duties.--The program
10 coordinator shall oversee and monitor the assistant outpatient
11 treatment program to ensure that each of the following occur:

12 (1) Each assisted outpatient receives the treatment
13 provided for in the court order issued pursuant to section
14 3315.

15 (2) Existing services located in the assisted
16 outpatient's community are utilized whenever practicable.

17 (3) A case manager or assertive community treatment team
18 is designated for each assisted outpatient.

19 (4) A mechanism exists for a case manager or assertive
20 community treatment team to regularly report the assisted
21 outpatient's compliance or lack of compliance with treatment
22 to the director of the assisted outpatient treatment program.

23 (5) Assisted outpatient treatment services are delivered
24 in a timely manner.

25 (c) Standards to be developed.--The secretary shall develop
26 standards designed to ensure that case managers or assertive
27 community treatment teams have appropriate training and have
28 clinically manageable caseloads designed to provide effective
29 case management or other care coordination services for persons
30 subject to a court order under section 3315.

1 (d) Corrective action to be taken.--Upon review or receiving
2 notice that services are not being delivered in a timely manner,
3 the program coordinator shall require the director of the
4 assisted outpatient treatment program to immediately commence
5 corrective action and inform the program coordinator of the
6 corrective action taken. Failure of a director to take
7 corrective action shall be reported by the program coordinator
8 to the secretary as well as to the court which ordered the
9 assisted outpatient treatment.

10 § 3313. Duties of county administrators.

11 Each county administrator shall be responsible for the filing
12 of petitions for assisted outpatient treatment pursuant to
13 section 3315 (relating to assisted outpatient treatment
14 program), for the receipt and investigation of reports of
15 persons who are alleged to be in need of that treatment and for
16 coordinating the delivery of court-ordered services with program
17 coordinators appointed by the secretary pursuant to section
18 3312(a) (relating to program coordinators to be appointed). In
19 discharge of the duties imposed by section 3315, directors of
20 community services may provide services directly, coordinate
21 services with the offices of the secretary or contract with any
22 public or private provider to provide services for assisted
23 outpatient treatment programs as may be necessary to carry out
24 the duties imposed pursuant to this subchapter.

25 § 3314. Directors of assisted outpatient treatment programs.

26 (a) General duties.--The following shall apply:

27 (1) Directors of assisted outpatient treatment programs
28 established pursuant to section 3315 (relating to assisted
29 outpatient treatment program) shall provide a written report
30 to the program coordinators, appointed by the secretary

1 pursuant to section 3312(a) (relating to program coordinators
2 to be appointed), within three days of the issuance of a
3 court order. The report shall demonstrate that mechanisms are
4 in place to ensure the delivery of services and medications
5 as required by the court order and shall include, but not be
6 limited to, the following:

7 (i) A copy of the court order.

8 (ii) A copy of the written treatment plan.

9 (iii) The identity of the case manager or assertive
10 community treatment team, including the name and contact
11 data of the organization which the case manager or
12 assertive community treatment team member represents.

13 (iv) The identity of providers of services.

14 (v) The date on which services have commenced or
15 will commence.

16 (2) The directors of assisted outpatient treatment
17 programs shall ensure the timely delivery of services
18 described in section 3315 pursuant to any court order issued
19 under that section. Directors of assisted outpatient
20 treatment programs shall immediately commence corrective
21 action upon receiving notice from program coordinators that
22 services are not being provided in a timely manner and the
23 directors shall inform the program coordinator of the
24 corrective action taken.

25 (b) Quarterly reports to program coordinators.--A director
26 of assisted outpatient treatment programs shall submit quarterly
27 reports to the program coordinators regarding the assisted
28 outpatient treatment program operated or administered by the
29 director. The report shall include the following information:

30 (1) The names of individuals served by the program.

1 (2) The percentage of petitions for assisted outpatient
2 treatment that are granted by the court.

3 (3) Any change in status of assisted outpatients,
4 including, but not limited to, the number of individuals who
5 have failed to comply with court-ordered assisted outpatient
6 treatment.

7 (4) A description of material changes in written
8 treatment plans of assisted outpatients.

9 (5) Any change in case managers.

10 (6) A description of the categories of services which
11 have been ordered by the court.

12 (7) Living arrangements of individuals served by the
13 program, including the number, if any, who are homeless.

14 (8) Any other information as required by the secretary.

15 (9) Any recommendations to improve the program Statewide
16 or locally.

17 § 3315. Assisted outpatient treatment program.

18 (a) Director to obtain approval from secretary.--A director
19 may operate, direct and supervise an assisted outpatient
20 treatment program as provided in this section upon approval by
21 the secretary. The county administrator shall operate, direct
22 and supervise an assisted outpatient treatment program as
23 provided in this section upon approval by the secretary. County
24 administrators shall be permitted to satisfy the provisions of
25 this subchapter through the operation of joint assisted
26 outpatient treatment programs. Nothing in this subchapter shall
27 be construed to preclude the combination or coordination of
28 efforts between and among counties and hospitals in providing
29 and coordinating assisted outpatient treatment.

30 (b) Criteria for assisted outpatient treatment.--A patient

1 may be ordered to obtain assisted outpatient treatment if the
2 court finds all of the following:

3 (1) The patient is 18 years of age or older.

4 (2) The patient is suffering from a mental illness.

5 (3) The patient is unlikely to survive safely in the
6 community without supervision, based on a clinical
7 determination.

8 (4) The patient has a history of lack of compliance with
9 treatment for mental illness that has:

10 (i) at least twice within the preceding 36 months,
11 been a significant factor in necessitating
12 hospitalization or receipt of services in a forensic or
13 other mental health unit of a correctional facility, not
14 including any period during which the person was
15 hospitalized or imprisoned immediately preceding the
16 filing of the petition; or

17 (ii) resulted in one or more acts of serious violent
18 behavior toward self or others or threats of, or attempts
19 at, serious physical harm to self or others within the
20 preceding 48 months, not including any period in which
21 the person was hospitalized or imprisoned immediately
22 preceding the filing of the petition.

23 (5) The patient is, as a result of the patient's mental
24 illness, unlikely to voluntarily participate in the
25 recommended treatment pursuant to the treatment plan.

26 (6) In view of the patient's treatment history and
27 current behavior, the patient is in need of assisted
28 outpatient treatment in order to prevent a relapse or
29 deterioration which would be likely to pose a clear and
30 present danger of harm to self or others as determined under

1 section 3301 (relating to persons who may be subject to
2 involuntary emergency examination and treatment).

3 (7) It is likely that the patient will benefit from
4 assisted outpatient treatment.

5 (c) Petition to the court.--The following shall apply:

6 (1) A petition for an order authorizing assisted
7 outpatient treatment may be filed in the court of common
8 pleas of the county in which the subject of the petition is
9 present or reasonably believed to be present. A petition to
10 obtain an order authorizing assisted outpatient treatment may
11 be initiated only by the following persons:

12 (i) a person 18 years of age or older with whom the
13 subject of the petition resides;

14 (ii) the parent, spouse, sibling 18 years of age or
15 older, or child 18 years of age or older of the subject
16 of the petition;

17 (iii) the director of the facility in which the
18 subject of the petition is hospitalized;

19 (iv) the director of any public or charitable
20 organization, agency or home providing mental health
21 services to the subject of the petition in whose
22 institution the subject of the petition resides;

23 (v) a licensed psychiatrist who is either
24 supervising the treatment of or treating the subject of
25 the petition for a mental illness;

26 (vi) the county administrator or his designee; or

27 (vii) a parole officer or probation officer assigned
28 to supervise the subject of the petition.

29 (2) The petition shall state:

30 (i) Each of the criteria for assisted outpatient

1 treatment as set forth in subsection (b).

2 (ii) The facts which support the petitioner's belief
3 that the person who is the subject of the petition meets
4 each criterion, provided that the hearing on the petition
5 need not be limited to the stated facts.

6 (iii) That the subject of the petition is present,
7 or is reasonably believed to be present, within the
8 county where the petition is filed.

9 (3) The petition shall be accompanied by an affirmation
10 or affidavit of a physician, who shall not be the petitioner,
11 and shall state either that:

12 (i) The physician has personally examined the person
13 who is the subject of the petition not more than 10 days
14 prior to the submission of the petition, recommends
15 assisted outpatient treatment for the subject of the
16 petition and is willing and able to testify at the
17 hearing on the petition.

18 (ii) Not more than 10 days prior to the filing of
19 the petition, the physician or his designee has made
20 appropriate attempts to elicit the cooperation of the
21 subject of the petition, but has not been successful in
22 persuading the subject to submit to an examination, that
23 the physician has reason to suspect that the subject of
24 the petition meets the criteria for assisted outpatient
25 treatment and that the physician is willing and able to
26 examine the subject of the petition and testify at the
27 hearing on the petition.

28 (d) Right to counsel.--The subject of the petition shall
29 have the right to be represented by counsel at all stages of a
30 proceeding commenced under this section. The subject of the

1 petition shall be represented either by counsel of his selection
2 or, if unrepresented and unable to afford counsel as determined
3 by the court, by court-appointed counsel.

4 (e) Hearing.--The following shall apply:

5 (1) Upon receipt by the court of the petition submitted
6 pursuant to subsection (c), the court shall fix the date for
7 a hearing at a time not later than three days from the date
8 the petition is received by the court, excluding Saturdays,
9 Sundays and holidays. Adjournments shall be permitted only
10 for good cause. In granting adjournments, the court shall
11 consider the need for further examination by a physician or
12 the potential need to provide assisted outpatient treatment
13 expeditiously.

14 (2) The court shall cause the subject of the petition,
15 the petitioner, the physician whose affirmation or affidavit
16 accompanied the petition, the appropriate director and such
17 other persons as the court may determine to be advised. The
18 subject of the petition shall have the opportunity to
19 provide, in writing, names and parties to be notified of the
20 hearing which shall be considered by the court.

21 (3) Upon the date for the hearing, or upon such other
22 date to which the proceeding may be adjourned, the court
23 shall hear testimony and, if it be deemed advisable and the
24 subject of the petition is available, examine the subject
25 alleged to be in need of assisted outpatient treatment in or
26 out of court.

27 (4) If the subject of the petition does not appear at
28 the hearing and appropriate attempts to elicit the attendance
29 of the subject have failed, the court may conduct the hearing
30 in the subject's absence. If the hearing is conducted without

1 the subject of the petition present, the court shall set
2 forth the factual basis for conducting the hearing without
3 the presence of the subject of the petition.

4 (5) The court may not order assisted outpatient
5 treatment unless an examining physician who has personally
6 examined the subject of the petition within the time period
7 commencing 10 days before the filing of the petition
8 testifies in person at the hearing.

9 (6) If the subject of the petition has refused to be
10 examined by a physician, the court may request the subject to
11 consent to an examination by a physician appointed by the
12 court. If the subject of the petition does not consent and
13 the court finds reasonable cause to believe that the
14 allegations in the petition are true, the court may order law
15 enforcement officers or the sheriff's department to take the
16 subject of the petition into custody and transport the
17 subject to a hospital for examination by a physician.
18 Retention of the subject of the petition under the order
19 shall not exceed 24 hours.

20 (7) The examination of the subject of the petition may
21 be performed by the physician whose affirmation or affidavit
22 accompanied the petition, if the physician is privileged by
23 the hospital or otherwise authorized by the hospital to do
24 so. If the examination is performed by another physician of
25 the hospital, the examining physician shall be authorized to
26 consult with the physician whose affirmation or affidavit
27 accompanied the petition regarding the issues of whether the
28 allegations in the petition are true and whether the subject
29 meets the criteria for assisted outpatient treatment.

30 (8) (i) A physician who testifies pursuant to paragraph

1 (5) shall state all of the following:

2 (A) The facts which support the allegation that
3 the subject meets each of the criteria for assisted
4 outpatient treatment.

5 (B) That the treatment is the least restrictive
6 alternative.

7 (C) The recommended assisted outpatient
8 treatment and the rationale for the recommended
9 assisted outpatient treatment.

10 (ii) If the recommended assisted outpatient
11 treatment includes medication, the physician's testimony
12 shall describe the types or classes of medication which
13 should be authorized, describe the beneficial and
14 detrimental physical and mental effects of the medication
15 and recommend whether the medication should be self-
16 administered or administered by authorized personnel.

17 (9) The subject of the petition shall be afforded an
18 opportunity to present evidence, to call witnesses on behalf
19 of the subject and to cross-examine adverse witnesses.

20 (f) Written individualized treatment plan.--The following
21 shall apply:

22 (1) (i) The court may not order assisted outpatient
23 treatment unless an examining physician appointed by the
24 appropriate director develops and provides to the court a
25 proposed written individualized treatment plan. The
26 written individualized treatment plan shall include case
27 management services or assertive community treatment
28 teams to provide care coordination and all categories of
29 services which the physician recommends that the subject
30 of the petition should receive.

1 (ii) If the written individualized treatment plan
2 includes medication, it shall state whether the
3 medication should be self-administered or administered by
4 authorized personnel and shall specify type and dosage
5 range of medication most likely to provide maximum
6 benefit for the subject.

7 (iii) If the written individualized treatment plan
8 includes alcohol or substance abuse counseling and
9 treatment, the plan may include a provision requiring
10 relevant testing for either alcohol or illegal
11 substances, provided the physician's clinical basis for
12 recommending the plan provides sufficient facts for the
13 court to find:

14 (A) That the person has a history of alcohol or
15 substance abuse that is clinically related to the
16 mental illness.

17 (B) That the testing is necessary to prevent a
18 relapse or deterioration which would be likely to
19 result in serious harm to the person or others.

20 (iv) In developing the plan, the physician shall
21 provide the following persons with an opportunity to
22 actively participate in the development of the plan:

23 (A) the subject of the petition;

24 (B) the treating physician; and

25 (C) upon the request of the patient, an
26 individual significant to the patient including any
27 relative, close friend or individual otherwise
28 concerned with the welfare of the patient.

29 If the petitioner is a director, the plan shall be
30 provided to the court no later than the date of the

1 hearing on the petition.

2 (2) The court shall not order assisted outpatient
3 treatment unless a physician testifies to explain the written
4 proposed treatment plan. The testimony shall state:

5 (i) The categories of assisted outpatient treatment
6 recommended.

7 (ii) The rationale for each category.

8 (iii) Facts which establish that the treatment is
9 the least restrictive alternative.

10 (iv) If the recommended assisted outpatient
11 treatment includes medication, the types or classes of
12 medication recommended, the beneficial and detrimental
13 physical and mental effects of the medication and whether
14 the medication should be self-administered or
15 administered by an authorized professional.

16 If the petitioner is a director, the testimony shall be given
17 at the hearing on the petition.

18 (g) Disposition.--The following shall apply:

19 (1) If after hearing all relevant evidence the court
20 finds that the subject of the petition does not meet the
21 criteria for assisted outpatient treatment, the court shall
22 dismiss the petition.

23 (2) If after hearing all relevant evidence the court
24 finds by clear and convincing evidence that the subject of
25 the petition meets the criteria for assisted outpatient
26 treatment and there is no appropriate and feasible less
27 restrictive alternative, the court shall order the subject to
28 receive assisted outpatient treatment for an initial period
29 not to exceed six months. In fashioning the order, the court
30 shall specifically make findings by clear and convincing

1 evidence that the proposed treatment is the least restrictive
2 treatment appropriate and feasible for the subject. The order
3 shall state the categories of assisted outpatient treatment
4 which the subject is to receive. The court may not order
5 treatment that has not been recommended by the examining
6 physician and included in the written treatment plan for
7 assisted outpatient treatment as required by subsection (f).

8 (3) If after hearing all relevant evidence the court
9 finds by clear and convincing evidence that the subject of
10 the petition meets the criteria for assisted outpatient
11 treatment and the court has yet to be provided with a written
12 individualized treatment plan and testimony pursuant to
13 subsection (f), the court shall order the county
14 administrator to provide the court with the plan and
15 testimony no later than the third day, excluding Saturdays,
16 Sundays and holidays, immediately following the date of the
17 order. Upon receiving the plan and testimony, the court may
18 order assisted outpatient treatment as provided in paragraph
19 (2).

20 (4) A court may order the patient to self-administer
21 psychotropic drugs or accept the administration of the drugs
22 by authorized personnel as part of an assisted outpatient
23 treatment program. The order may specify the type and dosage
24 range of psychotropic drugs and shall be effective for the
25 duration of the assisted outpatient treatment.

26 (5) If the petitioner is the director of a hospital that
27 operates an assisted outpatient treatment program, the court
28 order shall direct the hospital director to provide or
29 arrange for all categories of assisted outpatient treatment
30 for the assisted outpatient throughout the period of the

1 order. For all other persons, the order shall require the
2 director of community services of the appropriate local
3 governmental unit to provide or arrange for all categories of
4 assisted outpatient treatment for the assisted outpatient
5 throughout the period of the order.

6 (6) The director or his designee shall apply to the
7 court for approval before instituting a proposed material
8 change in the assisted outpatient treatment order, unless the
9 change is contemplated in the order. Nonmaterial changes may
10 be instituted by the assisted outpatient treatment program
11 without court approval. For the purposes of this paragraph, a
12 material change shall mean an addition or deletion of a
13 category of assisted outpatient treatment from the order of
14 the court or any deviation without the patient's consent from
15 the terms of an existing order relating to the administration
16 of psychotropic drugs.

17 (h) Applications for additional periods of treatment.--If
18 the director determines that the condition of the patient
19 requires further assisted outpatient treatment, the director
20 shall apply prior to the expiration of the period of assisted
21 outpatient treatment ordered by the court for a second or
22 subsequent order authorizing continued assisted outpatient
23 treatment for a period of not more than one year from the date
24 of the order. The procedures for obtaining any order pursuant to
25 this subsection shall be in accordance with this section,
26 provided that the time period included in subsection (b) (4) (i)
27 and (ii) shall not be applicable in determining the
28 appropriateness of additional periods of assisted outpatient
29 treatment. Any court order requiring periodic blood tests or
30 urinalysis for the presence of alcohol or illegal drugs shall be

1 subject to review after six months by the physician who
2 developed the written individualized treatment plan or another
3 physician designated by the director and the physician shall be
4 authorized to terminate the blood tests or urinalysis without
5 further action by the court.

6 (i) Application for order to stay, vacate or modify.--In
7 addition to any other right or remedy available by law with
8 respect to the order for assisted outpatient treatment, the
9 patient, the patient's counsel or anyone acting on the patient's
10 behalf may apply, on notice to the appropriate director and the
11 original petitioner, to the court to stay, vacate or modify the
12 order.

13 (j) Appeals.--Review of an order issued pursuant to this
14 section shall be conducted in the same manner as specified in
15 section 3303 (relating to extended involuntary emergency
16 treatment).

17 (k) Failure to comply with the assisted outpatient
18 treatment.--The following shall apply:

19 (1) (i) Where, in the clinical judgment of a physician,
20 the assisted outpatient has failed or refused to comply
21 with the assisted outpatient treatment and efforts were
22 made to solicit compliance and the assisted outpatient
23 may be in need of involuntary admission to a hospital or
24 immediate observation, care and treatment pursuant to
25 section 3302 (relating to involuntary emergency
26 examination and treatment) or 3303, the physician may
27 request the director of community services, the
28 director's designee or any physician designated by the
29 director of community services to take the assisted
30 outpatient to an appropriate hospital for an examination

1 to determine if the assisted outpatient has a mental
2 illness for which hospitalization is necessary.

3 (ii) If the assisted outpatient refuses to take
4 medication as required by the court order or refuses to
5 take or fails a blood test, urinalysis or alcohol or drug
6 test as required by the court order, the physician may
7 consider the refusal or failure when determining whether
8 the assisted outpatient is in need of an examination to
9 determine whether the assisted outpatient has a mental
10 illness for which hospitalization is necessary.

11 (2) Upon the request of the physician, the director or
12 the director's designee may direct law enforcement officers
13 or the sheriff's department to take into custody and
14 transport the patient to the hospital operating the assisted
15 outpatient treatment program or to any hospital authorized by
16 the director of community services to receive such patients.

17 (3) (i) Upon the request of the physician, the director
18 or the director's designee, the court may authorize the
19 patient to be taken into custody and transported to the
20 hospital operating the assisted outpatient treatment
21 program or to any other hospital authorized by the county
22 administrator to receive such patients in accordance with
23 section 3306 (relating to transfer of persons in
24 involuntary treatment).

25 (ii) The patient may be retained for observation,
26 care and treatment and further examination in the
27 hospital for up to 72 hours to permit a physician to
28 determine whether the patient has a mental illness and is
29 in need of involuntary care and treatment in a hospital
30 pursuant to this part.

1 3401. Examination and treatment of person charged with crime or
2 serving sentence.

3 3402. Incompetence to proceed on criminal charges.

4 3403. Incompetency hearing procedures and effect and dismissal
5 of charges.

6 3404. Determination of criminal responsibility.

7 3405. Examination of person charged with crime in aid of
8 sentencing.

9 3406. Application for court-ordered involuntary treatment.

10 3407. Voluntary treatment of person charged with crime or
11 serving sentence.

12 § 3401. Examination and treatment of person charged with crime
13 or serving sentence.

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

22 (b) Persons in United States Department of Veterans Affairs
23 facilities.--Proceedings under this section shall not be
24 initiated for examination and treatment at a United States
25 Department of Veterans Affairs facility if either of the
26 following apply:

27 (1) The examination and treatment requires the
28 preparation of competency reports.

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

1 (c) Transfer for examination and treatment.--A person who is
2 detained on criminal charges or incarcerated and made subject to
3 inpatient examination or treatment shall be transferred to a
4 mental health facility for that purpose. Transfer may be made to
5 a United States Department of Veterans Affairs facility if
6 custody or control is not required in addition to examination
7 and treatment. Individuals transferred to a United States
8 Department of Veterans Affairs facility are not subject to
9 return by the agency to the authority entitled to have them in
10 custody.

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

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

15 (i) A pretrial release is effected.

16 (ii) The term of imprisonment expires or is
17 terminated.

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

20 (2) In those instances where a person is charged with
21 offenses listed in section 3304(g)(2) (relating to court-
22 ordered involuntary treatment) and the court, after the
23 hearing, deems it desirable, security equivalent to the
24 institution to which the person is incarcerated shall be
25 provided.

26 (e) Effect of discharge.--Upon discharge from treatment, a
27 person who is or remains subject to a detainer or sentence shall
28 be returned to the authority entitled to have the person in
29 custody. The period of involuntary treatment shall be credited
30 as time served on account of any sentence to be imposed on

1 pending charges or an unexpired term of imprisonment.

2 (f) Persons subject to Juvenile Act.--The provisions of
3 Chapter 33 which are applicable to children of the person's age
4 shall apply to all proceedings for examination and treatment of
5 a person who is subject to a petition or who has been committed
6 under 42 Pa.C.S. Ch. 63 (relating to juvenile matters). If such
7 a person is in detention or is committed, the court having
8 jurisdiction under 42 Pa.C.S. Ch. 63 shall determine whether the
9 security conditions shall continue to be enforced during any
10 period of involuntary treatment and to whom the person should be
11 released thereafter.

12 § 3402. Incompetence to proceed on criminal charges.

13 (a) Person incompetent but not severely mentally disabled.--
14 Notwithstanding the provisions of Chapter 33 (relating to
15 involuntary examination and treatment), a court may order
16 involuntary treatment of a person found incompetent to proceed
17 on criminal charges who is not severely mentally disabled
18 subject to the following:

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

20 (2) Involuntary treatment pursuant to this subsection
21 may be ordered only if the court is reasonably certain that
22 the involuntary treatment will provide the defendant with the
23 capacity to proceed on criminal charges.

24 (3) The court may order outpatient treatment, partial
25 hospitalization or inpatient treatment.

26 (b) Application for incompetency examination.--Application
27 to the court for an order directing an incompetency examination
28 may be presented by any of the following:

29 (1) An attorney for the Commonwealth.

30 (2) A person charged with a crime.

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

2 (4) The warden or other official in charge of the
3 institution or place in which the person is detained.

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

5 (1) The court, either upon an application under
6 subsection (b) or on its own motion, may order an
7 incompetency examination at any stage in the proceedings and
8 may do so without a hearing unless the person charged with a
9 crime or the person's counsel objects to the examination.

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

14 (d) Conduct of examination; report.--When the court orders
15 an incompetency examination:

16 (1) The examination shall be conducted:

17 (i) as an outpatient examination unless an inpatient
18 examination is, or has been, authorized under another
19 provision of this part; and

20 (ii) by at least one licensed psychiatrist or
21 licensed psychologist and may relate both to competency
22 to proceed on criminal charges and to criminal
23 responsibility for the crime charged.

24 (2) The person shall be entitled to have counsel present
25 and may not be required to answer any questions or to perform
26 tests unless the person has moved for or agreed to the
27 examination. Nothing said or done by the person during the
28 examination may be used as evidence against the person in any
29 criminal proceedings on any issue other than that of the
30 person's mental condition.

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

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

5 (ii) An opinion as to the person's capacity to
6 understand the nature and object of the criminal
7 proceedings against the person and to assist in the
8 person's own defense.

9 (iii) When so requested, an opinion as to the
10 person's mental condition in relation to the standards
11 for criminal responsibility as then provided by law if it
12 appears that the facts concerning the person's mental
13 condition may also be relevant to the question of legal
14 responsibility.

15 (iv) When so requested, an opinion as to whether the
16 person had the capacity to have a particular state of
17 mind, where such state of mind is a required element of
18 the criminal charge.

19 (e) Experts.--The court may allow a licensed psychiatrist or
20 licensed psychologist retained by the person and a licensed
21 psychiatrist or licensed psychologist retained by the
22 Commonwealth to witness and participate in the examination of
23 the person. Whenever a person who is financially unable to
24 retain such expert has a substantial objection to the
25 conclusions reached by the court-appointed licensed psychiatrist
26 or licensed psychologist, the court shall allow reasonable
27 compensation for the employment of a licensed psychiatrist or
28 licensed psychologist of the person's selection, which amount
29 shall be chargeable against the mental health and intellectual
30 disability program of the locality.

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

6 § 3403. Incompetency hearing procedures and effect and
7 dismissal of charges.

8 (a) Standard and burden of proof.--Except for an
9 incompetency examination ordered by the court on its own motion
10 as provided for in section 3402(c) (relating to incompetence to
11 proceed on criminal charges), the individual making an
12 application to the court for an order directing an incompetency
13 examination shall have the burden of establishing incompetency
14 to proceed by a preponderance of the evidence. Upon completion
15 of the examination, a determination of incompetency shall be
16 made by the court where incompetency is established by a
17 preponderance of the evidence.

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

22 (1) Any legal objections suitable for determination
23 prior to trial and without the personal participation of the
24 person charged may be raised and decided in the interim.

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

29 (3) In cases of a charge of first or second degree
30 murder, there shall be no limit on the period during which

1 proceedings may be stayed.

2 (c) Right to counsel.--A person who is determined to be
3 incompetent to proceed on criminal charges shall have a
4 continuing right to counsel so long as the criminal charges are
5 pending.

6 (d) Periodic reexamination.--Following a determination of
7 incompetence to proceed on criminal charges, the person charged
8 shall be reexamined not less than every 90 days by a licensed
9 psychiatrist appointed by the court. A report of reexamination
10 shall be submitted to the court and counsel for the person.

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

14 (1) Incompetency to proceed on criminal charges is not
15 sufficient reason on its own to deny the person pretrial
16 release.

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

21 (3) If the court determines there is no substantial
22 probability that the person will attain competency, it shall
23 discharge the person.

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

28 (f) Resumption of proceedings or dismissal.--When the court,
29 on its own motion or upon the application of the attorney for
30 the Commonwealth or counsel for the person, determines that the

1 person has regained his competency to proceed on criminal
2 charges, the proceedings shall be resumed. If the court is of
3 the opinion that by reason of the passage of time and its effect
4 upon the criminal proceedings it would be unjust to resume the
5 prosecution, the court may dismiss the charge and order the
6 person discharged.

7 (g) Reexamination following discharge.--If the person is
8 discharged pursuant to subsection (e), but the charges remain
9 open pursuant to subsection (b)(2) and (3), the following shall
10 apply:

11 (1) The court discharging the person shall, on its own
12 motion or on the motion of the Commonwealth or on the motion
13 of the defense, order the person to submit to a psychiatric
14 examination every 12 months after the discharge of the
15 person, to determine whether the person has become competent
16 to proceed to trial.

17 (2) If the examination under paragraph (1) reveals that
18 the person has regained competency to proceed, a hearing
19 shall be scheduled, after which the court shall determine
20 whether the person is competent to proceed on criminal
21 charges.

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

24 (4) If the examination under paragraph (1) reveals that
25 the person is incompetent to proceed, the court shall order
26 the person to submit to a new competency examination in 12
27 months.

28 § 3404. Determination of criminal responsibility.

29 (a) Criminal responsibility determination by court.--At a
30 hearing under section 3403 (relating to incompetency hearing

1 procedures and effect and dismissal of charges) the court may
2 also hear evidence on whether the person was criminally
3 responsible for the commission of the crime charged, in
4 accordance with the rules governing the consideration and
5 determination of the same issue at criminal trial. If the person
6 is found to have lacked criminal responsibility, an acquittal
7 shall be entered. If the person is not so acquitted, the person
8 may raise the defense at such time as the person may be tried.

9 (b) Opinion evidence on mental condition.--At a hearing
10 under section 3403 or upon trial, a licensed psychiatrist or
11 licensed psychologist appointed by the court may be called as a
12 witness by the attorney for the Commonwealth or by the
13 defense. Each party may also summon any other licensed
14 psychiatrist or licensed psychologist or other expert to
15 testify.

16 (c) Bifurcation of issues or trial.--Upon trial and in the
17 interest of justice, the court may direct that the issue of
18 criminal responsibility be heard and determined separately from
19 the other issues in the case and, in a trial by jury, that the
20 issue of criminal responsibility be submitted to a separate
21 jury. Upon a request for bifurcation, the court shall consider
22 the substantiality of the defense of lack of responsibility, its
23 effect upon other defenses and the probability of a fair trial.

24 § 3405. Examination of person charged with crime in aid of
25 sentencing.

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

30 (b) Application for examination.--The action under

1 subsection (a) may be taken on the court's initiative or on the
2 application of the attorney for the Commonwealth, the person
3 charged, the person's counsel or any other person acting in the
4 person's interest.

5 (c) Type of examination.--If at the time of sentencing the
6 person is not in detention, examination shall be on an
7 outpatient basis unless inpatient examination for this purpose
8 is ordered pursuant to Chapter 33 (relating to involuntary
9 examination and treatment).

10 § 3406. Application for court-ordered involuntary treatment.

11 The attorney for the Commonwealth, the defendant, the
12 defendant's counsel, the county administrator or any other
13 interested party may petition the same court for an order
14 directing involuntary treatment under section 3304 (relating to
15 court-ordered involuntary treatment) after the occurrence of any
16 of the following:

17 (1) A finding of incompetency to proceed on criminal
18 charges under section 3403 (relating to incompetency hearing
19 procedures and effect and dismissal of charges).

20 (2) An acquittal by reason of lack of criminal
21 responsibility under section 3404 (relating to determination
22 of criminal responsibility).

23 (3) An examination in aid of sentencing under section
24 3405 (relating to examination of person charged with crime
25 in aid of sentencing).

26 § 3407. Voluntary treatment of person charged with crime or
27 serving sentence.

28 (a) Certification of need.--Whether in lieu of bail or
29 serving a sentence, a person in criminal detention who believes
30 that the person is in need of treatment and substantially

1 understands the nature of voluntary treatment may submit to
2 examination and treatment under this part, subject to the
3 following certification requirements:

4 (1) At least one physician shall certify the necessity
5 of treatment and that treatment cannot be adequately provided
6 at the prison or correctional facility where the person then
7 is detained.

8 (2) The physician's certificate shall set forth the
9 specific grounds that make transfer to a mental health
10 facility necessary.

11 (3) The correctional facility shall secure a written
12 acceptance of the person for inpatient treatment from the
13 mental health facility and shall forward the acceptance to
14 the court.

15 (b) Independent examination.--Before any inmate of a prison
16 or correctional facility may be transferred to a mental health
17 facility for the purpose of examination and treatment, the
18 correctional facility shall notify the district attorney, who
19 shall be given up to 14 days after receipt of notification to
20 conduct an independent examination of the defendant.

21 (c) Court review and approval.--The court shall review the
22 certification of the physician that the transfer is necessary
23 and the recommendation of the physician for the Commonwealth and
24 either approve or disapprove the transfer, subject to subsection
25 (d) and the following conditions:

26 (1) The court may request any other information it needs
27 concerning the necessity of the transfer.

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

29 (d) Hearing.--Upon the motion of the district attorney, a
30 hearing shall be held on the question of the voluntary treatment

1 of a person charged with a crime or serving a sentence.

2 (e) Reports.--A report of the person's mental condition
3 shall be made by the mental health facility to the court within
4 30 days of the person's transfer to the facility. The report
5 shall also set forth the specific grounds which require
6 continued treatment at a mental health facility. After the
7 initial report, the facility shall thereafter report to the
8 court every 180 days.

9 (f) Withdrawal from treatment.--If, at any time, the person
10 gives notice of intent to withdraw from treatment at the mental
11 health facility, the person shall be returned to the authority
12 entitled to have the person in custody, or proceedings may be
13 initiated under section 3304 (relating to court-ordered
14 involuntary treatment). During the pendency of any petition
15 filed under section 3304 concerning a person in treatment under
16 this section, the mental health facility shall have authority to
17 detain the person regardless of the provisions of section 3203
18 (relating to explanation and consent), provided that the hearing
19 under section 3304 is conducted within seven days of the time
20 the person gives notice of his intent to withdraw from
21 treatment.

22 (g) Time served.--The period of voluntary treatment under
23 this section shall be credited as time served on account of any
24 sentence to be imposed on pending charges or an unexpired term
25 of imprisonment.

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

28 § 6105. Persons not to possess, use, manufacture, control, sell
29 or transfer firearms.

30 * * *

1 (c) Other persons.--In addition to any person who has been
2 convicted of any offense listed under subsection (b), the
3 following persons shall be subject to the prohibition of
4 subsection (a):

5 * * *

6 (4) A person who has been adjudicated as an incompetent
7 or who has been involuntarily committed to a mental
8 institution for inpatient care and treatment under [section
9 302, 303 or 304 of the provisions of the act of July 9, 1976
10 (P.L.817, No.143), known as the Mental Health Procedures
11 Act.] 50 Pa.C.S. § 3302 (relating to involuntary emergency
12 examination and treatment), 3303 (relating to extended
13 involuntary emergency treatment), or 3304 (relating to court-
14 ordered involuntary treatment). This paragraph shall not
15 apply to any proceeding under [section 302 of the Mental
16 Health Procedures Act] 50 Pa.C.S. § 3302 unless the examining
17 physician has issued a certification that inpatient care was
18 necessary or that the person was committable.

19 * * *

20 § 6109. Licenses.

21 * * *

22 (i.1) Notice to sheriff.--Notwithstanding any statute to the
23 contrary:

24 (1) Upon conviction of a person for a crime specified in
25 section 6105(a) or (b) or upon conviction of a person for a
26 crime punishable by imprisonment exceeding one year or upon a
27 determination that the conduct of a person meets the criteria
28 specified in section 6105(c) (1), (2), (3), (5), (6) or (9),
29 the court shall determine if the defendant has a license to
30 carry firearms issued pursuant to this section. If the

1 defendant has such a license, the court shall notify the
2 sheriff of the county in which that person resides, on a form
3 developed by the Pennsylvania State Police, of the identity
4 of the person and the nature of the crime or conduct which
5 resulted in the notification. The notification shall be
6 transmitted by the judge within seven days of the conviction
7 or determination.

8 (2) Upon adjudication that a person is incompetent or
9 upon the involuntary commitment of a person to a mental
10 institution for inpatient care and treatment under [the act
11 of July 9, 1976 (P.L.817, No.143), known as the Mental Health
12 Procedures Act] 50 Pa.C.S. Pt. III (relating to mental health
13 procedures), or upon involuntary treatment of a person as
14 described under section 6105(c)(4), the judge of the court of
15 common pleas, mental health review officer or county mental
16 health and mental retardation administrator shall notify the
17 sheriff of the county in which that person resides, on a form
18 developed by the Pennsylvania State Police, of the identity
19 of the person who has been adjudicated, committed or treated
20 and the nature of the adjudication, commitment or treatment.
21 The notification shall be transmitted by the judge, mental
22 health review officer or county mental health and mental
23 retardation administrator within seven days of the
24 adjudication, commitment or treatment.

25 * * *

26 § 6111.1. Pennsylvania State Police.

27 * * *

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

30 (1) Notwithstanding any statute to the contrary, judges

1 of the courts of common pleas shall notify the Pennsylvania
2 State Police, on a form developed by the Pennsylvania State
3 Police, of:

4 (i) the identity of any individual who has been
5 adjudicated as an incompetent or as a mental defective or
6 who has been involuntarily committed to a mental
7 institution under the [act of July 9, 1976 (P.L.817,
8 No.143), known as the Mental Health Procedures Act] 50
9 Pa.C.S. Pt. III (relating to mental health procedures),
10 or who has been involuntarily treated as described in
11 section 6105(c)(4) (relating to persons not to possess,
12 use, manufacture, control, sell or transfer firearms) or
13 as described in 18 U.S.C. § 922(g)(4) (relating to
14 unlawful acts) and its implementing Federal regulations;
15 and

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

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

21 (3) Notwithstanding any law to the contrary, the
22 Pennsylvania State Police may disclose, electronically or
23 otherwise, to the United States Attorney General or a
24 designee, any record relevant to a determination of whether a
25 person is disqualified from possessing or receiving a firearm
26 under 18 U.S.C. § 922 (g) (3) or (4) or an applicable state
27 statute.

28 (g) Review by court.--

29 (1) Upon receipt of a copy of the order of a court of
30 competent jurisdiction which vacates a final order or an

1 involuntary certification issued by a mental health review
2 officer, the Pennsylvania State Police shall expunge all
3 records of the involuntary treatment received under
4 subsection (f).

5 (2) A person who is involuntarily committed pursuant to
6 [section 302 of the Mental Health Procedures Act] 50 Pa.C.S.
7 § 3302 (relating to involuntary emergency examination and
8 treatment) may petition the court to review the sufficiency
9 of the evidence upon which the commitment was based. If the
10 court determines that the evidence upon which the involuntary
11 commitment was based was insufficient, the court shall order
12 that the record of the commitment submitted to the
13 Pennsylvania State Police be expunged. A petition filed under
14 this subsection shall toll the 60-day period set forth under
15 section 6105(a)(2).

16 (3) The Pennsylvania State Police shall expunge all
17 records of an involuntary commitment of an individual who is
18 discharged from a mental health facility based upon the
19 initial review by the physician occurring within two hours of
20 arrival under [section 302(b) of the Mental Health Procedures
21 Act] 50 Pa.C.S. § 3302(b) and the physician's determination
22 that no severe mental disability existed pursuant to [section
23 302(b) of the Mental Health Procedures Act] 50 Pa.C.S. §
24 3302(b). The physician shall provide signed confirmation of
25 the determination of the lack of severe mental disability
26 following the initial examination under [section 302(b) of
27 the Mental Health Procedures Act] 50 Pa.C.S. § 3302(b) to the
28 Pennsylvania State Police.

29 * * *

30 (k) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

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

5 "Physician." Any licensed psychiatrist, or clinical
6 psychologist as defined in [the act of July 9, 1976 (P.L.817,
7 No.143), known as the Mental Health Procedures Act] 50 Pa.C.S.
8 Pt. III (relating to mental health procedures).

9 Section 3. Sections 5463(f), 5822(a), 5825(b), 5826(b),
10 5832(a), 5839(b) and 5843(a) and (b) of Title 20 are amended to
11 read:

12 § 5463. Effect on other State law.

13 * * *

14 (f) Disclosure.--The disclosure requirements of section
15 5456(d) (relating to authority of health care agent) supersede
16 any provision in any other State statute or regulation that
17 requires the principal to consent to disclosure or which
18 otherwise conflicts with section 5456(d), including, but not
19 limited to, the following:

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

23 (2) [Section 111 of the act of July 9, 1976 (P.L.817,
24 No.143), known as the Mental Health Procedures Act.] 50
25 Pa.C.S. §§ 3113 (relating to confidentiality of records) and
26 3116(c) (relating to reporting requirements for firearms
27 background checks).

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

30 (4) Section 41 of the act of December 20, 1985 (P.L.457,

1 No.112), known as the Medical Practice Act of 1985.

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

5 § 5822. Execution.

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

15 * * *

16 § 5825. Revocation.

17 * * *

18 (b) Capacity to revoke.--Subsection (a) notwithstanding,
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] 50 Pa.C.S. Ch. 33 (relating to
22 involuntary examination and treatment), a declarant may revoke
23 the declaration only if found to be capable of making mental
24 health decisions after examination by a psychiatrist and one of
25 the following: another psychiatrist, a psychologist, a family
26 physician, an attending physician or a mental health treatment
27 professional. Whenever possible, at least one of the decision
28 makers shall be a treating professional of the declarant or
29 principal.

30 * * *

1 § 5826. Amendment.

2 * * *

3 (b) Determination of capacity.--During the period of
4 involuntary treatment pursuant to [Article III of the act of
5 July 9, 1976 (P.L.817, No.143), known as the Mental Health
6 Procedures Act] 50 Pa.C.S. Ch. 33 (relating to involuntary
7 examination and treatment), a declarant may amend the
8 declaration if the individual is found to be capable of making
9 mental health decisions after examination by a psychiatrist and
10 one of the following: another psychiatrist, a psychologist,
11 family physician, attending physician or mental health treatment
12 professional. Whenever possible, at least one of the decision
13 makers shall be a treating professional of the declarant or
14 principal.

15 § 5832. Execution.

16 (a) Who may make.--An individual who is at least 18 years of
17 age or an emancipated minor and who has not been deemed
18 incapacitated pursuant to section 5511 (relating to petition and
19 hearing; independent evaluation) or found to be severely
20 mentally disabled pursuant to [Article III of the act of July 9,
21 1976 (P.L.817, No.143), known as the Mental Health Procedures
22 Act] 50 Pa.C.S. Ch. 33 (relating to involuntary examination and
23 treatment), may make a mental health power of attorney governing
24 the initiation, continuation, withholding or withdrawal of
25 mental health treatment.

26 * * *

27 § 5839. Revocation.

28 * * *

29 (b) Capacity to revoke.--Notwithstanding subsection (a),
30 during a period of involuntary commitment pursuant to [Article

1 III of the act of July 9, 1976 (P.L.817, No.143), known as the
2 Mental Health Procedures Act] 50 Pa.C.S. Ch. 33 (relating to
3 involuntary examination and treatment), a principal may revoke
4 the mental health power of attorney only if found to be capable
5 of making mental health decisions after examination by a
6 psychiatrist and one of the following: another psychiatrist, a
7 psychologist, a family physician, an attending physician or a
8 mental health treatment professional. Whenever possible, at
9 least one of the decision makers shall be a treating
10 professional of the declarant or principal.

11 * * *

12 § 5843. Construction.

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

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

18 (2) Authorize a mental health care agent to consent to
19 any mental health care prohibited by the laws of this
20 Commonwealth.

21 (3) Affect the laws of this Commonwealth regarding any
22 of the following:

23 (i) The standard of care of a mental health care
24 provider required in the administration of mental health
25 care or the clinical decision-making authority of the
26 mental health care provider.

27 (ii) When consent is required for mental health
28 care.

29 (iii) Informed consent for mental health care.

30 (4) Affect the ability to admit a person to a mental

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

5 (b) Disclosure.--

6 (1) The disclosure requirements of section 5836(e)
7 (relating to authority of mental health care agent) shall
8 supersede any provision in any other State statute or
9 regulation that requires a principal to consent to disclosure
10 or which otherwise conflicts with section 5836(e), including,
11 but not limited to, the following:

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

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

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

22 (iv) Section 41 of the act of December 20, 1985
23 (P.L.457, No.112), known as the Medical Practice Act of
24 1985.

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

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

1 * * *

2 Section 4. Section 5336(b) of Title 23 is amended to read:
3 § 5336. Access to records and information.

4 * * *

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

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

9 (2) Confidential information from an abuse counselor or
10 shelter.

11 (3) Information protected under Chapter 67 (relating to
12 domestic and sexual violence victim address confidentiality).

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

18 * * *

19 Section 5. Sections 6356 and 9727 of Title 42 are amended to
20 read:

21 § 6356. Disposition of mentally ill or mentally retarded child.

22 If, at a dispositional hearing of a child found to be a
23 delinquent or at any hearing, the evidence indicates that the
24 child may be subject to commitment or detention under the
25 provisions of the act of October 20, 1966 (3rd Sp.Sess., P.L.96,
26 No.6), known as the ["Mental Health and [Mental Retardation]
27 Intellectual Disability Act of 1966,[" or [the act of July 9,
28 1976 (P.L.817, No.143), known as the "Mental Health Procedures
29 Act,"] 50 Pa.C.S. Pt. III (relating to mental health
30 procedures), the court shall proceed under the provisions of the

1 appropriate statute.

2 § 9727. Disposition of persons found guilty but mentally ill.

3 (a) Imposition of sentence.--A defendant found guilty but
4 mentally ill or whose plea of guilty but mentally ill is
5 accepted under the provisions of 18 Pa.C.S. § 314 (relating to
6 guilty but mentally ill) may have any sentence imposed on him
7 which may lawfully be imposed on any defendant convicted of the
8 same offense. Before imposing sentence, the court shall hear
9 testimony and make a finding on the issue of whether the
10 defendant at the time of sentencing is severely mentally
11 disabled and in need of treatment pursuant to the provisions of
12 [the act of July 9, 1976 (P.L.817, No.143), known as the "Mental
13 Health Procedures Act."] 50 Pa.C.S. Pt. III (relating to mental
14 health procedures).

15 (b) Treatment.--

16 (1) An offender who is severely mentally disabled and in
17 need of treatment at the time of sentencing shall, consistent
18 with available resources, be provided such treatment as is
19 psychiatrically or psychologically indicated for his mental
20 illness. Treatment may be provided by the Bureau of
21 Correction, by the county or by the Department of [Public
22 Welfare] Human Services in accordance with the ["Mental
23 Health Procedures Act."] 50 Pa.C.S. Pt. III.

24 (2) The cost for treatment of offenders found guilty but
25 mentally ill, committed to the custody of the Bureau of
26 Correction and transferred to a mental health facility, shall
27 be borne by the Commonwealth.

28 * * *

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

30 § 1101. Benefits to injured employees of State correctional

1 institutions.

2 (a) General rule.--An employee of a State correctional
3 institution who is injured during the course of that employment
4 by an act of an inmate or by any person who has been committed
5 to the State correctional institution by any court of the
6 Commonwealth or by any provision of [the act of July 9, 1976
7 (P.L.817, No.143), known as the Mental Health Procedures Act] 50
8 Pa.C.S. Pt. III (relating to mental health procedures), shall be
9 paid by the Commonwealth the employee's full salary until the
10 disability arising from the injury no longer prevents the
11 employee's return as an employee of the department at a salary
12 equal to that earned by the employee at the time of the injury.

13 * * *

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

17 (1) Except as otherwise provided in 50 Pa.C.S. Pt. III,
18 all activities initiated under the Mental Health Procedures
19 Act shall continue and remain in full force and effect and
20 may be completed under 50 Pa.C.S. Pt. III. Resolutions,
21 orders, regulations, rules and decisions which were made
22 under the Mental Health Procedures Act and which are in
23 effect on the effective date of this section shall remain in
24 full force and effect until revoked, vacated or modified
25 under 50 Pa.C.S. Pt. III. Contracts, obligations and
26 agreements entered into under the Mental Health Procedures
27 Act are not affected nor impaired by the repeal of the Mental
28 Health Procedures Act.

29 (2) A reference in any other act or regulation to the
30 Mental Health Procedures Act shall be deemed to be a

1 reference to 50 Pa.C.S. Pt. III (relating to mental health
2 procedures).

3 Section 8. Repeals are as follows:

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

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

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