

No. 1978-324

AN ACT

SB 1105

Amending the act of July 9, 1976 (P.L.817, No.143), entitled "An act relating to mental health procedures; providing for the treatment and rights of mentally disabled persons, for voluntary and involuntary examination and treatment and for determinations affecting those charged with crime or under sentence," further providing for mental health review officers, for the use of statistical data, for immunity and for involuntary treatment; for a stay of proceedings of a person charged with a crime, for voluntary treatment of a person charged with a crime or serving a sentence, for payment of costs for treatment, and for referral to county mental health and mental retardation programs.

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

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304, 305 and 306, act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," section 109 repealed in part April 28, 1978 (No.53), are amended, and a section is added to read:

Section 102. Statement of Policy.—It is the policy of the Commonwealth of Pennsylvania to seek to assure the availability of adequate treatment to persons who are mentally ill, and it is the purpose of this act to establish procedures whereby this policy can be effected. ***The provisions of this act shall be interpreted in conformity with the principles of due process to make voluntary and involuntary treatment available where the need is great and its absence could result in serious harm to the mentally ill person or to others.*** Treatment on a voluntary basis shall be preferred to involuntary treatment; and in every case, the least restrictions consistent with adequate treatment shall be employed. Persons who are mentally retarded, senile, alcoholic, or drug dependent shall receive mental health treatment only if they are also diagnosed as mentally ill, but these conditions of themselves shall not be deemed to constitute mental illness: ***Provided, however, That nothing in this act shall prohibit underutilized State facilities for the mentally ill to be made available for the treatment of alcohol abuse or drug addiction pursuant to the act of April 14, 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act." Chronically disabled persons 70 years of age or older who have been continuously hospitalized in a State operated facility for at least ten years shall not be subject to the procedures of this act. Such a person's inability to give a rational, informed consent shall not prohibit the department from continuing to provide all necessary treatment to such a person. However, if such a person protests treatment or residence at a State operated facility he shall be subject to the provisions of Article III.***

Section 109. Mental Health Review Officer.—(a) Legal proceedings

concerning extended involuntary emergency treatment under section 303(c), [or] court-ordered involuntary treatment under section 304 *or* 305 *or transfer hearings under section 306*, may be conducted by a judge of the court of common pleas or by a mental health review officer authorized by the court to conduct the proceedings. Mental health review officers shall be members of the bar of the Supreme Court of Pennsylvania, without restriction as to the county of their residence and where possible should be familiar with the field of mental health. [They shall be appointed by the respective courts of common pleas for terms not to exceed one year, and may be reappointed to successive terms.] *Law-trained municipal court judges may be appointed mental health review officers.*

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

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

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

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

(c) Subsections (a) and (b) shall not apply to patients admitted pursuant to Article II when no part of the patient's care is provided with public funds provided that the department may require facilities to report clinical and statistical information so long as the data does not identify individual patients.

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

Section 114. Immunity from Civil and Criminal Liability.—(a) In the absence of willful misconduct or gross negligence, a county administrator, a director of a facility, a physician, *a peace officer* or any

other authorized person who participates in a decision that a person be examined or treated under this act, or that a person be discharged, or placed under partial hospitalization, outpatient care or leave of absence, or that the restraint upon such person be otherwise reduced, or a county administrator or other authorized person who denies an application for **voluntary treatment or for** involuntary emergency examination and treatment, shall not be civilly or criminally liable for such decision or for any of its consequences.

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

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

(b) The county mental health and mental retardation program shall, pursuant to Article III of the "Mental Health and Mental Retardation Act of 1966," receive referrals from State-operated facilities and shall be responsible for the treatment needs of county residents discharged from institutions pursuant to Articles II and III of this act.

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

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

(b) If the person is under the age of 14, his parent, legal guardian, or person standing in loco parentis may effect his release. If any responsible party believes that it would be in the best interest of a person under 14 years of age in voluntary treatment to be withdrawn therefrom or afforded treatment constituting a less restrictive alternative, such party may file a petition in the Juvenile Division of the court of common pleas for the

county in which the person under 14 years of age resides, requesting a withdrawal from or modification of treatment. The court shall promptly appoint an attorney for such minor person and schedule a hearing to determine what inpatient treatment, if any, is in the minor's best interest. The hearing shall be held within ten days of receipt of the petition, unless continued upon the request of the attorney for such minor. The hearing shall be conducted in accordance with the rules governing other Juvenile Court proceedings.

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

Section 301. Persons Who May be Subject to Involuntary Emergency Examination and Treatment.—* * *

(b) Determination of Clear and Present Danger.—(1) Clear and present danger to others shall be shown by establishing that within the past 30 days the person has inflicted or attempted to inflict serious bodily harm on another and that there is a reasonable probability that such conduct will be repeated. If, however, the person has been found incompetent to be tried or has been acquitted by reason of lack of criminal responsibility on charges arising from conduct involving infliction of or attempt to inflict substantial bodily harm on another, such 30-day limitation shall not apply so long as an application for examination and treatment is filed within 30 days after the date of such determination or verdict. In such case, a clear and present danger to others may be shown by establishing that the conduct charged in the criminal proceeding did occur, and that there is a reasonable probability that such conduct will be repeated. *For the purpose of this section, a clear and present danger of harm to others may be demonstrated by proof that the person has made threats of harm and has committed acts in furtherance of the threat to commit harm.*

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

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

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

(iii) the person has [severely] *substantially* mutilated himself or attempted to mutilate himself [severely] *substantially* and that there is the reasonable probability of mutilation unless adequate treatment is afforded under this act. *For the purposes of this subsection, a clear and present danger shall be established by proof that the person has made threats to commit mutilation and has committed acts which are in furtherance of the threat to commit mutilation.*

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

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

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

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

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

* * *

(c) Informal [Hearing] *Conference* on Extended Emergency Treatment Application.—(1) At the commencement of the informal [hearing] *conference*, the judge or the mental health review officer shall inform the person of the nature of the proceedings. Information relevant to whether the person is severely mentally disabled and in need of treatment shall be reviewed, including the reasons that continued involuntary treatment is considered necessary. Such explanation shall be made by a physician who examined the person and shall be in terms understandable to a layman. *The judge or mental health review officer may review any relevant information even if it would be normally excluded under rules of evidence if he believes that such information is reliable.* The person or his representative shall have the right to ask questions of the physician and of any other witnesses and to present any relevant information. At the conclusion of the review, if the judge or the review officer finds that the person is severely mentally disabled and in need of continued involuntary

treatment, he shall so certify. Otherwise, he shall direct that the facility director or his designee discharge the person.

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

* * *

Section 304. Court-ordered Involuntary Treatment Not to Exceed Ninety Days.—(a) Persons for Whom Application May be Made.—(1) A person who is severely mentally disabled and in need of treatment, as defined in section 301(a), may be made subject to court-ordered involuntary treatment upon a determination of clear and present danger under section 301(b)(1) (serious bodily harm to others), or section 301(b)(2)(i) (inability to care for himself, creating a danger of death or serious harm to himself), or 301(b)(2)(ii) (attempted suicide), or 301(b)(2)(iii) (self-mutilation).

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

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

(2) The petition shall be in writing upon a form adopted by the department and shall include a statement of the facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment. The petition shall state the name of any examining physician and the substance of his opinion regarding the mental condition of the person. It shall also state that the person has been given the information required by subsection (b)(3). **[and shall include copies of all documents relating to examination and treatment of the person which are required under this act.]**

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

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

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

(c) Procedures for Initiating Court-ordered Involuntary Treatment for

Persons not in Involuntary Treatment.—(1) Any responsible party may file a petition in the court of common pleas requesting court-ordered involuntary treatment for any person not already in involuntary treatment for whom application could be made under subsection (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) **Determination and Order.**—Upon a finding by clear and convincing evidence that the person is severely mentally disabled and in need of treatment and subject to subsection (a), an order shall be entered directing treatment of the person in an approved facility as an inpatient or an outpatient, *or a combination of such treatment as the director of the facility shall from time to time determine*. Inpatient treatment shall be deemed appropriate only after full consideration has been given to less restrictive alternatives. Investigation of treatment alternatives shall include consideration of the person's relationship to his community and family, his employment possibilities, all available community resources, and guardianship services. An order for inpatient treatment shall include findings on this issue.

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

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

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

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

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

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

(4) In cases involving involuntary treatment pursuant to clause (2), whenever the period of court-ordered involuntary treatment is about to expire and neither the director nor the county administrator intends to apply for an additional period of court-ordered involuntary treatment pursuant to section 305 or at any time the director concludes that the person is not severely mentally disabled or in need of treatment, the director shall petition the court which ordered the involuntary treatment for the unconditional or conditional release of the person. Notice of such petition shall be given to the person, the county administrator and the district attorney. Within 15 days after the petition has been filed, the court shall hold a hearing to determine if the person is severely mentally disabled and in need of treatment. Petitions which must be filed simply because the period of involuntary treatment will expire shall be filed at least ten days prior to the expiration of the court-ordered period of involuntary treatment. If the court determines after hearing that the person is severely mentally disabled and in need of treatment, it may order additional involuntary treatment not to exceed one year; if the court does not so determine, it shall order the discharge of the person.

Section 305. Additional Periods of Court-ordered Involuntary Treatment.—(a) At the expiration of a period of court-ordered involuntary treatment under section 304(g) *or this section*, the court may order treatment for an additional period upon the application of the county administrator or the director of the facility in which the person is receiving treatment. Such order shall be entered upon hearing on findings as required by sections 304(a) and (b), and the further finding of a need for continuing involuntary treatment as shown by conduct during the person's most recent period of court-ordered treatment. *The additional period of involuntary treatment shall not exceed 180 days; provided that persons meeting the criteria of section 304(g)(2) may be subject to an additional period of up to one year of involuntary treatment.* A person found dangerous to himself under section 301(b)(2)(i),(ii) or (iii) shall be subject to an additional period of involuntary full-time inpatient treatment only if he has first been released to a less restrictive alternative. This limitation shall not apply where, upon application made by the county administrator or facility director, it is determined by a judge or mental health review officer that such release would not be in the person's best interest.

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

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

(b) In the absence of an emergency, persons committed pursuant to section 304(g)(2) may not be transferred unless written notice is given to the committing judge and the district attorney in the committing county and no objection is noted from either within 20 days of receipt of said notice. If the court or the district attorney objects to said transfer, a hearing shall be held by the court within 20 days to review the commitment order. A decision shall be rendered within 48 hours after the close of evidence.

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

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

Section 401. Examination and Treatment of a Person Charged with Crime or Serving Sentence.—* * *

(b) Status in *Voluntary and* Involuntary Treatment.—Whenever a person who is detained on criminal charges or is incarcerated is made subject to inpatient examination or treatment, he shall be transferred, for this purpose, to a mental health facility. Transfer may be made to a Veterans Administration facility provided that neither custody nor control are required in addition to examination and treatment. Such individuals transferred to the Veterans Administration are not subject to return by the Federal agency to the authority entitled to have them in custody. During such period, provisions for his security shall continue to be enforced, unless in the interim a pretrial release is effected, or the term of imprisonment expires or is terminated, or it is otherwise ordered by the court having jurisdiction over his criminal status. *In those instances where a person is charged with offenses listed in section 304(g)(2) and where the court, after hearing, deems it desirable, security equivalent to the institution to which he is incarcerated must be provided.* Upon discharge from treatment, a person who is or remains subject to a detainer or sentence shall be returned to the authority entitled to have him in custody. The period of involuntary treatment shall be credited as time served on account of any sentence to be imposed on pending charges or any unexpired term of imprisonment.

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Section 402. Incompetence to Proceed on Criminal Charges and Lack of Criminal Responsibility as Defense.—* * *

(b) Involuntary Treatment of Persons Found Incompetent to Stand Trial Who are Not Mentally Disabled.—Notwithstanding the provisions of Article III of this act, a court may order involuntary treatment of a person found incompetent to stand trial but who is not severely mentally disabled, such involuntary treatment not to exceed a specific period of **[30] 60** days. Involuntary treatment pursuant to this subsection may be ordered only if the court is reasonably certain that the involuntary treatment will provide the defendant with the capacity to stand trial. The court may order outpatient treatment, partial hospitalization or inpatient treatment.

* * *

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

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

Section 403. Hearing and Determination of Incompetency to Proceed; Stay of Proceedings; Dismissal of Charges.—* * *

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

* * *

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

(g) *Procedure When Person Is Discharged.*—*If the person of the defendant is discharged pursuant to subsection (d), but the charges remain open pursuant to subsection (f), the court discharging the defendant shall, on its own motion or on the motion of the Commonwealth or on the motion of the defense, order the defendant to submit to a psychiatric examination every 12 months after said discharge of the person, to determine whether the defendant has become competent to proceed to trial. If such examination reveals that the defendant has regained competency to proceed, then a hearing shall be scheduled and the court shall determine, after a full and fair hearing, whether the defendant is competent to proceed. If the defendant is adjudged competent, then trial shall commence within 90 days of said adjudication. If such examination reveals that the defendant is incompetent to proceed, the court shall order the defendant to submit to a new competency examination in 12 months.*

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

Section 407. Voluntary Treatment of a Person Charged with Crime or Serving Sentence.—(a) *Whenever a person in criminal detention, whether in lieu of bail or serving a sentence, believes that he is in need of treatment and substantially understands the nature of voluntary treatment he may submit himself to examination and treatment under this act.*

provided that at least one physician certifies the necessity of such treatment and certifies further that such treatment cannot be adequately provided at the prison or correctional facility where the person then is detained. Such certificate shall set forth the specific grounds which make transfer to a mental health facility necessary. The correctional facility shall secure a written acceptance of the person for inpatient treatment from the mental health facility and shall forward such acceptance to the court.

(b) Before any inmate of a prison or correctional facility may be transferred to a mental health facility for the purpose of examination and treatment the district attorney shall be notified by the correctional facility and shall be given up to 14 days after receipt of notification to conduct an independent examination of the defendant. The court shall review the certification of the physician that such transfer is necessary and the recommendation of the physician for the Commonwealth and may request any other information concerning the necessity of such transfer. Upon the motion of the district attorney, a hearing shall be held on the question of the voluntary treatment of a person charged with a crime or serving a sentence. Upon such review the court shall either approve or disapprove the transfer.

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

(d) A report of the person's mental condition shall be made by the mental health facility to the court within 30 days of the person's transfer to such facility. Such report shall also set forth the specific grounds which require continued treatment at a mental health facility. After the initial report the facility shall thereafter report to the court every 180 days.

(e) If at any time the person gives notice of his intent to withdraw from treatment at the mental health facility he shall be returned to the authority entitled to have him in custody, or proceedings may be initiated under section 304 of this act. During the pendency of any petition filed under section 304 concerning a person in treatment under this section the mental health facility shall have authority to detain the person regardless of the provisions of section 203, provided that the hearing under section 304 is conducted within seven days of the time the person gives notice of his intent to withdraw from treatment.

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

Section 408. Costs of Treatment.—*The Commonwealth shall pay for the costs, payments or expenditures in excess of \$120 per day made on behalf of any person who is a resident of a county located within the Commonwealth and who receives treatment and for whom liability is imposed on the county pursuant to section 505(a) of the act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966." All costs up to and including \$120 per*

day shall be imposed upon the county of his residence. In the event that a residency cannot be determined to be in a county within the Commonwealth by the court that convicted or sentenced the person, all liability for treatment imposed by section 505(a) of the "Mental Health and Mental Retardation Act of 1966" shall be borne by the Commonwealth.

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

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP