

No. 2003-21

## AN ACT

SB 521

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for assessment and commitment of certain sexually violent persons.

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

Section 1. Section 6302 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a definition to read:

§ 6302. Definitions.

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

\* \* \*

***“Board.” The State Sexual Offenders Assessment Board.***

\* \* \*

Section 2. Section 6307 of Title 42 is amended by adding a paragraph to read:

§ 6307. Inspection of court files and records.

All files and records of the court in a proceeding under this chapter are open to inspection only by:

\* \* \*

***(6.4) The board for use in completing assessments.***

\* \* \*

Section 3. Title 42 is amended by adding a section to read:

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

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

***(b) Duty of probation officer.—Ninety days prior to the 20th birthday of the child, the probation officer shall have the duty to notify the board of the status of the delinquent child and the institution or other facility where the child is presently committed. The probation officer shall assist***

*the board in obtaining access to the child and any information required by the board to perform the assessment.*

*(b.1) Notification to board.—The probation officer shall, within five days of the effective date of this subsection, notify the board of any child whose age precludes compliance with subsection (b) provided the child has not yet attained 21 years of age.*

*(c) Assessment.—The board shall conduct an assessment, which shall include the board's determination of whether or not the child is in need of commitment for involuntary treatment due to a mental abnormality as defined in section 6402 (relating to definitions) or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior. Upon the completion of the assessment pursuant to this section, the board shall provide the assessment to the court. In no case shall the board file the assessment later than 90 days after the child's 20th birthday unless notification of the board was delayed under subsection (b.1), in which case the assessment shall be filed no later than 180 days after the child's 20th birthday.*

*(d) Duty of court.—The court shall provide a copy of the assessment by the board to the probation officer, the district attorney, county solicitor or designee and the child's attorney.*

*(e) Dispositional review hearing.—Where the board has concluded that the child is in need of involuntary treatment pursuant to the provisions of Chapter 64 (relating to court-ordered involuntary treatment of certain sexually violent persons), the court shall conduct a hearing at which the county solicitor or a designee, the probation officer and the child's attorney are present. The court shall consider the assessment, treatment information and any other relevant information regarding the delinquent child at the dispositional review hearing pursuant to section 6353 (relating to limitation on and change in place of commitment), which shall be held no later than 180 days before the 21st birthday of the child. Where the submission of the report was delayed pursuant to subsection (c), the dispositional review hearing shall be held no later than 90 days before the 21st birthday of the child.*

*(f) Subsequent proceeding.—If, at the conclusion of the dispositional review hearing required in subsection (e), the court finds there is a prima facie case that the child is in need of involuntary treatment under the provisions of Chapter 64, the court shall direct that the county solicitor or a designee file a petition to initiate proceedings under the provisions of that chapter.*

Section 4. Title 42 is amended by adding a chapter to read:

CHAPTER 64  
COURT-ORDERED INVOLUNTARY TREATMENT OF CERTAIN  
SEXUALLY VIOLENT PERSONS

Sec.

6401. Scope of chapter.

6402. Definitions.

6403. Court-ordered involuntary treatment.

6404. Duration of commitment and review.

6405. Right to counsel.

6406. Duty of Department of Public Welfare.

6407. Regulations.

6408. Jurisdiction.

6409. Immunity for good faith conduct.

§ 6401. Scope of chapter.

This chapter establishes rights and procedures for the civil commitment of sexually violent delinquent children who, due to a mental abnormality or personality disorder, have serious difficulty in controlling sexually violent behavior and thereby pose a danger to the public and further provides for additional periods of commitment for involuntary treatment for said persons.

§ 6402. Definitions.

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

“Act of sexual violence.” Any conduct prohibited under the following provisions of law:

(1) 18 Pa.C.S. § 3121 (relating to rape).

(2) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(3) 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(4) 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(5) 18 Pa.C.S. § 3126 (relating to indecent assault).

(6) 18 Pa.C.S. § 4302 (relating to incest).

“Board.” The board as defined in section 6302 (relating to definitions).

“County solicitor.” The solicitor appointed by the county commissioners or a similar body in home rule counties.

“Department.” The Department of Public Welfare of the Commonwealth.

“Mental abnormality.” A congenital or acquired condition of a person affecting the person’s emotional or volitional capacity.

“Sexually violent delinquent child.” A person who has been found delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest) and who has been determined to be in need of commitment for involuntary treatment under this chapter.

§ 6403. Court-ordered involuntary treatment.

(a) Persons subject to involuntary treatment.—A person may be subject to court-ordered commitment for involuntary treatment under this chapter if the person:

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

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

(3) Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

(b) Procedures for initiating court-ordered involuntary commitment.—

(1) Where, pursuant to the provisions of section 6358(f) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board), the court determines that a prima facie case has been presented that the child is in need of involuntary treatment under the provisions of this chapter, the court shall order that a petition be filed by the county solicitor or a designee before the court having jurisdiction of the person pursuant to Chapter 63 (relating to juvenile matters).

(2) The petition shall be in writing in a form adopted by the department and shall set forth the facts constituting reasonable grounds to believe the individual is within the criteria for court-ordered involuntary treatment as set forth in subsection (a). The petition shall include the assessment of the person by the board as required in section 6358.

(3) The court shall set a date for the hearing which shall be held within 30 days of the filing of the petition pursuant to paragraph (1) and direct the person to appear for the hearing. A copy of the petition and notice of the hearing date shall be served on the person, the attorney who represented the person at the most recent dispositional review hearing pursuant to section 6358(e) and the county solicitor or a designee. The person and the attorney who represented the person shall, along with copies of the petition, also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(4) The person shall be informed that the person has a right to be assisted in the proceedings by an independent expert in the field of sexually violent behavior. If the person cannot afford to engage such an expert, the court shall allow a reasonable fee for such purpose.

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

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

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

(3) The hearing shall be public.

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

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

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

(d) Determination and order.—Upon a finding by clear and convincing evidence that the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence, an order shall be entered directing the immediate commitment of the person for inpatient involuntary treatment to a facility designated by the department. The order shall be in writing and shall be consistent with the protection of the public safety and the appropriate control, care and treatment of the person. An appeal shall not stay the execution of the order.

§ 6404. Duration of commitment and review.

(a) Initial period of commitment.—The person shall be subject to a period of commitment for inpatient treatment for one year.

(b) Annual review.—

(1) Sixty days prior to the expiration of the one-year commitment period, the director of the facility or a designee shall submit an evaluation and the board shall submit an assessment of the person to the court.

(2) The court shall schedule a review hearing which shall be conducted pursuant to section 6403(c) (relating to court-ordered involuntary treatment) and which shall be held no later than 30 days after receipt of both the evaluation and the assessment under paragraph (1). Notice of the review hearing shall be provided to the person, the attorney who represented the person at the previous hearing held pursuant to this subsection or section 6403, the district attorney and the county solicitor or a designee. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person. If the court determines by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order an additional period of involuntary treatment of one year; otherwise, the court shall order the discharge of the person. The order shall be in writing and shall be consistent with the

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

(c) Discharge.—

(1) If at any time the director or a designee of the facility to which the person was committed concludes the person no longer has serious difficulty in controlling sexually violent behavior, the director shall petition the court for a hearing. Notice of the petition shall be given to the person, the attorney who represented the person at the previous hearing held pursuant to subsection (b) or section 6403, the board, the district attorney and the county solicitor. The person and the person's attorney shall also be provided with written notice advising that the person has the right to counsel and that, if he cannot afford one, counsel shall be appointed for the person.

(2) Upon receipt of notice under paragraph (1), the board shall conduct a new assessment within 30 days and provide that assessment to the court.

(3) Within 15 days after the petition has been filed, the court shall hold a hearing pursuant to section 6403(c). If the court determines the person no longer has serious difficulty controlling sexually violent behavior, the court shall order the discharge of the person. If the court denies the petition, the person shall be subject to the remainder of the period of commitment.

(4) The department shall provide the person with notice of the person's right to petition the court for discharge over the objection of the department. The court, after review of the petition, may schedule a hearing pursuant to section 6403(c).

#### § 6405. Right to counsel.

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

#### § 6406. Duty of Department of Public Welfare.

(a) General rule.—The department shall have the duty to provide a separate, secure State-owned facility or unit utilized solely for the control, care and treatment of persons committed pursuant to this chapter. The department shall be responsible for all costs relating to the control, care and treatment of persons committed to custody pursuant to this chapter.

(b) Interim facility.—The department may designate a State-owned facility or unit which currently receives children who are adjudicated delinquent and committed under Chapter 63 (relating to juvenile matters) to receive individuals committed under this chapter as long as these individuals are segregated at all times from children committed under Chapter 63. This subsection shall expire July 1, 2006.

(c) Treatment plans.—The department, in consultation with the Juvenile Court Judges' Commission and the board, shall develop policies and procedures for providing individualized treatment and discharge plans

based on clinical guidelines and professional standards in the fields of sexual offender treatment and mental health.

§ 6407. Regulations.

The department shall adopt in consultation with the Juvenile Court Judges' Commission and the board such regulations as are necessary to effectuate the provisions of this chapter.

§ 6408. Jurisdiction.

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

§ 6409. Immunity for good faith conduct.

The following entities shall be immune from liability for good faith conduct under this subchapter:

- (1) Members of the board and its agents and employees.
- (2) The department and its agents and employees.
- (3) County probation departments and their agents and employees.

Section 5. Section 9795.4(c) of Title 42 is amended and the section is amended by adding a subsection to read:

§ 9795.4. Assessments.

\* \* \*

(c) Release of information.—All State, county and local agencies, offices or entities in this Commonwealth, *including juvenile probation offices*, shall cooperate by providing copies of records and information as requested by the board in connection with the court-ordered assessment and the assessment requested by the Pennsylvania Board of Probation and Parole.

\* \* \*

(h) *Delinquent children.*—*Except where section 6358(b.1) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board) is applicable, the probation officer shall notify the board 90 days prior to the 20th birthday of the child of the status of the delinquent child who is committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) after having been found delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest), together with the location of the facility where the child is committed. The board shall conduct an assessment of the child, which shall include the board's determination of whether or not the child is in need of commitment due to a mental abnormality as defined in section 6402 (relating to definitions) or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior, and provide*

*a report to the court no later than 90 days after the child's 20th birthday. The probation officer shall assist the board in obtaining access to the child and any records or information as requested by the board in connection with the assessment. The assessment shall be conducted pursuant to subsection (b).*

Section 6. This act shall take effect in 180 days.

APPROVED—The 14th day of August, A.D. 2003.

EDWARD G. RENDELL