

No. 1996-77

AN ACT

SB 1566

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 officer, for confidentiality of records, for incompetence to proceed on criminal charges and lack of criminal responsibility as a defense and for competency determination and burden of proof.

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

Section 1. Section 109 of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, is amended by adding a subsection to read:

Section 109. Mental Health Review Officer.—* * *

(d) Notwithstanding any statute to the contrary, judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who has been adjudicated incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under this act or who has been involuntarily treated as described under 18 Pa.C.S § 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms). The notification shall be transmitted by the judge, mental health review officer or county mental health and mental retardation administrator within seven days of the adjudication, commitment or treatment. Notwithstanding any statute to the contrary, county mental health and mental retardation administrators shall notify the Pennsylvania State Police on a form developed by the Pennsylvania State Police of the identity of any individual who before the effective date of this act had been adjudicated incompetent or had been involuntarily committed to a mental institution for inpatient care treatment under this act or had been involuntarily treated as described in 18 Pa.C.S. § 6105(c)(4).

Section 2. Sections 111, 402(d) and 403(a) of the act are amended to read:

Section 111. Confidentiality of Records.—*(a)* All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

- (1) those engaged in providing treatment for the person;

(2) the county administrator, pursuant to section 110;
 (3) a court in the course of legal proceedings authorized by this act; and
 (4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency. In no event, however, shall privileged communications, whether written or oral, be disclosed to anyone without such written consent. This shall not restrict the collection and analysis of clinical or statistical data by the department, the county administrator or the facility so long as the use and dissemination of such data does not identify individual patients. Nothing herein shall be construed to conflict with section 8 of the act of April 14, 1972 (P.L.221, No.63), known as the "Pennsylvania Drug and Alcohol Abuse Control Act."

(b) This section shall not restrict judges of the courts of common pleas, mental health review officers and county mental health and mental retardation administrators from disclosing information to the Pennsylvania State Police or the Pennsylvania State Police from disclosing information to any person, in accordance with the provisions of 18 Pa.C.S. § 6105(c)(4) (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

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

(d) Hearing; When Required.—The court, either on application or on its own motion, may order an incompetency examination at any stage in the proceedings and may do so without a hearing unless the examination is objected to by the person charged with a crime or by his counsel. In such event, an examination shall be ordered only after determination upon a hearing that there is a prima facie question of incompetency. *Upon completion of the examination, a determination of incompetency shall be made by the court where incompetency is established by a preponderance of the evidence.*

* * *

Section 403. Hearing and Determination of Incompetency to Proceed; Stay of Proceedings; Dismissal of Charges.—(a) Competency Determination and Burden of Proof.—[The moving party shall have the burden of establishing incompetency to proceed by clear and convincing evidence. The determination shall be made by the court.] *Except for an incompetency examination ordered by the court on its own motion as provided for in section 402(d), the individual making an application to the court for an order directing an incompetency examination shall have the burden of establishing incompetency to proceed by a preponderance of the evidence. The determination shall be made by the court.*

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Section 3. This act shall take effect immediately.

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE