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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN GUILDAY, **Plaintiff,** **v.** **CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER et al.,** **Defendants,**	**Civil Action** **No. 21-2010**

MEMORANDUM OPINION

On June 2, 2020, Plaintiff was taken from his home by police and transported to the Crozer-Chester Medical Center ("Crozer-Chester") for an emergency psychiatric examination upon the petition of his father, a physician. Plaintiff spent seven to eight days in Crozer-Chester, during which time he refused all medical treatment and suffered mental and physical distress. Plaintiff now brings this petition against various entities affiliated with Crozer-Chester, with Delaware County and with the Commonwealth of Pennsylvania, alleging that the committal and related events violated his constitutional, statutory, and state law rights. Defendants the Pennsylvania Department of Human Services and its Secretary, Meg Snead (collectively, the "Commonwealth Defendants") have filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons that follow, the Motion shall be granted and Plaintiff's claims against the Commonwealth Defendants will be dismissed with prejudice.

I. FACTUAL ALLEGATIONS

Plaintiff's ordeal began on June 2, 2020, when the police transported him, in handcuffs, from his home to Crozer-Chester. The police acted on authority of a warrant issued by the Delaware County Administrator, Tracy Halliday, or her representative, upon the application of Plaintiff's father. The procedures for obtaining the warrant issue from the Pennsylvania Mental Health Procedures Act ("MHPA"), a statute that permits the involuntary emergency examination and treatment of an individual whose mental capacity is "so lessened that he poses a clear and present danger of harm to others or to himself." 50 Pa. C.S.A. §7301(a). The MHPA authorizes an initial period of involuntary treatment of 120 hours or less. 50 Pa. C.S.A. §7302.

After undergoing testing for COVID-19, Plaintiff was examined by a Crozer-Chester physician. The next day, June 3, he was transferred to the Center's North Campus. At the North Campus, he was examined by another physician, Doctor Amy Bebawi. He was told that Doctor Bebawi was going to file a petition for extended involuntary treatment of up to 20 days. Such a petition may be filed with the Pennsylvania Court of Common Pleas upon a determination that the need for emergency treatment is likely to exceed 120 hours. 50 Pa. C.S.A. §7303(a). Plaintiff was told that he could challenge the petition at a hearing, and that he would be provided an attorney. Such hearings are mandated by the MHPA upon receipt of an application for extended treatment. *Id.* §7303(b). If the judge or mental health review officer determines that the person is in need of continued treatment, a written certification for extended involuntary

treatment will issue. *Id.* §7303(c)-(d). A copy of the certification must be served on the committed individual. *Id.* §7303(e).

Doctor Bebawi testified at the extended treatment hearing on June 5. Plaintiff alleges that he was not able to consult with his attorney before or during the proceeding and maintains that he never received a copy of the certification for extended involuntary commitment. On June 8, Dr. Bebawi and Plaintiff spoke with his father, who said that he could come home. He was released shortly thereafter.

II. LEGAL STANDARDS

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In conducting this analysis, legal conclusions are disregarded and well-pleaded facts are taken as true. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). All reasonable inferences are drawn in the plaintiff's favor. *Shorter v. United States*, 12 F.4th 366, 374 (3d Cir. 2021). In particular, a *pro se* complaint is liberally construed. *Vogt v. Wetzel*, 8 F.4th 182, 185 (3d Cir. 2021).

III. DISCUSSION

The Complaint alleges that the Commonwealth Defendants had statutory duties under the MHPA to "approve facilities for involuntary commitment" and to "assure the availability and equitable provision of adequate mental health services." It further avers that they do not have an "effective communication system" to serve or transmit certifications for extended involuntary treatment. The Complaint contends that the

Commonwealth Defendants' actions in connection with these allegations violate the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

In his response to the Commonwealth Defendants' Motion to Dismiss, Plaintiff expands upon his theories of liability contending that the Commonwealth Defendants must also be held liable for, among other things, (1) "enacting an unconstitutional law"; (2) "using rules, regulations, and forms" to issue warrants that he says are unconstitutional because they rely on unverified facts and biased information, lack particularity, and are valid for 30 days; (3) "using rules, regulations, and forms" to "seize a person . . . without any Miranda or similar warning" and without "adequate notice . . . for the reasons of the search"; and, (4) "using an investigative. . . and information adjudicatory system . . . based on forms, rules, and regulations" that apply an unconstitutional burden of proof.

A. Claims Against the Department of Human Services

State entities like the Pennsylvania Department of Human Services are protected from suit under Section 1983 by two overlapping doctrines.[3]

First, Section 1983 "does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). "The Eleventh Amendment bars such suits unless the State has waived its immunity, or unless Congress has exercised its undoubted power

[3] Plaintiff alleges that the Department of Human Services is "sufficiently autonomous to prevent it from being an arm of the state" because it receives federal funding. It is firmly established, however, that the Department of Human Services is a state entity. *See* 71 Pa. C.S.A. §61(a) (defining the Department as an administrative department charged with the executive and administrative work of the Commonwealth).

under §5 of the Fourteenth Amendment to override that immunity." *Id.* (internal citation omitted) (citing *Welch v. Tex. Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 472-73 (1987)). "Congress, in passing §1983, had no intention to disturb the States' Eleventh Amendment immunity," *id.*, and Pennsylvania has not waived its immunity. *Downey v. Pa. Dep't of Corr.*, 968 F.3d 299, 310 (3d Cir. 2020) (citing 42 Pa. C.S.A. §8521(b)). As an administrative department created by the State, the Department of Human Services is therefore shielded from Plaintiff's suit by sovereign immunity. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) ("It is clear, of course, that in the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment.").[4]

Second, "governmental entities that are considered 'arms of the State' for Eleventh Amendment purposes"—such as the Department of Human Services—are not "persons" subject to suit under Section 1983. *Will*, 491 U.S. at 70-71.

For these reasons, Plaintiff cannot state a Section 1983 claim against the Pennsylvania Department of Human Services and, as amendment would be futile, any such claims will be dismissed with prejudice. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

B. Claims Against the Secretary

The Complaint does not specify whether Secretary Snead is named as a defendant in her official or personal capacity. Both possibilities will accordingly be addressed.

[4] Sovereign immunity bars Plaintiff's claims against the State for damages and injunctive relief alike. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984).

i. Official Capacity

In an action seeking monetary relief, "a suit against a state official in his or her official capacity . . . is no different from a suit against the State itself." *Will*, 491 U.S. at 71. Therefore, an official of the State sued for damages in her official capacity is not a "person" under Section 1983. *Id.* Plaintiff's claims against Secretary Snead in her official capacity for monetary damages must therefore be dismissed with prejudice, as futile. *Grayson*, 293 F.3d at 114.

Conversely, "a state official in his or her official capacity, when sued for injunctive relief, would be a person under §1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'" *Will*, 491 U.S. at 71 n.10 (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14 (1985)). Therefore, the Eleventh Amendment does not bar official- capacity actions seeking to enjoin future conduct. *Pennhurst State Sch.*, 465 U.S. at 102-03.

Plaintiff's injunctive relief claims, however, fail because he is not seeking prospective relief and, thus, does not have standing to seek injunctive relief. "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshhold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To satisfy this requirement, Plaintiff must allege that he "has sustained or is immediately in danger of

sustaining some direct injury" that is " 'real and immediate,' not 'conjectural' or 'hypothetical.'" *Id.* at 102.[5]

The Complaint seeks redress for past injuries related to Plaintiff's involuntary committal in June 2020. It alleges no facts suggesting that Plaintiff will be involuntarily examined or committed again—any future injury is purely conjectural. Because there is no "real and immediate threat," Plaintiff has no standing to seek injunctive relief. His claims for injunctive relief will be dismissed with prejudice, as amendment would be futile. *Grayson*, 293 F.3d at 114.[6]

ii. Personal Capacity

[5] The Commonwealth Defendants based their argument that Plaintiff cannot seek injunctive relief on Pennsylvania common law. This reliance is misplaced. The federal courts apply federal law, not state law, to claims arising from federal statutes. *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) ("*Except* in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state." (emphasis added)). Furthermore, federal law specifically governs the availability of equitable remedies in federal court. *See First Camden Nat. Bank & Tr. Co. v. Aetna Cas. & Sur. Co.*, 132 F.2d 114, 118 (3d Cir. 1942); Fed. R. Civ. P. 65 (Injunctions and Restraining Orders).

[6] In his brief responding to the Commonwealth Defendants' Motion to Dismiss, Plaintiff maintains that he "has been threatened with the use of the MHPA being used against him again" and that he "has avoided certain areas so as not to even potentially encounter individuals who may try to use the MHPA against him again erroneously." This new factual allegation cannot be considered because the Complaint "may not be amended by the briefs in opposition to a motion to dismiss." *Commonwealth ex. rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) (alteration in original) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984), *cert. denied*, 470 U.S. 1054 (1984))); *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record." (quoting *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)). In any case, the allegation that an unknown person threatened Plaintiff with an MHPA warrant, which the county administrator would have to approve and issue, at an unknown time for unknown reasons is too vague and conclusory to merit an assumption of truth. *Iqbal*, 556 U.S. at 679. Nor does it articulate a "real and immediate threat of injury." *Lyons*, 461 U.S. at 106 (Plaintiff had no standing to enjoin police use of chokehold against him because he could not allege either that "*all* police officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter" or that "the City ordered or authorized police officers to act in such manner." (emphasis in original)).

"Personal-capacity suits seek to impose personal liability upon a government official for actions he [or she] takes under color of state law." *Graham*, 473 U.S. at 165. "[S]tate officials, sued in their individual capacities, are 'persons' within the meaning of §1983" and the Eleventh Amendment "does not bar such suits." *Hafer v. Melo*, 502 U.S. 21, 31 (1991).

The Third Circuit has "identified two general ways in which a supervisor-defendant may be liable for unconstitutional acts undertaken by subordinates." *Barkes v. First Corr. Med., Inc.*, 766 F.3d 307, 316 (3d Cir. 2014), *reversed on other grounds by Taylor v. Barkes*, 575 U.S. 822 (2015). First, "liability may attach if [a supervisor], with deliberate indifference to the consequences, established and maintained a policy, practice or custom which directly caused the constitutional harm." *Id.* (cleaned up) (quoting *A.M. ex rel. J.M.K. v. Luzerne Cnty. Juvenile Det. Ctr.*, 372 F.3d 572, 586 (3d Cir. 2004)). Alternatively, " 'a supervisor may be personally liable under §1983 if he or she participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced' in the subordinate's unconstitutional conduct." *Id.* (quoting *Luzerne Cnty. Juvenile Det. Ctr.*, 372 F.3d at 586); *Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020).

The Complaint makes only the following allegations against Secretary Snead: (1) that she is the "executive policy maker" for the Department of Human Services; (2) that she had responsibility to approve treatment facilities and assure the "availability and equitable provision of adequate mental health services"; and, (3) that she "does not have

or is not using an effective communication system" for the service or transmission of certifications for extended involuntary treatment.[7] In his response to the Commonwealth Defendants' Motion to Dismiss, Plaintiff adds additional allegations to the effect that Secretary Snead "in putting forth, approving, and enacting rules, regulations, and forms used in the MHPA, violates constitutional standards and rights, . . . acting in a purposefully and deliberately discriminating way."

These allegations amount to little more than a general description of Secretary Snead's official responsibilities and a bare assertion that she violated the constitution in exercising those responsibilities. They are just the kind of "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" that the Supreme Court held will not suffice to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678 (allegations that officials "knew of, condoned, and willfully and maliciously agreed to" harsh conditions of confinement "as a matter of policy" did not state a claim). The Complaint alleges no facts suggesting that Secretary Snead participated in, directed, or knew of and acquiesced in Plaintiff's involuntary commitment or in the service of the certification of extended treatment (or lack thereof). Nor do they identify any "policy, practice or custom" established and maintained by her that directly caused harm to Plaintiff. Plaintiff does not state against the Secretary a "claim to relief that is plausible on its face." *Id.* (quoting *Twombly*, 550 U.S. at 570). Accordingly, his claims against Secretary Snead in her personal capacity will be dismissed with prejudice, on futility grounds. *Grayson*, 293 F.3d at 114.

[7] To the extent this allegation is made to support a claim for a violation of Section 303(e) of the MHPA, it is unavailing because "Section 1983 does not provide a cause of action for violations of state statutes." *Benn*, 371 F.3d at 173.

An appropriate order follows.

BY THE COURT:

/s/ Wendy Beetlestone, J.

WENDY BEETLESTONE, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN GUILDAY, **Plaintiff,** **v.** **CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER et al.,** **Defendants,**	**Civil Action** **No. 21-2010**

ORDER

AND NOW, this 17th day of February, 2022, upon consideration of the Motion to Dismiss of the Pennsylvania Department of Health and Human Services and of Acting Secretary of the Department of Human Services Meg Snead (collectively, the "Commonwealth Defendants") (ECF No. 29), of Plaintiff's Response in Opposition thereto (ECF No. 51), and of the Commonwealth Defendants' Reply (ECF No. 56), it is **HEREBY ORDERED** that the Commonwealth Defendants' Motion is **GRANTED**. It is **FURTHER ORDERED THAT**:

1) Plaintiff's claims against the Commonwealth Defendants are **DISMISSED WITH PREJUDICE.**

2) The Clerk of Court **SHALL TERMINATE** the Pennsylvania Department of Health and Human Services and Acting Secretary of the Department of Human Services Meg Snead as Defendants.

BY THE COURT:

/s/ Wendy Beetlestone, J.

WENDY BEETLESTONE, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN GUILDAY, **Plaintiff,** **v.** **CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER et al.,** **Defendants,**	**Civil Action** **No. 21-2010**

MEMORANDUM OPINION

Pro se Plaintiff Sean Guilday was involuntarily committed at the Crozer-Chester Medical Center ("Crozer-Chester") for emergency psychiatric treatment upon the petition of his father, a physician. Plaintiff's committal lasted seven to eight days, during which time he refused all medical care and suffered considerable distress. After his release, Plaintiff filed suit against various entities affiliated with Crozer-Chester (collectively, the "Crozer-Chester Defendants"),[8] with Delaware County (the "County

[8] Prospect Medical Holdings, Inc.; Prospect CCMC, LLC; Crisis Center at Crozer-Chester Medical Center; Prospect CCMC, LLC d/b/a Crisis Center at Crozer-Chester Medical Center; Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; Prospect CCMC LLC d/b/a Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; Akiba Bailey; Darren Piechota, M.D.; Amy Bebawi, M.D.; John/Jane Doe (The Director of Facility, Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center); and John/Jane Doe (Director of Facility, Crozer Crisis Center at Crozer-Chester Medical Center).

Defendants"),[9] and with the Commonwealth of Pennsylvania, alleging that the committal and related events had violated his constitutional, statutory, and state law rights. This opinion addresses the Crozer-Chester Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), and the County Defendants' Motion to Dismiss pursuant to the same rule. For the reasons that follow, Plaintiff's federal law claims against the Crozer-Chester Defendants will be dismissed with prejudice and his federal law claims against the County Defendants will be dismissed in part with prejudice and in part without prejudice. His state law claims against all Defendants will be dismissed without prejudice.

I. FACTUAL ALLEGATIONS

The facts below are taken from Plaintiff's Complaint as is proper on a motion to dismiss. Plaintiff's ordeal began on June 2, 2020, when the police transported him, in handcuffs, from his home to a Crozer-Chester facility. The police acted on authority of a warrant for emergency examination issued by Delaware County upon the application of Plaintiff's father. The warrant procedures stem from the Pennsylvania Mental Health Procedures Act ("MHPA"), a statute that permits the involuntary emergency examination and treatment of an individual who "poses a clear and present danger of harm to others or

[9] Collectively, the County of Delaware; the Delaware County Office of Behavioral Health; the Delaware County Office of Behavioral Health, Division of Mental Health, Adult; Tracy Halliday; and Dion Gilliard. The Complaint alleges that the Delaware County Office of Behavioral Health is a subdivision of the Delaware County Department of Human Services, and that the Division of Mental Health, Adult, is a "comprising office" of the Office of Behavioral Health. It asserts that Halliday is the County Administrator responsible for granting warrants pursuant to 50 Pa. C.S.A. §7302, and that Gilliard is the Mental Health Court Clerk for the Office of Behavioral Health.

to himself," due to mental illness. 50 Pa. C.S.A. §7301(a).

Upon arrival at Crozer-Chester, testing revealed that Plaintiff had an elevated temperature, and police took him to the Emergency Department for COVID-19 testing. They removed his handcuffs only once he was placed in a treatment room. In front of female medical personnel, Plaintiff was instructed to strip, put on a hospital gown, and submit to testing. Plaintiff felt that he was not free to leave.

Over four hours later, Plaintiff was returned to Crozer-Chester, still in a hospital gown. He had not been told why he was there or given anything to eat. Staff gave Plaintiff a pair of scrub pants but no socks or shoes, and left him in a waiting room for at least two hours. More patients arrived, some of whom arrived after Plaintiff but were taken to see a physician before him. Some of the other patients in the waiting room were shouting loudly and incoherently.

Eventually, Plaintiff was examined by Doctor Darren Piechota, a psychiatrist at Crozer- Chester. On his way to the interview room, he noticed that the doors had security features and felt that he was not free to leave. Plaintiff felt intimidated during this examination because Doctor Piechota expressed skepticism about his story, and said that he knew that Plaintiff's father worked as a physician at the adjacent hospital and had applied for the warrant. After the examination, Plaintiff returned to the waiting room and picked up the TV remote control. Seeing this, another patient yelled at Plaintiff and wrested the remote from him. The patient and another individual began to menace and taunt Plaintiff. He spent the night in the waiting room.

The next day, June 3, Plaintiff was transferred to Crozer-Chester's North Campus. He was given a pair of socks but had to walk outside without shoes. He had not eaten or slept since his arrival. At the North Campus, Plaintiff was examined by another psychiatrist, Doctor Amy Bebawi. Someone later told him that Doctor Bebawi was filing a petition for extended involuntary treatment of up to 20 days.[10] He was further told that he could have an attorney to challenge the petition at a hearing.

The hearing was held on June 5, but Plaintiff alleged that he was not able to consult with his lawyer before or during the proceeding. Plaintiff requested a copy of the certification for extended involuntary commitment that evening, but was told that Crozer-Chester had not received it. On June 7, he was informed by a physician's assistant that his committal had been extended for up to 20 days, and he was read a text message confirming that a certification for extended involuntary treatment had been issued. He reiterated his request for a copy of the document every day until his discharge, to no avail. Although he received a copy of his medical records from Crozer-Chester on June 22, the certification was not among them.

On June 8, Doctor Bebawi told Plaintiff that she had spoken with his father. The three of them later talked on a conference call during which Plaintiff's father said that he could come home. Plaintiff was released shortly thereafter. Later that month, Plaintiff

[10] Although the initial period of involuntary emergency treatment under the MHPA may not exceed 120 hours, 50 Pa. C.S.A. §7302(d), the Act permits a treatment facility to apply to the Pennsylvania Court of Common Pleas for extended treatment if it determines that the person's need for emergency treatment is likely to extend beyond that period. *Id.* §7303(a). A judge or mental health review officer then conducts an informal hearing to determine whether the person needs continued treatment. *Id.* §7303(b). If so, the judge or review officer will make a written certification for extended involuntary treatment, *id.* §7303(c)-(d), a copy of which must be served on the committed individual. *Id.* §7303(e).

hired an attorney and challenged his involuntary commitment in the Pennsylvania Court of Common Pleas. At a hearing on September 17, 2020, the Delaware County Office of Behavioral Health produced a copy of the certification for extended involuntary treatment. Although the document was admitted into evidence, Plaintiff maintains that he still did not personally receive a copy. On October 29, 2020, the Court of Common Pleas "ordered the commitment expunged and the record vacated."

Throughout his commitment, Plaintiff experienced constant dread and anxiety, could not eat or sleep, and was in physical pain. To this day, he continues to suffer psychological and physical symptoms arising out of these events. For the provision of emergency treatment services, he received a bill totaling over $35,000.

II. STANDARD OF REVIEW

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* In conducting this analysis, legal conclusions are disregarded and well-pleaded facts are taken as true. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). In particular, a *pro se* complaint is liberally construed. *Vogt v. Wetzel*, 8 F.4th 182, 185 (3d Cir. 2021).

FEDERAL CLAIMS AGAINST THE CROZER-CHESTER DEFENDANTS

A. Constitutional Claims

The Complaint challenges the manner in which the Crozer-Chester Defendants conducted Plaintiff's emergency examination and the adequacy of the care that they provided during his subsequent commitment. The Crozer-Chester Defendants argue that Plaintiff's federal constitutional claims must be dismissed because they are not state actors within the meaning of Section 1983.

i. Legal Standards

"Title 42 U.S.C. §1983 provides a remedy for deprivations of rights secured by the Constitution and laws of the United States when that deprivation takes place 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.' " *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982).[11] To state a Section 1983 claim, a plaintiff must allege: (1) "the violation of a right secured by the Constitution and laws of the United States,"(2) "committed by a person," (3) "acting under color of state law." *West v. Atkins*, 487 U.S. 42, 48 (1988). The third element evokes a "state action" requirement which limits liability under Section 1983 to conduct that "is fairly attributable to the State." *Lugar*, 457 U.S. at 937. "What is fairly attributable is a matter of normative judgment, and the criteria lack rigid simplicity." *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001). "[T]he principal question at stake is whether there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." *Kach v.*

[11] "In cases under §1983, 'under color' of law has consistently been treated as the same thing as the 'state action' required under the Fourteenth Amendment." *Rendell–Baker v. Kohn*, 457 U.S. 830, 838 (1982) (quoting *United States v. Price*, 383 U.S. 787, 794 n.7 (1966)); *see also Lugar*, 457 U.S. at 935 ("If the challenged conduct . . . constitutes state action . . . , then that conduct was also action under color of state law and will support a suit under §1983.").

Hose, 589 F.3d 626, 646 (3d Cir. 2009) (quoting *Leshko v. Servis*, 423 F.3d 337, 339 (3d Cir. 2005)). The Supreme Court explained in *Brentwood*:

> Our cases have identified a host of facts that can bear on the fairness of such an attribution. We have, for example, held that a challenged activity may be state action when it results from the State's exercise of "coercive power," when the State provides "significant encouragement, either overt or covert," or when a private actor operates as a "willful participant in joint activity with the State or its agents." We have treated a nominally private entity as a state actor when it is controlled by an "agency of the State," when it has been delegated a public function by the State, when it is "entwined with governmental policies," or when government is "entwined in [its] management or control."

Brentwood, 531 U.S. at 296 (internal citations omitted). "Regardless of whether these are 'tests' or 'facts,' *Brentwood* directs courts to focus on the fact-intensive nature of the state action inquiry, mindful of its central purpose: to assure that constitutional standards are invoked when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains." *Crissman v. Dover Downs Ent. Inc.*, 289 F.3d 231, 239 (3d Cir. 2002) (emphasis in original) (internal quotation marks omitted) (quoting *Brentwood*, 531 U.S. at 295).

ii. Discussion

Plaintiff advances a host of theories according to which he alleges the Crozer-Chester Defendants' actions may be "fairly attributable to the State." Each is addressed in turn below.

Plaintiff first contends that his involuntary commitment resulted from an exercise of the Commonwealth's coercive power because the warrant for emergency examination

was issued pursuant to the MHPA, and the MHPA rests on the Commonwealth's police power.

The express language of the MHPA defeats this contention because it leaves the decision whether to examine or treat individuals involuntarily to the discretion of the examining physicians. *See* 50 Pa. C.S.A. §7302(a) (an emergency examination "may be undertaken" upon fulfilment of certain prerequisites); *id.* §7302(b) (examination and treatment are to be conducted only if the examining physician determines that "the person is severely mentally disabled"); *see also Janicsko v. Pellman*, 774 F. Supp. 331, 339 (M.D. Pa. 1991), *aff'd without published opinion*, 970 F.2d 899 (3d Cir. 1992) ("Given the language of the relevant sections of the MHPA, this court cannot say that the involuntary commitment of the mentally ill by private physicians and hospitals is, under the MHPA, a function compelled by or sufficiently connected to state directives to attribute those actions to the state."); *Carver v. Plyer*, 115 F. App'x 532, 537-38 (3d Cir. 2004) (holding that hospital did not conspire with police to involuntarily commit plaintiff, because police did not participate in the decision to treat her). Therefore, the issuance of an emergency examination warrant pursuant to the MHPA does not coerce private facilities into conducting involuntary examinations or treatment.

Next, Plaintiff argues that the Crozer-Chester Defendants are entwined with the Commonwealth because the County Administrator approves treatment facilities pursuant to 50 Pa. C.S.A. §7105, and the Commonwealth "controls the standards used for involuntary commitment examinations and related procedures" through the MHPA.

This argument falls short because the "mere fact that a business is subject to state regulations does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974)). "A complaining party must also show that 'there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself.' " *Id.* (quoting *Jackson*, 419 U.S. at 351). "The purpose of this requirement is to assure that constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains." *Id.* (emphasis in original). Applying these principles, the Supreme Court held in *Blum* that nursing homes licensed and regulated by the State did not take state action when deciding whether to discharge or transfer certain patients. *Id.* at 1006-11; *see also Crissman*, 289 F.3d at 246-47 (racetrack licensed and regulated by the State did not take state action when it excluded plaintiffs from the property).

The County's approval of the Crozer-Chester Defendants' facility does not establish a "close nexus" between the Commonwealth and the *specific conduct* that led to Plaintiff's examination and committal. Nor does the fact that the Pennsylvania legislature mandated the adoption of certain procedures and standards in the operation of the Crozer-Chester Defendants' business entwine them together. To hold otherwise would expose parties to "constitutional litigation whenever they seek to rely on some state rule

governing their interactions with the community surrounding them." *Lugar*, 457 U.S. at 937.[12]

Plaintiff also contends that the emergency examination itself constituted the exercise of a traditionally public function. This theory rests on the idea that the examination was a "search" conducted on behalf of the County and/or the Commonwealth. The question here is "whether the challenged action relates to a function that has been 'traditionally the *exclusive* prerogative of the State.' " *Benn v. Univ. Health Sys., Inc.*, 371 F.3d 165, 172 (3d Cir. 2004) (emphasis added) (quoting *Jackson*, 419 U.S. at 353). "While many functions have been traditionally performed by government, very few have

[12] Plaintiff also argues in his brief that the Commonwealth encouraged, or entwined itself with, the Crozer Defendants because the Commonwealth and County receive federal funding for the provision of mental health services, and refer all emergency examinations to Crozer-Chester, purportedly the only crisis center in Delaware County, by issuing warrants. As a preliminary matter, these statements cannot be taken as true for the purposes of this motion to dismiss because they were not contained in the Complaint. *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record." (quoting *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993))); *Pennsylvania ex. rel. Zimmerman v. PepsiCo, Inc.*, 836 F.2d 173, 181 (3d Cir. 1988) ("It is axiomatic that the complaint may not be amended by the briefs in opposition to a motion to dismiss." (alteration in original) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984), *cert. denied*, 470 U.S. 1054 (1984))). Even assuming *arguendo* that these statements are true, the mere referral of patients to Crozer-Chester is not an illustration of the prerequisite "close nexus". At most, Plaintiff's allegations suggest that state referrals indirectly provide some funding to Crozer-Chester, but even facilities *substantially* and *directly* funded by the Commonwealth are not therefor government actors. *See Rendell-Baker*, 457 U.S. at 840 (private school that derived 90-99% of its income from public sources did not engage in state action); *Blum*, 457 U.S. at 1010-11 (although the State subsidized nursing homes' costs and paid the medical expenses of over 90% of their patients, it was not responsible for their actions). Similarly, the fact that Crozer-Chester is the only crisis facility in the County does not mean their actions are fairly attributable to the County. Not even the actions of private entities "total[ly] engage[d] in performing public contracts" are necessarily attributable to the State, and Plaintiff's allegations fall far short of that threshold. *Rendell-Baker*, 457 U.S. at 841. Plaintiff's reliance on *Jensen v. Lane Cnty.*, 222 F.3d 570 (9th Cir. 2000) is to no avail because *Jensen* is distinguishable (and, in any case, is not binding on the district courts of the Third Circuit). The *Jensen* Court held that a private physician had taken state action by ordering the committal of the plaintiff, a pretrial detainee, at a County facility administered and staffed by a private hospital. *Id.* at 573, 575. This holding was based on the Court's finding that County employees initiated the evaluation process, that public and private mental health professionals consulted with each other throughout the committal, and that a private psychiatric group helped to "develop and maintain the mental health policies" of the County facility. *Id.* at 575. Those facts bear no resemblance to this case, where the petition, examination, and treatment were carried out by private health professionals at a private institution without any consultation with the Commonwealth or County.

been 'exclusively reserved to the State.' " *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 158 (1978) (holding that "the settlement of disputes between debtors and creditors is not traditionally an exclusive public function"). Certainly, the Third Circuit has held that *petitioning* for involuntary confinement has never been "the exclusive prerogative of the State" in Pennsylvania or the United States, *Benn*, 371 F.3d at 172, and this rationale extends to involuntary confinement as well. Indeed, the private commitment of individuals suffering from mental illness dates to at least the Eighteenth Century. *See Spencer v. Lee*, 864 F.2d 1376, 1380- 81 (7th Cir. 1989) (concluding that "involuntary extrajudicial commitment to private institutions has long been commonplace" in England and the United States); *Rockwell v. Cape Cod Hosp.*, 26 F.3d 254, 259-60 (1st Cir. 1994) (concluding that, in Massachusetts, "treatment of the mentally ill was almost exclusively private" during the Colonial era).

For the reasons stated above, Plaintiff cannot sue the Crozer-Chester Defendants for constitutional violations under Section 1983 because their actions cannot be "fairly attributed" to the Commonwealth. As amendment would be futile, Plaintiff's federal constitutional claims against the Crozer-Chester Defendants will be dismissed with prejudice. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

B. HIPAA Claim

Plaintiff also brings a claim under Section 1983 specifically against Crozer-Chester Defendant Doctor Amy Bebawi premised on a violation of the Health Insurance Portability and Accountability Act ("HIPAA") in connection with her communications with his father while he was committed.

A plaintiff may use Section 1983 to enforce federal statutory rights as well as constitutional rights. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279 (2002) (citing *Maine v. Thiboutot*, 448 U.S. 1 (1980)). Because only an "unambiguously conferred right" can support a Section 1983 cause of action, it must be determined "whether Congress *intended to create a federal right*" through HIPAA. *Id.* at 283 (emphasis in original). This question must be "definitively answered in the negative" if the "statute by its terms grants no private rights to any identifiable class." *Id.* at 283-84 (quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 576 (1979)). "For a statute to create such private rights, its text must be 'phrased in terms of the persons benefited.' " *Id.* (quoting *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692, n.13 (1979)).

The Fifth Circuit's reasoning in *Acara v. Banks*, 470 F.3d 569 (5th Cir. 2006) is persuasive here. In *Acara*, the court explained that instead of bestowing privacy rights on a specific class of individuals, HIPAA focuses on regulating those who access individually identifiable medical information. *Id.* at 571. Furthermore, the statute delegates enforcement of its provisions to the Secretary of Health and Human Services. *Id.* Accordingly, the Fifth Circuit concluded that "Congress did not intend for private enforcement of HIPAA." *Id.* The Third Circuit has agreed with this conclusion (albeit in in two unpublished cases), as have other Circuit Courts to have considered the question. *See Johnson v. WPIC*, 782 F. App'x 169, 170-71 (3d Cir. 2019) (per curiam) (citing *Acara*, 470 F.3d at 571-72); *Hatfield v. Berube*, 714 F. App'x 99, 105-06 (3d Cir. 2017) (quoting *Wilkerson v. Shineski*, 606 F.3d 1256, 1267 n.4 (10th Cir. 2010)); *Payne v. Taslimi*, 998

F.3d 648, 660 (4th Cir. 2021) (collecting cases). As amendment would be futile, Plaintiff's HIPAA claim will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.

IV. FEDERAL CLAIMS AGAINST THE COUNTY DEFENDANTS

Plaintiff alleges that the County Defendants violated his rights under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. He specifically evokes the right: (1) "to be free from unreasonable search and seizures"; (2) "to not be deprived of life, liberty, or property, without due process of law"; (3) "to be informed of the nature and cause of the accusation"; (4) "to not have cruel and unusual punishments inflicted"; and, (5) "to not have any State deprive any person of life, liberty, or property without due process of law." Plaintiff does not draw the connection between these alleged constitutional violations and the specific events at issue with precision, but each claim will be evaluated in turn below, adopting a liberal reading of the Complaint such that his claims are construed broadly.

A. Eighth Amendment

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. The contours of Plaintiff's Eighth Amendment claim against the County Defendants emerged only in his brief in opposition to their Motion to Dismiss. It rests on their failure to serve him with a copy of the certification for extended treatment and their failure to immediately execute the warrant for emergency examination against him.

Plaintiff's claims under the Eighth Amendment will be dismissed. The rights of individuals who are civilly committed are protected by the Due Process Clause, not the

Eighth Amendment's prohibition on cruel and unusual punishment. *Romeo v. Youngberg*, 644 F.2d 147, 156 (3d Cir. 1980) (en banc), *vacated on other grounds by* 457 U.S. 307 (1982); *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) (holding that the Eighth Amendment's protections apply solely to inmates who have been sentenced). As amendment of this claim would be futile, dismissal will be with prejudice. *Grayson*, 293 F.3d at 114.

B. Fifth Amendment

The Fifth Amendment provides in relevant part that "[n]o person [. . .] shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In his brief opposing the County Defendants' Motion to Dismiss, Plaintiff contends that his Fifth Amendment rights were violated because the County Defendants "have a custom or policy of not requiring a Miranda warning, or something similar, when seizing a person for involuntary commitment, [] or before the [emergency] examination."

The Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973). "In any of these contexts, therefore, a witness protected by the privilege may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." *Id.* at 78. "Absent such protection, if

he is nevertheless compelled to answer, his answers are inadmissible against him in a later criminal prosecution." *Id.*

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that the Self-Incrimination Clause of the Fifth Amendment prohibits a prosecutor from using "statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Renda v. King*, 347 F.3d 550, 557 (3d Cir. 2003) (quoting *Miranda*, 384 U.S. at 444). Therefore, "prior to custodial interrogation," an individual must be warned "of his right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be provided to him." *Id.*

Plaintiff has not alleged any facts permitting a reasonable inference that the Fifth Amendment's protection against self-incrimination applies here. First, Plaintiff was never subjected to interrogation while in government custody. His emergency examination was conducted by private physicians while in the custody of a private facility. "Miranda deals with governmental conduct toward persons whom the government has subjected to restraint." *United States v. Jaskiewicz*, 433 F.2d 415, 419 (3d Cir. 1970). Statements made while in custody to persons not connected with the government do not fall under *Miranda*. *United States v. Fioravanti*, 412 F.2d 407, 413 (3d Cir. 1969), *cert. denied*, *Panaccione v. United States*, 396 U.S. 837 (1969); *Alston v. Redman*, 34 F.3d 1237, 1250 (3d Cir. 1994) ("noninvestigatory officials" such as doctors who are "charged with the

mere custody or care of a suspect" are not "state agents capable of accepting a suspect's invocation of his Miranda rights.").

Even assuming *Miranda* did apply, Plaintiff's right against self-incrimination was not violated because any statements made during his psychiatric examinations were not in the context of criminal proceedings. *United States v. A.R.*, 38 F.3d 699, 703 (3d Cir. 1994) (holding that the failure to administer *Miranda* warnings to juvenile did not deprive him of his right against self-incrimination because their use at a civil transfer hearing did not incriminate him). The only proceeding mentioned in the Complaint is the extended treatment hearing that took place on June 5, but civil commitment proceedings are not criminal proceedings. *See Addington v. Texas*, 441 U.S. 418, 428-29 (1979). Plaintiff's Fifth Amendment claims will be dismissed with prejudice because amendment would be futile. *Grayson*, 293 F.3d at 114.[13]

C. Sixth Amendment

Plaintiff also asserts a claim under the Sixth Amendment, which provides in relevant part that "[i]n all criminal prosecutions, the accused shall enjoy the right [. . .] to be informed of the nature and cause of the accusation." U.S. Const. amend. VI. "The protections provided by the Sixth Amendment are explicitly confined to 'criminal prosecutions,' " *Austin v. United States*, 509 U.S. 602, 608 (1993) (quoting *United States v. Ward*, 448 U.S. 242, 248 (1980)), and therefore do not apply to Plaintiff's civil

[13] Plaintiff also asserts claims under the Due Process Clause of the Fifth Amendment. That provision, however, operates only with regard to the United States, *i.e.* to federal defendants. *Dusenberry v. United States*, 534 U.S. 161, 167 (2002)). As Plaintiff did not sue any federal defendants, his due process claims are properly analyzed under the Fourteenth Amendment.

commitment. *See Addington*, 441 U.S. at 428-29. Accordingly, Plaintiff's Sixth Amendment claims will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.[14]

D. Municipal Liability under the Fourth and Fourteenth Amendments

The remainder of Plaintiff's claims rest on the Fourth Amendment's provisions on searches and seizures and the Due Process Clause of the Fourteenth Amendment. Plaintiff frames these claims against the County Defendants pursuant to the Supreme Court's decision in *Monell v. Dep't Social Servs.*, 436 U.S. 658 (1978), which held that a municipal entity may be found liable under Section 1983 "when execution of a government's policy or custom . . . inflicts the injury." *Id.* at 694. To state a claim under *Monell*, the plaintiff must demonstrate "the existence of an unlawful policy or custom" and "establish that the government policy or custom was the proximate cause of the injuries sustained." *Kneipp v. Tedder*, 95 F.3d 1199, 1213 (3d Cir. 1996).

i. Fourth Amendment

Plaintiff raises three challenges on Fourth Amendment grounds.[15] The "fundamental inquiry" under the Fourth Amendment is "whether the government's

[14] On the same facts, Plaintiff also cites to 50 Pa. Stat. §7302(c), which requires that "[u]pon arrival at the facility, the person shall be informed of the reasons for emergency examination," but a breach of state law provides no basis for a Section 1983 claim. *Benn*, 371 F.3d at 174.

[15] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. It applies to the States through the Due Process Clause of the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), in civil proceedings as well as criminal investigations. *Doby*, 171 F.3d at 871.

conduct is reasonable under the circumstances." *Doby v. Decrescenzo*, 171 F.3d 858, 871 (3d Cir. 1999).

a. Duration of Warrants

Plaintiff's first Fourth Amendment claim is that his constitutional rights were violated because "[l]ocal custom allows for a warrant for emergency examination based on information from at most 30 days prior and on petitioner's suspicion of harm within the next 30 days (50 Pa. Stat. §7301) to last for 30 days before growing stale and expiring, if not acted upon." The Complaint contends that "[a]ny unreasonable lapse in time between the issuance and the use of the warrant places its validity in jeopardy."[16]

The thirty-day warrant validity period of which Plaintiff complains comes from the MHPA itself—as Plaintiff himself concedes by citing to the statute. A Section 302 warrant may issue upon an application "setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled." 50 Pa. C.S.A. §7302(a)(1). The statutory definition of "severely mentally disabled" rests on a finding that an individual poses "a clear and present danger," *id.* §7301(a), which "shall be shown" by certain, statutorily-defined conduct occurring "within the past 30 days." *Id.* §7301(b). A warrant may be valid for up to thirty days, therefore, because the MHPA permits a warrant to be executed on the basis of evidence up to thirty days old.

[16] The Complaint alleges that this "unreasonable lapse" violates the MHPA, and the Fourth and Fifth Amendments. In his opposition brief, Plaintiff contends that it also violates the Eighth and Fourteenth Amendments. Section 1983 does not recognize a cause of action for the violation of state statutes, *Benn*, 371 F.3d at 174, and as this claim must be dismissed with prejudice for failure to allege a policy or custom, the specific constitutional provision allegedly violated is immaterial to the analysis.

"[W]hen a county is merely enforcing state law, without adopting any particular policy of its own, it cannot be held liable under the *Monell* line of cases." *Doby*, 171 F.3d at 868. Because a 30-day warrant validity period tracks the MHPA, there is no evidence that the County Defendants maintained a custom that denied Plaintiff his due process rights. *See Benn*, 371 F.3d at 174 (*Monell* claim based on failure to grant a hearing prior to involuntary commitment failed because the hospital's "guidelines track the MHPA, which does not deny due process"). As amendment would be futile, this Fourth Amendment claim will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.

b. Verification of Facts Alleged in Warrant Petitions

Plaintiff's second Fourth Amendment claim challenges the County Defendants' "custom or policy of not verifying any facts" averred in petitions for emergency examination warrants, with the result that the warrants are based on "evidence which does not meet probable cause evidentiary standards in violation of the fourth amendment."

In general, the Fourth Amendment requires that a search or seizure be conducted only pursuant to a warrant supported by probable cause. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987). However, "the Supreme Court has held that states may act without obtaining a warrant and without probable cause in situations where 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.' " *Doby*, 171 F.3d at 871 (quoting *Griffin*, 483 U.S. at 873). The "special needs" exception to the Fourth Amendment's warrant and probable cause requirements applies to "the temporary involuntary commitment of those deemed dangerous to

themselves or others" because "[s]uch emergency cases present a situation where seeking a warrant is *systemically* impracticable." *Id.* (emphasis in original) (citing *McCabe v. Life-Line Ambulance Serv., Inc.*, 77 F.3d 540, 549 (1st Cir. 1996)).

In keeping with this context, "[t]he MHPA clearly permits seizures of mentally ill individuals without requiring county officials to apply to a magistrate for a warrant that would be issued only upon probable cause." *Id.* at 871 n.5; *see also In re J.M.*, 726 A.2d 1041, 1048 (Pa. 1999) (holding that "[t]he probable cause inquiry required in the criminal warrant context" does not apply to warrants issued under the MHPA). "Instead, the statute creates an alternative warrant scheme." *Doby*, 171 F.3d at 871 n.5. Under this alternative scheme, county officials are not required to independently verify the facts asserted by the petitioner before issuing a warrant for emergency examination. *See* 50 Pa. C.S.A. §7302(a)(1); *In re J.M.*, 726 A.2d at 1049 ("[T]here is no blanket requirement . . . that information be verified by outside sources before a section 7302 warrant can properly be issued.").

Indeed, the Third Circuit held that the MHPA's alternative warrant scheme is constitutionally reasonable under the Fourth Amendment and that, specifically, "[b]ecause the section 7302 procedures exist to respond to emergency cases, it is reasonable for the county delegate to . . . *issue such warrants without independent investigation.*" *Doby*, 171 F.3d at 872 (emphasis added) (noting that "magistrate judges often issue warrants based on information supplied by police officers who themselves are relying on absent informants"). This holding forecloses Plaintiff's argument as a matter of law. Because

amendment would be futile, this claim will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.

c. Identity of Warrant Petitioners

Plaintiff's third claim under the Fourth Amendment challenges the County Defendants' custom or policy of issuing warrants based on petitions by physicians who: (1) "are related to, married to, or reside with those people against whom the petition for warrant is directed"; and/or, (2) "are not treating, nor have ever treated, those people against whom the petition for warrant is directed nor are mental health experts." This contention fails to identify a *municipal* policy or custom that could have caused the alleged constitutional violation.

To state a claim for municipal liability under *Monell*, the plaintiff must "identify a custom or policy, and specify what exactly that custom or policy was." *McTernan v. City of York*, 564 F.3d 636, 658 (3d Cir. 2009). "Policy is made when a 'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict." *Bielevicz v. Dubinon*, 915 F.2d 845, 850 (3d Cir. 1990) (alteration in original) (quoting *Andrews v. City of Phila.*, 895 F.2d 1469, 1480 (3d Cir. 1990)). "Custom, on the other hand, can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as virtually to constitute law." *Id.*

Section 302 of the MHPA permits the issuance of a warrant for emergency examination "[u]pon written application by a physician or other responsible party." 50 Pa. C.S.A. §7302(a)(1). Therefore, in permitting physicians who reside with the individual

named in the warrant, or who have not treated that individual, to petition for a warrant, the County Defendants were enforcing state law—conduct which triggers no liability under Section 1983. *Doby*, 171 F.3d at 868.[17] This claim will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.

ii. Fourteenth Amendment

Plaintiff's remaining claims against the County Defendants are brought pursuant to the Due Process Clause of the Fourteenth Amendment which provides that [n]o state shall . . . deprive any person of life, liberty, or property, without due process of law."(thus) U.S. Const. amend. XIV §1. This clause embodies two concepts: "procedural due process," a guarantee of fair process, and "substantive due process," a bar on abuses of executive power. Cnty. of Sacramento v. Lewis, 523 U.S. 833, 840, 842 (1998).

"In analyzing a procedural due process claim, the first step is to determine whether the nature of the interest is one within the contemplation of the 'liberty or property' language of the Fourteenth Amendment." *Newman v. Beard*, 617 F.3d 775, 782 (3d Cir. 2010) (quoting *Shoats v. Horn*, 213 F.3d 140, 143 (3d Cir. 2000)). If a complaint

[17] Plaintiff also contends that the County Defendants have a custom and policy of "issuing warrants which do not meet the particularity requirements of the Fourth Amendment." Plaintiff's only factual allegation as to particularity is that the "warrant is a search of the mind based on unverified information and extremely vague criteria." The fact that a warrant is based on unverified information in a petition does not violate the Fourth Amendment, as discussed *supra*. The contention that the warrants issued by the County Defendants are based on "extremely vague criteria" is a conclusory legal assertion, and as such, is not entitled to an assumption of truth. *Iqbal*, 556 U.S. at 679.
Plaintiff also asserts that the County Defendants violated the Fourth Amendment by: (1) "issuing warrants for unreasonable searches"; (2) "issuing warrants relying on evidence which does not meet probable cause evidentiary standards"; and, (3) "using these warrants and petitions in the subsequent procedures despite the differences from constitutional standards in the evidentiary burden and standards." As discussed, *supra*, the probable cause evidentiary standards do not apply to warrants issued under the MHPA, and without factual support, the allegation that the County Defendants issue warrants for unreasonable searches is a legal conclusion that must be disregarded. *Iqbal*, 556 U.S. at 679.

alleges the deprivation of a constitutionally-cognizable liberty or property interest, "the question then becomes what process is due to protect it." *Newman*, 617 F.3d at 783 (quoting *Shoats*, 213 F.3d at 143). To answer this question, courts "weigh[] the liberty interest of the individual against the legitimate interests of the State, including the fiscal and administrative burdens additional procedures would entail." *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982).

Substantive due process "bar[s] certain government actions regardless of the fairness of the procedures used to implement them." *Cnty. of Sacramento*, 523 U.S. at 840 (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)). The "core" of this concept is "protection against arbitrary action." *Id.* at 845. However, "only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense.' " *Id.* at 846 (quoting *Collins v. Harker Heights*, 503 U.S. 115, 129 (1992)). To offend substantive due process, an executive abuse of power must be one that "shocks the conscience." *Id.* at 846.

a. Certification for Extended Treatment

1. Procedural Due Process

Plaintiff alleges that the County Defendants' failure to serve him a copy of the certification for extended treatment as required by Section 303(e) of the MHPA breached his procedural due process rights. Specifically, in his response brief, Plaintiff maintains that the copy of the certification was his personal property, and that the County Defendants' custom or policy of "using an inadequate system to ensure the service and

verification of service for extended involuntary treatment" unlawfully deprived him of that property.[18]

To the extent this allegation is made to support a claim for a violation of Section 303(e) of the MHPA, it is unavailing because, once again, "Section 1983 does not provide a cause of action for violations of state statutes." *Benn*, 371 F.3d at 174 (quoting *Brown v. Grabowski*, 922 F.2d 1097, 1113 (3d Cir. 1990)). And Plaintiff has not shown that the County Defendants had such a custom or policy because he did not allege the existence of any "official proclamation, policy, or edict" to that effect, and the facts do not support a reasonable inference that the County Defendants' conduct was "so well-settled and permanent as virtually to constitute law." *Bielevicz*, 915 F.2d at 850.

With respect to the County Defendants, the Complaint alleges that: (1) Plaintiff never received a copy of the certification; (2) on June 25, 2020, after his release, he contacted the Delaware County Office of Behavioral Health and was put in contact with Dion Gilliard, the Mental Health Court Clerk; (3) when he had not heard back from Gilliard a few days later, he went to the Office of Behavioral Health in person, but was

[18] "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at 577. Although not addressed by the Parties, whether Plaintiff has a constitutionally-cognizable property interest in a copy of the certification is doubtful because Pennsylvania courts do not appear to recognize entitlement to that benefit. The Pennsylvania Superior Court held that, absent a showing of prejudice, the failure to timely serve a copy of the certification on a committed individual constitutes a "technical violation" of the MHPA that does not require the vacation of an order of commitment. *In re S.L.W.*, 698 A.2d 90, 92-93 (Pa. Super. 1997). The court also held that a hospital's policy of reading the certification to patients and not giving them a personal copy was "reasonable and adequate" under the MHPA. *Id.* at 94 n.3.

"unable to get in contact with anyone there"; (4) he continued to communicate with Gilliard by email; and, (5) on April 12, 2021, the Office of Behavioral Health told him that the clerk was not in the office due to the pandemic.

These facts do not support an inference of a well-settled and permanent course of conduct. They do suggest that communicating with the Office of Behavioral Health was challenging, but they also show that the pandemic was affecting its operations. And although it took a few days for Gilliard to respond, Plaintiff concedes that he communicated with her via email for some time afterwards and it cannot be inferred from that fact that Gilliard customarily used an inadequate system to serve certifications. Accordingly, this claim will also be dismissed with prejudice.

2. Substantive Due Process

Responding to the County Defendants' Motion to Dismiss, Plaintiff also asserts a substantive due process against Gilliard for the failure to serve the certification, alleging that her actions "shock the conscience" and that she was "at least deliberately indifferent."

"Whether an incident 'shocks the conscience' is a matter of law for the courts to decide." *Benn*, 371 F.3d at 174. Courts are "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open- ended." *Collins v. Harker Heights*, 503 U.S. at 125 (city's duty to provide a safe working environment is not a substantive component of the Due Process Clause). The threshold for liability is accordingly high. *See, e.g., Benn*, 371 F.3d at 174 ("[I]nvoluntary commitment under the MHPA does not in itself violate substantive due

process; *Boyanowski v. Cap. Area Intermediate Unit*, 215 F.3d 396, 400-01 (3d Cir. 2000) (defamatory statements were not sufficiently egregious to violate substantive due process); *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 286 (3d Cir. 2004) (absent allegations of corruption, self-dealing, interference with constitutionally protected activity, bias against an ethnic group, or other conscience-shocking behavior, township did not violate substantive due process in zoning dispute).

The Constitution does not impose liability "whenever someone cloaked with state authority causes harm." *Cnty. of Sacramento*, 523 U.S. at 848. Negligence "is categorically beneath the threshold of constitutional due process." *Id.* at 849. To state a substantive due process claim, a plaintiff must allege at least deliberate indifference, that is, "conscious disregard of a substantial risk of serious harm." *Kedra v. Schroeter*, 876 F.3d 424, 437 (3d Cir. 2017) (quoting *Vargas v. City of Phila.*, 783 F.3d 962, 973-74 (3d Cir. 2015)) (explaining that deliberate indifference is the lowest of "three potential levels of culpability" applicable to substantive due process claims).

The Complaint does not plead sufficient facts to support a reasonable inference that Gilliard engaged in conscience-shocking conduct. Plaintiff has alleged nothing more than that she did not immediately respond to his inquiries, and that she later spoke with him by email. Without more, these facts do not suffice to survive a motion to dismiss. Plaintiff's substantive due process claim against Gilliard will be dismissed with prejudice.

b. Identity of Warrant Petitioners

Plaintiff's challenge to the identity of MHPA warrant petitioners pursuant to the Fourth Amendment was discussed above; the same claim must now be analyzed under the

Fourteenth Amendment. The Complaint alleges that this policy or custom violates procedural due process because it taints the petition with "inherent bias," and opens the process to the "potential for malicious use."[19]

Here, Plaintiff has passed the first step of the procedural due process analysis because "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington*, 441 U.S. at 425; *see also Zinermon v. Burch*, 494 U.S. 113, 131 (1990) ("[T]here is a substantial liberty interest in avoiding confinement in a mental hospital."). To determine what procedure is due, it is necessary to weigh the "individual's interest in not being involuntarily confined indefinitely" against "the state's interest in committing the emotionally disturbed under a particular standard of proof." *Addington*, 441 U.S. at 425.

In *Doby*, the plaintiffs argued that letting non-physicians petition for a warrant under Section 302 of the MHPA violated the Due Process Clause because it would "lead to arbitrary deprivations of liberty as the petitioner may have improper motives." *Doby*, 171 F.3d at 869. "[T]he Supreme Court has held that a state, in conformity with the Due Process Clause, may confine mentally ill individuals if it shows by clear and convincing evidence that the individuals are ill and *dangerous* to themselves or others." *Id.* at 870 (emphasis in original) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The *Doby* plaintiffs, therefore, were arguing that "permitting non-physicians to apply for such warrants 'converts a constitutional process into an unconstitutional one.' " *Id.* at 870.

[19] Plaintiff also asserts that relying on the information contained in petitions by such individuals violates equal protection, because it has an "adverse effect upon a group, in this case the individuals for whom a petition is written." As this claim was not raised in the Complaint, it is not before the Court.

This argument did "not withstand scrutiny" for several reasons. *Id.* First, the Third Circuit noted that the plaintiffs had offered no evidence in support of their contention that non- physicians were "inherently unreliable fact informants." *Id.* Second, the role played by petitioners under the MHPA is limited—"making clinical determinations about an individual's mental state" is a task entrusted to the county delegate, "who has the duty to decide whether the information provided by the petitioner constitutes grounds for issuing a warrant." *Id.* Third, the court found it "likely that a person other than a physician or a mental health professional will have the material information." *Id.* Fourth, Section 302 permits the county delegate to review petitions by a "physician or other responsible party," and the plaintiffs in *Doby* had not "proffered any evidence to suggest that [the defendants] have a practice of issuing warrants when a petitioner seems clearly imbalanced or otherwise impaired." *Id.* Finally, the *Doby* Court observed that providing false information on an application constitutes a misdemeanor in Pennsylvania, a "built-in safeguard to prevent ill-motivated individuals from seeking involuntary examination of others." *Id.*

Doby's reasoning is controlling here, and Plaintiff's argument that allowing physicians with certain ties to an individual or physicians who are not specialized in psychiatric care to petition for an emergency examination warrant renders the MHPA's warrant procedures unconstitutional must be rejected. First, like the *Doby* plaintiffs, no facts have been alleged here in support of Plaintiff's contention that certain physicians are inherently biased informants. Second, these physician petitioners would not rob the

County Administrator of her discretion. Third, physicians who are related to or reside with the individual identified in the warrant are likely to have material information concerning his or her mental state. Fourth, the MHPA permits "a physician or other responsible party" to apply for a warrant for an emergency examination, 50 Pa. C.S.A. §7302(a)(1), with no exception based on the physician's specialty or relationship to the individual to be examined, and Plaintiff has not alleged that the County Defendants have a "practice of issuing warrants when a petitioner seems clearly imbalanced or otherwise impaired." Finally, the petitioner's oath and the threat of liability for a criminal misdemeanor provide additional safeguards against any foul play in individual cases. As amendment would be futile, this claim will be dismissed with prejudice.[20]

c. Verification of Facts Alleged in Warrant Petitions

Plaintiff renews his challenge to the County Defendants' policy or custom not to verify the facts averred in warrant petitions under the Fourteenth Amendment. Specifically, in his response brief, Plaintiff alleges that the County Defendants "overrel[y] on post-deprivation remedies" even though the pre-deprivation remedy of verifying facts would be "practicable" and would not cause "inordinate" delay.

[20] Although no substantive due process claim related to these factual allegations is evident from the face of the Complaint, the County Defendants interpret it as containing one and Plaintiff, in responding to the County Defendants' Motion to Dismiss, briefly asserts that the County Administrator's reliance on petitions completed by such physicians is "at least deliberately indifferent to the rights of others in a conscience shocking way." The Third Circuit rejected this argument, holding that its "conclusion [] that the MHPA authorizes seizures that are 'reasonable' under the Fourth Amendment establishes that the MHPA meets the rationality test imposed by substantive due process analysis." *Doby*, 171 F.3d at 871 n.4. As the County Defendants' conduct has been found reasonable under the Fourth Amendment in this case as well, any substantive due process claim based on the same facts must be rejected.

Plaintiff's allegation is not persuasive. To the contrary, the delay inherent in verifying the facts asserted in a petition "would entail delays with potentially life-threatening consequences." *Doby*, 171 F.3d at 871. It would "frustrate the very purpose of the emergency evaluation and treatment sections of the MHPA, which is to render immediate assistance to those persons who are in need." *In re J.M.*, 726 A.2d at 1048. Given that a warrant for emergency examination authorizes the curtailment of an individual's liberty for at most several hours, *Doby*, 171 F.3d at 872, and in light of the other safeguards in place, including the oath of the petitioner, the requirement that a petitioner be a "responsible party," and the County Administrator's duty to make a reasonableness determination, requiring independent verification of a petitioner's facts would be "unduly burdensome in proportion to the liberty interest at stake." *Zinermon*, 494 U.S. at 132.[21] As amendment would be futile, this claim will be dismissed with prejudice. *Grayson*, 293 F.3d at 114.

d. Approval of Treatment Facilities

1. Claim Against the County Entities

The Complaint alleges that the County Defendants should be held liable for their "touchstone policy of approval of facilities to provide involuntary, inadequate treatment."[22] To establish municipal liability under Section 1983, a plaintiff "must demonstrate a

[21] In his brief in opposition, Plaintiff also alleged that by issuing warrants in reliance on unverified information, the County Administrator is "at least deliberately indifferent to the rights of others in a conscience shocking way." As explained *supra* note 13, this argument is foreclosed by *Doby*, 171 F.3d at 871 n.4.

[22] The approval of treatment facilities is a duty delegated to the County Administrator and the Pennsylvania Department of Human Services. 50 Pa. C.S.A. §7105.

'plausible nexus' or 'affirmative link' between the municipality's custom [or policy] and the specific deprivation of constitutional rights at issue." *Kneipp*, 95 F.3d at 1213 (quoting *Bielevicz*, 915 F.2d at 850).

It appears from the Complaint that the specific deprivations at issue in relation to this claim are those deprivations allegedly committed by the Crozer-Chester Defendants after Plaintiff arrived at Crozer-Chester for an emergency examination. As explained above, the MHPA leaves the decision of whether to examine and treat an individual involuntarily in the hands of the treatment facility. Thus, Plaintiff cannot allege a "plausible nexus" between any County policy and the Crozer-Chester Defendants' examination and treatment of patients. Accordingly, this claim will be dismissed with prejudice, on futility grounds. *Grayson*, 293 F.3d at 114.

2. Claim Against the County Administrator

Plaintiff also asserts claims against Tracy Halliday in her official capacity as the County Administrator. One of her duties under the MHPA as County Administrator is the approval of treatment facilities. 50 Pa. C.S.A. §7105. Plaintiff alleges that, because conditions at Crozer- Chester failed to meet constitutional standards, Halliday demonstrated reckless disregard in approving Crozer-Chester as a treatment facility and was "deliberately indifferent to the failures of the facility and [is] creating a danger for individuals whom [she] send[s] there." These arguments appear to invoke the state-created danger doctrine to argue that Halliday should be held liable for the constitutional violations that allegedly occurred at Crozer-Chester.

"[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 195 (1989). However, "there is an exception to this general rule that nevertheless holds an officer liable if his conduct exposes an individual to a 'state-created danger.' " *Kedra*, 876 F.3d at 436 (quoting *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 235 (3d Cir. 2008)). A state-created danger exists if (1) "the harm ultimately caused was foreseeable and fairly direct"; (2) "a state actor acted with a degree of culpability that shocks the conscience"; (3) "a relationship between the state and the plaintiff existed such that the plaintiff was a foreseeable victim of the defendant's acts, or a member of a discrete class of persons subjected to the potential harm brought about by the state's actions, as opposed to a member of the public in general"; and, (4) "a state actor affirmatively used his or her authority in a way that created a danger to the citizen or that rendered the citizen more vulnerable to danger than had the state not acted at all." *Bright v. Westmoreland Cnty.*, 443 F.3d 276, 281 (3d Cir. 2006) (internal quotations omitted).

Like this claim against the County Defendants, Plaintiff's claim against Halliday fails under the first element because he cannot show causation. "State actors are not liable every time their actions set into motion a chain of events that result in harm." *Henry v. City of Erie*, 728 F.3d 275, 283 (3d Cir. 2013). A plaintiff must show that the defendant's actions were a "fairly direct" cause of the harm. *Id.* at 283. To fulfil this requirement, "the plaintiff must plausibly allege that state officials' actions 'precipitated or w[ere] the catalyst for' the harm for which the plaintiff brings suit." *Id.* at 285 (alteration in original).

In other words, the defendant's actions must have caused the harm "to happen or come to a crisis suddenly, unexpectedly, or too soon." *Id.* "[I]t is insufficient to plead that state officials' actions took place somewhere along the causal chain that ultimately led to the plaintiff's harm." *Id.*

"[I]mproper licensure will often be too far removed from the ultimate harm to permit liability under §1983." *Id.* at 284-85 (holding that officials' approval of apartment for subsidy program despite known fire safety deficiencies did not lead "fairly directly" to the fire that killed plaintiffs). Such has proved true here. The mere fact that the County Administrator is charged with approving facilities for the purpose of involuntary treatment does not make her responsible for the conduct of approved facilities, which have discretion in deciding whether to examine or treat patients. Plaintiff therefore has not stated a substantive due process claim in connection with the approval of facilities and his claim against Halliday will be dismissed with prejudice because amendment would be futile. *Grayson*, 293 F.3d at 114.

V. INJUNCTIVE RELIEF

Plaintiff's claims for injunctive relief will be dismissed with prejudice for lack of standing. "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshhold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To satisfy this requirement, Plaintiff must allege that he "has sustained or is immediately in danger of sustaining some direct injury" that is " 'real and immediate,' not 'conjectural' or 'hypothetical.'" *Id.* at 101-02. The Complaint seeks redress for past injuries related to

Plaintiff's involuntary committal in June 2020. It alleges no facts suggesting that Plaintiff will be involuntarily examined or committed again—any future injury is purely conjectural. Because there is no "real and immediate threat," Plaintiff has no standing to seek injunctive relief.[23]

VI. STATE LAW CLAIMS

Courts exercise supplemental jurisdiction over related state law claims under 28 U.S.C. §1367. *Kach v. Hose*, 589 F.3d 626, 650 (3d Cir. 2009). "The decision to retain or decline jurisdiction over state-law claims is discretionary," and "should be based on considerations of 'judicial economy, convenience and fairness to the litigants.' " *Id.* (quoting *New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1505 (3d Cir. 1996)). Under Section 1367, a court may decline to exercise supplemental jurisdiction once it has "dismissed all claims over which it has original jurisdiction." *Id.* (quoting 28 U.S.C. §1367(c)(3)).

All of Plaintiff's claims against the Commonwealth Defendants have been dismissed, *Guilday v. Crisis Ctr. at Crozer-Chester Med. Ctr.*, 2022 WL 507484 (E.D. Pa. Feb. 17, 2022), and his federal claims against the Crozer-Chester Defendants and the County Defendants will be dismissed for the reasons set forth herein. Therefore, no federal claims have survived the Defendants' motions to dismiss. This case is yet at its inception; no principle of judicial economy would counsel the continued exercise of supplemental jurisdiction over Plaintiff's state law claims and the Parties have identified

[23] In his response to the County Defendants' Motion to Dismiss, Plaintiff asserts that, in addition to challenging the customs and policies of the County Defendants, he is also challenging the constitutionality of the MHPA. As this claim was not raised in the Complaint, it is not before the Court.

no concerns that would render the state courts an inconvenient or unfair forum. Accordingly, Plaintiff's state law claims will be dismissed without prejudice so that Plaintiff may refile them in the proper state forum, should he so choose.

VII. CONCLUSION

"The confinement of an individual to an institution for [] the mentally ill . . . entails a 'massive curtailment of liberty.' " *Romeo*, 644 F.2d at 157 (quoting *Humphrey v. Cady*, 405 U.S. 504, 509 (1972)), *reversed on other grounds by* 457 U.S. 307 (1982). It is evident that Plaintiff suffered in body and mind when he was involuntarily committed and that he continues to endure symptoms of distress to this day. But as pled, his Complaint does not support a cause of action in federal court.

For the reasons stated herein, Plaintiff's federal claims against the Crozer-Chester and against the County Defendants will be dismissed with prejudice. Plaintiff's state law claims will be dismissed without prejudice.

An appropriate order follows.

BY THE COURT:

/s/ Wendy Beetlestone, J.

WENDY BEETLESTONE, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SEAN GUILDAY, **Plaintiff,** **v.** **CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER et al.,** **Defendants,**	**Civil Action** **No. 21-2010**

ORDER

AND NOW, this 1st day of March, 2022, upon consideration of the Crozer-Chester Defendants' Motion to Dismiss (ECFs No. 24 & 58) and Plaintiff's Response in Opposition thereto (ECF No. 57); and of the County Defendants' Motion to Dismiss (ECF No. 25), and Plaintiff's Response in Opposition thereto (ECF No. 45), it is **HEREBY ORDERED THAT:**

1) The Crozer-Chester Defendants' Motion is **GRANTED** with respect to Plaintiff's federal law claims against the Crozer-Chester Defendants which claims are **DISMISSED WITH PREJUDICE;**

2) The County Defendants' Motion is **GRANTED** with respect to Plaintiff's federal law claims against the County Defendants which claims are **DISMISSED WITH PREJUDICE;**

3) Plaintiff's state law claims (Counts II, III, IV, V, VI, and VIII) are **DISMISSED WITHOUT PREJUDICE.**

BY THE COURT:

/s/ Wendy Beetlestone, J.

WENDY BEETLESTONE, J.

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1519

SEAN GUILDAY,

Appellant

v.

CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER; PROSPECT CCMC LLC d/b/a Crisis Center at Crozer-Chester Medical Center, PROSPECT CCMC LLC; PROSPECT MEDICAL HOLDINGS INC; DARREN PIECHOTA, M.D.; TRACY HALLIDAY; AKIBA BAILEY; PROSPECT CCMC LLC d/b/a Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; CROZER HEALTH INPATIENT PSYCHIATRY, in North Campus at Crozer-Chester Medical Center; AMY BEBAWI, M.D.; JOHN/JANE DOE, The Director of Facility, Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; JOHN/JANE DOE, The Director of Facility, Crozer Crisis Center at Crozer-Chester Medical Center; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH, Division of Mental Health, Adult; DION GILLIARD; COUNTY OF DELAWARE; *PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES; MEG SNEAD, Acting Commonwealth Secretary of the Department of Human Services

(*Amended Per Clerk Order of 4/4/22)

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action No. 2-21-cv-02010) District Judge: Honorable Wendy Beetlestone

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Submitted Pursuant to Third Circuit LAR 34.1(a)

December 1, 2022

Before: SHWARTZ, BIBAS, and PHIPPS, Circuit Judges

(Opinion filed: December 7, 2022)

OPINION *

PER CURIAM

Sean Guilday appeals, inter alia, the District Court's orders granting Appellees' motions to dismiss his complaint. For the reasons that follow, we will vacate the District Court's judgment as to one claim and remand for further proceedings. In all other respects, we will affirm the District Court's judgment.

The procedural history of this case and the many details of Guilday's claims are well known to the parties, set forth and thoroughly addressed in the District Court's memorandum opinions, and need not be discussed at length. Briefly, Guilday was

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

involuntarily committed for psychiatric treatment pursuant to the Pennsylvania Mental Health Procedures Act ("MHPA"). He later filed a complaint against Appellees alleging violations of his rights under federal and state law. Appellees filed motions to dismiss, which the District Court granted. The District Court dismissed his claims against the Commonwealth Appellees with prejudice. After then dismissing Guilday's federal claims against the County and Crozer-Chester Appellees with prejudice, the District Court declined to exercise supplemental jurisdiction and dismissed his state law claims against them without prejudice. After filing unsuccessful motions to amend his complaint and for reconsideration, Guilday filed a notice of appeal. In this Court, he has filed several motions seeking a variety of relief.

We have jurisdiction pursuant to 28 U.S.C. §1291 and exercise de novo review over the District Court's orders granting Appellees' motions to dismiss. See Dique v. N.J. State Police, 603 F.3d 181, 188 (3d Cir. 2010). In its memorandum opinions, the District Court thoroughly described the factual background of the case and Guilday's allegations against the Appellees. We agree with its analysis with the exception of one claim.

In his complaint, Guilday alleged that Delaware County has a policy of allowing warrants for emergency examinations to be valid for 30 days from their issuance. He contended that this violated his rights under the Fourth Amendment as an unreasonable seizure. Compl. at ¶¶ 179-81. The District Court determined that Delaware County could not be liable because it was merely enforcing state law, i.e., the MHPA. See D. Ct. Op. at 16 (ECF #84) ("A warrant may be valid for up to thirty days, therefore, because the MHPA permits a warrant to be executed on the basis of evidence up to thirty days old.");

Doby v. DeCrescenzo, 171 F.3d 858, 868 (3d Cir. 1999) (noting that "when a county is merely enforcing state law, without adopting any particular policy of its own, it cannot be held liable under the Monell [v. Department of Social Services, 436 U.S. 658, 694 (1978)] line of cases").

Guilday, however, alleged that the County purportedly has a policy allowing warrants to be valid from 30 days after *issuance* and not just 30 days from the events on which the warrant is based. Citing 50 Pa. Stat. and Cons. Stat. §7301(b)(2)(i), the County argues in response that the MHPA permits "issuance of a warrant premised on conduct within the past 30 days to obtain treatment within 30 days." Appellees' Br. at 18. That subsection provides that a person is a clear and present danger to himself if, within the last 30 days, he has acted in a manner to show that he is unable to care for himself without supervision and there is a reasonable probability that serious bodily injury would result within 30 days unless treated. The County reads the language regarding whether injury would ensue in 30 days without treatment as allowing the warrant to be valid for 30 days after its *issuance*. However, that language describes the imminence of the possible harm if the person is not treated.[25] The MHPA does not provide that warrants are valid 30 days after they are issued—or, indeed, contain any explicit requirements about the time in

[25] Moreover, it is not clear that Guilday's warrant was issued pursuant to subsection (b)(2), which addresses being a danger to oneself or (b)(1), which addresses being a danger to others and does not contain the language regarding injury occurring within 30 days. In his complaint, Guilday alleges that his father told a doctor in a phone call that he would be fine with Guilday coming home. Guilday states that this call was a sign that he "was no longer perceived as a threat in the community." Compl. at ¶ 129.

which to execute a warrant. Cf. Doby, 171 F.3d at 869 (suggesting that the county might be responsible if it has "some discretion in deciding how to implement" the state law).[26]

The District Court thus erred in dismissing this claim on the ground that the County was merely enforcing state law. Accordingly, we will vacate its decision as to this claim only and remand the matter to the District Court for further proceedings. As alternate grounds for affirmance have not been briefed, we leave it to the District Court on remand to determine in the first instance whether Guilday has stated a claim under the Fourth Amendment based on the delay in the execution of his warrant or could amend his complaint to do so if he provided additional factual information regarding the issuance and execution of his warrant. We also leave it to the District Court to determine whether Guilday has alleged facts that could establish municipal liability on the part of Delaware County or could amend his complaint to do so. See Popa v. Harriet Carter Gifts, Inc., 52 F.4th 121, 2022 WL 10224949, at *8 (3d Cir. 2022) ("We generally decline to resolve issues not decided by a district court, choosing instead to allow it to decide in the first instance.").[27] We express no opinion on these matters.

We strongly emphasize the narrowness of our decision and the limited nature of our remand. We have concluded only that the District Court erred in basing its dismissal on the ground discussed above. Our decision does not entitle Guilday to any injunctive

[26] The MHPA allows a warrant to be issued up to 30 days after the behavior that establishes that the person is a clear and present danger to himself or others. We need not reach the question of whether a policy of allowing a warrant to be valid for 30 days after that behavior would be a county policy or a state policy.

[27] Our directions do not preclude the District Court from addressing any other basis for dismissal raised by the County Appellees or resolving the matter on other grounds.

relief or expedited handling of the remand by the District Court. See In re Fine Paper Antitrust Litig., 685 F.2d 810, 817 (3d Cir. 1982) (noting that the manner in which a court disposes of cases on its docket is within its discretion).

In all other respects, we will affirm the District Court's decision for essentially the reasons that it provided. We note that in his brief on appeal Guilday asserts numerous, detailed constitutional challenges to the statutory procedures involved in the involuntary commitment process. However, he did not raise a constitutional challenge to the MHPA in his complaint in the District Court. Rather, Guilday argued in his complaint that Appellee Delaware County's policies and procedures implementing the MHPA violated his constitutional rights. After the County Appellees argued in their motion to dismiss that their procedures satisfied the MHPA and noted that Guilday was not challenging the constitutionality of the statute, see ECF #25-3 at 9, Guilday then filed a motion for declaratory relief challenging the constitutionality of the MHPA, ECF #33, and asserted in his response to the motion to dismiss that he was challenging the constitutionality of the MHPA. See ECF #45-3 at 10. The District Court concluded that he had not raised that challenge in the complaint and noted that it would not address it. See ECF #84 at 30 n.16. It subsequently denied his motion for declaratory relief.

Guilday argues in his brief that he challenged the constitutionality of the MHPA in the District Court when he sought to enjoin "any unconstitutional . . . statutes" in his complaint. This was not sufficient to put the Appellees or the District Court on notice that he was challenging the constitutionality of the MHPA. We will consider an issue that was not raised in the District Court only in exceptional circumstances. See United States v.

Anthony Dell'Aquilla, Enters. and Subsidiaries, 150 F.3d 329, 335 (3d Cir. 1998) ("[A]bsent exceptional circumstances, an issue not raised in district court will not be heard on appeal."). There are no exceptional circumstances here. Moreover, Guilday recognizes that many of his arguments are foreclosed by our decision in Doby, see 171 F.3d at 875 (rejecting arguments that the MHPA violated the Due Process Clause and the Fourth Amendment), and understands that we, as a panel of the Court, cannot overturn Doby. See 3d Cir. I.O.P. 9.1 (2018) (providing that panel of the court cannot overturn the holding of a precedential opinion of a previous panel). Rather, en banc consideration is required, see id., and the Court recently denied Guilday's petition for initial hearing en banc.

With the exception noted above, the District Court did not err in granting Appellees' motions to dismiss Guilday's complaint. Nor did the District Court err or abuse its discretion in denying his requests for injunctive or declaratory relief, as he has not shown he is entitled to such relief. See Brown v. Fauver, 819 F.2d 395, 400 (3d Cir. 1987) (plaintiff must establish real and immediate threat that he would be subject to unconstitutional action in order to establish standing for prospective relief). Finally, Guilday has not shown that the District Court abused its discretion in denying his motion to amend his complaint or his motions for reconsideration. See In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1434 (3d Cir. 1997) (reviewing denial of leave to amend for abuse of discretion); Lazaridis v. Wehmer, 591 F.3d 666, 669 (3d Cir. 2010) (per curiam) (reviewing denial of reconsideration for abuse of discretion).

For the above reasons, we will vacate the District Court's judgment in part and remand for further proceedings. In all other respects we will affirm the District Court's

judgment. Guilday's motion to amend his motion for leave to file additional reply briefs is granted. His motion to file additional reply briefs is granted in this instance only. Guilday's remaining motions are denied.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1519

SEAN GUILDAY,

Appellant

v.

CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER; PROSPECT CCMC LLC d/b/a Crisis Center at Crozer-Chester Medical Center, PROSPECT CCMC LLC; PROSPECT MEDICAL HOLDINGS INC; DARREN PIECHOTA, M.D.; TRACY HALLIDAY; AKIBA BAILEY; PROSPECT CCMC LLC d/b/a Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; CROZER HEALTH INPATIENT PSYCHIATRY, in North Campus at Crozer-Chester Medical Center; AMY BEBAWI, M.D.; JOHN/JANE DOE, The Director of Facility, Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; JOHN/JANE DOE, The Director of Facility, Crozer Crisis Center at Crozer-Chester Medical Center; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH, Division of Mental Health, Adult; DION GILLIARD; COUNTY OF DELAWARE; *PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES; MEG SNEAD, Acting Commonwealth Secretary of the Department of Human Services

(*Amended Per Clerk Order of 4/4/22)

On Appeal from the United States District Court for the Eastern District of Pennsylvania

(D.C. Civil Action No. 2-21-cv-02010) District Judge: Honorable Wendy Beetlestone

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Submitted Pursuant to Third Circuit LAR 34.1(a) December 1, 2022

Before: SHWARTZ, BIBAS, and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on December 1, 2022. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 18, 2022, be and the same is hereby VACATED in part and AFFIRMED in part and this matter is REMANDED for further consideration. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit

Clerk

Dated: December 7, 2022

Certified as a True Copy and Issued in lieu of a Formal Mandate on: May 31, 2023

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-1519

SEAN GUILDAY,

Appellant

v.

CRISIS CENTER AT CROZER-CHESTER MEDICAL CENTER; PROSPECT CCMC LLC d/b/a Crisis Center at Crozer-Chester Medical Center, PROSPECT CCMC LLC; PROSPECT MEDICAL HOLDINGS INC; DARREN PIECHOTA, M.D.; TRACY HALLIDAY; AKIBA BAILEY; PROSPECT CCMC LLC d/b/a Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; CROZER HEALTH INPATIENT PSYCHIATRY, in North Campus at Crozer-Chester Medical Center; AMY BEBAWI, M.D.; JOHN/JANE DOE, The Director of Facility, Crozer Health Inpatient Psychiatry in North Campus at Crozer-Chester Medical Center; JOHN/JANE DOE, The Director of Facility, Crozer Crisis Center at Crozer-Chester Medical Center; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH; DELAWARE COUNTY OFFICE OF BEHAVIORAL HEALTH, Division of Mental Health, Adult; DION GILLIARD; COUNTY OF DELAWARE; *PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES; MEG SNEAD, Acting Commonwealth Secretary of the Department of Human Services

(*Amended Per Clerk Order of 4/4/22)

(D.C. Civil Action No. 2-21-cv-02010)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS and FREEMAN, Circuit Judges[28]

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

Dated: May 23, 2023

BY THE COURT,

s/Patty Shwartz

Circuit Judge

kr/cc: Sean Guilday

All Counsel of Record

[28] The Coram is composed of all judges in active service as of the date of the original petition for rehearing and Judge Ambro has elected to not participate pursuant to IOP 9.6.4.

Constitution of the United States of America

The Fourteenth Amendment of the Constitution of the United States of America declares:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The provisions of the Constitution, referenced in the Petition, found in the entirety of the Constitution, relevant, applicable, as well as related to involuntary examination and involuntary commitment, include the grant and bestowal of citizen of the United States including the privileges or immunities of citizens of the United States, cruel and unusual punishment, unreasonable search as well as unreasonable seizure, unconstitutional warrants without probable cause, particularity, or a meaningful oath, being a witness against themself, warnings or protections against self testament, informing the individual of the nature and cause of the accusations against the individual, travel, Habeas Corpus, access to the Courts, thought, speech, engagement in speech, exercise of religion, privacy and security, the provisions of the Second Amendment, double jeopardy, movement, association, involuntary servitude, jury trials, nondisclosure of personal and private information, bodily integrity, human dignity, autonomy, independence with respect to significant decisions, freedom from government intrusion, personal freedom.

Mental Health Procedures Act (MHPA)

MENTAL HEALTH PROCEDURES ACT

Act of Jul. 9, 1976, P.L. 817, No. 143 Cl. 50

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.

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ARTICLE I

General Provisions

Section 101. Short Title.—This act shall be known and may be cited as the "Mental Health Procedures Act."

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. (102 amended Nov. 26, 1978, P.L.1362, No.324)

Section 103. Scope of Act.—This act establishes rights and procedures for all involuntary treatment of mentally ill persons, whether inpatient or outpatient, and for all voluntary inpatient treatment of mentally ill persons. (103 amended Oct. 24, 2018, P.L.690, No.106)

Section 103.1. Definitions.—The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Assisted outpatient treatment." Community-based outpatient social, medical and behavioral health treatment services ordered by a court for a severely mentally disabled person, which may include one or more of the following services:

(1) Community psychiatric supportive treatment.

(2) Assertive community treatment.

(3) Medications.

(4) Individual or group therapy.

(5) Peer support services.

(6) Financial services.

(7) Housing or supervised living services.

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

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

"County local authority." The county commissioners of a county, or the city councils and the mayors of the first class cities, or two or more of these acting in concert.

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

"Facility." A mental health establishment, hospital, clinic, institution, center, day care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons, whether as outpatients or inpatients.

"Inpatient treatment." All treatment that requires full or part-time residence in a facility.

"Qualified professional." A mental health professional who:

(1) has a graduate degree, or the international equivalent, from an institution accredited or evaluated by an organization recognized by the department in a generally recognized clinical discipline that includes mental health clinical experience;

(2) has mental health clinical experience; and

(3) is licensed or certified by the Commonwealth.

"Secretary." The Secretary of Human Services of the Commonwealth. (103.1 added Oct. 24, 2018, P.L.690, No.106)

Section 104. Provision for Treatment.—Adequate treatment means a course of treatment designed and administered to alleviate a person's pain and distress and to maximize the probability of his recovery from mental illness. It shall be provided to all persons in treatment who are subject to this act. It may include inpatient treatment, partial hospitalization, or outpatient treatment. Adequate inpatient treatment shall include such accommodations, diet, heat, light, sanitary facilities, clothing, recreation, education and medical care as are necessary to maintain decent, safe and healthful living conditions. Treatment shall include diagnosis, evaluation, therapy, or rehabilitation needed to alleviate pain and distress and to facilitate the recovery of a person from mental illness and shall also include care and other services that supplement treatment and aid or promote such recovery.

Section 105. Treatment Facilities.—Involuntary treatment and voluntary treatment funded in whole or in part by public moneys shall be available at a facility approved for such purposes by the county administrator (who shall be the County Mental Health and Mental Retardation Administrator of a county or counties, or his duly authorized delegate), or by the department. Approval of facilities shall be made by the appropriate authority which can be the department pursuant to regulations adopted by the department. Treatment may be ordered at the Veterans Administration or other agency of

the United States upon receipt of a certificate that the person is eligible for such hospitalization or treatment and that there is available space for his care. Mental health facilities operated under the direct control of the Veterans Administration or other Federal agency are exempt from obtaining State approval. The department's standards for approval shall be at least as stringent as those of the joint commission for accreditation of hospitals and those of the Federal Government pursuant to Titles 18 and 19 of the Federal Social Security Act to the extent that the type of facility is one in which those standards are intended to apply. An exemption from the standards may be granted by the department for a period not in excess of one year and may be renewed. Notice of each exemption and the rationale for allowing the exemption must be published pursuant to the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law," and shall be prominently posted at the entrance to the main office and in the reception areas of the facility.

(105 amended Oct. 24, 2018, P.L.690, No.106)

Section 106. Persons Responsible for Formulation and Review of Treatment Plan. —

(a) Pursuant to sections 107 and 108 of this act, a treatment team shall formulate and review an individualized treatment plan for every person who is in treatment under this act.

(b) A treatment team must be under the direction of either a physician or a licensed clinical psychologist and may include other mental health professionals.

(c) A treatment team must be under the direction of a physician when:

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

(2) the director of a facility requires the treatment to be under the direction of a physician.

(d) All treatment teams must include a physician and the administration of all drugs shall be controlled by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

Section 107. Individualized Treatment Plan.—

(a) Individualized treatment plan means a plan of treatment formulated for a particular person in a program appropriate to his specific needs, including an assisted outpatient treatment plan under subsection (b). To the extent possible, the plan shall be made with the cooperation, understanding and consent of the person in treatment, and shall impose the least restrictive alternative consistent with affording the person adequate treatment for his condition.

(b) Assisted outpatient treatment plan means an individualized treatment plan developed by a qualified professional or the treatment team that is ordered by a court for involuntary outpatient civil commitment of a person. The treatment plan shall be reviewed and approved by a psychiatrist or a licensed clinical psychologist prior to submission to the court. The treatment plan shall contain the reasonable objectives and goals for a person determined to be in need of assisted outpatient treatment. In addition to the requirements of subsection (a), the treatment plan shall include:

(1) Delineation of specific assisted outpatient treatment services to be provided based on the person's specific needs.

(2) Delineation of the providers that agree to provide assisted outpatient treatment services to the person.

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

(c) A treatment plan developed in accordance with this section shall meet all of the requirements of this act.

(d) In the development and approval of an individualized treatment plan, nothing in this subsection shall be construed to require a county to include in a person's individual treatment plan for assisted outpatient treatment a service that is not available in that county or for which no funding source or provider is available to pay for or render the service. (107 amended Oct. 24, 2018, P.L.690, No.106)

Section 108. Periodic Reexamination, Review and Redisposition.—

(a) Reexamination and Review.—Every person who is in treatment under this act shall be examined by a treatment team and his treatment plan reviewed not less than once in every 30 days.

(b) Redisposition.—On the basis of reexamination and review, the treatment team may either authorize continuation of the existing treatment plan if appropriate, formulate a new individualized treatment plan, or recommend to the director the discharge of the person. A person shall not remain in treatment or under any particular mode of treatment for longer than such treatment is necessary and appropriate to his needs.

(c) Record of Reexamination and Review.—The treatment team responsible for the treatment plan shall maintain a record of each reexamination and review under this section for each person in treatment to include:

(1) a report of the reexamination, including a diagnosis and prognosis;

(2) a brief description of the treatment provided to the person during the period preceding the reexamination and the results of that treatment;

(3) a statement of the reason for discharge or for continued treatment;

(4) an individualized treatment plan for the next period, if any;

(5) a statement of the reasons that such treatment plan imposes the least restrictive alternative consistent with adequate treatment of his condition; and

(6) a certification that the adequate treatment recommended is available and will be afforded in the treatment program.

Section 109. Mental Health Review Officer.—

(a) Legal proceedings concerning extended involuntary emergency treatment under section 303(c), 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. ((a) repealed in part Oct. 5, 1980, P.L.693, No.142)

(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.

(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). ((d) added July 2, 1996, P.L.481, No.77) (109 repealed in part Apr. 28, 1978, P.L.202, No.53 and amended Nov. 26, 1978, P.L.1362, No.324)

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 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) ((d) repealed Oct. 5, 1980, P.L.693, No.142)(110 amended Nov. 26, 1978, P.L.1362, No.324)

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). (111 amended July 2, 1996, P.L.481, No.77)

Section 112. Rules, Regulations and Forms.—The department shall adopt such rules, regulations and forms as may be required to effectuate the provisions of this act. Rules and regulations adopted under the provisions of this act shall be adopted according to provisions of section 201 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," and the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

Section 113. Rights and Remedies of Persons in Treatment.—Every person who is in treatment shall be entitled to all other rights now or hereafter provided under the laws of this Commonwealth, in addition to any rights provided for in this act. Actions requesting damages, declaratory judgment, injunction, mandamus, writs of prohibition, habeas corpus, including challenges to the legality of detention or degree of restraint, and any other remedies or relief granted by law may be maintained in order to protect and effectuate the rights granted 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.

(114 amended Nov. 26, 1978, P.L.1362, No.324)

Section 115. Venue and Location of Legal Proceedings.— (a) The jurisdiction of the courts of common pleas and juvenile courts conferred by Articles II and III shall be exercised initially by the court for the county in which the subject of the proceedings is or resides. Whenever involuntary treatment is ordered, jurisdiction over any subsequent proceeding shall be retained by the court in which the initial proceedings took place, but may be transferred to the county of the person's usual residence. In all cases, a judge of the court of common pleas or a mental health review officer of the county of venue may conduct legal proceedings at a facility where the person is in treatment whether or not its location is within the county.

(b) Venue for actions instituted to effectuate rights under this act shall be as now or hereafter provided by law.

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. (116 added Nov. 26, 1978, P.L.1362, No.324)

Section 117. Assisted Outpatient Treatment Implementation by Counties.—

(a)

(1) The county administrator of any county may determine annually that the county mental health and intellectual disabilities program will not provide assisted outpatient treatment pursuant to section 301(c). The county administrator making the determination shall:

(i) provide notice to the secretary that the county program will not provide assisted outpatient treatment in accordance with section 301(c); and

(ii) notify the county local authority of the decision not to offer assisted outpatient treatment in accordance with section 301(c).

(2) The notification to the secretary under clause (1) shall be submitted annually in a form determined by the secretary.

(b) The secretary shall grant an annual waiver to any county that has notified the secretary under subsection (a) of the county's decision not to offer assisted outpatient services pursuant to section 301(c).

(c) Nothing in this section shall be construed as permitting a county or the secretary to waive existing obligations of a county to serve seriously mentally ill residents in accordance with all other applicable provisions of law and regulation. (117 added Oct. 24, 2018, P.L.690, No.106)

Section 118. Assisted Outpatient Treatment Implementation by Department.—

(a) The department shall modify the standard involuntary commitment petition forms and other relevant educational documents used in conjunction with the involuntary commitment process to describe, define and incorporate assisted outpatient treatment.

(b) The department shall develop a separate involuntary assisted outpatient treatment commitment petition form which shall include:

(1) The eligibility criteria for assisted outpatient treatment.

(2) After consultation with the Pennsylvania College of Emergency Physicians, appropriate guidance and instructions to the petitioner on use of hospital emergency departments in conjunction with the petition process for involuntary inpatient commitment or assisted outpatient treatment. (118 added Oct. 24, 2018, P.L.690, No.106)

ARTICLE III

Involuntary Examination and Treatment

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

(a) Persons Subject.—Whenever a person is severely mentally disabled and in need of immediate treatment, he may be made subject to involuntary emergency examination and treatment. A person is severely mentally disabled when, as a result of mental illness, his capacity to exercise self-control, judgment and discretion in the conduct of his affairs and social relations or to care for his own personal needs is so lessened that he poses a clear and present danger of harm to others or to himself, as defined in subsection (b), or the person is determined to be in need of assisted outpatient treatment as defined in subsection (c). ((a) amended Oct. 24, 2018, P.L.690, No.106)

(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 substantially mutilated himself or attempted to mutilate himself 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. ((b) amended Nov. 26, 1978, P.L.1362, No.324) (c) Determination of Need for Assisted Outpatient Treatment.—

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

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

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

(A) Within the 12 months prior to the filing of a petition seeking assisted outpatient treatment, the person's failure to adhere to treatment has been a significant factor in necessitating involuntary inpatient hospitalization or receipt of services in a forensic or other mental health unit of a correctional facility, provided that the 12-month period shall be extended by the length of any hospitalization or incarceration of the person in a correctional institution that occurred within the 12-month period.

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

(iii) The person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment and the person previously has been offered voluntary treatment services but has not accepted or has refused to participate on a sustained basis in voluntary treatment, provided that voluntary agreement to enter into services by a person during the pendency of a petition for assisted outpatient treatment shall not preclude the court from ordering assisted outpatient treatment for that person if reasonable evidence exists to believe that the person is unlikely to make a voluntary sustained commitment to and remain in a treatment program.

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

(2) An individual who meets only the criteria described in clause (1) shall not be subject to involuntary inpatient hospitalization unless a separate determination is made that the individual poses a clear and present danger in accordance with subsection (b). ((c) added Oct. 24, 2018, P.L.690, No.106)

Section 302. Involuntary Emergency Examination and Treatment Authorized by a Physician - Not to Exceed One Hundred Twenty Hours.—(Hdg. amended Nov. 26, 1978, P.L.1362, No.324)

(a) Application for Examination.—Emergency examination may be undertaken at a treatment facility upon the certification of a physician stating the need for such examination; or upon a warrant issued by the county administrator authorizing such

examination; or without a warrant upon application by a physician or other authorized person who has personally observed conduct showing the need for such examination.

(1) Warrant for Emergency Examination.—Upon written application by a physician or other responsible party setting forth facts constituting reasonable grounds to believe a person is severely mentally disabled and in need of immediate treatment, the county administrator may issue a warrant requiring a person authorized by him, or any peace officer, to take such person to the facility specified in the warrant.

(2) Emergency Examination Without a Warrant.—Upon personal observation of the conduct of a person constituting reasonable grounds to believe that he is severely mentally disabled and in need of immediate treatment, any physician or peace officer, or anyone authorized by the county administrator may take such person to an approved facility for an emergency examination. Upon arrival, he shall make a written statement setting forth the grounds for believing the person to be in need of such examination.

(b) Examination and Determination of Need for Emergency Treatment.—A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301(b) and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct. The physician shall make a record of the examination and his findings. In no event shall a person be accepted for involuntary

emergency treatment if a previous application was granted for such treatment and the new application is not based on behavior occurring after the earlier application. ((b) amended Oct. 24, 2018, P.L.690, No.106) (c) Notification of Rights at Emergency Examination.—Upon arrival at the facility, the person shall be informed of the reasons for emergency examination and of his right to communicate immediately with others. He shall be given reasonable use of the telephone. He shall be requested furnish the names of parties whom he may want notified custody and kept informed of his status. The county administrator or the director of the facility shall:

(1) give notice to such parties of the whereabouts status of the person, how and when he may be contacted visited, and how they may obtain information concerning him while he is in inpatient treatment; and

(2) take reasonable steps to assure that while the person is detained, the health and safety needs of any of his dependents are met, and that his personal property and the premises he occupies are secure.

(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 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. ((d) amended Nov. 26, 1978, P.L.1362, No.324)

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 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. ((a) amended Nov. 26, 1978, P.L.1362, No.324)

(b) Appointment of Counsel and Scheduling of Informal Hearing.—Upon receiving such application, the court of common pleas shall appoint an attorney who shall represent the person unless it shall appear that the person can afford, and desires to have, private representation. Within 24 hours after the application is filed, an informal hearing shall be conducted by a judge or by a mental health review officer and, if practicable, shall be held at the facility.

(c) Informal Conference on Extended Emergency Treatment Application.—

(1) At the commencement of the informal 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, either as an inpatient or through less restrictive assisted outpatient treatment, he shall so certify. Otherwise, he shall direct that the facility director or his designee discharge the person. ((1) amended Oct. 24, 2018, P.L.690, No.106)

(2) A 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. ((c) amended Nov. 26, 1978, P.L.1362, No.324)

(d) Contents of Certification.—A certification for extended involuntary treatment shall be made in writing upon a form adopted by the department and shall include:

(1) findings by the judge or mental health review officer as to the reasons that extended involuntary emergency treatment is necessary;

(2) a description of the treatment to be provided together with an explanation of the adequacy and appropriateness of such treatment, based upon the information received at the hearing;

(3) any documents required by the provisions of section 302;

(4) the application as filed pursuant to section 303(a);

(5) a statement that the person is represented by counsel; and

(6) an explanation of the effect of the certification, the person's right to petition the court for release under subsection (g), and the continuing right to be represented by counsel.

(e) Filing and Service.—The certification shall be filed with the director of the facility and a copy served on the person, such other parties as the person requested to be notified pursuant to section 302(c), and on counsel.

(f) Effect of Certification.—Upon the filing and service of a certification for extended involuntary emergency treatment, the person may be given treatment in an approved facility for a period not to exceed 20 days.

(g) Petition to Common Pleas Court.—In all cases in which the hearing was conducted by a mental health review officer, a person made subject to treatment pursuant to this section 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.

(h) Duration of Extended Involuntary Emergency Treatment.—Whenever a person is no longer severely mentally disabled or in need of immediate treatment and, in any event, within 20 days after the filing of the certification, he shall be discharged, unless within such period:

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

(2) the court orders involuntary treatment pursuant to section 304.

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), or upon determination that a person meets the requirements under section 301(c) (determination of need for assisted outpatient treatment).

(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(b) in fact occurred, and that his condition continues to evidence a clear and present danger to himself or others, or that the conduct originally required by section 301(c) in fact occurred and that his condition continues to evidence a need for assisted outpatient treatment. In such event, it shall not be necessary to show the reoccurrence of dangerous conduct, either harmful or debilitating, within the past 30 days. (a) amended Oct. 24, 2018, P.L.690, No.106)

(b) Procedures for Initiating Court-ordered Involuntary Treatment for Persons Already Subject to Involuntary Treatment.—

(1) Petition for court-ordered involuntary treatment for sections 303, administrator

common pleas. persons already subject to treatment under

304 and 305 may be made by the county

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).

(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.

(c.1) Procedures for Initiating Assisted Outpatient Treatment for Persons Already Subject to Involuntary Treatment.—

(1) Petition for assisted outpatient treatment for persons already subject to involuntary treatment under section 301(b)(1) or (2), or persons with mental illness subject to treatment in a forensic facility or a correctional institution who are ready for release, 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:

(i) No longer determined to be in need of involuntary inpatient treatment under section 301(b)(1) or (2) or no longer subject to treatment in a forensic facility or correctional institution.

ii) Determined to be in need of assisted outpatient treatment under section 301(c).

(3) The petition shall state the name of any examining psychiatrist or licensed clinical psychologist 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).

(4) 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).

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

(6) Treatment shall be permitted to be maintained pending the determination of the petition. ((c.1) added Oct. 24, 2018, P.L.690, No.106)

(c.2) Procedures for Initiating Assisted Outpatient Treatment for Persons Not in Involuntary Treatment.— (1) Any responsible party may file a petition in the court of common pleas requesting assisted outpatient treatment for any person determined under section 301(c) to be in need of assisted outpatient treatment, who is not already in involuntary treatment and who is not already in assisted outpatient 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 as defined under section 301(c) for a person in need of assisted outpatient treatment. The petition shall be accompanied by a statement of a psychiatrist, or a statement signed by a clinical licensed psychologist stating that the clinician who issued the statement has

examined the person and is of the opinion that the person is in need of assisted outpatient treatment, or shall be accompanied by a written statement by the applicant, under oath, that the person has refused to submit to an examination by a psychiatrist or by a clinical licensed psychologist.

(3) Upon a determination that the petition sets forth 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 an individual 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 clause (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 or other qualified professional appointed by the court, provided that:

(i) a qualified professional who is appointed by the court and is not a psychiatrist or licensed clinical psychologist shall be selected from a panel of qualified professionals

specifically designated by the county administrator for the qualified professional's demonstrated expertise and ability to conduct court-ordered examinations for assisted outpatient treatment consistent with the qualified professional's scope of practice;

(ii) the examination shall be conducted on an outpatient basis and the person shall have the right to have counsel present;

(iii) the written report prepared by the qualified professional under subclause (i) shall be reviewed and approved by a psychiatrist or a licensed clinical psychologist prior to submission to the court; and

(iv) the written report on the results 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 sections 302 and 303. ((c.2) added Oct. 24, 2018, P.L.690, No.106)

(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.

(8) If the person is believed to be in need of assisted outpatient treatment in accordance with section 301(c), a hearing on the petition shall be conducted in accordance with the following additional requirements:

(i) No later than the date of the hearing, a treatment team shall provide a written proposed assisted outpatient treatment plan to the court. The plan shall state all treatment services recommended for the person and, for each service, shall specify a provider that has agreed to provide the service.

(ii) In developing a written proposed assisted outpatient treatment plan, the treatment team shall take into account, if existing, an advance directive for mental health treatment and provide the following persons with an opportunity to participate:

(A) the person believed to be in need of court-ordered assistant outpatient treatment;

(B) all current treating providers;

(C) upon the request of the person believed to be in need of court-ordered assistant outpatient treatment, an individual significant to the person, including any relative, close friend or individual otherwise concerned with the welfare of the person; and

(D) any authorized guardian or other surrogate decision-maker.

(iii) The written proposed assisted outpatient treatment plan shall include case management services or an assertive community treatment team to provide care coordination and assisted outpatient treatment services recommended by the treatment team. If the plan includes medication, the prescribing physician's order shall state whether such medication should be self-administered or administered by a specified provider. In no event shall the plan recommend the use of physical force or restraints to administer medication to the person.

(iv) A qualified professional, who has personally examined the person within ten days of the filing of the petition, shall provide testimony in support of the finding that the person meets all of the criteria for assisted outpatient treatment and in support of a written proposed treatment plan developed pursuant to this section, including:

(A) the recommended assisted outpatient treatment, the rationale for the recommended assisted outpatient treatment and the facts that establish that such treatment is the least restrictive appropriate alternative;

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

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

(9) A decision shall be rendered within 48 hours after the close of evidence. ((e) amended Oct. 24, 2018, P.L.690, No.106)

(f) Determination and Order.—

(1) 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, including assisted outpatient treatment. 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.

(2) If the person is found to be in need of assisted outpatient treatment in accordance with section 301(c) or as a result of consideration of less restrictive settings under clause (1), the court shall order the person to receive assisted outpatient treatment for a period not to exceed 90 days from any provider or facility approved by the department or the county administrator for purposes of providing assisted outpatient treatment, provided that a jail or any other State or county correctional institution shall not be an authorized facility.

(3) The facility or provider shall examine and treat the person in accordance with the assisted outpatient treatment plan. If the person is receiving assisted outpatient treatment, or receives treatment in an outpatient setting during a subsequent period of continued commitment under section 305, the facility or provider to whom the person is ordered shall determine the appropriate assisted outpatient treatment plan for the person.

(4) If the approved court-ordered assisted outpatient treatment plan includes medications, the court order shall authorize the treatment team, in accordance with their professional judgment and under supervision of the prescribing physician, to perform routine medication management, including adjustment of specific medications and doses, in consultation with the person and as warranted by changes in the person's medical condition.

(5) The provider or facility responsible for the assisted outpatient treatment plan shall inform the court if the person fails materially to adhere to the treatment plan and comply

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

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

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

(iii) issue an order for the person to be examined in accordance with section 302 for purposes of evaluation and, if appropriate, file a petition that the person poses a clear and present danger under section 301(b), provided that a State or county correctional institution may not be considered an authorized treatment facility.

(6) If the court determines under clause (5) that the person has failed to adhere to the assisted outpatient treatment plan, the court may not hold that person in contempt or otherwise sanction the person solely based on the failure to comply with the assisted outpatient treatment plan.

(7) The person subject to assisted outpatient treatment may petition the court for enforcement of a service specifically contained in that person's individualized treatment plan, provided that the petition must include clear and convincing evidence demonstrating that the service is not being provided in accordance with that plan.

(8) A copy of the person's individualized treatment plan and related documents shall be made available to the court for purposes of proceedings under clause (5) or (7). ((f) amended Oct. 24, 2018, P.L.690, No.106)

(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:

(i) the person meets the criteria established by clause (2); and

(ii) the person may be subject to assisted outpatient treatment for a period not to exceed 180 days if the person meets the criteria established by clause (5).

(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.

(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.

(5) A person may be subject to assisted outpatient treatment for a period of up to 180 days if the person continues to meet the requirements of section 301(c) or is being discharged from involuntary inpatient treatment under this article. ((g) amended Oct. 24, 2018, P.L.690, No.106)(304 amended Nov. 26, 1978, P.L.1362, No.324)

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.

(c) At the expiration of a period of assisted outpatient 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 treatment team. 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 assisted outpatient treatment. The additional period of involuntary treatment shall not exceed 180 days. ((c) added Oct. 24, 2018, P.L.690, No.106) (305 amended Nov. 26, 1978, P.L.1362, No.324)

Section 306. Transfer of Persons in Involuntary Treatment.—

(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. (306 amended Nov. 26, 1978, P.L.1362, No.324)

ARTICLE IV

Determinations Affecting Those Charged With Crime, or Under Sentence

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

(a) Examination and Treatment to be Pursuant to Civil Provisions.—Whenever a person who is charged with crime, or who is undergoing sentence, is or becomes severely mentally disabled, proceedings may be instituted for examination and treatment under the civil provisions of this act in the same manner as if he were not so charged or sentenced. Proceedings under this section shall not be initiated for examination and treatment at Veterans Administration facilities if such examination and treatment requires the preparation of competency reports and/or the facility is required to maintain custody and control over the person. Such proceedings, however, shall not affect the conditions of security required by his criminal detention or incarceration.

(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. ((b) amended Nov. 26, 1978, P.L.1362, No.324)

(c) Persons Subject to the Juvenile Act.—As to any person who is subject to a petition or who has been committed under the Juvenile Act, the civil provisions of this act applicable to children of his age shall apply to all proceedings for his examination and treatment. If such a person is in detention or is committed, the court having jurisdiction under the Juvenile Act shall determine whether such security conditions shall continue to be enforced during any period of involuntary treatment and to whom the person should be released thereafter.

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

(a) Definition of Incompetency.—Whenever a person who has been charged with a crime is found to be substantially unable to understand the nature or object of the proceedings

of the examination, which shall include:

(i) diagnosis of the person's mental condition;

(ii) an opinion as to his capacity to understand the nature and object of the criminal proceedings against him and to assist in his defense;

(iii) when so requested, an opinion as to his mental condition in relation to the standards for criminal responsibility as then provided by law if it appears that the facts concerning his mental condition may also be relevant to the question of legal responsibility; and

against him or to participate and assist in his defense, he shall be deemed incompetent to be tried, convicted or sentenced so long as such incapacity continues.

(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 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

(iv) when so requested, an opinion as to whether he had the capacity to have a particular state of mind, where such state of mind is a required element of the criminal charge. ((e) amended March 19, 2014, P.L.50, No.21)

(f) Experts.—The court may allow a psychiatrist or licensed psychologist retained by the defendant and a psychiatrist or licensed psychologist 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 or licensed psychologist, the court shall allow reasonable compensation for the employment of a psychiatrist or licensed psychologist of his selection, which amount shall be chargeable against the mental health and mental retardation program of the locality. ((f) amended March 19, 2014, P.L.50, No.21)

(g) Time Limit on Determination.—The determination of the competency of a person who is detained under a criminal charge shall be rendered by the court within 20 days after the receipt of the report of examination unless the hearing was continued at the person's request.

(h) Definition.—As used in this section, the term "licensed psychologist" means an individual licensed under the act of March 23, 1972 (P.L.136, No.52), known as the "Professional Psychologists Practice Act." ((h) added March 19, 2014, P.L.50, No.21)

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

Charges.—

(a) Competency Determination and Burden of Proof.—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. ((a) amended July 2, 1996, P.L.481, No.77)

(b) Effect as Stay - Exception.—A determination of incompetency to proceed shall effect a stay of the prosecution for so long as such incapacity persists, excepting that any legal objections suitable for determination prior to trial and without the personal participation of the person charged may be raised and decided in the interim.

(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 90 days by a psychiatrist appointed by the court and a report of reexamination shall be submitted to the court and to counsel. ((c) amended Nov. 26, 1978, P.L.1362, No.324)

(d) Effect on Criminal Detention.—Whenever a person who has been charged with a crime has been determined to be incompetent to proceed, he shall not for that reason alone be denied pretrial release. Nor shall he in any event be detained on the criminal charge longer than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If the court determines there is no such probability, it shall discharge the person. Otherwise, he

may continue to be criminally detained so long as such probability exists but in no event longer than the period of time specified in subsection (f).

(e) Resumption of Proceedings or Dismissal.—When the court, on its own motion or upon the application of the attorney for the Commonwealth or counsel for the defendant, determines that such person has regained his competence to proceed, the proceedings shall be resumed. If the court is of the opinion that by reason of the passage of time and its effect upon the criminal proceedings it would be unjust to resume the prosecution, the court may dismiss the charge and order the person discharged.

(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 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. ((f) amended Nov. 26, 1978, P.L.1362, No.324)

(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. ((g) added Nov. 26, 1978, P.L.1362, No.324)

Section 404. Hearing and Determination of Criminal Responsibility; Bifurcated Trial.—

(a) Criminal Responsibility Determination by Court.—At a hearing under section 403 of this act the court may, in its discretion, also hear evidence on whether the person was criminally responsible for the commission of the crime charged. It shall do so in accordance with the rules governing the consideration and determination of the same issue at criminal trial. If the person is found to have lacked criminal responsibility, an acquittal shall be entered. If the person is not so acquitted, he may raise the defense at such time as he may be tried.

(b) Opinion Evidence on Mental Condition.—At a hearing under section 403 or upon trial, a psychiatrist or licensed psychologist appointed by the court may be called as a witness by the attorney for the Commonwealth or by the defendant and each party may also summon any other psychiatrist or licensed psychologist or other expert to testify.

(c) Bifurcation of Issues or Trial.—Upon trial, the court, in the interest of justice, may direct that the issue of criminal responsibility be heard and determined separately from the other issues in the case and, in a trial by jury, that the issue of criminal responsibility be submitted to a separate jury. Upon a request for bifurcation, the court shall consider

charged with a crime or serving a sentence. Upon such review the court shall either approve or disapprove the transfer.

(c) Where possible, the sentencing judge shall preside. ((c) repealed in part Oct. 5, 1980, P.L.693, No.142)

(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. (407 added Nov. 26, 1978, P.L.1362, No.324)

Section 408. Costs of Treatment.—(408 repealed June 18, 1997, P.L.179, No.18)

ARTICLE V

Effective Date, Applicability, Repeals and Severability

Section 501. Effective Date and Applicability.—This act shall take effect 60 days after its enactment and shall thereupon apply immediately to all persons receiving voluntary treatment. As to all persons who were made subject to involuntary treatment prior to the effective date, it shall become applicable 180 days thereafter.

Section 502. Repeals.—

(a) The definition of "mental disability" in section 102, and sections 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 416, 418, 419, 420 and 426, act of October 20, 1966 (3rd Sp.Sess., P.L.96, No.6), known as the "Mental Health and Mental Retardation Act of 1966," are hereby repealed, except in so far as they relate to mental retardation or to persons who are mentally retarded. Section 29 of the act of December 6, 1972 (P.L.1464, No.333), known as the "Juvenile Act," except so far as it relates to mental retardation or to persons who are mentally retarded, is hereby repealed.

(b) All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 503. Severability.—If any provision of this act including, but not limited to, any provision relating to children or the application thereof including but not limited to an application thereof to a child is held invalid, such invalidity shall not affect other

provisions or applications of the act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared severable.