
	<b>MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES BULLETIN</b>		
	COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE		
<b>NUMBER:</b> OMHSAS-02-04	<b>ISSUE DATE:</b> 9/12/02	<b>EFFECTIVE DATE:</b> 9/2/02	
<b>SUBJECT:</b>  Interpretation of Pennsylvania Law Related to 402 (b) Commitment	<b>BY:</b>   <b>Gerald F. Radke</b> Deputy Secretary for Mental Health and Substance Abuse Services		

**SCOPE:**

County MH/MR Administrators, State Mental Health Hospitals

**PURPOSE:**

Questions have come to the attention of OMHSAS regarding the appropriateness of using the criteria at §402(b) of the Mental Health Procedures Act (MHPA) for involuntary mental health treatment for a person found incompetent to stand trial if the individual also meets the criteria at §301 of the MHPA. Also questioned, is the appropriateness of recommitting an individual (an indefinite number of times) under a §402(b) court commitment. The Office of Mental Health and Substance Abuse Services (OMHSAS) is issuing this bulletin to provide an interpretation of PA law related to these issues.

**BACKGROUND:**

Article III of the MHPA contains procedures related to involuntary examination and treatment of individuals who are severely mentally disabled and in need of immediate treatment, when as a result of their mental illness, their capacity to exercise self-control, judgment, and discretion in the conduct of their affairs and social relations or to care for their own personal needs is so lessened that they pose a clear and present danger of harm to others or to themselves.

Article IV of the MHPA contains procedures related to determinations affecting those charged with crime or under sentence. Specifically § 402(b) provides procedures related to the "Involuntary Treatment of Persons Found Incompetent to Stand Trial Who are Not Mentally Disabled."

**INTERPRETATION:**

Section 402(b) commitments are expressly intended for those defendants incompetent to stand trial "but who are not severely mentally disabled." The phrase "severely mentally disabled" is used in Article III of the MHPA to define those subject to Article III commitments. See 50 P.S. § 7301. Accordingly, those subject to Article III commitment are not subject to § 402(b) commitment. Criminal defendants who are severely mentally disabled are to be treated under Article III. See 50 P.S. § 7401 (a).

Section 402(b) does not explicitly permit or forbid recommitment under that section. It is therefore necessary to examine the entire MHPA to ascertain legislative intent. See, e.g., Tierney v. Pennsylvania Assigned Claims Plan, 466 A.2d 168, 171 (Pa. Super. 1983). In light of the express provisions in Article III for recommitment (an indefinite number of times), the silence on the subject of recommitment must be construed as a prohibition on it. See Pennsylvania State Police v. Prekop, 627 A.2d 223, 226 (Pa. Commw. 1993).

**CONCLUSION:**

A person who meets the criteria for involuntary commitment as defined in Article III of the MHPA may not be subject to §402 (b) commitment.

A person who is subject to §402(b) commitment may not be subject to recommitment under that section.

**COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:**

Bureau of Policy and Program Development (717) 772-7900