



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
HARRISBURG, PENNSYLVANIA 17120

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February 3, 1978

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FEB 8 1978
DEPARTMENT OF JUSTICE
COMMUNITY ADVOCATE UNIT
PITTSBURGH

Dear Tom,

This is in response to your request for a legal opinion regarding the impact of a proposed amendment to Senate Bill 94, dealing with community residential facilities for the mentally ill, mentally retarded, and other individuals. The amendment would define the facility as one providing residence for, among others,

"mentally ill persons who do not pose a clear and present danger of harm to themselves or others, and who were not, within the past two years, receiving mental health treatment under Article IV of Act 143."

Specifically, you have asked whether the above-language would permit dangerous mentally ill persons to reside in these facilities. My answer is in the negative. Initially, no person who is subject to civil commitment under state law would meet the limitation of danger to himself or others. The standard for involuntary commitment includes persons who, because of mental illness, "pose a clear and present danger of harm to others or to himself." 50 P.S. § 7301(a). The clear and present danger may come in turn, be shown by overt behavior within 30 days, as specified in § 7301(b). If a person met these standards, he would be subject to involuntary commitment upon petition of any responsible party, rather than being a fit subject for community residential facility. See also § 305, 50 P.S. § 7305, regarding standards for continued involuntary commitment.

The reference to Article IV of Act 143, 50 P.S. § 7401 et seq., would have a further effect of excluding persons committed to mental hospitals via the criminal justice system. This would include persons (1) charged with crime and in detention or undergoing sentence (50 P.S. § 7401); (2) committed to determine their competency to stand trial (50 P.S. § 7402); (3) committed following a determination of incompetency to stand trial (50 P.S. §§7403, 7406); (4) committed following an acquittal by reason of lack of responsibility (50 P.S. §§7404, 7406); and (5) committed for examination in aid of sentencing

Mr. Thomas F. Holloran

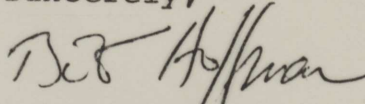
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(50 P.S. §§ 7405, 7406). I would note that the limitation regarding Article IV is supplementary to that previously discussed regarding dangerousness to self or others.

In summary, the proposed amendment would exclude mentally ill persons who are subject to involuntary commitment, and would further exclude persons who had within the past two years been committed with criminal justice system involvement. I hope this is responsive to your request.

Sincerely,



Robert B. Hoffman
Assistant Attorney General
Department of Public Welfare

RBH:bmd