



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5351

Introduced 2/9/2024, by Rep. Lindsey LaPointe

SYNOPSIS AS INTRODUCED:

405 ILCS 5/2-107.1	from Ch. 91 1/2, par. 2-107.1
405 ILCS 5/3-100	from Ch. 91 1/2, par. 3-100
405 ILCS 5/3-752	
405 ILCS 5/3-753	
405 ILCS 5/3-812	from Ch. 91 1/2, par. 3-812

Amends the Mental Health and Developmental Disabilities Code. Provides that the circuit court has jurisdiction under the Admission, Transfer and Discharge Procedures for the Mentally Ill Chapter of the Code over persons not charged with a felony who are subject to involuntary admission on an inpatient basis. Provides that the circuit court has jurisdiction over all persons who are subject to involuntary admission on an outpatient basis under the Admission on an Outpatient Basis by Court Order Article of that Chapter of the Code, whether or not they are charged with a felony. Provides that a petition that the respondent is subject to involuntary admission on an outpatient basis must be accompanied by one certificate (rather than 2 certificates) of a physician, qualified examiner, psychiatrist, advanced practice psychiatric nurse, or clinical psychologist which certifies that the respondent is subject to involuntary admission on an outpatient basis. Provides that a court order placing the respondent in the care and custody of a relative or other person willing and able to properly care for him or her or committing the respondent to alternative treatment at a community mental health provider may include provisions requiring that the respondent participate in: case management services, individual or group therapy, day or partial day programs, educational or vocational training, supervised living, assertive community treatment team services, substance use disorder treatment and testing and any other service that would help prevent relapse or deterioration resulting in hospitalization. Provides that psychotropic medication or electroconvulsive therapy and accompanying tests may be ordered only pursuant to the administration of psychotropic medication and electroconvulsive therapy upon application to a court provisions of the Code. Provides that the court may also order the custodian or treatment provider to file periodic reports with the court, and provide copies to the State's Attorney and respondent's counsel, reflecting the respondent's participation in treatment and his or her clinical condition.

LRB103 38673 RLC 68810 b

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 2-107.1,
6 3-100, 3-752, 3-753, and 3-812 as follows:

7 (405 ILCS 5/2-107.1) (from Ch. 91 1/2, par. 2-107.1)

8 Sec. 2-107.1. Administration of psychotropic medication
9 and electroconvulsive therapy upon application to a court.

10 (a) (Blank).

11 (a-5) Notwithstanding the provisions of Section 2-107 of
12 this Code, psychotropic medication and electroconvulsive
13 therapy may be administered to an adult recipient of services
14 on an inpatient or outpatient basis without the informed
15 consent of the recipient under the following standards:

16 (1) Any person 18 years of age or older, including any
17 guardian, may petition the circuit court for an order
18 authorizing the administration of psychotropic medication
19 and electroconvulsive therapy to a recipient of services.
20 The petition shall state that the petitioner has made a
21 good faith attempt to determine whether the recipient has
22 executed a power of attorney for health care under the
23 Powers of Attorney for Health Care Law or a declaration

1 for mental health treatment under the Mental Health
2 Treatment Preference Declaration Act and to obtain copies
3 of these instruments if they exist. If either of the
4 above-named instruments is available to the petitioner,
5 the instrument or a copy of the instrument shall be
6 attached to the petition as an exhibit. The petitioner
7 shall deliver a copy of the petition, and notice of the
8 time and place of the hearing, to the respondent, his or
9 her attorney, any known agent or attorney-in-fact, if any,
10 and the guardian, if any, no later than 3 days prior to the
11 date of the hearing. Service of the petition and notice of
12 the time and place of the hearing may be made by
13 transmitting them via facsimile machine to the respondent
14 or other party. Upon receipt of the petition and notice,
15 the party served, or the person delivering the petition
16 and notice to the party served, shall acknowledge service.
17 If the party sending the petition and notice does not
18 receive acknowledgement of service within 24 hours,
19 service must be made by personal service.

20 The petition may include a request that the court
21 authorize such testing and procedures as may be essential
22 for the safe and effective administration of the
23 psychotropic medication or electroconvulsive therapy
24 sought to be administered, but only where the petition
25 sets forth the specific testing and procedures sought to
26 be administered.

1 If a hearing is requested to be held immediately
2 following the hearing on a petition for involuntary
3 admission, then the notice requirement shall be the same
4 as that for the hearing on the petition for involuntary
5 admission, and the petition filed pursuant to this Section
6 shall be filed with the petition for involuntary
7 admission.

8 (2) The court shall hold a hearing within 7 days of the
9 filing of the petition. The People, the petitioner, or the
10 respondent shall be entitled to a continuance of up to 7
11 days as of right. An additional continuance of not more
12 than 7 days may be granted to any party (i) upon a showing
13 that the continuance is needed in order to adequately
14 prepare for or present evidence in a hearing under this
15 Section or (ii) under exceptional circumstances. The court
16 may grant an additional continuance not to exceed 21 days
17 when, in its discretion, the court determines that such a
18 continuance is necessary in order to provide the recipient
19 with an examination pursuant to Section 3-803 or 3-804 of
20 this Act, to provide the recipient with a trial by jury as
21 provided in Section 3-802 of this Act, or to arrange for
22 the substitution of counsel as provided for by the
23 Illinois Supreme Court Rules. The hearing shall be
24 separate from a judicial proceeding held to determine
25 whether a person is subject to involuntary admission on an
26 inpatient basis but may be heard immediately preceding or

1 following such a judicial proceeding and may be heard by
2 the same trier of fact or law as in that judicial
3 proceeding.

4 (3) Unless otherwise provided herein, the procedures
5 set forth in Article VIII of Chapter III of this Act,
6 including the provisions regarding appointment of counsel,
7 shall govern hearings held under this subsection (a-5).

8 (4) Psychotropic medication and electroconvulsive
9 therapy may be administered to the recipient if and only
10 if it has been determined by clear and convincing evidence
11 that all of the following factors are present. In
12 determining whether a person meets the criteria specified
13 in the following paragraphs (A) through (G), the court may
14 consider evidence of the person's history of serious
15 violence, repeated past pattern of specific behavior,
16 actions related to the person's illness, or past outcomes
17 of various treatment options.

18 (A) That the recipient has a serious mental
19 illness or developmental disability.

20 (B) That because of said mental illness or
21 developmental disability, the recipient currently
22 exhibits any one of the following: (i) deterioration
23 of his or her ability to function, as compared to the
24 recipient's ability to function prior to the current
25 onset of symptoms of the mental illness or disability
26 for which treatment is presently sought, (ii)

1 suffering, or (iii) threatening behavior.

2 (C) That the illness or disability has existed for
3 a period marked by the continuing presence of the
4 symptoms set forth in item (B) of this subdivision (4)
5 or the repeated episodic occurrence of these symptoms.

6 (D) That the benefits of the treatment outweigh
7 the harm.

8 (E) That the recipient lacks the capacity to make
9 a reasoned decision about the treatment.

10 (F) That other less restrictive services have been
11 explored and found inappropriate.

12 (G) If the petition seeks authorization for
13 testing and other procedures, that such testing and
14 procedures are essential for the safe and effective
15 administration of the treatment.

16 (5) In no event shall an order issued under this
17 Section be effective for more than 90 days. A second
18 90-day period of involuntary treatment may be authorized
19 pursuant to a hearing that complies with the standards and
20 procedures of this subsection (a-5). Thereafter,
21 additional 180-day periods of involuntary treatment may be
22 authorized pursuant to the standards and procedures of
23 this Section without limit. If a new petition to authorize
24 the administration of psychotropic medication or
25 electroconvulsive therapy is filed at least 15 days prior
26 to the expiration of the prior order, and if any

1 continuance of the hearing is agreed to by the recipient,
2 the administration of the treatment may continue in
3 accordance with the prior order pending the completion of
4 a hearing under this Section.

5 (6) An order issued under this subsection (a-5) shall
6 designate the persons authorized to administer the
7 treatment under the standards and procedures of this
8 subsection (a-5). Those persons shall have complete
9 discretion not to administer any treatment authorized
10 under this Section. The order shall also specify the
11 medications and the anticipated range of dosages that have
12 been authorized and may include a list of any alternative
13 medications and range of dosages deemed necessary.

14 (a-10) The court may, in its discretion, appoint a
15 guardian ad litem for a recipient before the court or
16 authorize an existing guardian of the person to monitor
17 treatment and compliance with court orders under this Section.

18 (b) A guardian may be authorized to consent to the
19 administration of psychotropic medication or electroconvulsive
20 therapy to an objecting recipient only under the standards and
21 procedures of subsection (a-5).

22 (c) Notwithstanding any other provision of this Section, a
23 guardian may consent to the administration of psychotropic
24 medication or electroconvulsive therapy to a non-objecting
25 recipient under Article XIa of the Probate Act of 1975.

26 (d) Nothing in this Section shall prevent the

1 administration of psychotropic medication or electroconvulsive
2 therapy to recipients in an emergency under Section 2-107 of
3 this Act.

4 (e) Notwithstanding any of the provisions of this Section,
5 psychotropic medication or electroconvulsive therapy may be
6 administered pursuant to a power of attorney for health care
7 under the Powers of Attorney for Health Care Law or a
8 declaration for mental health treatment under the Mental
9 Health Treatment Preference Declaration Act over the objection
10 of the recipient if the recipient has not revoked the power of
11 attorney or declaration for mental health treatment as
12 provided in the relevant statute.

13 (f) The Department shall conduct annual trainings for
14 physicians and registered nurses working in State-operated
15 mental health facilities on the appropriate use of
16 psychotropic medication and electroconvulsive therapy,
17 standards for their use, and the preparation of court
18 petitions under this Section.

19 (Source: P.A. 100-710, eff. 8-3-18.)

20 (405 ILCS 5/3-100) (from Ch. 91 1/2, par. 3-100)

21 Sec. 3-100. The circuit court has jurisdiction under this
22 Chapter over persons not charged with a felony who are subject
23 to involuntary admission on an inpatient basis. The circuit
24 court has jurisdiction over all persons who are subject to
25 involuntary admission on an outpatient basis under Article

1 VII-A of this Code, whether or not they are charged with a
2 felony. Inmates of penal institutions shall not be considered
3 as charged with a felony within the meaning of this Chapter.
4 Court proceedings under Article VIII of this Chapter may be
5 instituted as to any such inmate at any time within 90 days
6 prior to discharge of such inmate by expiration of sentence or
7 otherwise, and if such inmate is found to be subject to
8 involuntary admission, the order of the court ordering
9 hospitalization or other disposition shall become effective at
10 the time of discharge of the inmate from penal custody. The
11 circuit court has jurisdiction over all persons alleged to be
12 in need of treatment under Section 2-107.1 of this Code,
13 whether or not they are charged with a felony.

14 (Source: P.A. 99-179, eff. 7-29-15.)

15 (405 ILCS 5/3-752)

16 Sec. 3-752. Certificate.

17 (a) The petition may be accompanied by the certificate of
18 a physician, qualified examiner, psychiatrist, advanced
19 practice psychiatric nurse, or clinical psychologist which
20 certifies that the respondent is subject to involuntary
21 admission on an outpatient basis. The certificate shall
22 indicate that the physician, qualified examiner, psychiatrist,
23 advanced practice psychiatric nurse, or clinical psychologist
24 personally examined the respondent not more than 72 hours
25 prior to the completion of the certificate. It shall also

1 contain the physician's, qualified examiner's, psychiatrist's,
2 advanced practice psychiatric nurse's, or clinical
3 psychologist's clinical observations, other factual
4 information relied upon in reaching a diagnosis, and a
5 statement as to whether the respondent was advised of his or
6 her rights under Section 3-208.

7 (b) Upon receipt of the petition either with or without a
8 certificate, if the court finds the documents are in order, it
9 may make such orders pursuant to Section 3-753 as are
10 necessary to provide for examination of the respondent. If the
11 petition is not accompanied by a certificate ~~2 certificates~~
12 executed pursuant to Section 3-753, the court may order the
13 respondent to present himself or herself for examination at a
14 time and place designated by the court. If the petition is
15 accompanied by a certificate ~~2 certificates~~ executed pursuant
16 to Section 3-753 and the court finds the documents are in
17 order, the court shall set the matter for hearing.

18 (Source: P.A. 101-587, eff. 1-1-20.)

19 (405 ILCS 5/3-753)

20 Sec. 3-753. Examination. If no certificate was filed, the
21 respondent shall be examined separately by a physician,
22 clinical psychologist, advanced practice psychiatric nurse, ~~or~~
23 qualified examiner, or ~~and by a psychiatrist. If a certificate~~
24 ~~executed by a psychiatrist was filed, the respondent shall be~~
25 ~~examined by a physician, clinical psychologist, qualified~~

1 ~~examiner, advanced practice psychiatric nurse, or~~
2 ~~psychiatrist. If a certificate executed by a qualified~~
3 ~~examiner, clinical psychologist, advanced practice psychiatric~~
4 ~~nurse, or a physician who is not a psychiatrist was filed, the~~
5 ~~respondent shall be examined by a psychiatrist.~~ The examining
6 physician, clinical psychologist, qualified examiner, advanced
7 practice psychiatric nurse, or psychiatrist may interview by
8 telephone or in person any witnesses or other persons listed
9 in the petition for involuntary admission. If, as a result of
10 an examination, a certificate is executed, the certificate
11 shall be promptly filed with the court. If a certificate is
12 executed, the examining physician, clinical psychologist,
13 qualified examiner, advanced practice psychiatric nurse, or
14 psychiatrist may also submit for filing with the court a
15 report in which his or her findings are described in detail,
16 and may rely upon such findings for his opinion that the
17 respondent is subject to involuntary admission. Copies of the
18 certificates shall be made available to the attorneys for the
19 parties upon request prior to the hearing.

20 (Source: P.A. 101-587, eff. 1-1-20.)

21 (405 ILCS 5/3-812) (from Ch. 91 1/2, par. 3-812)

22 Sec. 3-812. Court ordered admission on an outpatient
23 basis; modification; revocation.

24 (a) If a respondent is found subject to involuntary
25 admission on an outpatient basis, the court may issue an

1 order: (i) placing the respondent in the care and custody of a
2 relative or other person willing and able to properly care for
3 him or her; or (ii) committing the respondent to alternative
4 treatment at a community mental health provider.

5 (b) An order placing the respondent in the care and
6 custody of a relative or other person shall specify the powers
7 and duties of the custodian. An order of care and custody
8 entered pursuant to this Section may grant the custodian the
9 authority to admit a respondent to a hospital if the
10 respondent fails to comply with the conditions of the order.
11 If necessary in order to obtain the hospitalization of the
12 respondent, the custodian may apply to the court for an order
13 authorizing an officer of the peace to take the respondent
14 into custody and transport the respondent to a mental health
15 facility. The provisions of Section 3-605 shall govern the
16 transportation of the respondent to a mental health facility,
17 except to the extent that those provisions are inconsistent
18 with this Section. No person admitted to a hospital pursuant
19 to this subsection shall be detained for longer than 24 hours,
20 excluding Saturdays, Sundays, and holidays, unless, within
21 that period, a petition for involuntary admission on an
22 inpatient basis and a certificate supporting such petition
23 have been filed as provided in Section 3-611.

24 (c) Alternative treatment shall not be ordered unless the
25 program being considered is capable of providing adequate and
26 humane treatment in the least restrictive setting which is

1 appropriate to the respondent's condition. The court shall
2 have continuing authority to modify an order for alternative
3 treatment if the recipient fails to comply with the order or is
4 otherwise found unsuitable for alternative treatment. Prior to
5 modifying such an order, the court shall receive a report from
6 the facility director of the program specifying why the
7 alternative treatment is unsuitable. The recipient shall be
8 notified and given an opportunity to respond when modification
9 of the order for alternative treatment is considered. If the
10 court determines that the respondent has violated the order
11 for alternative treatment in the community or that alternative
12 treatment in the community will no longer provide adequate
13 assurances for the safety of the respondent or others, the
14 court may revoke the order for alternative treatment in the
15 community and may order a peace officer to take the recipient
16 into custody and transport him to an inpatient mental health
17 facility. The provisions of Section 3-605 shall govern the
18 transportation of the respondent to a mental health facility,
19 except to the extent that those provisions are inconsistent
20 with this Section. No person admitted to a hospital pursuant
21 to this subsection shall be detained for longer than 24 hours,
22 excluding Saturdays, Sundays, and holidays, unless, within
23 that period, a petition for involuntary admission on an
24 inpatient basis and a certificate supporting such petition
25 have been filed as provided in Section 3-611.

26 (d) A court order placing the respondent in the care and

1 custody of a relative or other person willing and able to
2 properly care for him or her or committing the respondent to
3 alternative treatment at a community mental health provider
4 may include provisions requiring that the respondent
5 participate in: case management services, individual or group
6 therapy, day or partial day programs, educational or
7 vocational training, supervised living, assertive community
8 treatment team services, substance use disorder treatment and
9 testing and any other service that would help prevent relapse
10 or deterioration resulting in hospitalization. Psychotropic
11 medication or electroconvulsive therapy and accompanying tests
12 may be ordered only pursuant to Section 2-107.1. The court may
13 also order the custodian or treatment provider to file
14 periodic reports with the court, and provide copies to the
15 State's Attorney and respondent's counsel, reflecting the
16 respondent's participation in treatment and his or her
17 clinical condition.

18 (Source: P.A. 98-221, eff. 1-1-14.)