

1 AN ACT in relation to 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 3-800, and 3-802 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 authorized involuntary
9 treatment upon application to a court.

10 (a) An adult recipient of services and the recipient's
11 guardian, if the recipient is under guardianship, and the
12 substitute decision maker, if any, shall be informed of the
13 recipient's right to refuse medication. The recipient and the
14 recipient's guardian or substitute decision maker shall be
15 given the opportunity to refuse generally accepted mental
16 health or developmental disability services, including but
17 not limited to medication.

18 (a-5) Notwithstanding the provisions of Section 2-107 of
19 this Code, authorized involuntary treatment may be
20 administered to an adult recipient of services without the
21 informed consent of the recipient under the following
22 standards:

23 (1) Any person 18 years of age or older, including
24 any guardian, may petition the circuit court for an order
25 authorizing the administration of authorized involuntary
26 treatment to a recipient of services. The petition shall
27 state that the petitioner has made a good faith attempt
28 to determine whether the recipient has executed a power
29 of attorney for health care under the Powers of Attorney
30 for Health Care Law or a declaration for mental health

1 treatment under the Mental Health Treatment Preference
2 Declaration Act and to obtain copies of these instruments
3 if they exist. If either of the above-named instruments
4 is available to the petitioner, the instrument or a copy
5 of the instrument shall be attached to the petition as an
6 exhibit. The petitioner shall deliver a copy of the
7 petition, and notice of the time and place of the
8 hearing, to the respondent, his or her attorney, any
9 known agent or attorney-in-fact, if any, and the
10 guardian, if any, no later than 3 days prior to the date
11 of the hearing. Service of the petition and notice of the
12 time and place of the hearing may be made by transmitting
13 them via facsimile machine to the respondent or other
14 party. Upon receipt of the petition and notice, the
15 party served, or the person delivering the petition and
16 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 authorized involuntary treatment sought to be
24 administered, but only where the petition sets forth the
25 specific testing and procedures sought to be
26 administered.

27 If a hearing is requested to be held immediately
28 following the hearing on a petition for involuntary
29 admission, then the notice requirement shall be the same
30 as that for the hearing on the petition for involuntary
31 admission, and the petition filed pursuant to this
32 Section shall be filed with the petition for involuntary
33 admission.

34 (2) The court shall hold a hearing within 7 days of

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

22 (3) Unless otherwise provided herein, the
23 procedures set forth in Article VIII of Chapter 3 of this
24 Act, including the provisions regarding appointment of
25 counsel, shall govern hearings held under this subsection
26 (a-5).

27 (4) Authorized involuntary treatment shall not be
28 administered to the recipient unless it has been
29 determined by clear and convincing evidence that all of
30 the following factors are present:

31 (A) That the recipient has a serious mental
32 illness or developmental disability.

33 (B) That because of said mental illness or
34 developmental disability, the recipient exhibits any

1 one of the following at the time it is determined
2 that this factor (B) is present: (i) deterioration
3 of his or her ability to function, as compared to
4 the recipient's ability to function before the onset
5 of symptoms of the mental illness or disability for
6 which the authorized involuntary treatment is being
7 sought, (ii) suffering, or (iii) threatening
8 behavior.

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

14 (D) That the benefits of the treatment
15 outweigh the harm.

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

18 (F) That other less restrictive services have
19 been explored and found inappropriate.

20 (G) If the petition seeks authorization for
21 testing and other procedures, that such testing and
22 procedures are essential for the safe and effective
23 administration of the treatment.

24 (5) In no event shall an order issued under this
25 Section be effective for more than 90 days. A second
26 90-day period of involuntary treatment may be authorized
27 pursuant to a hearing that complies with the standards
28 and procedures of this subsection (a-5). Thereafter,
29 additional 180-day periods of involuntary treatment may
30 be authorized pursuant to the standards and procedures of
31 this Section without limit. If a new petition to
32 authorize the administration of authorized involuntary
33 treatment is filed at least 15 days prior to the
34 expiration of the prior order, and if any continuance of

1 the hearing is agreed to by the recipient, the
2 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)
6 shall designate the persons authorized to administer the
7 authorized involuntary treatment under the standards and
8 procedures of this subsection (a-5). Those persons shall
9 have complete discretion not to administer any treatment
10 authorized under this Section. The order shall also
11 specify the medications and the anticipated range of
12 dosages that have been authorized.

13 (b) A guardian may be authorized to consent to the
14 administration of authorized involuntary treatment to an
15 objecting recipient only under the standards and procedures
16 of subsection (a-5).

17 (c) Notwithstanding any other provision of this Section,
18 a guardian may consent to the administration of authorized
19 involuntary treatment to a non-objecting recipient under
20 Article XIa of the Probate Act of 1975.

21 (d) Nothing in this Section shall prevent the
22 administration of authorized involuntary treatment to
23 recipients in an emergency under Section 2-107 of this Act.

24 (e) Notwithstanding any of the provisions of this
25 Section, authorized involuntary treatment may be administered
26 pursuant to a power of attorney for health care under the
27 Powers of Attorney for Health Care Law or a declaration for
28 mental health treatment under the Mental Health Treatment
29 Preference Declaration Act.

30 (Source: P.A. 91-726, eff. 6-2-00; 91-787, eff. 1-1-01;
31 92-16, eff. 6-28-01.)

32 (405 ILCS 5/3-800) (from Ch. 91 1/2, par. 3-800)
33 Sec. 3-800. (a) Court hearings under this Chapter shall

1 be held in the mental health facility where the respondent is
2 hospitalized if the facility has the physical capacity to
3 accommodate such a hearing. If the facility is unable to
4 accommodate the hearing, the hearing shall be commenced (i)
5 in a facility used as a courthouse in the county in which the
6 mental health facility is located or (ii) if necessitated by
7 the respondent's condition, in another mental health
8 facility. The respondent may request that the hearing be
9 transferred to any other facility used as a courthouse in the
10 same county or to any other county for the convenience of the
11 parties or witnesses. The petitioner also may request that
12 the hearing be transferred to any other facility used as a
13 courthouse in the same county or to any other county for the
14 convenience of the parties or witnesses, but the court may
15 not grant the petitioner's request if the respondent objects
16 to the transfer. Unless otherwise indicated, court hearings
17 under this Chapter shall be held pursuant to this Article.
18 Hearings shall be held in such quarters as the court directs.
19 To the extent practical, hearings shall be held in the mental
20 health facility where the respondent is hospitalized. Any
21 party may request a change of venue or transfer to any other
22 county because of the convenience of parties or witnesses or
23 the condition of the respondent. The respondent may request
24 to have the proceedings transferred to the county of his
25 residence.

26 (b) If the court grants a continuance on its own motion
27 or upon the motion of one of the parties, the respondent may
28 continue to be detained pending further order of the court.
29 Such continuance shall not extend beyond 15 days except to
30 the extent that continuances are requested by the respondent.

31 (c) Court hearings under this Chapter, including
32 hearings under Section 2-107.1, shall be open to the press
33 and public unless the respondent or some other party requests
34 that they be closed. The court may also indicate its

1 intention to close a hearing, including when it determines
2 that the respondent may be unable to make a reasoned decision
3 to request that the hearing be closed. A request that a
4 hearing be closed shall be granted unless there is an
5 objection to closing the hearing by a party or any other
6 person. If an objection is made, the court shall not close
7 the hearing unless, following a hearing, it determines that
8 the patient's interest in having the hearing closed is
9 compelling. The court shall support its determination with
10 written findings of fact and conclusions of law. The court
11 shall not close the hearing if the respondent objects to its
12 closure. Whenever a court determines that a hearing shall be
13 closed, access to the records of the hearing, including but
14 not limited to transcripts and pleadings, shall be limited
15 to the parties involved in the hearing, court personnel, and
16 any person or agency providing mental health services that
17 are the subject of the hearing. Access may also be granted,
18 however, pursuant to the provisions of the Mental Health and
19 Developmental Disabilities Confidentiality Act.

20 (Source: P.A. 90-538, eff. 12-1-97.)

21 (405 ILCS 5/3-802) (from Ch. 91 1/2, par. 3-802)

22 Sec. 3-802. Except as otherwise provided in this
23 Section, the respondent is entitled to a jury on the question
24 of whether he is subject to involuntary admission. The jury
25 shall consist of 6 persons to be chosen in the same manner as
26 are jurors in other civil proceedings. A respondent is not
27 entitled to a jury on the question of whether authorized
28 involuntary treatment may be administered under Section
29 2-107.1.

30 (Source: P.A. 80-1414.)

31 Section 99. Effective date. This Act takes effect upon
32 becoming law.