



Rep. Kathleen A. Ryg

Filed: 4/22/2008

FISCAL NOTE ACT  
MAY APPLY

09500HB5574ham005

LRB095 16884 AJ0 49773 a

1 AMENDMENT TO HOUSE BILL 5574

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5574, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Mental Health and Developmental  
6 Disabilities Code is amended by changing Sections 1-104.5 and  
7 3-703 as follows:

8 (405 ILCS 5/1-104.5)

9 (This Section may contain text from a Public Act with a  
10 delayed effective date)

11 Sec. 1-104.5. "Dangerous conduct" means threatening  
12 behavior or conduct that places the person or another  
13 individual in reasonable expectation of being harmed, or a  
14 person's inability to provide, without the assistance of family  
15 or outside help, for his or her basic physical needs so as to  
16 guard himself or herself from serious harm.

1        Notwithstanding any other rulemaking authority that may  
2 exist, neither the Governor nor any agency or agency head under  
3 the jurisdiction of the Governor has any authority to make or  
4 promulgate rules to implement or enforce the provisions of this  
5 amendatory Act of the 95th General Assembly. If, however, the  
6 Governor believes that rules are necessary to implement or  
7 enforce the provisions of this amendatory Act of the 95th  
8 General Assembly, the Governor may suggest rules to the General  
9 Assembly by filing them with the Clerk of the House and  
10 Secretary of the Senate and by requesting that the General  
11 Assembly authorize such rulemaking by law, enact those  
12 suggested rules into law, or take any other appropriate action  
13 in the General Assembly's discretion. Nothing contained in this  
14 amendatory Act of the 95th General Assembly shall be  
15 interpreted to grant rulemaking authority under any other  
16 Illinois statute where such authority is not otherwise  
17 explicitly given. For the purposes of this amendatory Act of  
18 the 95th General Assembly, "rules" is given the meaning  
19 contained in Section 1-70 of the Illinois Administrative  
20 Procedure Act, and "agency" and "agency head" are given the  
21 meanings contained in Sections 1-20 and 1-25 of the Illinois  
22 Administrative Procedure Act to the extent that such  
23 definitions apply to agencies or agency heads under the  
24 jurisdiction of the Governor.

25        (Source: P.A. 95-602, eff. 6-1-08.)

1 (405 ILCS 5/3-703) (from Ch. 91 1/2, par. 3-703)

2 Sec. 3-703. If no certificate was filed, the respondent  
3 shall be examined separately by a physician, or clinical  
4 psychologist, or qualified examiner and by a psychiatrist. If a  
5 certificate executed by a psychiatrist was filed, the  
6 respondent shall be examined by a physician, clinical  
7 psychologist, qualified examiner, or psychiatrist. If a  
8 certificate executed by a qualified examiner, clinical  
9 psychologist, or a physician who is not a psychiatrist was  
10 filed, the respondent shall be examined by a psychiatrist. The  
11 examining physician, clinical psychologist, qualified examiner  
12 or psychiatrist may interview by telephone or in person any  
13 witnesses or other persons listed in the petition for  
14 involuntary admission. If, as a result of an examination, a  
15 certificate is executed, the certificate shall be promptly  
16 filed with the court. If a certificate is executed, the  
17 examining physician, clinical psychologist, qualified examiner  
18 or psychiatrist may also submit for filing with the court a  
19 report in which his findings are described in detail, and may  
20 rely upon such findings for his opinion that the respondent is  
21 subject to involuntary admission. Copies of the certificates  
22 shall be made available to the attorneys for the parties upon  
23 request prior to the hearing. A certificate prepared in  
24 compliance with this Article shall state whether or not the  
25 respondent is in need of immediate hospitalization. However, if  
26 both of the certificates state that the respondent is not in

1 need of immediate hospitalization, the respondent may remain in  
2 his or her place of residence absent imminent danger pending a  
3 hearing on the petition unless he or she voluntarily agrees to  
4 inpatient treatment.

5 Notwithstanding any other rulemaking authority that may  
6 exist, neither the Governor nor any agency or agency head under  
7 the jurisdiction of the Governor has any authority to make or  
8 promulgate rules to implement or enforce the provisions of this  
9 amendatory Act of the 95th General Assembly. If, however, the  
10 Governor believes that rules are necessary to implement or  
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17 in the General Assembly's discretion. Nothing contained in this  
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19 interpreted to grant rulemaking authority under any other  
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21 explicitly given. For the purposes of this amendatory Act of  
22 the 95th General Assembly, "rules" is given the meaning  
23 contained in Section 1-70 of the Illinois Administrative  
24 Procedure Act, and "agency" and "agency head" are given the  
25 meanings contained in Sections 1-20 and 1-25 of the Illinois  
26 Administrative Procedure Act to the extent that such

1 definitions apply to agencies or agency heads under the  
2 jurisdiction of the Governor.

3 (Source: P.A. 85-558.)

4 Section 10. The Mental Health and Developmental  
5 Disabilities Confidentiality Act is amended by changing  
6 Sections 4, 9.2, and 11 as follows:

7 (740 ILCS 110/4) (from Ch. 91 1/2, par. 804)

8 Sec. 4. (a) The following persons shall be entitled, upon  
9 request, to inspect and copy a recipient's record or any part  
10 thereof:

11 (1) the parent or guardian of a recipient who is under  
12 12 years of age;

13 (2) the recipient if he is 12 years of age or older;

14 (3) the parent or guardian of a recipient who is at  
15 least 12 but under 18 years, if the recipient is informed  
16 and does not object or if the therapist does not find that  
17 there are compelling reasons for denying the access. The  
18 parent or guardian who is denied access by either the  
19 recipient or the therapist may petition a court for access  
20 to the record. Nothing in this paragraph is intended to  
21 prohibit the parent or guardian of a recipient who is at  
22 least 12 but under 18 years from requesting and receiving  
23 the following information: current physical and mental  
24 condition, diagnosis, treatment needs, services provided,

1 and services needed, including medication, if any;

2 (4) the guardian of a recipient who is 18 years or  
3 older;

4 (5) an attorney or guardian ad litem who represents a  
5 minor 12 years of age or older in any judicial or  
6 administrative proceeding, provided that the court or  
7 administrative hearing officer has entered an order  
8 granting the attorney this right; ~~or~~

9 (6) an agent appointed under a recipient's power of  
10 attorney for health care or for property, when the power of  
11 attorney authorizes the access; or-

12 (7) an attorney-in-fact appointed under the Mental  
13 Health Treatment Preference Declaration Act.

14 (b) Assistance in interpreting the record may be provided  
15 without charge and shall be provided if the person inspecting  
16 the record is under 18 years of age. However, access may in no  
17 way be denied or limited if the person inspecting the record  
18 refuses the assistance. A reasonable fee may be charged for  
19 duplication of a record. However, when requested to do so in  
20 writing by any indigent recipient, the custodian of the records  
21 shall provide at no charge to the recipient, or to the  
22 Guardianship and Advocacy Commission, the agency designated by  
23 the Governor under Section 1 of the Protection and Advocacy for  
24 Developmentally Disabled Persons Act or to any other  
25 not-for-profit agency whose primary purpose is to provide free  
26 legal services or advocacy for the indigent and who has

1 received written authorization from the recipient under  
2 Section 5 of this Act to receive his records, one copy of any  
3 records in its possession whose disclosure is authorized under  
4 this Act.

5 (c) Any person entitled to access to a record under this  
6 Section may submit a written statement concerning any disputed  
7 or new information, which statement shall be entered into the  
8 record. Whenever any disputed part of a record is disclosed,  
9 any submitted statement relating thereto shall accompany the  
10 disclosed part. Additionally, any person entitled to access may  
11 request modification of any part of the record which he  
12 believes is incorrect or misleading. If the request is refused,  
13 the person may seek a court order to compel modification.

14 (d) Whenever access or modification is requested, the  
15 request and any action taken thereon shall be noted in the  
16 recipient's record.

17 (e) Notwithstanding any other rulemaking authority that  
18 may exist, neither the Governor nor any agency or agency head  
19 under the jurisdiction of the Governor has any authority to  
20 make or promulgate rules to implement or enforce the provisions  
21 of this amendatory Act of the 95th General Assembly. If,  
22 however, the Governor believes that rules are necessary to  
23 implement or enforce the provisions of this amendatory Act of  
24 the 95th General Assembly, the Governor may suggest rules to  
25 the General Assembly by filing them with the Clerk of the House  
26 and Secretary of the Senate and by requesting that the General

1 Assembly authorize such rulemaking by law, enact those  
2 suggested rules into law, or take any other appropriate action  
3 in the General Assembly's discretion. Nothing contained in this  
4 amendatory Act of the 95th General Assembly shall be  
5 interpreted to grant rulemaking authority under any other  
6 Illinois statute where such authority is not otherwise  
7 explicitly given. For the purposes of this amendatory Act of  
8 the 95th General Assembly, "rules" is given the meaning  
9 contained in Section 1-70 of the Illinois Administrative  
10 Procedure Act, and "agency" and "agency head" are given the  
11 meanings contained in Sections 1-20 and 1-25 of the Illinois  
12 Administrative Procedure Act to the extent that such  
13 definitions apply to agencies or agency heads under the  
14 jurisdiction of the Governor.

15 (Source: P.A. 88-484; 89-439, eff. 6-1-96.)

16 (740 ILCS 110/9.2)

17 Sec. 9.2. Interagency disclosure of recipient information.  
18 For the purposes of continuity of care, the Department of Human  
19 Services (as successor to the Department of Mental Health and  
20 Developmental Disabilities), community agencies funded by the  
21 Department of Human Services in that capacity, licensed private  
22 hospitals receiving payments from the Department of Human  
23 Services or the Department of Healthcare and Family Services,  
24 State correctional facilities ~~prisons operated by the~~  
25 ~~Department of Corrections,~~ mental health facilities operated



1 by a county, and jails operated by any county of this State may  
2 disclose a recipient's record or communications, without  
3 consent, to each other, but only for the purpose of admission,  
4 treatment, planning, or discharge. Entities shall not  
5 redisclose any personally identifiable information, unless  
6 necessary for admission, treatment, planning, or discharge of  
7 the identified recipient to another setting. No records or  
8 communications may be disclosed to a county jail or State  
9 correctional facility ~~prison~~ pursuant to this Section unless  
10 the Department has entered into a written agreement with the  
11 county jail or State correctional facility ~~prison~~ requiring  
12 that the county jail or State correctional facility ~~prison~~  
13 adopt written policies and procedures designed to ensure that  
14 the records and communications are disclosed only to those  
15 persons employed by or under contract to the county jail or  
16 State correctional facility ~~prison~~ who are involved in the  
17 provision of mental health services to inmates and that the  
18 records and communications are protected from further  
19 disclosure. For the purposes of this Section, the term  
20 "licensed private hospital" shall have the meaning ascribed to  
21 it in the Mental Health and Developmental Disabilities Code.

22 Notwithstanding any other rulemaking authority that may  
23 exist, neither the Governor nor any agency or agency head under  
24 the jurisdiction of the Governor has any authority to make or  
25 promulgate rules to implement or enforce the provisions of this  
26 amendatory Act of the 95th General Assembly. If, however, the

1 Governor believes that rules are necessary to implement or  
2 enforce the provisions of this amendatory Act of the 95th  
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4 Assembly by filing them with the Clerk of the House and  
5 Secretary of the Senate and by requesting that the General  
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10 interpreted to grant rulemaking authority under any other  
11 Illinois statute where such authority is not otherwise  
12 explicitly given. For the purposes of this amendatory Act of  
13 the 95th General Assembly, "rules" is given the meaning  
14 contained in Section 1-70 of the Illinois Administrative  
15 Procedure Act, and "agency" and "agency head" are given the  
16 meanings contained in Sections 1-20 and 1-25 of the Illinois  
17 Administrative Procedure Act to the extent that such  
18 definitions apply to agencies or agency heads under the  
19 jurisdiction of the Governor.

20 (Source: P.A. 94-182, eff. 7-12-05.)

21 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

22 Sec. 11. Disclosure of records and communications. Records  
23 and communications may be disclosed:

24 (i) in accordance with the provisions of the Abused and  
25 Neglected Child Reporting Act, subsection (u) of Section 5

1 of the Children and Family Services Act, or Section 7.4 of  
2 the Child Care Act of 1969;

3 (ii) when, and to the extent, a therapist, in his or  
4 her sole discretion, determines that disclosure is  
5 necessary to initiate or continue civil commitment  
6 proceedings under the laws of this State or to otherwise  
7 protect the recipient or other person against a clear,  
8 imminent risk of serious physical or mental injury or  
9 disease or death being inflicted upon the recipient or by  
10 the recipient on himself or another;

11 (iii) when, and to the extent disclosure is, in the  
12 sole discretion of the therapist, necessary to the  
13 provision of emergency medical care to a recipient who is  
14 unable to assert or waive his or her rights hereunder;

15 (iii-a) to any medical practitioner from whom the  
16 recipient is seeking medical care, including any primary  
17 care physician; however, disclosure shall be limited to  
18 pharmaceutical records and communications regarding  
19 pharmaceuticals, including records and communications  
20 regarding payment for pharmaceuticals;

21 (iv) when disclosure is necessary to collect sums or  
22 receive third party payment representing charges for  
23 mental health or developmental disabilities services  
24 provided by a therapist or agency to a recipient under  
25 Chapter V of the Mental Health and Developmental  
26 Disabilities Code or to transfer debts under the

1           Uncollected State Claims Act; however, disclosure shall be  
2           limited to information needed to pursue collection, and the  
3           information so disclosed shall not be used for any other  
4           purposes nor shall it be redisclosed except in connection  
5           with collection activities;

6           (v) when requested by a family member, the Department  
7           of Human Services may assist in the location of the  
8           interment site of a deceased recipient who is interred in a  
9           cemetery established under Section 100-26 of the Mental  
10          Health and Developmental Disabilities Administrative Act;

11          (vi) in judicial proceedings under Article VIII of  
12          Chapter III and Article V of Chapter IV of the Mental  
13          Health and Developmental Disabilities Code and proceedings  
14          and investigations preliminary thereto, to the State's  
15          Attorney for the county or residence of a person who is the  
16          subject of such proceedings, or in which the person is  
17          found, or in which the facility is located, to the attorney  
18          representing the recipient in the judicial proceedings, to  
19          any person or agency providing mental health services that  
20          are the subject of the proceedings and to that person's or  
21          agency's attorney, to any court personnel, including but  
22          not limited to judges and circuit court clerks, and to a  
23          guardian ad litem if one has been appointed by the court,  
24          provided that the information so disclosed shall not be  
25          utilized for any other purpose nor be redisclosed except in  
26          connection with the proceedings or investigations;

1           (vii) when, and to the extent disclosure is necessary  
2 to comply with the requirements of the Census Bureau in  
3 taking the federal Decennial Census;

4           (viii) when, and to the extent, in the therapist's sole  
5 discretion, disclosure is necessary to warn or protect a  
6 specific individual against whom a recipient has made a  
7 specific threat of violence where there exists a  
8 therapist-recipient relationship or a special  
9 recipient-individual relationship;

10           (ix) in accordance with the Sex Offender Registration  
11 Act;

12           (x) in accordance with the Rights of Crime Victims and  
13 Witnesses Act;

14           (xi) in accordance with Section 6 of the Abused and  
15 Neglected Long Term Care Facility Residents Reporting Act;  
16 and

17           (xii) in accordance with Section 55 of the Abuse of  
18 Adults with Disabilities Intervention Act.

19           Any person, institution, or agency, under this Act,  
20 participating in good faith in the making of a report under the  
21 Abused and Neglected Child Reporting Act or in the disclosure  
22 of records and communications under this Section, shall have  
23 immunity from any liability, civil, criminal or otherwise, that  
24 might result by reason of such action. For the purpose of any  
25 proceeding, civil or criminal, arising out of a report or  
26 disclosure under this Section, the good faith of any person,

1 institution, or agency so reporting or disclosing shall be  
2 presumed.

3 Notwithstanding any other rulemaking authority that may  
4 exist, neither the Governor nor any agency or agency head under  
5 the jurisdiction of the Governor has any authority to make or  
6 promulgate rules to implement or enforce the provisions of this  
7 amendatory Act of the 95th General Assembly. If, however, the  
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23 meanings contained in Sections 1-20 and 1-25 of the Illinois  
24 Administrative Procedure Act to the extent that such  
25 definitions apply to agencies or agency heads under the  
26 jurisdiction of the Governor.

1 (Source: P.A. 94-852, eff. 6-13-06; 94-1010, eff. 10-1-06;  
2 95-331, eff. 8-21-07.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.".