



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### HB1591

Introduced 2/15/2011, by Rep. Patricia R. Bellock

#### SYNOPSIS AS INTRODUCED:

405 ILCS 5/2-107.1	from Ch. 91 1/2, par. 2-107.1
405 ILCS 5/3-101	from Ch. 91 1/2, par. 3-101
405 ILCS 5/3-400	from Ch. 91 1/2, par. 3-400
405 ILCS 5/3-401.1 new	
405 ILCS 5/3-751	
405 ILCS 5/3-800	from Ch. 91 1/2, par. 3-800
405 ILCS 5/3-801	from Ch. 91 1/2, par. 3-801
405 ILCS 5/3-801.5	
740 ILCS 110/11	from Ch. 91 1/2, par. 811
755 ILCS 5/11a-10	from Ch. 110 1/2, par. 11a-10

Amends the Mental Health and Developmental Disabilities Code, the Mental Health and Developmental Disabilities Confidentiality Act, and the Probate Act of 1975. Adds provisions concerning: (i) the administration of psychotropic medication and electroconvulsive therapy on an inpatient and outpatient basis; (ii) the right of a community mental health provider or inpatient mental health facility to be represented by counsel during a respondent's commitment proceedings; (iii) the transportation of a mental health patient by a licensed ambulance service; (iv) the filing of an involuntary admission petition prior to the expiration of an agreed order for outpatient admission; (v) a respondent's right to object to a motion for voluntary dismissal; (vi) the extension of an order for admission on an outpatient basis; (vi) the right of a guardian ad litem to inspect and copy any medical or mental health records; and other matters. Effective immediately.

LRB097 07036 KTG 47129 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 3-101, 3-400, 3-751, 3-800, 3-801, and 3-801.5 and by adding  
7 Section 3-401.1 as follows:

8 (405 ILCS 5/2-107.1) (from Ch. 91 1/2, par. 2-107.1)

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

11 (a) (Blank).

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

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

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

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

1 administered.

2 If a hearing is requested to be held immediately  
3 following the hearing on a petition for involuntary  
4 admission, then the notice requirement shall be the same as  
5 that for the hearing on the petition for involuntary  
6 admission, and the petition filed pursuant to this Section  
7 shall be filed with the petition for involuntary 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 Illinois  
23 Supreme Court Rules. The hearing shall be separate from a  
24 judicial proceeding held to determine whether a person is  
25 subject to involuntary admission but may be heard  
26 immediately preceding or following such a judicial

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

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

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

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

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

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

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

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

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

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

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

1 the administration of the treatment may continue in  
2 accordance with the prior order pending the completion of a  
3 hearing under this Section.

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

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

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

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

25 (d) Nothing in this Section shall prevent the  
26 administration of psychotropic medication or electroconvulsive

1 therapy to recipients in an emergency under Section 2-107 of  
2 this Act.

3 (e) Notwithstanding any of the provisions of this Section,  
4 psychotropic medication or electroconvulsive therapy may be  
5 administered pursuant to a power of attorney for health care  
6 under the Powers of Attorney for Health Care Law or a  
7 declaration for mental health treatment under the Mental Health  
8 Treatment Preference Declaration Act.

9 (f) The Department shall conduct annual trainings for  
10 physicians and registered nurses working in State-operated  
11 mental health facilities on the appropriate use of psychotropic  
12 medication and electroconvulsive therapy, standards for their  
13 use, and the preparation of court petitions under this Section.  
14 (Source: P.A. 94-1066, eff. 8-1-06; 95-172, eff. 8-14-07.)

15 (405 ILCS 5/3-101) (from Ch. 91 1/2, par. 3-101)  
16 Sec. 3-101.

17 (a) The State's Attorneys of the several counties shall  
18 represent the people of the State of Illinois in court  
19 proceedings under this Chapter and in proceedings under Section  
20 2-107.1 in their respective counties, shall attend such  
21 proceedings either in person or by assistant, and shall ensure  
22 that petitions, reports and orders are properly prepared.  
23 Nothing herein contained shall prevent any party, including any  
24 petitioner, from being represented by his own counsel.

25 (b) Any community mental health provider or inpatient



1 mental health facility, including hospitals operated by the  
2 Department, may be represented by counsel in court proceedings  
3 under this Chapter if they are providing services or funding  
4 for services to the respondent, or if an order by the court  
5 directing said entity to provide services or funding for  
6 services to the respondent is being sought by any party.

7 (Source: P.A. 89-439, eff. 6-1-96.)

8 (405 ILCS 5/3-400) (from Ch. 91 1/2, par. 3-400)

9 Sec. 3-400. Voluntary admission to mental health facility.

10 (a) Any person 16 or older, including a person adjudicated  
11 a disabled person, may be admitted to a mental health facility  
12 as a voluntary recipient for treatment of a mental illness upon  
13 the filing of an application with the facility director of the  
14 facility if the facility director determines and documents in  
15 the recipient's medical record that the person (1) is  
16 clinically suitable for admission as a voluntary recipient and  
17 (2) has the capacity to consent to voluntary admission.

18 (b) For purposes of consenting to voluntary admission, a  
19 person has the capacity to consent to voluntary admission if,  
20 in the professional judgment of the facility director or his or  
21 her designee, the person is able to understand that:

22 (1) He or she is being admitted to a mental health  
23 facility.

24 (2) He or she may request discharge at any time. The  
25 request must be in writing, and discharge is not automatic.

1           (3) Within 5 business days after receipt of the written  
2           request for discharge, the facility must either discharge  
3           the person or initiate commitment proceedings.

4           (c) No mental health facility shall require the completion  
5           of a petition or certificate as a condition of accepting the  
6           admission of a recipient who is being transported to that  
7           facility from any other inpatient or outpatient healthcare  
8           facility if the recipient has completed an application for  
9           voluntary admission to the receiving facility pursuant to this  
10          Section.

11          (Source: P.A. 96-612, eff. 1-1-10.)

12           (405 ILCS 5/3-401.1 new)

13           Sec. 3-401.1. Transportation to mental health facility.  
14           Upon receipt of an application for admission prepared pursuant  
15           to this Article, any licensed ambulance service may transport a  
16           recipient to a mental health facility or from one mental health  
17           facility to another. An ambulance service, acting in good faith  
18           and without negligence in connection with the transportation of  
19           recipients shall incur no liability, civil or criminal, by  
20           reason of such transportation.

21           (405 ILCS 5/3-751)

22           Sec. 3-751. Involuntary admission; petition.

23           (a) Any person 18 years of age or older may execute a  
24           petition asserting that another person is subject to

1 involuntary admission on an outpatient basis. The petition  
2 shall be prepared pursuant to paragraph (b) of Section 3-601  
3 and shall be filed with the court in the county where the  
4 respondent resides or is present.

5 (b) The court may inquire of the petitioner whether there  
6 are reasonable grounds to believe that the facts stated in the  
7 petition are true and whether the respondent is subject to  
8 involuntary admission on an outpatient basis.

9 (c) A petition for involuntary admission on an outpatient  
10 basis may be combined with or accompanied by a petition for  
11 involuntary admission on an inpatient basis under Article VII.

12 (d) Notwithstanding any other provision in this Chapter, a  
13 petition may be filed under this Article prior to the  
14 expiration of an agreed order for outpatient admission issued  
15 pursuant to Section 3-801.5 of this Chapter, provided that the  
16 recipient has refused to agree to an extension of the agreed  
17 order as provided in subsection (g) of Section 3-801.5. The  
18 filing of such a petition at least 5 days prior to the  
19 expiration of such an agreed order shall continue the order in  
20 effect pending the disposition of the petition.

21 (e) A petition for involuntary outpatient commitment may be  
22 filed pursuant to this Section concerning a person who has been  
23 admitted to a mental health facility on an informal basis under  
24 Section 3-300 of this Code or as a voluntary recipient under  
25 Section 3-400 of this Code provided that such a person has a  
26 documented history of illness and treatment demonstrating that

1 he or she is unlikely to continue to receive needed treatment  
2 following release from informal or voluntary admission and that  
3 an order for alternative treatment or for care and custody is  
4 necessary in order to ensure continuity of treatment outside a  
5 mental health facility. The filing of such a petition shall not  
6 prevent the recipient from requesting and obtaining a discharge  
7 pursuant to subsection (b) of Section 3-300 or Section 3-404,  
8 nor shall it prevent the facility director from discharging the  
9 recipient pursuant to Section 3-902 of this Code.

10 (Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

11 (405 ILCS 5/3-800) (from Ch. 91 1/2, par. 3-800)

12 Sec. 3-800. (a) Unless otherwise indicated, court hearings  
13 under this Chapter shall be held pursuant to this Article.  
14 Hearings shall be held in such quarters as the court directs.  
15 To the extent practical, hearings shall be held in the mental  
16 health facility where the respondent is hospitalized. Any party  
17 may request a change of venue or transfer to any other county  
18 because of the convenience of parties or witnesses or the  
19 condition of the respondent. The respondent may request to have  
20 the proceedings transferred to the county of his residence.

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

1 (c) Court hearings under this Chapter, including hearings  
2 under Section 2-107.1, shall be open to the press and public  
3 unless the respondent or some other party requests that they be  
4 closed. The court may also indicate its intention to close a  
5 hearing, including when it determines that the respondent may  
6 be unable to make a reasoned decision to request that the  
7 hearing be closed. A request that a hearing be closed shall be  
8 granted unless there is an objection to closing the hearing by  
9 a party or any other person. If an objection is made, the court  
10 shall not close the hearing unless, following a hearing, it  
11 determines that the patient's interest in having the hearing  
12 closed is compelling. The court shall support its determination  
13 with written findings of fact and conclusions of law. The court  
14 shall not close the hearing if the respondent objects to its  
15 closure. Whenever a court determines that a hearing shall be  
16 closed, access to the records of the hearing, including but not  
17 limited to transcripts and pleadings, shall be limited to the  
18 parties involved in the hearing, court personnel, and any  
19 person or agency providing mental health services that are the  
20 subject of the hearing. Access may also be granted, however,  
21 pursuant to the provisions of the Mental Health and  
22 Developmental Disabilities Confidentiality Act.

23 (d) The provisions of subsection (a-5) of Section 6 of the  
24 Rights of Crime Victims and Witnesses Act shall apply to the  
25 initial commitment hearing, as provided under Section 5-2-4 of  
26 the Unified Code of Corrections, for a respondent found not

1 guilty by reason of insanity of a violent crime in a criminal  
2 proceeding and the hearing has been ordered by the court under  
3 this Code to determine if the defendant is:

4 (1) in need of mental health services on an inpatient  
5 basis;

6 (2) in need of mental health services on an outpatient  
7 basis; or

8 (3) not in need of mental health services.

9 While the impact statement to the court allowed under this  
10 subsection (d) may include the impact that the respondent's  
11 criminal conduct has had upon the victim, victim's  
12 representative, or victim's family or household member, the  
13 court may only consider the impact statement along with all  
14 other appropriate factors in determining the:

15 (i) threat of serious physical harm posed by the  
16 respondent to himself or herself, or to another person;

17 (ii) location of inpatient or outpatient mental health  
18 services ordered by the court, but only after complying  
19 with all other applicable administrative requirements,  
20 rules, and statutory requirements;

21 (iii) maximum period of commitment for inpatient  
22 mental health services; and

23 (iv) conditions of release for outpatient mental  
24 health services ordered by the court.

25 (e) Notwithstanding the provisions of Section 2-1009 of the  
26 Code of Civil Procedure, a respondent may object to a motion

1 for voluntary dismissal and the court may refuse to grant such  
2 a dismissal for good cause shown.

3 (Source: P.A. 96-117, eff. 1-1-10.)

4 (405 ILCS 5/3-801) (from Ch. 91 1/2, par. 3-801)

5 Sec. 3-801. A respondent may request admission as an  
6 informal or voluntary recipient at any time prior to an  
7 adjudication that he is subject to involuntary admission on an  
8 inpatient or outpatient basis. The facility director shall  
9 approve such a request unless the facility director determines  
10 that the respondent lacks the capacity to consent to informal  
11 or voluntary admission or that informal or voluntary admission  
12 is clinically inappropriate. The director shall not find that  
13 voluntary admission is clinically inappropriate in the absence  
14 of a documented history of the respondent's illness and  
15 treatment demonstrating that the respondent is unlikely to  
16 continue to receive needed treatment following release from  
17 informal or voluntary admission and that an order for  
18 involuntary admission on an outpatient basis is necessary in  
19 order to ensure continuity of treatment outside a mental health  
20 facility.

21 If the facility director approves such a request, the  
22 petitioner shall be notified of the request and of his or her  
23 right to object thereto, if the petitioner has requested such  
24 notification on that individual recipient. The court may  
25 dismiss the pending proceedings, but shall consider any

1 objection made by ~~either~~ the petitioner, the respondent, or the  
2 State's Attorney and may require proof that such dismissal is  
3 in the best interest of the respondent and of the public. If  
4 voluntary admission is accepted and the petition is dismissed  
5 by the court, notice shall be provided to the petitioner,  
6 orally and in writing, of his or her right to receive notice of  
7 the recipient's discharge pursuant to Section 3-902(d).

8 (Source: P.A. 96-570, eff. 1-1-10; 96-1399, eff. 7-29-10;  
9 96-1453, eff. 8-20-10.)

10 (405 ILCS 5/3-801.5)

11 Sec. 3-801.5. Agreed order for admission on an outpatient  
12 basis.

13 (a) At any time before the conclusion of the hearing and  
14 the entry of the court's findings, a respondent may enter into  
15 an agreement to be subject to an order for admission on an  
16 outpatient basis as provided for in Sections 3-811, 3-812, and  
17 ~~3-813, and 3-815~~ of this Code, provided that:

18 (1) The court and the parties have been presented with  
19 a written report pursuant to Section 3-810 of this Code  
20 containing a recommendation for court-ordered admission on  
21 an outpatient basis and setting forth in detail the  
22 conditions for such an order, and the court is satisfied  
23 that the proposal for admission on an outpatient basis is  
24 in the best interest of the respondent and of the public.

25 (2) The court advises the respondent of the conditions



1 of the proposed order in open court and is satisfied that  
2 the respondent understands and agrees to the conditions of  
3 the proposed order for admission on an outpatient basis.

4 (3) The proposed custodian is advised of the  
5 recommendation for care and custody and agrees to abide by  
6 the terms of the proposed order.

7 (4) No such order may require the respondent to be  
8 hospitalized except as provided in subsection (b) of this  
9 Section.

10 (5) No order may include as one of its conditions the  
11 administration of psychotropic medication, unless the  
12 court determines, based on the documented history of the  
13 respondent's treatment and illness, that the respondent is  
14 unlikely to continue to receive needed psychotropic  
15 medication in the absence of such an order.

16 (b) An agreed order of care and custody entered pursuant to  
17 this Section may grant the custodian the authority to admit a  
18 respondent to a hospital if the respondent fails to comply with  
19 the conditions of the agreed order. If necessary in order to  
20 obtain the hospitalization of the respondent, the custodian may  
21 apply to the court for an order authorizing an officer of the  
22 peace to take the respondent into custody and transport the  
23 respondent to the hospital specified in the agreed order. The  
24 provisions of Section 3-605 of this Code shall govern the  
25 transportation of the respondent to a mental health facility,  
26 except to the extent that those provisions are inconsistent

1 with this Section. However, a person admitted to a hospital  
2 pursuant to powers granted under an agreed order for care and  
3 custody shall be treated as a voluntary recipient pursuant to  
4 Article IV of this Chapter and shall be advised immediately of  
5 his or her right to request a discharge pursuant to Section  
6 3-403 of this Code.

7 (c) If the court has appointed counsel for the respondent  
8 pursuant to Section 3-805 of this Code, that appointment shall  
9 continue for the duration of any order entered under this  
10 Section, and the respondent shall be represented by counsel in  
11 any proceeding held pursuant to this Section.

12 (d) An order entered under this Section shall not  
13 constitute a finding that the respondent is subject to  
14 involuntary admission on an inpatient or outpatient basis.

15 (e) Nothing in this Section shall be deemed to create an  
16 agency relationship between the respondent and any custodian  
17 appointed pursuant to this Section.

18 (f) Notwithstanding any other provision of Illinois law, no  
19 respondent may be cited for contempt for violating the terms  
20 and conditions of his or her agreed order of care and custody.

21 (g) An order entered under this Section may be extended  
22 with the agreement of the parties for additional 180-day  
23 periods.

24 (Source: P.A. 96-1399, eff. 7-29-10; 96-1453, eff. 8-20-10.)

25 Section 10. The Mental Health and Developmental

1 Disabilities Confidentiality Act is amended by changing  
2 Section 11 as follows:

3 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

4 Sec. 11. Disclosure of records and communications. Records  
5 and communications may be disclosed:

6 (i) in accordance with the provisions of the Abused and  
7 Neglected Child Reporting Act, subsection (u) of Section 5  
8 of the Children and Family Services Act, or Section 7.4 of  
9 the Child Care Act of 1969;

10 (ii) when, and to the extent, a therapist, in his or  
11 her sole discretion, determines that disclosure is  
12 necessary to initiate or continue civil commitment or  
13 involuntary treatment proceedings under the laws of this  
14 State or to otherwise protect the recipient or other person  
15 against a clear, imminent risk of serious physical or  
16 mental injury or disease or death being inflicted upon the  
17 recipient or by the recipient on himself or another;

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

22 (iv) when disclosure is necessary to collect sums or  
23 receive third party payment representing charges for  
24 mental health or developmental disabilities services  
25 provided by a therapist or agency to a recipient under

1 Chapter V of the Mental Health and Developmental  
2 Disabilities Code or to transfer debts under the  
3 Uncollected State Claims Act; however, disclosure shall be  
4 limited to information needed to pursue collection, and the  
5 information so disclosed shall not be used for any other  
6 purposes nor shall it be redisclosed except in connection  
7 with collection activities;

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

13 (vi) in judicial proceedings under Article VIII of  
14 Chapter III and Article V of Chapter IV of the Mental  
15 Health and Developmental Disabilities Code and proceedings  
16 and investigations preliminary thereto, to the State's  
17 Attorney for the county or residence of a person who is the  
18 subject of such proceedings, or in which the person is  
19 found, or in which the facility is located, to the attorney  
20 representing the petitioner in the judicial proceedings,  
21 to the attorney representing the recipient in the judicial  
22 proceedings, to any person or agency providing mental  
23 health services that are the subject of the proceedings and  
24 to that person's or agency's attorney, to any court  
25 personnel, including but not limited to judges and circuit  
26 court clerks, and to a guardian ad litem if one has been

1 appointed by the court. Information ~~, provided that the~~  
2 ~~information so~~ disclosed under this subsection shall not be  
3 utilized for any other purpose nor be redisclosed except in  
4 connection with the proceedings or investigations. ~~†~~  
5 Copies of any records provided to counsel for a petitioner  
6 shall be deleted or destroyed at the end of the proceedings  
7 and counsel for petitioner shall certify to the court in  
8 writing that he or she has done so. At the request of a  
9 recipient or his or her counsel, the court shall issue a  
10 protective order insuring the confidentiality of any  
11 records or communications provided to counsel for a  
12 petitioner.

13 (vii) when, and to the extent disclosure is necessary  
14 to comply with the requirements of the Census Bureau in  
15 taking the federal Decennial Census;

16 (viii) when, and to the extent, in the therapist's sole  
17 discretion, disclosure is necessary to warn or protect a  
18 specific individual against whom a recipient has made a  
19 specific threat of violence where there exists a  
20 therapist-recipient relationship or a special  
21 recipient-individual relationship;

22 (ix) in accordance with the Sex Offender Registration  
23 Act;

24 (x) in accordance with the Rights of Crime Victims and  
25 Witnesses Act;

26 (xi) in accordance with Section 6 of the Abused and

1 Neglected Long Term Care Facility Residents Reporting Act;  
2 and

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

5 Any person, institution, or agency, under this Act,  
6 participating in good faith in the making of a report under the  
7 Abused and Neglected Child Reporting Act or in the disclosure  
8 of records and communications under this Section, shall have  
9 immunity from any liability, civil, criminal or otherwise, that  
10 might result by reason of such action. For the purpose of any  
11 proceeding, civil or criminal, arising out of a report or  
12 disclosure under this Section, the good faith of any person,  
13 institution, or agency so reporting or disclosing shall be  
14 presumed.

15 (Source: P.A. 95-331, eff. 8-21-07; 96-466, eff. 8-14-09;  
16 revised 9-16-10.)

17 Section 15. The Probate Act of 1975 is amended by changing  
18 Section 11a-10 as follows:

19 (755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

20 Sec. 11a-10. Procedures preliminary to hearing.

21 (a) Upon the filing of a petition pursuant to Section  
22 11a-8, the court shall set a date and place for hearing to take  
23 place within 30 days. The court shall appoint a guardian ad  
24 litem to report to the court concerning the respondent's best

1 interests consistent with the provisions of this Section,  
2 except that the appointment of a guardian ad litem shall not be  
3 required when the court determines that such appointment is not  
4 necessary for the protection of the respondent or a reasonably  
5 informed decision on the petition. If the guardian ad litem is  
6 not a licensed attorney, he or she shall be qualified, by  
7 training or experience, to work with or advocate for the  
8 developmentally disabled, mentally ill, physically disabled,  
9 the elderly, or persons disabled because of mental  
10 deterioration, depending on the type of disability that is  
11 alleged in the petition. The court may allow the guardian ad  
12 litem reasonable compensation. The guardian ad litem may  
13 consult with a person who by training or experience is  
14 qualified to work with persons with a developmental disability,  
15 persons with mental illness, or physically disabled persons, or  
16 persons disabled because of mental deterioration, depending on  
17 the type of disability that is alleged. The guardian ad litem  
18 shall personally observe the respondent prior to the hearing  
19 and shall inform him orally and in writing of the contents of  
20 the petition and of his rights under Section 11a-11. The  
21 guardian ad litem shall also attempt to elicit the respondent's  
22 position concerning the adjudication of disability, the  
23 proposed guardian, a proposed change in residential placement,  
24 changes in care that might result from the guardianship, and  
25 other areas of inquiry deemed appropriate by the court.  
26 Notwithstanding any provision in the Mental Health and

1 Developmental Disabilities Confidentiality Act or any other  
2 law, a guardian ad litem shall have the right to inspect and  
3 copy any medical or mental health record of the respondent  
4 which the guardian ad litem deems necessary, provided that the  
5 information so disclosed shall not be utilized for any other  
6 purpose nor be redisclosed except in connection with the  
7 proceedings. At or before the hearing, the guardian ad litem  
8 shall file a written report detailing his or her observations  
9 of the respondent, the responses of the respondent to any of  
10 the inquires detailed in this Section, the opinion of the  
11 guardian ad litem or other professionals with whom the guardian  
12 ad litem consulted concerning the appropriateness of  
13 guardianship, and any other material issue discovered by the  
14 guardian ad litem. The guardian ad litem shall appear at the  
15 hearing and testify as to any issues presented in his or her  
16 report.

17 (b) The court (1) may appoint counsel for the respondent,  
18 if the court finds that the interests of the respondent will be  
19 best served by the appointment, and (2) shall appoint counsel  
20 upon respondent's request or if the respondent takes a position  
21 adverse to that of the guardian ad litem. The respondent shall  
22 be permitted to obtain the appointment of counsel either at the  
23 hearing or by any written or oral request communicated to the  
24 court prior to the hearing. The summons shall inform the  
25 respondent of this right to obtain appointed counsel. The court  
26 may allow counsel for the respondent reasonable compensation.



1 (c) If the respondent is unable to pay the fee of the  
2 guardian ad litem or appointed counsel, or both, the court may  
3 enter an order for the petitioner to pay all such fees or such  
4 amounts as the respondent or the respondent's estate may be  
5 unable to pay. However, in cases where the Office of State  
6 Guardian is the petitioner, consistent with Section 30 of the  
7 Guardianship and Advocacy Act, where an elder abuse provider  
8 agency is the petitioner, pursuant to Section 9 of the Elder  
9 Abuse and Neglect Act, or where the Department of Human  
10 Services Office of Inspector General is the petitioner,  
11 consistent with Section 45 of the Abuse of Adults with  
12 Disabilities Intervention Act, no guardian ad litem or legal  
13 fees shall be assessed against the Office of State Guardian,  
14 the elder abuse provider agency, or the Department of Human  
15 Services Office of Inspector General.

16 (d) The hearing may be held at such convenient place as the  
17 court directs, including at a facility in which the respondent  
18 resides.

19 (e) Unless he is the petitioner, the respondent shall be  
20 personally served with a copy of the petition and a summons not  
21 less than 14 days before the hearing. The summons shall be  
22 printed in large, bold type and shall include the following  
23 notice:

24 NOTICE OF RIGHTS OF RESPONDENT

25 You have been named as a respondent in a guardianship  
26 petition asking that you be declared a disabled person. If the

1 court grants the petition, a guardian will be appointed for  
2 you. A copy of the guardianship petition is attached for your  
3 convenience.

4 The date and time of the hearing are:

5 The place where the hearing will occur is:

6 The Judge's name and phone number is:

7 If a guardian is appointed for you, the guardian may be  
8 given the right to make all important personal decisions for  
9 you, such as where you may live, what medical treatment you may  
10 receive, what places you may visit, and who may visit you. A  
11 guardian may also be given the right to control and manage your  
12 money and other property, including your home, if you own one.  
13 You may lose the right to make these decisions for yourself.

14 You have the following legal rights:

15 (1) You have the right to be present at the court  
16 hearing.

17 (2) You have the right to be represented by a lawyer,  
18 either one that you retain, or one appointed by the Judge.

19 (3) You have the right to ask for a jury of six persons  
20 to hear your case.

21 (4) You have the right to present evidence to the court  
22 and to confront and cross-examine witnesses.

23 (5) You have the right to ask the Judge to appoint an  
24 independent expert to examine you and give an opinion about  
25 your need for a guardian.

26 (6) You have the right to ask that the court hearing be

1 closed to the public.

2 (7) You have the right to tell the court whom you  
3 prefer to have for your guardian.

4 You do not have to attend the court hearing if you do not  
5 want to be there. If you do not attend, the Judge may appoint a  
6 guardian if the Judge finds that a guardian would be of benefit  
7 to you. The hearing will not be postponed or canceled if you do  
8 not attend.

9 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO  
10 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE  
11 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.  
12 IF YOU DO NOT WANT A GUARDIAN OF IF YOU HAVE ANY OTHER  
13 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND  
14 TELL THE JUDGE.

15 Service of summons and the petition may be made by a  
16 private person 18 years of age or over who is not a party to the  
17 action.

18 (f) Notice of the time and place of the hearing shall be  
19 given by the petitioner by mail or in person to those persons,  
20 including the proposed guardian, whose names and addresses  
21 appear in the petition and who do not waive notice, not less  
22 than 14 days before the hearing.

23 (Source: P.A. 95-373, eff. 8-23-07; 96-1052, eff. 7-14-10.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.