



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4623

Introduced 2/1/2012, by Rep. Patricia R. Bellock

SYNOPSIS AS INTRODUCED:

See Index

Amends the Mental Health and Developmental Disabilities Code. Provides that if the respondent is unable to obtain an examination, in a proceeding to determine whether he or she is subject to involuntary admission, the respondent may request that the court order an examination to be made by a physician, qualified examiner, clinical psychologist, or other expert. Provides that if the respondent is unable to obtain an examination, in a proceeding for the administration of psychotropic medication or electroconvulsive therapy, the respondent may request that the court order an examination to be made by an impartial psychiatrist. Provides that if the respondent is receiving treatment from the Department of Human Services, the examiner shall not be in the employ of the Department of Human Services. Provides that if the respondent is receiving treatment from a hospital that is not affiliated with the Department of Human Services, the examiner shall not be in the employ of such hospital. Provides that if the respondent is in a hospital, the examiner shall be given direct access to the respondent in order to perform the examination. Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that the Department of Human Services may disclose records or communications of persons receiving care from the Department or under contract with the Department, without consent, to not-for-profit institutions of higher education engaged in research concerning the safety, effectiveness, or cost-effectiveness of mental health treatments. Effective immediately.

LRB097 16961 RLC 62150 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 3-804 and
6 3-812 as follows:

7 (405 ILCS 5/3-804) (from Ch. 91 1/2, par. 3-804)

8 Sec. 3-804. The respondent is entitled to secure an
9 independent examination by a physician, qualified examiner,
10 clinical psychologist or other expert of his choice. If the
11 respondent is unable to obtain an examination, in a proceeding
12 to determine whether he or she is subject to involuntary
13 admission, the respondent may request that the court order an
14 examination to be made by a physician, qualified examiner,
15 clinical psychologist, or other expert. If the respondent is
16 unable to obtain an examination, in a proceeding under Section
17 2-107.1 of this Code, the respondent may request that the court
18 order an examination to be made by an impartial psychiatrist.
19 If the respondent is receiving treatment from the Department of
20 Human Services, the examiner shall not be in the employ of the
21 Department of Human Services. If the respondent is receiving
22 treatment from a hospital that is not affiliated with the
23 Department of Human Services, the examiner shall not be in the

1 employ of such hospital. If the respondent is in a hospital,
2 the examiner shall be given direct access to the respondent in
3 order to perform the examination. ~~he may request that the court~~
4 ~~order an examination to be made by an impartial medical expert~~
5 ~~pursuant to Supreme Court Rules or by a qualified examiner,~~
6 ~~clinical psychologist or other expert.~~ Any such physician or
7 other examiner, whether secured by the respondent or appointed
8 by the court, may interview by telephone or in person any
9 witnesses or other persons listed in the petition for
10 involuntary admission. The physician or other examiner shall
11 ~~may~~ submit to the court a report in which his findings are
12 described in detail and the report shall be made available to
13 the attorneys for the parties. Determination of the
14 compensation of the ~~physician, qualified examiner, clinical~~
15 ~~psychologist~~ or other expert shall be made by the Court. The
16 fee of the examiner shall be paid by the respondent's county of
17 residence unless the respondent is not a resident of the State
18 of Illinois, in which case the fee shall be paid by the county
19 in which the proceeding is pending ~~and its payment shall be~~
20 ~~governed by Supreme Court Rule.~~

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

22 (405 ILCS 5/3-812) (from Ch. 91 1/2, par. 3-812)

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

25 (a) If a respondent is found subject to involuntary

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

6 (b) An order placing the respondent in the care and custody
7 of a relative or other person shall specify the powers and
8 duties of the custodian. An order of care and custody entered
9 pursuant to this Section may grant the custodian the authority
10 to admit a respondent to a hospital if the respondent fails to
11 comply with the conditions of the order. If necessary in order
12 to obtain the hospitalization of the respondent, the custodian
13 may apply to the court for an order authorizing an officer of
14 the peace to take the respondent into custody and transport the
15 respondent to a mental health facility ~~the hospital specified~~
16 ~~in the agreed order~~. The provisions of Section 3-605 shall
17 govern the transportation of the respondent to a mental health
18 facility, except to the extent that those provisions are
19 inconsistent with this Section. No person admitted to a
20 hospital pursuant to this subsection shall be detained for
21 longer than 24 hours, excluding Saturdays, Sundays, and
22 holidays, unless, within that period, a petition for
23 involuntary admission on an inpatient basis and a certificate
24 supporting such petition have been filed as provided in Section
25 3-611.

26 (c) Alternative treatment shall not be ordered unless the

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

1 been filed as provided in Section 3-611.

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

3 Section 10. The Mental Health and Developmental
4 Disabilities Confidentiality Act is amended by changing
5 Sections 9.1 and 10 as follows:

6 (740 ILCS 110/9.1) (from Ch. 91 1/2, par. 809.1)

7 Sec. 9.1. (a) The Department of Human Services, and other
8 agencies and institutions which provide services, may disclose
9 a recipient's record or communications, without consent, to the
10 Institute for Juvenile Research and the Institute for the Study
11 of Developmental Disabilities for purposes of research,
12 education and treatment. The Institutes shall not redisclose
13 any personally identifiable information, unless necessary for
14 treatment of the identified recipient.

15 (b) The Department of Human Services may disclose records
16 or communications of persons receiving care from the Department
17 or under contract with the Department, without consent, to
18 not-for-profit institutions of higher education engaged in
19 research concerning the safety, effectiveness, or
20 cost-effectiveness of mental health treatments, provided that
21 the Department has entered into a written agreement with the
22 persons or institutions to whom the records and communications
23 are disclosed, which agreement shall provide that records and
24 communications are used solely for the purpose of the research

1 and that the records and communications are protected from
2 further disclosure. The Department may refuse to disclose
3 records or communications under this Section if, in its sole
4 discretion, it determines that the identity of recipients or
5 any of the records and communications will not be adequately
6 protected. The Department shall promulgate rules concerning
7 the use of any records or communications disclosed under this
8 Section, including but not limited to rules prohibiting further
9 disclosure and compliance with all federal and State laws and
10 regulations concerning the conduct of research.

11 (Source: P.A. 89-507, eff. 7-1-97.)

12 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

13 Sec. 10. (a) Except as provided herein, in any civil,
14 criminal, administrative, or legislative proceeding, or in any
15 proceeding preliminary thereto, a recipient, and a therapist on
16 behalf and in the interest of a recipient, has the privilege to
17 refuse to disclose and to prevent the disclosure of the
18 recipient's record or communications.

19 (1) Records and communications may be disclosed in a
20 civil, criminal or administrative proceeding in which the
21 recipient introduces his mental condition or any aspect of
22 his services received for such condition as an element of
23 his claim or defense, if and only to the extent the court
24 in which the proceedings have been brought, or, in the case
25 of an administrative proceeding, the court to which an

1 appeal or other action for review of an administrative
2 determination may be taken, finds, after in camera
3 examination of testimony or other evidence, that it is
4 relevant, probative, not unduly prejudicial or
5 inflammatory, and otherwise clearly admissible; that other
6 satisfactory evidence is demonstrably unsatisfactory as
7 evidence of the facts sought to be established by such
8 evidence; and that disclosure is more important to the
9 interests of substantial justice than protection from
10 injury to the therapist-recipient relationship or to the
11 recipient or other whom disclosure is likely to harm.
12 Except in a criminal proceeding in which the recipient, who
13 is accused in that proceeding, raises the defense of
14 insanity, no record or communication between a therapist
15 and a recipient shall be deemed relevant for purposes of
16 this subsection, except the fact of treatment, the cost of
17 services and the ultimate diagnosis unless the party
18 seeking disclosure of the communication clearly
19 establishes in the trial court a compelling need for its
20 production. However, for purposes of this Act, in any
21 action brought or defended under the Illinois Marriage and
22 Dissolution of Marriage Act, or in any action in which pain
23 and suffering is an element of the claim, mental condition
24 shall not be deemed to be introduced merely by making such
25 claim and shall be deemed to be introduced only if the
26 recipient or a witness on his behalf first testifies

1 concerning the record or communication.

2 (2) Records or communications may be disclosed in a
3 civil proceeding after the recipient's death when the
4 recipient's physical or mental condition has been
5 introduced as an element of a claim or defense by any party
6 claiming or defending through or as a beneficiary of the
7 recipient, provided the court finds, after in camera
8 examination of the evidence, that it is relevant,
9 probative, and otherwise clearly admissible; that other
10 satisfactory evidence is not available regarding the facts
11 sought to be established by such evidence; and that
12 disclosure is more important to the interests of
13 substantial justice than protection from any injury which
14 disclosure is likely to cause.

15 (3) In the event of a claim made or an action filed by
16 a recipient, or, following the recipient's death, by any
17 party claiming as a beneficiary of the recipient for injury
18 caused in the course of providing services to such
19 recipient, the therapist and other persons whose actions
20 are alleged to have been the cause of injury may disclose
21 pertinent records and communications to an attorney or
22 attorneys engaged to render advice about and to provide
23 representation in connection with such matter and to
24 persons working under the supervision of such attorney or
25 attorneys, and may testify as to such records or
26 communication in any administrative, judicial or discovery

1 proceeding for the purpose of preparing and presenting a
2 defense against such claim or action.

3 (4) Records and communications made to or by a
4 therapist in the course of examination ordered by a court
5 for good cause shown may, if otherwise relevant and
6 admissible, be disclosed in a civil, criminal, or
7 administrative proceeding in which the recipient is a party
8 or in appropriate pretrial proceedings, provided such
9 court has found that the recipient has been as adequately
10 and as effectively as possible informed before submitting
11 to such examination that such records and communications
12 would not be considered confidential or privileged. Such
13 records and communications shall be admissible only as to
14 issues involving the recipient's physical or mental
15 condition and only to the extent that these are germane to
16 such proceedings. Nothing in this subsection shall be
17 interpreted to permit the disclosure of records or
18 communications made pursuant to Section 3-803 or 3-804 of
19 the Mental Health and Developmental Disabilities Code,
20 except as provided in clause (vi) of Section 11 of this
21 Act.

22 (5) Records and communications may be disclosed in a
23 proceeding under the Probate Act of 1975, to determine a
24 recipient's competency or need for guardianship, provided
25 that the disclosure is made only with respect to that
26 issue.

1 (6) Records and communications may be disclosed to a
2 court-appointed therapist, psychologist, or psychiatrist
3 for use in determining a person's fitness to stand trial if
4 the records were made within the 180-day period immediately
5 preceding the date of the therapist's, psychologist's or
6 psychiatrist's court appointment. These records and
7 communications shall be admissible only as to the issue of
8 the person's fitness to stand trial. Records and
9 communications may be disclosed when such are made during
10 treatment which the recipient is ordered to undergo to
11 render him fit to stand trial on a criminal charge,
12 provided that the disclosure is made only with respect to
13 the issue of fitness to stand trial.

14 (7) Records and communications of the recipient may be
15 disclosed in any civil or administrative proceeding
16 involving the validity of or benefits under a life,
17 accident, health or disability insurance policy or
18 certificate, or Health Care Service Plan Contract,
19 insuring the recipient, but only if and to the extent that
20 the recipient's mental condition, or treatment or services
21 in connection therewith, is a material element of any claim
22 or defense of any party, provided that information sought
23 or disclosed shall not be redisclosed except in connection
24 with the proceeding in which disclosure is made.

25 (8) Records or communications may be disclosed when
26 such are relevant to a matter in issue in any action

1 brought under this Act and proceedings preliminary
2 thereto, provided that any information so disclosed shall
3 not be utilized for any other purpose nor be redisclosed
4 except in connection with such action or preliminary
5 proceedings.

6 (9) Records and communications of the recipient may be
7 disclosed in investigations of and trials for homicide when
8 the disclosure relates directly to the fact or immediate
9 circumstances of the homicide.

10 (10) Records and communications of a deceased
11 recipient may be disclosed to a coroner conducting a
12 preliminary investigation into the recipient's death under
13 Section 3-3013 of the Counties Code. However, records and
14 communications of the deceased recipient disclosed in an
15 investigation shall be limited solely to the deceased
16 recipient's records and communications relating to the
17 factual circumstances of the incident being investigated
18 in a mental health facility.

19 (11) Records and communications of a recipient shall be
20 disclosed in a proceeding where a petition or motion is
21 filed under the Juvenile Court Act of 1987 and the
22 recipient is named as a parent, guardian, or legal
23 custodian of a minor who is the subject of a petition for
24 wardship as described in Section 2-3 of that Act or a minor
25 who is the subject of a petition for wardship as described
26 in Section 2-4 of that Act alleging the minor is abused,

1 neglected, or dependent or the recipient is named as a
2 parent of a child who is the subject of a petition,
3 supplemental petition, or motion to appoint a guardian with
4 the power to consent to adoption under Section 2-29 of the
5 Juvenile Court Act of 1987.

6 (12) Records and communications of a recipient may be
7 disclosed when disclosure is necessary to collect sums or
8 receive third party payment representing charges for
9 mental health or developmental disabilities services
10 provided by a therapist or agency to a recipient; however,
11 disclosure shall be limited to information needed to pursue
12 collection, and the information so disclosed may not be
13 used for any other purposes nor may it be redisclosed
14 except in connection with collection activities. Whenever
15 records are disclosed pursuant to this subdivision (12),
16 the recipient of the records shall be advised in writing
17 that any person who discloses mental health records and
18 communications in violation of this Act may be subject to
19 civil liability pursuant to Section 15 of this Act or to
20 criminal penalties pursuant to Section 16 of this Act or
21 both.

22 (b) Before a disclosure is made under subsection (a), any
23 party to the proceeding or any other interested person may
24 request an in camera review of the record or communications to
25 be disclosed. The court or agency conducting the proceeding may
26 hold an in camera review on its own motion. When, contrary to

1 the express wish of the recipient, the therapist asserts a
2 privilege on behalf and in the interest of a recipient, the
3 court may require that the therapist, in an in camera hearing,
4 establish that disclosure is not in the best interest of the
5 recipient. The court or agency may prevent disclosure or limit
6 disclosure to the extent that other admissible evidence is
7 sufficient to establish the facts in issue. The court or agency
8 may enter such orders as may be necessary in order to protect
9 the confidentiality, privacy, and safety of the recipient or of
10 other persons. Any order to disclose or to not disclose shall
11 be considered a final order for purposes of appeal and shall be
12 subject to interlocutory appeal.

13 (c) A recipient's records and communications may be
14 disclosed to a duly authorized committee, commission or
15 subcommittee of the General Assembly which possesses subpoena
16 and hearing powers, upon a written request approved by a
17 majority vote of the committee, commission or subcommittee
18 members. The committee, commission or subcommittee may request
19 records only for the purposes of investigating or studying
20 possible violations of recipient rights. The request shall
21 state the purpose for which disclosure is sought.

22 The facility shall notify the recipient, or his guardian,
23 and therapist in writing of any disclosure request under this
24 subsection within 5 business days after such request. Such
25 notification shall also inform the recipient, or guardian, and
26 therapist of their right to object to the disclosure within 10

1 business days after receipt of the notification and shall
2 include the name, address and telephone number of the
3 committee, commission or subcommittee member or staff person
4 with whom an objection shall be filed. If no objection has been
5 filed within 15 business days after the request for disclosure,
6 the facility shall disclose the records and communications to
7 the committee, commission or subcommittee. If an objection has
8 been filed within 15 business days after the request for
9 disclosure, the facility shall disclose the records and
10 communications only after the committee, commission or
11 subcommittee has permitted the recipient, guardian or
12 therapist to present his objection in person before it and has
13 renewed its request for disclosure by a majority vote of its
14 members.

15 Disclosure under this subsection shall not occur until all
16 personally identifiable data of the recipient and provider are
17 removed from the records and communications. Disclosure under
18 this subsection shall not occur in any public proceeding.

19 (d) No party to any proceeding described under paragraphs
20 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
21 Section, nor his or her attorney, shall serve a subpoena
22 seeking to obtain access to records or communications under
23 this Act unless the subpoena is accompanied by a written order
24 issued by a judge, authorizing the disclosure of the records or
25 the issuance of the subpoena. No such written order shall be
26 issued without written notice of the motion to the recipient

1 and the treatment provider. Prior to issuance of the order,
2 each party or other person entitled to notice shall be
3 permitted an opportunity to be heard pursuant to subsection (b)
4 of this Section. No person shall comply with a subpoena for
5 records or communications under this Act, unless the subpoena
6 is accompanied by a written order authorizing the issuance of
7 the subpoena or the disclosure of the records. Each subpoena
8 duces tecum issued by a court or administrative agency or
9 served on any person pursuant to this subsection (d) shall
10 include the following language: "No person shall comply with a
11 subpoena for mental health records or communications pursuant
12 to Section 10 of the Mental Health and Developmental
13 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the
14 subpoena is accompanied by a written order that authorizes the
15 issuance of the subpoena and the disclosure of records or
16 communications."

17 (e) When a person has been transported by a peace officer
18 to a mental health facility, then upon the request of a peace
19 officer, if the person is allowed to leave the mental health
20 facility within 48 hours of arrival, excluding Saturdays,
21 Sundays, and holidays, the facility director shall notify the
22 local law enforcement authority prior to the release of the
23 person. The local law enforcement authority may re-disclose the
24 information as necessary to alert the appropriate enforcement
25 or prosecuting authority.

26 (f) A recipient's records and communications shall be

1 disclosed to the Inspector General of the Department of Human
2 Services within 10 business days of a request by the Inspector
3 General (i) in the course of an investigation authorized by the
4 Department of Human Services Act and applicable rule or (ii)
5 during the course of an assessment authorized by the Abuse of
6 Adults with Disabilities Intervention Act and applicable rule.
7 The request shall be in writing and signed by the Inspector
8 General or his or her designee. The request shall state the
9 purpose for which disclosure is sought. Any person who
10 knowingly and willfully refuses to comply with such a request
11 is guilty of a Class A misdemeanor. A recipient's records and
12 communications shall also be disclosed pursuant to subsection
13 (g-5) of Section 1-17 of the Department of Human Services Act
14 in testimony at health care worker registry hearings or
15 preliminary proceedings when such are relevant to the matter in
16 issue, provided that any information so disclosed shall not be
17 utilized for any other purpose nor be redisclosed except in
18 connection with such action or preliminary proceedings.

19 (Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
20 96-1453, eff. 8-20-10; 97-566, eff. 1-1-12.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 405 ILCS 5/3-804 from Ch. 91 1/2, par. 3-804

4 405 ILCS 5/3-812 from Ch. 91 1/2, par. 3-812

5 740 ILCS 110/9.1 from Ch. 91 1/2, par. 809.1

6 740 ILCS 110/10 from Ch. 91 1/2, par. 810