



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB3780

Introduced 2/10/2012, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

740 ILCS 110/10

from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that the mental health records of a recipient may be disclosed in a civil, criminal or administrative proceeding in response to a subpoena, discovery request, or other lawful process in cases involving criminal sexual assault, aggravated criminal sexual assault, criminal sexual abuse, or aggravated criminal sexual abuse when the recipient is the alleged perpetrator of the offense and the disclosure relates directly to the fact or immediate circumstances of the offense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal may be taken, finds, after an in camera examination, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise admissible provided that other satisfactory evidence is not available regarding the facts sought to be established.

LRB097 19369 AJO 64622 b

1 AN ACT concerning civil law.

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 Confidentiality Act is amended by changing  
6 Section 10 as follows:

7 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

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

14 (1) Records and communications may be disclosed in a  
15 civil, criminal or administrative proceeding in which the  
16 recipient introduces his mental condition or any aspect of  
17 his services received for such condition as an element of  
18 his claim or defense, if and only to the extent the court  
19 in which the proceedings have been brought, or, in the case  
20 of an administrative proceeding, the court to which an  
21 appeal or other action for review of an administrative  
22 determination may be taken, finds, after in camera  
23 examination of testimony or other evidence, that it is

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

25 (2) Records or communications may be disclosed in a  
26 civil proceeding after the recipient's death when the

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

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

26 (4) Records and communications made to or by a

1 therapist in the course of examination ordered by a court  
2 for good cause shown may, if otherwise relevant and  
3 admissible, be disclosed in a civil, criminal, or  
4 administrative proceeding in which the recipient is a party  
5 or in appropriate pretrial proceedings, provided such  
6 court has found that the recipient has been as adequately  
7 and as effectively as possible informed before submitting  
8 to such examination that such records and communications  
9 would not be considered confidential or privileged. Such  
10 records and communications shall be admissible only as to  
11 issues involving the recipient's physical or mental  
12 condition and only to the extent that these are germane to  
13 such proceedings.

14 (5) Records and communications may be disclosed in a  
15 proceeding under the Probate Act of 1975, to determine a  
16 recipient's competency or need for guardianship, provided  
17 that the disclosure is made only with respect to that  
18 issue.

19 (6) Records and communications may be disclosed to a  
20 court-appointed therapist, psychologist, or psychiatrist  
21 for use in determining a person's fitness to stand trial if  
22 the records were made within the 180-day period immediately  
23 preceding the date of the therapist's, psychologist's or  
24 psychiatrist's court appointment. These records and  
25 communications shall be admissible only as to the issue of  
26 the person's fitness to stand trial. Records and

1           communications may be disclosed when such are made during  
2           treatment which the recipient is ordered to undergo to  
3           render him fit to stand trial on a criminal charge,  
4           provided that the disclosure is made only with respect to  
5           the issue of fitness to stand trial.

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

17          (8) Records or communications may be disclosed when  
18          such are relevant to a matter in issue in any action  
19          brought under this Act and proceedings preliminary  
20          thereto, provided that any information so disclosed shall  
21          not be utilized for any other purpose nor be redisclosed  
22          except in connection with such action or preliminary  
23          proceedings.

24          (9) Records and communications of the recipient may be  
25          disclosed in investigations of and trials for homicide when  
26          the disclosure relates directly to the fact or immediate

1 circumstances of the homicide.

2 (10) Records and communications of a deceased  
3 recipient may be disclosed to a coroner conducting a  
4 preliminary investigation into the recipient's death under  
5 Section 3-3013 of the Counties Code. However, records and  
6 communications of the deceased recipient disclosed in an  
7 investigation shall be limited solely to the deceased  
8 recipient's records and communications relating to the  
9 factual circumstances of the incident being investigated  
10 in a mental health facility.

11 (11) Records and communications of a recipient shall be  
12 disclosed in a proceeding where a petition or motion is  
13 filed under the Juvenile Court Act of 1987 and the  
14 recipient is named as a parent, guardian, or legal  
15 custodian of a minor who is the subject of a petition for  
16 wardship as described in Section 2-3 of that Act or a minor  
17 who is the subject of a petition for wardship as described  
18 in Section 2-4 of that Act alleging the minor is abused,  
19 neglected, or dependent or the recipient is named as a  
20 parent of a child who is the subject of a petition,  
21 supplemental petition, or motion to appoint a guardian with  
22 the power to consent to adoption under Section 2-29 of the  
23 Juvenile Court Act of 1987.

24 (12) Records and communications of a recipient may be  
25 disclosed when disclosure is necessary to collect sums or  
26 receive third party payment representing charges for

1 mental health or developmental disabilities services  
2 provided by a therapist or agency to a recipient; however,  
3 disclosure shall be limited to information needed to pursue  
4 collection, and the information so disclosed may not be  
5 used for any other purposes nor may it be redisclosed  
6 except in connection with collection activities. Whenever  
7 records are disclosed pursuant to this subdivision (12),  
8 the recipient of the records shall be advised in writing  
9 that any person who discloses mental health records and  
10 communications in violation of this Act may be subject to  
11 civil liability pursuant to Section 15 of this Act or to  
12 criminal penalties pursuant to Section 16 of this Act or  
13 both.

14 (13) Records of the recipient may be disclosed in a  
15 civil, criminal or administrative proceeding in response  
16 to a subpoena, discovery request, or other lawful process  
17 in cases involving criminal sexual assault, aggravated  
18 criminal sexual assault, criminal sexual abuse, or  
19 aggravated criminal sexual abuse as defined in the Criminal  
20 Code of 1961 when the recipient is the alleged perpetrator  
21 of the offense and the disclosure relates directly to the  
22 fact or immediate circumstances of the offense, if and only  
23 to the extent the court in which the proceedings have been  
24 brought, or, in the case of an administrative proceeding,  
25 the court to which an appeal or other action for review of  
26 an administrative determination may be taken, finds, after



1       in camera examination of testimony or other evidence, that  
2       it is relevant, probative, not unduly prejudicial or  
3       inflammatory, and otherwise admissible; that other  
4       satisfactory evidence is not available regarding the facts  
5       sought to be established by such evidence; and that  
6       disclosure is more important to the interests of  
7       substantial justice than protection from any injury which  
8       disclosure is likely to cause.

9       (b) Before a disclosure is made under subsection (a), any  
10      party to the proceeding or any other interested person may  
11      request an in camera review of the record or communications to  
12      be disclosed. The court or agency conducting the proceeding may  
13      hold an in camera review on its own motion. When, contrary to  
14      the express wish of the recipient, the therapist asserts a  
15      privilege on behalf and in the interest of a recipient, the  
16      court may require that the therapist, in an in camera hearing,  
17      establish that disclosure is not in the best interest of the  
18      recipient. The court or agency may prevent disclosure or limit  
19      disclosure to the extent that other admissible evidence is  
20      sufficient to establish the facts in issue. The court or agency  
21      may enter such orders as may be necessary in order to protect  
22      the confidentiality, privacy, and safety of the recipient or of  
23      other persons. Any order to disclose or to not disclose shall  
24      be considered a final order for purposes of appeal and shall be  
25      subject to interlocutory appeal.

26      (c) A recipient's records and communications may be

1 disclosed to a duly authorized committee, commission or  
2 subcommittee of the General Assembly which possesses subpoena  
3 and hearing powers, upon a written request approved by a  
4 majority vote of the committee, commission or subcommittee  
5 members. The committee, commission or subcommittee may request  
6 records only for the purposes of investigating or studying  
7 possible violations of recipient rights. The request shall  
8 state the purpose for which disclosure is sought.

9 The facility shall notify the recipient, or his guardian,  
10 and therapist in writing of any disclosure request under this  
11 subsection within 5 business days after such request. Such  
12 notification shall also inform the recipient, or guardian, and  
13 therapist of their right to object to the disclosure within 10  
14 business days after receipt of the notification and shall  
15 include the name, address and telephone number of the  
16 committee, commission or subcommittee member or staff person  
17 with whom an objection shall be filed. If no objection has been  
18 filed within 15 business days after the request for disclosure,  
19 the facility shall disclose the records and communications to  
20 the committee, commission or subcommittee. If an objection has  
21 been filed within 15 business days after the request for  
22 disclosure, the facility shall disclose the records and  
23 communications only after the committee, commission or  
24 subcommittee has permitted the recipient, guardian or  
25 therapist to present his objection in person before it and has  
26 renewed its request for disclosure by a majority vote of its

1 members.

2 Disclosure under this subsection shall not occur until all  
3 personally identifiable data of the recipient and provider are  
4 removed from the records and communications. Disclosure under  
5 this subsection shall not occur in any public proceeding.

6 (d) No party to any proceeding described under paragraphs  
7 (1), (2), (3), (4), (7), or (8) of subsection (a) of this  
8 Section, nor his or her attorney, shall serve a subpoena  
9 seeking to obtain access to records or communications under  
10 this Act unless the subpoena is accompanied by a written order  
11 issued by a judge, authorizing the disclosure of the records or  
12 the issuance of the subpoena. No such written order shall be  
13 issued without written notice of the motion to the recipient  
14 and the treatment provider. Prior to issuance of the order,  
15 each party or other person entitled to notice shall be  
16 permitted an opportunity to be heard pursuant to subsection (b)  
17 of this Section. No person shall comply with a subpoena for  
18 records or communications under this Act, unless the subpoena  
19 is accompanied by a written order authorizing the issuance of  
20 the subpoena or the disclosure of the records. Each subpoena  
21 duces tecum issued by a court or administrative agency or  
22 served on any person pursuant to this subsection (d) shall  
23 include the following language: "No person shall comply with a  
24 subpoena for mental health records or communications pursuant  
25 to Section 10 of the Mental Health and Developmental  
26 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the

1 subpoena is accompanied by a written order that authorizes the  
2 issuance of the subpoena and the disclosure of records or  
3 communications."

4 (e) When a person has been transported by a peace officer  
5 to a mental health facility, then upon the request of a peace  
6 officer, if the person is allowed to leave the mental health  
7 facility within 48 hours of arrival, excluding Saturdays,  
8 Sundays, and holidays, the facility director shall notify the  
9 local law enforcement authority prior to the release of the  
10 person. The local law enforcement authority may re-disclose the  
11 information as necessary to alert the appropriate enforcement  
12 or prosecuting authority.

13 (f) A recipient's records and communications shall be  
14 disclosed to the Inspector General of the Department of Human  
15 Services within 10 business days of a request by the Inspector  
16 General (i) in the course of an investigation authorized by the  
17 Department of Human Services Act and applicable rule or (ii)  
18 during the course of an assessment authorized by the Abuse of  
19 Adults with Disabilities Intervention Act and applicable rule.  
20 The request shall be in writing and signed by the Inspector  
21 General or his or her designee. The request shall state the  
22 purpose for which disclosure is sought. Any person who  
23 knowingly and willfully refuses to comply with such a request  
24 is guilty of a Class A misdemeanor. A recipient's records and  
25 communications shall also be disclosed pursuant to subsection  
26 (g-5) of Section 1-17 of the Department of Human Services Act

1 in testimony at health care worker registry hearings or  
2 preliminary proceedings when such are relevant to the matter in  
3 issue, provided that any information so disclosed shall not be  
4 utilized for any other purpose nor be redisclosed except in  
5 connection with such action or preliminary proceedings.

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