



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1458

by Rep. Elizabeth Hernandez

SYNOPSIS AS INTRODUCED:

405 ILCS 5/3-812
740 ILCS 110/10

from Ch. 91 1/2, par. 3-812
from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Code. Provides that if necessary in order to obtain the hospitalization of the respondent, a custodian may apply to the court for an order authorizing an officer of the peace to take the respondent into custody and transport the respondent to a mental health facility (instead of to the hospital specified in the agreed order). Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that a party to certain proceedings may also serve a subpoena seeking to obtain access to records or communications under the Act if it is accompanied by the written consent of the person whose records are being sought (instead of only when accompanied by a written order issued by a judge). Provides that each subpoena (instead of subpoena duces tecum) shall contain language informing the person being served of the requirement for the subpoena to be accompanied by a written order or consent.

LRB098 08600 HEP 38718 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 Section 3-812 as
6 follows:

7 (405 ILCS 5/3-812) (from Ch. 91 1/2, par. 3-812)

8 Sec. 3-812. Court ordered admission on an outpatient basis;
9 modification; revocation.

10 (a) If a respondent is found subject to involuntary
11 admission on an outpatient basis, the court may issue an order:
12 (i) placing the respondent in the care and custody of a
13 relative or other person willing and able to properly care for
14 him or her; or (ii) committing the respondent to alternative
15 treatment at a community mental health provider.

16 (b) An order placing the respondent in the care and custody
17 of a relative or other person shall specify the powers and
18 duties of the custodian. An order of care and custody entered
19 pursuant to this Section may grant the custodian the authority
20 to admit a respondent to a hospital if the respondent fails to
21 comply with the conditions of the order. If necessary in order
22 to obtain the hospitalization of the respondent, the custodian
23 may apply to the court for an order authorizing an officer of

1 the peace to take the respondent into custody and transport the
2 respondent to a mental health facility ~~the hospital specified~~
3 ~~in the agreed order~~. The provisions of Section 3-605 shall
4 govern the transportation of the respondent to a mental health
5 facility, except to the extent that those provisions are
6 inconsistent with this Section. No person admitted to a
7 hospital pursuant to this subsection shall be detained for
8 longer than 24 hours, excluding Saturdays, Sundays, and
9 holidays, unless, within that period, a petition for
10 involuntary admission on an inpatient basis and a certificate
11 supporting such petition have been filed as provided in Section
12 3-611.

13 (c) Alternative treatment shall not be ordered unless the
14 program being considered is capable of providing adequate and
15 humane treatment in the least restrictive setting which is
16 appropriate to the respondent's condition. The court shall have
17 continuing authority to modify an order for alternative
18 treatment if the recipient fails to comply with the order or is
19 otherwise found unsuitable for alternative treatment. Prior to
20 modifying such an order, the court shall receive a report from
21 the facility director of the program specifying why the
22 alternative treatment is unsuitable. The recipient shall be
23 notified and given an opportunity to respond when modification
24 of the order for alternative treatment is considered. If the
25 court determines that the respondent has violated the order for
26 alternative treatment in the community or that alternative

1 treatment in the community will no longer provide adequate
2 assurances for the safety of the respondent or others, the
3 court may revoke the order for alternative treatment in the
4 community and may order a peace officer to take the recipient
5 into custody and transport him to an inpatient mental health
6 facility. The provisions of Section 3-605 shall govern the
7 transportation of the respondent to a mental health facility,
8 except to the extent that those provisions are inconsistent
9 with this Section. No person admitted to a hospital pursuant to
10 this subsection shall be detained for longer than 24 hours,
11 excluding Saturdays, Sundays, and holidays, unless, within
12 that period, a petition for involuntary admission on an
13 inpatient basis and a certificate supporting such petition have
14 been filed as provided in Section 3-611.

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

16 Section 10. The Mental Health and Developmental
17 Disabilities Confidentiality Act is amended by changing
18 Section 10 as follows:

19 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

20 Sec. 10. (a) Except as provided herein, in any civil,
21 criminal, administrative, or legislative proceeding, or in any
22 proceeding preliminary thereto, a recipient, and a therapist on
23 behalf and in the interest of a recipient, has the privilege to
24 refuse to disclose and to prevent the disclosure of the

1 recipient's record or communications.

2 (1) Records and communications may be disclosed in a
3 civil, criminal or administrative proceeding in which the
4 recipient introduces his mental condition or any aspect of
5 his services received for such condition as an element of
6 his claim or defense, if and only to the extent the court
7 in which the proceedings have been brought, or, in the case
8 of an administrative proceeding, the court to which an
9 appeal or other action for review of an administrative
10 determination may be taken, finds, after in camera
11 examination of testimony or other evidence, that it is
12 relevant, probative, not unduly prejudicial or
13 inflammatory, and otherwise clearly admissible; that other
14 satisfactory evidence is demonstrably unsatisfactory as
15 evidence of the facts sought to be established by such
16 evidence; and that disclosure is more important to the
17 interests of substantial justice than protection from
18 injury to the therapist-recipient relationship or to the
19 recipient or other whom disclosure is likely to harm.
20 Except in a criminal proceeding in which the recipient, who
21 is accused in that proceeding, raises the defense of
22 insanity, no record or communication between a therapist
23 and a recipient shall be deemed relevant for purposes of
24 this subsection, except the fact of treatment, the cost of
25 services and the ultimate diagnosis unless the party
26 seeking disclosure of the communication clearly

1 establishes in the trial court a compelling need for its
2 production. However, for purposes of this Act, in any
3 action brought or defended under the Illinois Marriage and
4 Dissolution of Marriage Act, or in any action in which pain
5 and suffering is an element of the claim, mental condition
6 shall not be deemed to be introduced merely by making such
7 claim and shall be deemed to be introduced only if the
8 recipient or a witness on his behalf first testifies
9 concerning the record or communication.

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

23 (3) In the event of a claim made or an action filed by
24 a recipient, or, following the recipient's death, by any
25 party claiming as a beneficiary of the recipient for injury
26 caused in the course of providing services to such

1 recipient, the therapist and other persons whose actions
2 are alleged to have been the cause of injury may disclose
3 pertinent records and communications to an attorney or
4 attorneys engaged to render advice about and to provide
5 representation in connection with such matter and to
6 persons working under the supervision of such attorney or
7 attorneys, and may testify as to such records or
8 communication in any administrative, judicial or discovery
9 proceeding for the purpose of preparing and presenting a
10 defense against such claim or action.

11 (4) Records and communications made to or by a
12 therapist in the course of examination ordered by a court
13 for good cause shown may, if otherwise relevant and
14 admissible, be disclosed in a civil, criminal, or
15 administrative proceeding in which the recipient is a party
16 or in appropriate pretrial proceedings, provided such
17 court has found that the recipient has been as adequately
18 and as effectively as possible informed before submitting
19 to such examination that such records and communications
20 would not be considered confidential or privileged. Such
21 records and communications shall be admissible only as to
22 issues involving the recipient's physical or mental
23 condition and only to the extent that these are germane to
24 such proceedings.

25 (5) Records and communications may be disclosed in a
26 proceeding under the Probate Act of 1975, to determine a

1 recipient's competency or need for guardianship, provided
2 that the disclosure is made only with respect to that
3 issue.

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

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

1 with the proceeding in which disclosure is made.

2 (8) Records or communications may be disclosed when
3 such are relevant to a matter in issue in any action
4 brought under this Act and proceedings preliminary
5 thereto, provided that any information so disclosed shall
6 not be utilized for any other purpose nor be redisclosed
7 except in connection with such action or preliminary
8 proceedings.

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

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

22 (11) Records and communications of a recipient shall be
23 disclosed in a proceeding where a petition or motion is
24 filed under the Juvenile Court Act of 1987 and the
25 recipient is named as a parent, guardian, or legal
26 custodian of a minor who is the subject of a petition for

1 wardship as described in Section 2-3 of that Act or a minor
2 who is the subject of a petition for wardship as described
3 in Section 2-4 of that Act alleging the minor is abused,
4 neglected, or dependent or the recipient is named as a
5 parent of a child who is the subject of a petition,
6 supplemental petition, or motion to appoint a guardian with
7 the power to consent to adoption under Section 2-29 of the
8 Juvenile Court Act of 1987.

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

25 (b) Before a disclosure is made under subsection (a), any
26 party to the proceeding or any other interested person may

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

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

25 The facility shall notify the recipient, or his guardian,
26 and therapist in writing of any disclosure request under this

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

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

22 (d) No party to any proceeding described under paragraphs
23 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
24 Section, nor his or her attorney, shall serve a subpoena
25 seeking to obtain access to records or communications under
26 this Act unless the subpoena is accompanied by a written order

1 issued by a judge or by the written consent under Section 5 of
2 this Act of the person whose records are being sought,
3 authorizing the disclosure of the records or the issuance of
4 the subpoena. No such written order shall be issued without
5 written notice of the motion to the recipient and the treatment
6 provider. Prior to issuance of the order, each party or other
7 person entitled to notice shall be permitted an opportunity to
8 be heard pursuant to subsection (b) of this Section. In the
9 absence of the written consent under Section 5 of this Act of
10 the person whose records are being sought, no ~~no~~ person shall
11 comply with a subpoena for records or communications under this
12 Act, unless the subpoena is accompanied by a written order
13 authorizing the issuance of the subpoena or the disclosure of
14 the records. Each subpoena ~~duces tecum~~ issued by a court or
15 administrative agency or served on any person pursuant to this
16 subsection (d) shall include the following language: "No person
17 shall comply with a subpoena for mental health records or
18 communications pursuant to Section 10 of the Mental Health and
19 Developmental Disabilities Confidentiality Act, 740 ILCS
20 110/10, unless the subpoena is accompanied by a written order
21 that authorizes the issuance of the subpoena and the disclosure
22 of records or communications or by the written consent under
23 Section 5 of that Act of the person whose records are being
24 sought."

25 (e) When a person has been transported by a peace officer
26 to a mental health facility, then upon the request of a peace

1 officer, if the person is allowed to leave the mental health
2 facility within 48 hours of arrival, excluding Saturdays,
3 Sundays, and holidays, the facility director shall notify the
4 local law enforcement authority prior to the release of the
5 person. The local law enforcement authority may re-disclose the
6 information as necessary to alert the appropriate enforcement
7 or prosecuting authority.

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

1 (Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
2 96-1453, eff. 8-20-10; 97-566, eff. 1-1-12.)