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FISCAL NOTE ACT
MAY APPLY

09600HB5350ham001

LRB096 14617 KTG 37158 a

1 AMENDMENT TO HOUSE BILL 5350

2 AMENDMENT NO. _____. Amend House Bill 5350 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 1-119, 3-600,
6 3-601, 3-602, 3-603, 3-606, 3-607, 3-610, 3-700, 3-701, 3-702,
7 3-703, 3-704, 3-801, 3-801.5, 3-802, 3-805, 3-807, 3-808,
8 3-809, 3-810, 3-811, 3-812, 3-813, 3-900, 3-901, and 3-902, by
9 changing the heading of Article VII of Chapter III, by adding
10 Section 1-119.1, and by adding Article VII-A to Chapter III as
11 follows:

12 (405 ILCS 5/1-119) (from Ch. 91 1/2, par. 1-119)

13 Sec. 1-119. "Person subject to involuntary admission on an
14 inpatient basis" means:

15 (1) A person with mental illness and who because of his
16 or her illness is reasonably expected to inflict serious

1 physical harm on herself or himself or another unless
2 treated on an inpatient basis ~~engage in dangerous conduct~~
3 ~~which may include threatening behavior or conduct that~~
4 ~~places that person or another individual in reasonable~~
5 ~~expectation of being harmed; or~~

6 (2) A person with mental illness and who because of his
7 or her illness is unable to provide for his or her basic
8 physical needs so as to guard himself or herself from
9 serious harm unless treated on an inpatient basis ~~without~~
10 ~~the assistance of family or outside help. ; or~~

11 (3) (Blank) ~~A person with mental illness who, because~~
12 ~~of the nature of his or her illness, is unable to~~
13 ~~understand his or her need for treatment and who, if not~~
14 ~~treated, is reasonably expected to suffer or continue to~~
15 ~~suffer mental deterioration or emotional deterioration, or~~
16 ~~both, to the point that the person is reasonably expected~~
17 ~~to engage in dangerous conduct.~~

18 In determining whether a person meets the criteria
19 specified in paragraph (1) or, (2), ~~or (3)~~, the court may
20 consider evidence of the person's repeated past pattern of
21 specific behavior and actions related to the person's illness.
22 Nothing in this Section shall be interpreted as requiring a
23 determination that the respondent has inflicted or threatened
24 serious physical harm on himself or another in the past, so
25 long as it is determined that the respondent is reasonably
26 expected to inflict harm in the future as provided in paragraph

1 (1). A person shall not be considered able to provide for his
2 or her basic physical needs as specified in paragraph (2) if he
3 or she is unable to provide for those needs without the
4 assistance of family or others and said family or others are
5 not able or willing to provide for those needs. Nothing in this
6 Section shall be interpreted to require any family member or
7 other person to provide assistance to a person with a mental
8 illness.

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

10 (405 ILCS 5/1-119.1 new)

11 Sec. 1-119.1. "Person subject to involuntary admission on
12 an outpatient basis" means:

13 (1) A person who would meet the criteria for admission
14 on an inpatient basis as specified in Section 1-119 in the
15 absence of treatment on an outpatient basis and for whom
16 treatment on an outpatient basis can only be reasonably
17 ensured by a court order mandating such treatment; or

18 (2) A person with a mental illness which, if left
19 untreated, is reasonably expected to result in an increase
20 in the symptoms caused by the illness to the point that the
21 person would meet the criteria for commitment under Section
22 1-119, and whose mental illness has, on more than one
23 occasion in the past, caused that person to refuse needed
24 and appropriate mental health services in the community.

1 (405 ILCS 5/3-600) (from Ch. 91 1/2, par. 3-600)

2 Sec. 3-600. A person 18 years of age or older who is
3 subject to involuntary admission on an inpatient basis and in
4 need of immediate hospitalization may be admitted to a mental
5 health facility pursuant to this Article.

6 (Source: P.A. 80-1414.)

7 (405 ILCS 5/3-601) (from Ch. 91 1/2, par. 3-601)

8 Sec. 3-601. Involuntary admission; petition.

9 (a) When a person is asserted to be subject to involuntary
10 admission on an inpatient basis and in such a condition that
11 immediate hospitalization is necessary for the protection of
12 such person or others from physical harm, any person 18 years
13 of age or older may present a petition to the facility director
14 of a mental health facility in the county where the respondent
15 resides or is present. The petition may be prepared by the
16 facility director of the facility.

17 (b) The petition shall include all of the following:

18 1. A detailed statement of the reason for the assertion
19 that the respondent is subject to involuntary admission on
20 an inpatient basis, including the signs and symptoms of a
21 mental illness and a description of any acts, threats, or
22 other behavior or pattern of behavior supporting the
23 assertion and the time and place of their occurrence.

24 2. The name and address of the spouse, parent,
25 guardian, substitute decision maker, if any, and close

1 relative, or if none, the name and address of any known
2 friend of the respondent whom the petitioner has reason to
3 believe may know or have any of the other names and
4 addresses. If the petitioner is unable to supply any such
5 names and addresses, the petitioner shall state that
6 diligent inquiry was made to learn this information and
7 specify the steps taken.

8 3. The petitioner's relationship to the respondent and
9 a statement as to whether the petitioner has legal or
10 financial interest in the matter or is involved in
11 litigation with the respondent. If the petitioner has a
12 legal or financial interest in the matter or is involved in
13 litigation with the respondent, a statement of why the
14 petitioner believes it would not be practicable or possible
15 for someone else to be the petitioner.

16 4. The names, addresses and phone numbers of the
17 witnesses by which the facts asserted may be proved.

18 (c) Knowingly making a material false statement in the
19 petition is a Class A misdemeanor.

20 (Source: P.A. 91-726, eff. 6-2-00; 92-651, eff. 7-11-02.)

21 (405 ILCS 5/3-602) (from Ch. 91 1/2, par. 3-602)

22 Sec. 3-602. The petition shall be accompanied by a
23 certificate executed by a physician, qualified examiner,
24 psychiatrist, or clinical psychologist which states that the
25 respondent is subject to involuntary admission on an inpatient

1 basis and requires immediate hospitalization. The certificate
2 shall indicate that the physician, qualified examiner,
3 psychiatrist, or clinical psychologist personally examined the
4 respondent not more than 72 hours prior to admission. It shall
5 also contain the physician's, qualified examiner's,
6 psychiatrist's, or clinical psychologist's clinical
7 observations, other factual information relied upon in
8 reaching a diagnosis, and a statement as to whether the
9 respondent was advised of his rights under Section 3-208.

10 (Source: P.A. 80-1414.)

11 (405 ILCS 5/3-603) (from Ch. 91 1/2, par. 3-603)

12 Sec. 3-603. (a) If no physician, qualified examiner,
13 psychiatrist, or clinical psychologist is immediately
14 available or it is not possible after a diligent effort to
15 obtain the certificate provided for in Section 3-602, the
16 respondent may be detained for examination in a mental health
17 facility upon presentation of the petition alone pending the
18 obtaining of such a certificate.

19 (b) In such instance the petition shall conform to the
20 requirements of Section 3-601 and further specify that:

21 1. the petitioner believes, as a result of his personal
22 observation, that the respondent is subject to involuntary
23 admission on an inpatient basis;

24 2. a diligent effort was made to obtain a certificate;

25 3. no physician, qualified examiner, psychiatrist, or

1 clinical psychologist could be found who has examined or
2 could examine the respondent; and

3 4. a diligent effort has been made to convince the
4 respondent to appear voluntarily for examination by a
5 physician, qualified examiner, psychiatrist, or clinical
6 psychologist, unless the petitioner reasonably believes
7 that effort would impose a risk of harm to the respondent
8 or others.

9 (Source: P.A. 91-726, eff. 6-2-00; 91-837, eff. 6-16-00; 92-16,
10 eff. 6-28-01.)

11 (405 ILCS 5/3-606) (from Ch. 91 1/2, par. 3-606)

12 Sec. 3-606. A peace officer may take a person into custody
13 and transport him to a mental health facility when the peace
14 officer has reasonable grounds to believe that the person is
15 subject to involuntary admission on an inpatient basis and in
16 need of immediate hospitalization to protect such person or
17 others from physical harm. Upon arrival at the facility, the
18 peace officer may complete the petition under Section 3-601. If
19 the petition is not completed by the peace officer transporting
20 the person, the transporting officer's name, badge number, and
21 employer shall be included in the petition as a potential
22 witness as provided in Section 3-601 of this Chapter.

23 (Source: P.A. 94-202, eff. 7-12-05.)

24 (405 ILCS 5/3-607) (from Ch. 91 1/2, par. 3-607)

1 Sec. 3-607. Court ordered temporary detention and
2 examination. When, as a result of personal observation and
3 testimony in open court, any court has reasonable grounds to
4 believe that a person appearing before it is subject to
5 involuntary admission on an inpatient basis and in need of
6 immediate hospitalization to protect such person or others from
7 physical harm, the court may enter an order for the temporary
8 detention and examination of such person. The order shall set
9 forth in detail the facts which are the basis for its
10 conclusion. The court may order a peace officer to take the
11 person into custody and transport him to a mental health
12 facility. The person may be detained for examination for no
13 more than 24 hours to determine whether or not she or he is
14 subject to involuntary admission and in need of immediate
15 hospitalization. If a petition and certificate, ~~as provided in~~
16 ~~this Article,~~ are executed within the 24 hours, the person may
17 be admitted provided that the certificate states that the
18 person is both subject to involuntary admission and in need of
19 immediate hospitalization. If the certificate states that the
20 person is subject to involuntary admission but not in need of
21 immediate hospitalization, the person may remain in his or her
22 place of residence pending a hearing on the petition unless he
23 or she voluntarily agrees to inpatient treatment. The ~~and the~~
24 provisions of this Article shall apply to all petitions and
25 certificates executed pursuant to this Section. If no petition
26 or certificate is executed, the person shall be released.

1 (Source: P.A. 91-726, eff. 6-2-00.)

2 (405 ILCS 5/3-610) (from Ch. 91 1/2, par. 3-610)

3 Sec. 3-610. As soon as possible but not later than 24
4 hours, excluding Saturdays, Sundays and holidays, after
5 admission of a respondent pursuant to this Article, the
6 respondent shall be examined by a psychiatrist. The
7 psychiatrist may be a member of the staff of the facility but
8 shall not be the person who executed the first certificate. If
9 a certificate has already been completed by a psychiatrist
10 following the respondent's admission, the respondent shall be
11 examined by another psychiatrist or by a physician, clinical
12 psychologist, or qualified examiner. If, as a result of this
13 second examination, a certificate is executed, the certificate
14 shall be promptly filed with the court. If the certificate
15 states that the respondent is subject to involuntary admission
16 but not in need of immediate hospitalization, the respondent
17 may remain in his or her place of residence pending a hearing
18 on the petition unless he or she voluntarily agrees to
19 inpatient treatment. If the respondent is not examined or if
20 the psychiatrist, physician, clinical psychologist, or
21 qualified examiner does not execute a certificate pursuant to
22 Section 3-602, the respondent shall be released forthwith.

23 (Source: P.A. 80-1414.)

24 (405 ILCS 5/Ch. III Art. VII heading)

1 ARTICLE VII. ADMISSION ON AN INPATIENT BASIS BY COURT ORDER

2 (405 ILCS 5/3-700) (from Ch. 91 1/2, par. 3-700)

3 Sec. 3-700. A person 18 years of age or older who is
4 subject to involuntary admission on an inpatient basis may be
5 admitted to an inpatient a mental health facility upon court
6 order pursuant to this Article.

7 (Source: P.A. 80-1414.)

8 (405 ILCS 5/3-701) (from Ch. 91 1/2, par. 3-701)

9 Sec. 3-701. (a) Any person 18 years of age or older may
10 execute a petition asserting that another person is subject to
11 involuntary admission on an inpatient basis. The petition shall
12 be prepared pursuant to paragraph (b) of Section 3-601 and
13 shall be filed with the court in the county where the
14 respondent resides or is present.

15 (b) The court may inquire of the petitioner whether there
16 are reasonable grounds to believe that the facts stated in the
17 petition are true and whether the respondent is subject to
18 involuntary admission. The inquiry may proceed without notice
19 to the respondent only if the petitioner alleges facts showing
20 that an emergency exists such that immediate hospitalization is
21 necessary and the petitioner testifies before the court as to
22 the factual basis for the allegations.

23 (c) A petition for involuntary admission on an inpatient
24 basis may be combined with or accompanied by a petition for

1 involuntary admission on an outpatient basis under Article
2 VII-A.

3 (Source: P.A. 91-837, eff. 6-16-00.)

4 (405 ILCS 5/3-702) (from Ch. 91 1/2, par. 3-702)

5 Sec. 3-702. (a) The petition may be accompanied by the
6 certificate of a physician, qualified examiner, psychiatrist,
7 or clinical psychologist which certifies that the respondent is
8 subject to involuntary admission on an inpatient basis and
9 which contains the other information specified in Section
10 3-602.

11 (b) Upon receipt of the petition either with or without a
12 certificate, if the court finds the documents are in order, it
13 may make such orders pursuant to Section 3-703 as are necessary
14 to provide for examination of the respondent. If the petition
15 is not accompanied by 2 certificates executed pursuant to
16 Section 3-703, the court may order the respondent to present
17 himself for examination at a time and place designated by the
18 court. If the petition is accompanied by 2 certificates
19 executed pursuant to Section 3-703 and the court finds the
20 documents are in order, it shall set the matter for hearing.

21 (Source: P.A. 91-726, eff. 6-2-00.)

22 (405 ILCS 5/3-703) (from Ch. 91 1/2, par. 3-703)

23 Sec. 3-703. If no certificate was filed, the respondent
24 shall be examined separately by a physician, or clinical

1 psychologist, or qualified examiner and by a psychiatrist. If a
2 certificate executed by a psychiatrist was filed, the
3 respondent shall be examined by a physician, clinical
4 psychologist, qualified examiner, or psychiatrist. If a
5 certificate executed by a qualified examiner, clinical
6 psychologist, or a physician who is not a psychiatrist was
7 filed, the respondent shall be examined by a psychiatrist. The
8 examining physician, clinical psychologist, qualified examiner
9 or psychiatrist may interview by telephone or in person any
10 witnesses or other persons listed in the petition for
11 involuntary admission. If, as a result of an examination, a
12 certificate is executed, the certificate shall be promptly
13 filed with the court. If a certificate is executed, the
14 examining physician, clinical psychologist, qualified examiner
15 or psychiatrist may also submit for filing with the court a
16 report in which his findings are described in detail, and may
17 rely upon such findings for his opinion that the respondent is
18 subject to involuntary admission on an inpatient basis. Copies
19 of the certificates shall be made available to the attorneys
20 for the parties upon request prior to the hearing. A
21 certificate prepared in compliance with this Article shall
22 state whether or not the respondent is in need of immediate
23 hospitalization. However, if both the certificates state that
24 the respondent is not in need of immediate hospitalization, the
25 respondent may remain in his or her place of residence pending
26 a hearing on the petition unless he or she voluntarily agrees

1 to inpatient treatment.

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

3 (405 ILCS 5/3-704) (from Ch. 91 1/2, par. 3-704)

4 Sec. 3-704. Examination; detention.

5 (a) The respondent shall be permitted to remain in his or
6 her place of residence pending any examination. The respondent
7 may be accompanied by one or more of his or her relatives or
8 friends or by his or her attorney to the place of examination.
9 If, however, the court finds that it is necessary in order to
10 complete the examination the court may order that the person be
11 admitted to a mental health facility pending examination and
12 may order a peace officer or other person to transport the
13 person there. The examination shall be conducted at a local
14 mental health facility or hospital or, if possible, in the
15 respondent's own place of residence. No person may be detained
16 for examination under this Section for more than 24 hours. The
17 person shall be released upon completion of the examination
18 unless the physician, qualified examiner or clinical
19 psychologist executes a certificate stating that the person is
20 subject to involuntary admission on an inpatient basis and in
21 need of immediate hospitalization to protect such person or
22 others from physical harm. Upon admission under this Section
23 treatment may be given pursuant to Section 3-608.

24 (a-5) Whenever a respondent has been transported to a
25 mental health facility for an examination, the admitting

1 facility shall inquire, upon the respondent's arrival, whether
2 the respondent wishes any person or persons to be notified of
3 his or her detention at that facility. If the respondent does
4 wish to have any person or persons notified of his or her
5 detention at the facility, the facility must promptly make all
6 reasonable attempts to locate the individual identified by the
7 respondent, or at least 2 individuals identified by the
8 respondent if more than one has been identified, and notify
9 them of the respondent's detention at the facility for a
10 mandatory examination pursuant to court order.

11 (b) Not later than 24 hours, excluding Saturdays, Sundays,
12 and holidays, after admission under this Section, the
13 respondent shall be asked if he desires the petition and the
14 notice required under Section 3-206 sent to any other persons
15 and at least 2 such persons designated by the respondent shall
16 be sent the documents. At the time of his admission the
17 respondent shall be allowed to complete not fewer than 2
18 telephone calls to such persons as he chooses.

19 (Source: P.A. 91-726, eff. 6-2-00; 91-837, eff. 6-16-00; 92-16,
20 eff. 6-28-01.)

21 (405 ILCS 5/Ch. III Art. VII-A heading new)

22 ARTICLE VII-A. ADMISSION ON AN OUTPATIENT BASIS BY COURT ORDER

23 (405 ILCS 5/3-750 new)

24 Sec. 3-750. Involuntary admission on an outpatient basis. A

1 person 18 years of age or older who is subject to involuntary
2 admission on an outpatient basis may receive alternative
3 treatment in the community or may be placed in the care and
4 custody of a relative or other person upon court order pursuant
5 to this Article.

6 (405 ILCS 5/3-751 new)

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

8 (a) Any person 18 years of age or older may execute a
9 petition asserting that another person is subject to
10 involuntary admission on an outpatient basis. The petition
11 shall be prepared pursuant to paragraph (b) of Section 3-601
12 and shall be filed with the court in the county where the
13 respondent resides or is present.

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

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

21 (405 ILCS 5/3-752 new)

22 Sec. 3-752. Certificate.

23 (a) The petition may be accompanied by the certificate of a
24 physician, qualified examiner, psychiatrist, or clinical

1 psychologist which certifies that the respondent is subject to
2 involuntary admission on an outpatient basis. The certificate
3 shall indicate that the physician, qualified examiner, or
4 clinical psychologist personally examined the respondent not
5 more than 72 hours prior to the completion of the certificate.
6 It shall also contain the physician's, qualified examiner's, or
7 clinical psychologist's clinical observations, other factual
8 information relied upon in reaching a diagnosis, and a
9 statement as to whether the respondent was advised of his or
10 her rights under Section 3-208.

11 (b) Upon receipt of the petition either with or without a
12 certificate, if the court finds the documents are in order, it
13 may make such orders pursuant to Section 3-753 as are necessary
14 to provide for examination of the respondent. If the petition
15 is not accompanied by 2 certificates executed pursuant to
16 Section 3-753, the court may order the respondent to present
17 himself or herself for examination at a time and place
18 designated by the court. If the petition is accompanied by 2
19 certificates executed pursuant to Section 3-753 and the court
20 finds the documents are in order, the court shall set the
21 matter for hearing.

22 (405 ILCS 5/3-753 new)

23 Sec. 3-753. Examination. If no certificate was filed, the
24 respondent shall be examined separately by a physician, or
25 clinical psychologist or qualified examiner and by a

1 psychiatrist. If a certificate executed by a psychiatrist was
2 filed, the respondent shall be examined by a physician,
3 clinical psychologist, qualified examiner, or psychiatrist. If
4 a certificate executed by a qualified examiner, clinical
5 psychologist, or a physician who is not a psychiatrist was
6 filed, the respondent shall be examined by a psychiatrist. The
7 examining physician, clinical psychologist, qualified examiner
8 or psychiatrist may interview by telephone or in person any
9 witnesses or other persons listed in the petition for
10 involuntary admission. If, as a result of an examination, a
11 certificate is executed, the certificate shall be promptly
12 filed with the court. If a certificate is executed, the
13 examining physician, clinical psychologist, qualified examiner
14 or psychiatrist may also submit for filing with the court a
15 report in which his or her findings are described in detail,
16 and may rely upon such findings for his opinion that the
17 respondent is subject to involuntary admission. Copies of the
18 certificates shall be made available to the attorneys for the
19 parties upon request prior to the hearing.

20 (405 ILCS 5/3-754 new)

21 Sec. 3-754. Detention.

22 (a) The respondent shall be permitted to remain in his or
23 her place of residence pending any examination. The respondent
24 may be accompanied by one or more of his or her relatives or
25 friends or by his or her attorney to the place of examination.

1 If, however, the respondent refuses to cooperate with an
2 examination on an outpatient basis, the court may order that
3 the person be admitted to a mental health facility solely for
4 the purpose of such examination and may order a peace officer
5 or other person to transport the person there. The examination
6 shall be conducted at a local mental health facility or
7 hospital or, if possible, in the respondent's own place of
8 residence. No person may be detained for examination under this
9 Section for more than 24 hours. The person shall be released
10 upon completion of the examination unless the physician,
11 qualified examiner or clinical psychologist executes a
12 certificate stating that the person is subject to involuntary
13 admission on an inpatient basis and in need of immediate
14 hospitalization to protect such person or others from physical
15 harm and a petition is filed pursuant to Section 3-701. Upon
16 admission under this Section treatment may be given pursuant to
17 Section 3-608. If the respondent is admitted on an inpatient
18 basis, the facility shall proceed pursuant to Article VII.

19 (b) Whenever a respondent has been transported to a mental
20 health facility for an examination, the admitting facility
21 shall inquire, upon the respondent's arrival, whether the
22 respondent wishes any person or persons to be notified of his
23 or her detention at that facility. If the respondent does wish
24 to have any person or persons notified of his or her detention
25 at the facility, the facility must promptly make all reasonable
26 attempts to locate the individual identified by the respondent,

1 or at least 2 individuals identified by the respondent if more
2 than one has been identified, and notify them of the
3 respondent's detention at the facility for a mandatory
4 examination pursuant to court order.

5 (405 ILCS 5/3-755 new)

6 Sec. 3-755. Notice. At least 36 hours before the time of
7 the examination fixed by the court, a copy of the petition, the
8 order for examination, and a statement of rights as provided in
9 Section 3-205 shall be personally delivered to the person and
10 shall be given personally or sent by mail to his or her
11 attorney and guardian, if any. If the respondent is admitted to
12 a mental health facility for examination under Section 3-754,
13 such notices may be delivered at the time of service of the
14 order for admission.

15 (405 ILCS 5/3-756 new)

16 Sec. 3-756. Court hearing. The court shall set a hearing to
17 be held within 15 days, excluding Saturdays, Sundays, and
18 holidays, after its receipt of the second certificate. The
19 court shall direct that notice of the time and place of hearing
20 be served upon the respondent, his or her attorney, and
21 guardian, if any, and his or her responsible relatives. The
22 respondent may remain at his residence pending the hearing. If,
23 however, the court finds it necessary, it may order a peace
24 officer or another person to have the respondent before the

1 court at the time and place set for hearing.

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

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

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

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

7 (Source: P.A. 96-570, eff. 1-1-10.)

8 (405 ILCS 5/3-801.5)

9 Sec. 3-801.5. Agreed order for admission on an outpatient
10 basis ~~alternative treatment or care and custody~~.

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

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

1 (2) The court advises the respondent of the conditions
2 of the proposed order in open court and is satisfied that
3 the respondent understands and agrees to the conditions of
4 the proposed order for admission on an outpatient basis
5 ~~alternative treatment or care and custody.~~

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

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

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

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

1 transportation of the respondent to a mental health facility,
2 except to the extent that those provisions are inconsistent
3 with this Section. However, a person admitted to a hospital
4 pursuant to powers granted under an agreed order for care and
5 custody shall be treated as a voluntary recipient pursuant to
6 Article IV of this Chapter and shall be advised immediately of
7 his or her right to request a discharge pursuant to Section
8 3-403 of this Code.

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

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

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

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

23 (Source: P.A. 94-521, eff. 1-1-06.)

24 (405 ILCS 5/3-802) (from Ch. 91 1/2, par. 3-802)

25 Sec. 3-802. The respondent is entitled to a jury on the

1 question of whether he is subject to involuntary admission on
2 an inpatient or outpatient basis. The jury shall consist of 6
3 persons to be chosen in the same manner as are jurors in other
4 civil proceedings. A respondent is not entitled to a jury on
5 the question of whether psychotropic medication or
6 electroconvulsive therapy may be administered under Section
7 2-107.1.

8 (Source: P.A. 95-172, eff. 8-14-07.)

9 (405 ILCS 5/3-805) (from Ch. 91 1/2, par. 3-805)

10 Sec. 3-805. Every respondent alleged to be subject to
11 involuntary admission on an inpatient or outpatient basis shall
12 be represented by counsel. If the respondent is indigent or an
13 appearance has not been entered on his behalf at the time the
14 matter is set for hearing, the court shall appoint counsel for
15 him. A hearing shall not proceed when a respondent is not
16 represented by counsel unless, after conferring with counsel,
17 the respondent requests to represent himself and the court is
18 satisfied that the respondent has the capacity to make an
19 informed waiver of his right to counsel. Counsel shall be
20 allowed time for adequate preparation and shall not be
21 prevented from conferring with the respondent at reasonable
22 times nor from making an investigation of the matters in issue
23 and presenting such relevant evidence as he believes is
24 necessary.

25 1. If the court determines that the respondent is unable to

1 obtain counsel, the court shall appoint as counsel an attorney
2 employed by or under contract with the Guardianship and Mental
3 Health Advocacy Commission, if available.

4 2. If an attorney from the Guardianship and Mental Health
5 Advocacy Commission is not available, the court shall appoint
6 as counsel the public defender or, only if no public defender
7 is available, an attorney licensed to practice law in this
8 State.

9 3. Upon filing with the court of a verified statement of
10 legal services rendered by the private attorney appointed
11 pursuant to paragraph (2) of this Section, the court shall
12 determine a reasonable fee for such services. If the respondent
13 is unable to pay the fee, the court shall enter an order upon
14 the county to pay the entire fee or such amount as the
15 respondent is unable to pay.

16 (Source: P.A. 80-1414.)

17 (405 ILCS 5/3-807) (from Ch. 91 1/2, par. 3-807)

18 Sec. 3-807. No respondent may be found subject to
19 involuntary admission on an inpatient or outpatient basis
20 unless at least one psychiatrist, clinical social worker, or
21 clinical psychologist who has examined him testifies in person
22 at the hearing. The respondent may waive the requirement of the
23 testimony subject to the approval of the court.

24 (Source: P.A. 87-530.)

1 (405 ILCS 5/3-808) (from Ch. 91 1/2, par. 3-808)

2 Sec. 3-808. No respondent may be found subject to
3 involuntary admission on an inpatient or outpatient basis
4 unless that finding has been established by clear and
5 convincing evidence.

6 (Source: P.A. 80-1414.)

7 (405 ILCS 5/3-809) (from Ch. 91 1/2, par. 3-809)

8 Sec. 3-809. If the respondent is not found subject to
9 involuntary admission on an inpatient or outpatient basis, the
10 court shall dismiss the petition and order the respondent
11 discharged. If the respondent is found subject to involuntary
12 admission on an inpatient or outpatient basis, the court shall
13 enter an order so specifying. If the court is not satisfied
14 with the verdict of the jury finding the respondent subject to
15 involuntary admission on an inpatient or outpatient basis, it
16 may set aside such verdict and order the respondent discharged
17 or it may order another hearing.

18 (Source: P.A. 80-1414.)

19 (405 ILCS 5/3-810) (from Ch. 91 1/2, par. 3-810)

20 Sec. 3-810. Before disposition is determined, the facility
21 director or such other person as the court may direct shall
22 prepare a written report including information on the
23 appropriateness and availability of alternative treatment
24 settings, a social investigation of the respondent, a

1 preliminary treatment plan, and any other information which the
2 court may order. The treatment plan shall describe the
3 respondent's problems and needs, the treatment goals, the
4 proposed treatment methods, and a projected timetable for their
5 attainment. If the respondent is found subject to involuntary
6 admission on an inpatient or outpatient basis, the court shall
7 consider the report in determining an appropriate disposition.

8 (Source: P.A. 91-726, eff. 6-2-00.)

9 (405 ILCS 5/3-811) (from Ch. 91 1/2, par. 3-811)

10 Sec. 3-811. Involuntary admission; alternative mental
11 health facilities.

12 (a) If any person is found subject to involuntary admission
13 on an inpatient basis, the court shall consider alternative
14 mental health facilities which are appropriate for and
15 available to the respondent, including but not limited to
16 hospitalization. The court may order the respondent to undergo
17 a program of hospitalization in a mental health facility
18 designated by the Department, in a licensed private hospital or
19 private mental health facility if it agrees, or in a facility
20 of the United States Veterans Administration if it agrees. If
21 any person is found subject to involuntary admission on an
22 outpatient basis, ~~+ or~~ the court may order the respondent to
23 undergo a program of alternative treatment; or the court may
24 place the respondent in the care and custody of a relative or
25 other person willing and able to properly care for him or her.

1 The court shall order the least restrictive alternative for
2 treatment which is appropriate.

3 (b) Whenever a person is found subject to involuntary
4 admission on an inpatient or outpatient basis, notice shall be
5 provided to the petitioner, orally and in writing, of his or
6 her right to receive notice of the recipient's discharge
7 pursuant to Section 3-902(d).

8 (Source: P.A. 96-570, eff. 1-1-10.)

9 (405 ILCS 5/3-812) (from Ch. 91 1/2, par. 3-812)

10 Sec. 3-812. Court ordered admission on an outpatient basis
11 ~~alternative treatment~~; modification; revocation.

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

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

12 (c) ~~(a)~~ Alternative treatment shall not be ordered unless
13 the program being considered is capable of providing adequate
14 and humane treatment in the least restrictive setting which is
15 appropriate to the respondent's condition. The court shall have
16 continuing authority to modify an order for alternative
17 treatment if the recipient fails to comply with the order or is
18 otherwise found unsuitable for alternative treatment. Prior to
19 modifying such an order, the court shall receive a report from
20 the facility director of the program specifying why the
21 alternative treatment is unsuitable. The recipient shall be
22 notified and given an opportunity to respond when modification
23 of the order for alternative treatment is considered. If the
24 court determines that the respondent has violated the order for
25 alternative treatment in the community or that alternative
26 treatment in the community will no longer provide adequate

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

14 ~~(b) If the court revokes an order for alternative treatment~~
15 ~~and orders a recipient hospitalized, it may order a peace~~
16 ~~officer to take the recipient into custody and transport him to~~
17 ~~the facility. The court may order the recipient to undergo a~~
18 ~~program of hospitalization at a licensed private hospital or~~
19 ~~private mental health facility, or a facility of the United~~
20 ~~States Veterans Administration, if such private or Veterans~~
21 ~~Administration facility agrees to such placement, or at a~~
22 ~~mental health facility designated by the Department.~~

23 (Source: P.A. 91-726, eff. 6-2-00.)

24 (405 ILCS 5/3-813) (from Ch. 91 1/2, par. 3-813)

25 Sec. 3-813. (a) An initial order for commitment on an

1 inpatient basis ~~hospitalization~~ shall be for a period not to
2 exceed 90 days. Prior to the expiration of the initial order if
3 the facility director believes that the recipient continues to
4 be subject to involuntary admission on an inpatient or
5 outpatient basis, a new petition and 2 new certificates may be
6 filed with the court. If a petition is filed, the facility
7 director shall file with the court a current treatment plan
8 which includes an evaluation of the recipient's progress and
9 the extent to which he is benefiting from treatment. If no
10 petition is filed prior to the expiration of the initial order,
11 the recipient shall be discharged. Following a hearing, the
12 court may order a second period of commitment on an inpatient
13 basis ~~hospitalization~~ not to exceed 90 days only if it finds
14 that the recipient continues to be subject to involuntary
15 admission on an inpatient basis. If, following a hearing, the
16 court determines that the respondent is subject to involuntary
17 admission on an outpatient basis as provided in Section 3-812,
18 the court may order respondent committed on an outpatient basis
19 for a period not to exceed 180 days.

20 (a-1) An initial order of commitment on an outpatient basis
21 shall be for a period not to exceed 180 days. Prior to the
22 expiration of the initial order, if the facility director or
23 the custodian believes that the recipient continues to be
24 subject to involuntary admission on an outpatient basis, a new
25 petition and 2 new certificates may be filed with the court. If
26 a petition is filed, the facility director or the custodian

1 shall file with the court a current treatment plan which
2 includes an evaluation of the recipient's progress and the
3 extent to which he or she is benefiting from treatment. If no
4 petition is filed prior to the expiration of the initial order,
5 the recipient shall be discharged. Following a hearing, the
6 court may order a second period of commitment on an outpatient
7 basis not to exceed 180 days only if it finds that the
8 recipient continues to be subject to involuntary admission on
9 an outpatient basis.

10 (b) Additional 180 day periods of inpatient or outpatient
11 commitment ~~treatment~~ may be sought pursuant to the procedures
12 set out in this Section for so long as the recipient continues
13 to meet the standard for such commitment ~~be subject to~~
14 ~~involuntary admission~~. The provisions of this chapter which
15 apply whenever an initial order is sought shall apply whenever
16 an additional period of inpatient or outpatient commitment
17 ~~treatment~~ is sought.

18 (Source: P.A. 91-787, eff. 1-1-01.)

19 (405 ILCS 5/3-900) (from Ch. 91 1/2, par. 3-900)

20 Sec. 3-900. (a) Any person committed on an inpatient or
21 outpatient basis ~~hospitalized or admitted to alternative~~
22 ~~treatment or care and custody as having mental illness~~ on court
23 order under this Chapter or under any prior statute or any
24 person on his behalf may file a petition for discharge at any
25 time in the court of the county where the recipient resides or

1 is found.

2 (b) The petition shall set forth: (1) the name of the
3 recipient; (2) the underlying circumstances and date of the
4 order; (3) a request for discharge from the order; and (4) the
5 reasons for such request.

6 (Source: P.A. 88-380.)

7 (405 ILCS 5/3-901) (from Ch. 91 1/2, par. 3-901)

8 Sec. 3-901. (a) Upon the filing of a petition under Section
9 3-900 or Section 3-906, the court shall set the matter for
10 hearing to be held within 5 days, excluding Saturdays, Sundays,
11 and holidays. The court shall direct that notice of the time
12 and place of the hearing be given to the recipient, his
13 attorney, his guardian, the facility director, the person
14 having care and custody of the recipient, and to at least 2
15 persons whom the recipient may designate.

16 (b) Article VIII of this Chapter applies to hearings held
17 under this Section. The court shall determine whether the
18 recipient is: (i) subject to involuntary admission on an
19 inpatient basis; (ii) subject to involuntary admission on an
20 outpatient basis; or (iii) not subject to involuntary admission
21 on either an inpatient or outpatient basis. If the court finds
22 that the recipient is not subject to involuntary admission on
23 an inpatient or outpatient basis, the court shall enter an
24 order so finding and discharging the recipient. If the court
25 orders the discharge of a recipient who was adjudicated as

1 having mental illness pursuant to any prior statute of this
2 State or who was otherwise adjudicated to be under legal
3 disability, the court shall also enter an order restoring the
4 recipient to legal status without disability unless the court
5 finds that the recipient continues to be under legal
6 disability. A copy of any order discharging the recipient shall
7 be given to the recipient and to the facility director.

8 (b-1) If the court determines that the recipient is subject
9 to involuntary admission on an outpatient basis, the court
10 shall enter an appropriate order pursuant to Section 3-812.

11 (c) If the court determines that the recipient continues to
12 be subject to involuntary admission on an inpatient basis, the
13 court may continue or modify its original order in accordance
14 with this Act. Thereafter, no new petition for discharge may be
15 filed without leave of court.

16 (Source: P.A. 88-380.)

17 (405 ILCS 5/3-902) (from Ch. 91 1/2, par. 3-902)

18 Sec. 3-902. Director initiated discharge.

19 (a) The facility director may at any time discharge an
20 informal, voluntary, or minor recipient who is clinically
21 suitable for discharge.

22 (b) The facility director shall discharge a recipient
23 admitted upon court order under this Chapter or any prior
24 statute where he is no longer subject to involuntary admission
25 on an inpatient basis. If the facility director believes that

1 continuing treatment is advisable for such recipient, he shall
2 inform the recipient of his right to remain as an informal or
3 voluntary recipient. If the facility director determines that
4 the recipient is subject to involuntary admission on an
5 outpatient basis, he or she shall petition the court for such a
6 commitment pursuant to this Chapter.

7 (c) When a facility director discharges or changes the
8 status of a recipient pursuant to this Section he shall
9 promptly notify the clerk of the court which entered the
10 original order of the discharge or change in status. Upon
11 receipt of such notice, the clerk of the court shall note the
12 action taken in the court record. If the person being
13 discharged is a person under legal disability, the facility
14 director shall also submit a certificate regarding his legal
15 status without disability pursuant to Section 3-907.

16 (d) When the facility director determines that discharge is
17 appropriate for a recipient pursuant to this Section or Section
18 3-403 he or she shall notify the state's attorney of the county
19 in which the recipient resided immediately prior to his
20 admission to a mental health facility and the state's attorney
21 of the county where the last petition for commitment was filed
22 at least 48 hours prior to the discharge when either state's
23 attorney has requested in writing such notification on that
24 individual recipient or when the facility director regards a
25 recipient as a continuing threat to the peace and safety of the
26 community. Upon receipt of such notice, the state's attorney

1 may take any court action or notify such peace officers that he
2 deems appropriate. When the facility director determines that
3 discharge is appropriate for a recipient pursuant to this
4 Section or Section 3-403, he or she shall notify the person
5 whose petition pursuant to Section 3-701 resulted in the
6 current hospitalization of the recipient's discharge at least
7 48 hours prior to the discharge, if the petitioner has
8 requested in writing such notification on that individual
9 recipient.

10 (e) The facility director may grant a temporary release to
11 a recipient whose condition is not considered appropriate for
12 discharge where such release is considered to be clinically
13 appropriate, provided that the release does not endanger the
14 public safety.

15 (Source: P.A. 96-570, eff. 1-1-10.)

16 (405 ILCS 5/1-104.5 rep.)

17 (405 ILCS 5/3-704.1 rep.)

18 (405 ILCS 5/3-815 rep.)

19 Section 10. The Mental Health and Developmental
20 Disabilities Code is amended by repealing Sections 1-104.5,
21 3-704.1, and 3-815.

22 Section 15. The Mental Health and Developmental
23 Disabilities Confidentiality Act is amended by changing
24 Sections 4, 9.2, and 10 as follows:

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

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

5 (1) the parent or guardian of a recipient who is under
6 12 years of age;

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

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

20 (4) the guardian of a recipient who is 18 years or
21 older;

22 (5) an attorney or guardian ad litem who represents a
23 minor 12 years of age or older in any judicial or
24 administrative proceeding, provided that the court or
25 administrative hearing officer has entered an order

1 granting the attorney this right; ~~or~~

2 (6) an agent appointed under a recipient's power of
3 attorney for health care or for property, when the power of
4 attorney authorizes the access; ~~or~~

5 (7) an attorney-in-fact appointed under the Mental
6 Health Treatment Preference Declaration Act; or

7 (8) any person in whose care and custody the recipient
8 has been placed pursuant to Section 3-811 of the Mental
9 Health and Developmental Disabilities Code.

10 (b) Assistance in interpreting the record may be provided
11 without charge and shall be provided if the person inspecting
12 the record is under 18 years of age. However, access may in no
13 way be denied or limited if the person inspecting the record
14 refuses the assistance. A reasonable fee may be charged for
15 duplication of a record. However, when requested to do so in
16 writing by any indigent recipient, the custodian of the records
17 shall provide at no charge to the recipient, or to the
18 Guardianship and Advocacy Commission, the agency designated by
19 the Governor under Section 1 of the Protection and Advocacy for
20 Developmentally Disabled Persons Act or to any other
21 not-for-profit agency whose primary purpose is to provide free
22 legal services or advocacy for the indigent and who has
23 received written authorization from the recipient under
24 Section 5 of this Act to receive his records, one copy of any
25 records in its possession whose disclosure is authorized under
26 this Act.

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

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

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

14 (740 ILCS 110/9.2)

15 Sec. 9.2. Interagency disclosure of recipient information.
16 For the purposes of continuity of care, the Department of Human
17 Services (as successor to the Department of Mental Health and
18 Developmental Disabilities), community agencies funded by the
19 Department of Human Services in that capacity, licensed private
20 hospitals receiving payments from the Department of Human
21 Services or the Department of Healthcare and Family Services,
22 State correctional facilities ~~prisons operated by the~~
23 ~~Department of Corrections,~~ mental health facilities operated
24 by a county, and jails operated by any county of this State may
25 disclose a recipient's record or communications, without

1 consent, to each other, but only for the purpose of admission,
2 treatment, planning, or discharge. Entities shall not
3 redisclose any personally identifiable information, unless
4 necessary for admission, treatment, planning, or discharge of
5 the identified recipient to another setting. No records or
6 communications may be disclosed to a county jail or State
7 correctional facility ~~prison~~ pursuant to this Section unless
8 the Department has entered into a written agreement with the
9 county jail or State correctional facility ~~prison~~ requiring
10 that the county jail or State correctional facility ~~prison~~
11 adopt written policies and procedures designed to ensure that
12 the records and communications are disclosed only to those
13 persons employed by or under contract to the county jail or
14 State correctional facility ~~prison~~ who are involved in the
15 provision of mental health services to inmates and that the
16 records and communications are protected from further
17 disclosure.

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

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
25 recipient's record or communications.

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

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

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

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

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

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

24 (5) Records and communications may be disclosed in a
25 proceeding under the Probate Act of 1975, to determine a
26 recipient's competency or need for guardianship, provided

1 that the disclosure is made only with respect to that
2 issue.

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

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

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

26 (9) Records and communications of the recipient may be

1 disclosed in investigations of and trials for homicide when
2 the disclosure relates directly to the fact or immediate
3 circumstances of the homicide.

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

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

26 (12) Records and communications of a recipient may be

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

16 (b) Before a disclosure is made under subsection (a), any
17 party to the proceeding or any other interested person may
18 request an in camera review of the record or communications to
19 be disclosed. The court or agency conducting the proceeding may
20 hold an in camera review on its own motion. When, contrary to
21 the express wish of the recipient, the therapist asserts a
22 privilege on behalf and in the interest of a recipient, the
23 court may require that the therapist, in an in camera hearing,
24 establish that disclosure is not in the best interest of the
25 recipient. The court or agency may prevent disclosure or limit
26 disclosure to the extent that other admissible evidence is

1 sufficient to establish the facts in issue. The court or agency
2 may enter such orders as may be necessary in order to protect
3 the confidentiality, privacy, and safety of the recipient or of
4 other persons. Any order to disclose or to not disclose shall
5 be considered a final order for purposes of appeal and shall be
6 subject to interlocutory appeal.

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

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

1 the committee, commission or subcommittee. If an objection has
2 been filed within 15 business days after the request for
3 disclosure, the facility shall disclose the records and
4 communications only after the committee, commission or
5 subcommittee has permitted the recipient, guardian or
6 therapist to present his objection in person before it and has
7 renewed its request for disclosure by a majority vote of its
8 members.

9 Disclosure under this subsection shall not occur until all
10 personally identifiable data of the recipient and provider are
11 removed from the records and communications. Disclosure under
12 this subsection shall not occur in any public proceeding.

13 (d) No party to any proceeding described under paragraphs
14 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
15 Section, nor his or her attorney, shall serve a subpoena
16 seeking to obtain access to records or communications under
17 this Act unless the subpoena is accompanied by a written order
18 issued by a judge, authorizing the disclosure of the records or
19 the issuance of the subpoena. No such written order shall be
20 issued without written notice of the motion to the recipient
21 and the treatment provider. Prior to issuance of the order,
22 each party or other person entitled to notice shall be
23 permitted an opportunity to be heard pursuant to subsection (b)
24 of this Section. No person shall comply with a subpoena for
25 records or communications under this Act, unless the subpoena
26 is accompanied by a written order authorizing the issuance of

1 the subpoena or the disclosure of the records. Each subpoena
2 duces tecum issued by a court or administrative agency or
3 served on any person pursuant to this subsection (d) shall
4 include the following language: "No person shall comply with a
5 subpoena for mental health records or communications pursuant
6 to Section 10 of the Mental Health and Developmental
7 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the
8 subpoena is accompanied by a written order that authorizes the
9 issuance of the subpoena and the disclosure of records or
10 communications."

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

20 (f) A recipient's records and communications shall be
21 disclosed to the Inspector General of the Department of Human
22 Services within 10 business days of a request by the Inspector
23 General (i) in the course of an investigation authorized by the
24 Department of Human Services Act and applicable rule or (ii)
25 during the course of an assessment authorized by the Abuse of
26 Adults with Disabilities Intervention Act and applicable rule.

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

13 (Source: P.A. 96-406, eff. 8-13-09.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law."