



Rep. Lindsey LaPointe

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10400HB5329ham001

LRB104 20662 KTG 35654 a

1 AMENDMENT TO HOUSE BILL 5329

2 AMENDMENT NO. _____. Amend House Bill 5329 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 1-109,
6 1-129, 2-107, 2-107.1, 3-611, and 3-807 and by adding Section
7 1-103.5 as follows:

8 (405 ILCS 5/1-103.5 new)

9 Sec. 1-103.5. Confinement. "Confinement", with respect to
10 a mental health facility, means that an individual is
11 prevented or otherwise not permitted to leave the facility.

12 (405 ILCS 5/1-109) (from Ch. 91 1/2, par. 1-109)

13 Sec. 1-109. "Discharge" means the full and physical
14 release of any person admitted or otherwise detained under
15 this Act from treatment, habilitation, or care and custody.

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

2 (405 ILCS 5/1-129)

3 Sec. 1-129. Mental illness. "Mental illness" means a
4 mental, or emotional disorder that substantially impairs a
5 person's thought, perception of reality, emotional process,
6 judgment, behavior, or ability to cope with the ordinary
7 demands of life, but does not include a developmental
8 disability, a neurocognitive disorder ~~dementia or Alzheimer's~~
9 ~~disease~~ absent psychosis, a substance use disorder, or an
10 abnormality manifested only by repeated criminal or otherwise
11 antisocial conduct.

12 (Source: P.A. 100-759, eff. 1-1-19.)

13 (405 ILCS 5/2-107) (from Ch. 91 1/2, par. 2-107)

14 Sec. 2-107. Refusal of services; informing of risks.

15 (a) An adult recipient of services or the recipient's
16 guardian, if the recipient is under guardianship, and the
17 recipient's substitute decision maker, if any, must be
18 informed of the recipient's right to refuse medication or
19 electroconvulsive therapy. The recipient and the recipient's
20 guardian or substitute decision maker shall be given the
21 opportunity to refuse generally accepted mental health or
22 developmental disability services, including but not limited
23 to medication or electroconvulsive therapy. If such services
24 are refused, they shall not be given unless such services are

1 necessary to prevent the recipient from causing serious and
2 imminent physical harm to the recipient or others and no less
3 restrictive alternative is available. The facility director
4 shall inform a recipient, guardian, or substitute decision
5 maker, if any, who refuses such services of alternate services
6 available and the risks of such alternate services, as well as
7 the possible consequences to the recipient of refusal of such
8 services.

9 (b) Psychotropic medication or electroconvulsive therapy
10 may be administered under this Section for up to 24 hours only
11 if the circumstances leading up to the need for emergency
12 treatment are set forth in writing in the recipient's record.

13 (c) Administration of medication or electroconvulsive
14 therapy may not be continued unless the need for such
15 treatment is redetermined at least every 24 hours based upon a
16 personal examination of the recipient by a physician or a
17 nurse under the supervision of a physician and the
18 circumstances demonstrating that need are set forth in writing
19 in the recipient's record.

20 (d) Neither psychotropic medication nor electroconvulsive
21 therapy may be administered under this Section for a period in
22 excess of 72 hours, excluding Saturdays, Sundays, and
23 holidays, unless a petition is filed under Section 2-107.1 and
24 the treatment continues to be necessary under subsection (a)
25 of this Section. Once the petition has been filed, treatment
26 may continue in compliance with subsections (a), (b), and (c)

1 of this Section until the final outcome of the hearing on the
2 petition.

3 (e) The Department shall issue rules designed to ensure
4 ~~insure~~ that in State-operated mental health facilities
5 psychotropic medication and electroconvulsive therapy are
6 administered in accordance with this Section and only when
7 appropriately authorized and monitored by a physician or a
8 nurse under the supervision of a physician in accordance with
9 accepted medical practice. The facility director of each
10 mental health facility not operated by the State shall issue
11 rules designed to ensure ~~insure~~ that in that facility
12 psychotropic medication and electroconvulsive therapy are
13 administered in accordance with this Section and only when
14 appropriately authorized and monitored by a physician or a
15 nurse under the supervision of a physician in accordance with
16 accepted medical practice. Such rules shall be available for
17 public inspection and copying during normal business hours.

18 (f) The provisions of this Section with respect to the
19 emergency administration of psychotropic medication and
20 electroconvulsive therapy do not apply to facilities licensed
21 under the Nursing Home Care Act, the Specialized Mental Health
22 Rehabilitation Act of 2013, the ID/DD Community Care Act, or
23 the MC/DD Act.

24 (g) Under no circumstances may long-acting psychotropic
25 medications be administered under this Section.

26 (h) Whenever psychotropic medication or electroconvulsive

1 therapy is refused pursuant to subsection (a) of this Section
2 at least once that day, the physician or advanced practice
3 psychiatric nurse shall determine and state in writing the
4 reasons why the recipient did not meet the criteria for
5 administration of medication or electroconvulsive therapy
6 under subsection (a) and whether the recipient meets the
7 standard for administration of psychotropic medication or
8 electroconvulsive therapy under Section 2-107.1 of this Code.
9 If the physician or advanced practice psychiatric nurse
10 determines that the recipient meets the standard for
11 administration of psychotropic medication or electroconvulsive
12 therapy under Section 2-107.1, the facility director or his or
13 her designee shall petition the court for administration of
14 psychotropic medication or electroconvulsive therapy pursuant
15 to that Section unless the facility director or his or her
16 designee states in writing in the recipient's record why the
17 filing of such a petition is not warranted. This subsection
18 (h) applies only to State-operated mental health facilities.

19 (i) The Department shall conduct annual trainings for all
20 physicians and registered nurses working in State-operated
21 mental health facilities on the appropriate use of emergency
22 administration of psychotropic medication and
23 electroconvulsive therapy, standards for their use, and the
24 methods of authorization under this Section.

25 (Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15.)

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

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

4 (a) (Blank).

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

10 (1) Any person 18 years of age or older, including any
11 guardian, may petition the circuit court for an order
12 authorizing the administration of psychotropic medication
13 and electroconvulsive therapy to a recipient of services.
14 The petition shall state that the petitioner has made a
15 good faith attempt to determine whether the recipient has
16 executed a power of attorney for health care under the
17 Powers of Attorney for Health Care Law or a declaration
18 for mental health treatment under the Mental Health
19 Treatment Preference Declaration Act and to obtain copies
20 of these instruments if they exist. If either of the
21 above-named instruments is available to the petitioner,
22 the instrument or a copy of the instrument shall be
23 attached to the petition as an exhibit. The petitioner
24 shall deliver a copy of the petition⁷ and notice of the
25 time and place of the hearing⁷ to the respondent, his or
26 her attorney, any known agent or attorney-in-fact, if any,

1 and the guardian, if any, no later than 3 days prior to the
2 date of the hearing. Service of the petition and notice of
3 the time and place of the hearing may be made by
4 transmitting them via facsimile machine or secured
5 electronic mail to the respondent or other party. Upon
6 receipt of the petition and notice, the party served, ~~or~~
7 ~~the person delivering the petition and notice to the party~~
8 ~~served,~~ shall acknowledge service. If the party sending
9 the petition and notice does not receive acknowledgement
10 of service within 24 hours, service must be made by
11 personal service. A petition requesting that the court
12 authorize treatment with psychotropic medication shall
13 specify the full names of the medications and anticipated
14 range of dosage that comprise such treatment. The petition
15 also may include a request that the court authorize
16 alternative or alternate treatments with psychotropic
17 medications, but only where the petition sets forth the
18 psychotropic medications and the anticipated range of
19 dosages for each alternative or alternate and each
20 combination of psychotropic medications that may be
21 administered simultaneously.

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

1 sets forth the specific testing and procedures sought to
2 be administered.

3 If a hearing is requested to be held immediately
4 following the hearing on a petition for involuntary
5 admission, then the notice requirement shall be the same
6 as that for the hearing on the petition for involuntary
7 admission, and the petition filed pursuant to this Section
8 shall be filed with the petition for involuntary
9 admission.

10 (2) The court shall hold a hearing within 7 days of the
11 filing of the petition. The People, the petitioner, or the
12 respondent shall be entitled to a continuance of up to 7
13 days as of right. An additional continuance of not more
14 than 7 days may be granted to any party (i) upon a showing
15 that the continuance is needed in order to adequately
16 prepare for or present evidence in a hearing under this
17 Section or (ii) under exceptional circumstances. The court
18 may grant an additional continuance not to exceed 21 days
19 when, in its discretion, the court determines that such a
20 continuance is necessary in order to provide the recipient
21 with an examination pursuant to Section 3-803 or 3-804 of
22 this Act, to provide the recipient with a trial by jury as
23 provided in Section 3-802 of this Act, or to arrange for
24 the substitution of counsel as provided for by the
25 Illinois Supreme Court Rules. The hearing shall be
26 separate from a judicial proceeding held to determine

1 whether a person is subject to involuntary admission but
2 may be heard immediately preceding or following such a
3 judicial proceeding and may be heard by the same trier of
4 fact or law as in that judicial proceeding.

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

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

19 (A) ~~That~~ the recipient has a serious mental
20 illness or developmental disability; ~~:-~~

21 (B) ~~That~~ because of said mental illness or
22 developmental disability, the recipient currently
23 exhibits any one of the following: (i) deterioration
24 of his or her ability to function, as compared to the
25 recipient's ability to function prior to the current
26 onset of symptoms of the mental illness or disability

1 for which treatment is presently sought, (ii)
2 suffering, or (iii) threatening behavior;~~;~~

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

8 (D) ~~That~~ the benefits of the treatment outweigh
9 the harm;~~;~~

10 (E) ~~That~~ the recipient lacks the capacity to make
11 a reasoned decision about the treatment;~~;~~

12 (F) ~~That~~ other less restrictive services have been
13 explored and found inappropriate; ~~and;~~

14 (G) if ~~if~~ the petition seeks authorization for
15 testing and other procedures, ~~that~~ such testing and
16 procedures are essential for the safe and effective
17 administration of the treatment.

18 (4.5) In determining whether there is clear and
19 convincing evidence, the court may consider evidence
20 presented, if any, about a recipient's history of serious
21 violence, repeated past pattern of specific behavior
22 related to the recipient's illness, or outcomes of past
23 treatments.

24 (5) In no event shall an order issued under this
25 Section be effective for more than 90 days. A second
26 90-day period of involuntary treatment may be authorized

1 pursuant to a hearing that complies with the standards and
2 procedures of this subsection (a-5). Thereafter,
3 additional 180-day periods of involuntary treatment may be
4 authorized pursuant to the standards and procedures of
5 this Section without limit. If a new petition to authorize
6 the administration of psychotropic medication or
7 electroconvulsive therapy is filed at least 15 days prior
8 to the expiration of the prior order, and if any
9 continuance of the hearing is agreed to by the recipient,
10 the administration of the treatment may continue in
11 accordance with the prior order pending the completion of
12 a hearing under this Section.

13 (6) An order issued under this subsection (a-5) shall
14 designate the persons authorized to administer the
15 treatment under the standards and procedures of this
16 subsection (a-5). Those persons shall have complete
17 discretion not to administer any treatment authorized
18 under this Section. The order shall also specify the
19 medications and the anticipated range of dosages that have
20 been authorized ~~and may include a list of any alternative~~
21 ~~medications and range of dosages deemed necessary.~~ In
22 addition, the order may authorize the administration of
23 any alternative or alternate treatment that is requested
24 in the petition and for which the court finds clear and
25 convincing evidence that the benefits of the alternative
26 or alternate treatment outweigh the harm and the recipient

1 lacks the capacity to make a reasoned decision about the
2 treatment. The medications and the anticipated range of
3 dosages for any alternative or alternate treatment that
4 the court authorizes shall be included in the order. Where
5 the simultaneous use of multiple psychotropic medications
6 is authorized, the order shall specify the combinations
7 that are authorized.

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

12 (b) A guardian may be authorized to consent to the
13 administration of psychotropic medication or electroconvulsive
14 therapy to an objecting recipient only under the standards and
15 procedures of subsection (a-5).

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

20 (d) Nothing in this Section shall prevent the
21 administration of psychotropic medication ~~or electroconvulsive~~
22 ~~therapy~~ to recipients in an emergency under Section 2-107 of
23 this Act.

24 (e) Notwithstanding any of the provisions of this Section,
25 psychotropic medication or electroconvulsive therapy may be
26 administered pursuant to a power of attorney for health care

1 under the Powers of Attorney for Health Care Law or a
2 declaration for mental health treatment under the Mental
3 Health Treatment Preference Declaration Act over the objection
4 of the recipient if the recipient has not revoked the power of
5 attorney or declaration for mental health treatment as
6 provided in the relevant statute.

7 (f) The Department shall conduct annual trainings for
8 physicians and registered nurses working in State-operated
9 mental health facilities on the appropriate use of
10 psychotropic medication and electroconvulsive therapy,
11 standards for their use, and the preparation of court
12 petitions under this Section before any such psychiatrists or
13 advanced practice psychiatric nurses may petition the court or
14 testify at a hearing under this Section.

15 (Source: P.A. 100-710, eff. 8-3-18.)

16 (405 ILCS 5/3-611) (from Ch. 91 1/2, par. 3-611)

17 Sec. 3-611. Filing petition, first certificate, and proof
18 of service.

19 (a) Within 24 hours, excluding Saturdays, Sundays and
20 holidays, after the respondent's admission under this Article,
21 the facility director of the facility shall file 2 copies of
22 the petition, the first certificate, and proof of service of
23 the petition and statement of rights upon the respondent with
24 the court in the county in which the facility is located.

25 (b) Upon completion of the second certificate, the

1 facility director shall promptly file it with the court and
2 provide a copy to the respondent.

3 (c) The facility director shall make copies of the
4 certificates available to the attorneys for the parties upon
5 request.

6 (d) Upon the filing of the petition and first certificate,
7 the court shall set a hearing to be held within 5 days,
8 excluding Saturdays, Sundays and holidays, after receipt of
9 the petition. The court shall direct that notice of the time
10 and place of the hearing be served upon the respondent, his
11 responsible relatives, and the persons entitled to receive a
12 copy of the petition pursuant to Section 3-609.

13 (e) For purposes of this Section, (1) a respondent is
14 admitted to a mental health facility at the earlier of the
15 respondent's confinement or receipt of treatment and (2) a
16 respondent who is ordered discharged in accordance with
17 Section 3-809 or subsection (b) of Section 3-901, or
18 discharged upon notice by the facility director as provided by
19 subsection (a) of Section 3-903, remains admitted to a mental
20 health facility until the respondent is physically released
21 from the mental health facility and thereafter physically
22 enters a mental health facility.

23 (Source: P.A. 98-865, eff. 8-8-14.)

24 (405 ILCS 5/3-807) (from Ch. 91 1/2, par. 3-807)

25 Sec. 3-807. Testimony. No respondent may be found subject

1 to involuntary admission on an inpatient or outpatient basis
2 unless at least one psychiatrist, clinical social worker,
3 clinical psychologist, advanced practice psychiatric nurse, or
4 qualified examiner who has examined the respondent testifies
5 in person at the hearing. No administration of psychotropic
6 medication or electroconvulsive therapy without the informed
7 consent of the recipient may be authorized unless at least one
8 psychiatrist or advanced practice psychiatric nurse who has
9 examined the recipient testifies in person at the hearing. The
10 respondent may waive the requirement of the testimony subject
11 to the approval of the court.

12 (Source: P.A. 101-587, eff. 1-1-20.)".