

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 1-104.5,
6 3-602, 3-603, 3-607, 3-610, 3-702, and 3-703 as follows:

7 (405 ILCS 5/1-104.5)

8 Sec. 1-104.5. "Dangerous conduct" means threatening
9 behavior or conduct that places another individual or the
10 person engaging in the behavior or conduct, in reasonable
11 expectation of being harmed, or a person's inability to
12 provide, without the assistance of family or outside help, for
13 his or her basic physical needs so as to guard himself or
14 herself from serious harm.

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

16 (405 ILCS 5/3-602) (from Ch. 91 1/2, par. 3-602)

17 Sec. 3-602. The petition shall be accompanied by a
18 certificate executed by a physician, qualified examiner,
19 psychiatrist, or clinical psychologist which states that the
20 respondent is subject to involuntary admission and requires
21 immediate hospitalization. The certificate shall indicate that
22 the physician, qualified examiner, psychiatrist, or clinical

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

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

9 (405 ILCS 5/3-603) (from Ch. 91 1/2, par. 3-603)

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

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

19 1. the petitioner believes, as a result of his personal
20 observation, that the respondent is subject to involuntary
21 admission;

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

23 3. no physician, qualified examiner, psychiatrist, or
24 clinical psychologist could be found who has examined or
25 could examine the respondent; and

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

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

9 (405 ILCS 5/3-607) (from Ch. 91 1/2, par. 3-607)

10 Sec. 3-607. Court ordered temporary detention and
11 examination. When, as a result of personal observation and
12 testimony in open court, any court has reasonable grounds to
13 believe that a person appearing before it is subject to
14 involuntary admission and in need of immediate hospitalization
15 to protect such person or others from physical harm, the court
16 may enter an order for the temporary detention and examination
17 of such person. The order shall set forth in detail the facts
18 which are the basis for its conclusion. The court may order a
19 peace officer to take the person into custody and transport him
20 to a mental health facility. The person may be detained for
21 examination for no more than 24 hours to determine whether or
22 not she or he is subject to involuntary admission and in need
23 of immediate hospitalization. If a petition and certificate, ~~as~~
24 ~~provided in this Article,~~ are executed within the 24 hours, the
25 person may be admitted provided that the certificate states

1 that the person is both subject to involuntary admission and in
2 need of immediate hospitalization. If the certificate states
3 that the person is subject to involuntary admission but not in
4 need of immediate hospitalization absent imminent danger, the
5 person may remain in his or her place of residence pending a
6 hearing on the petition unless he or she voluntarily agrees to
7 inpatient treatment. ~~and the~~ The provisions of this Article
8 shall apply to all petitions and certificates executed pursuant
9 to this Section. If no petition or certificate is executed, the
10 person shall be released.

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

12 (405 ILCS 5/3-610) (from Ch. 91 1/2, par. 3-610)

13 Sec. 3-610. As soon as possible but not later than 24
14 hours, excluding Saturdays, Sundays and holidays, after
15 admission of a respondent pursuant to this Article, the
16 respondent shall be examined by a psychiatrist. The
17 psychiatrist may be a member of the staff of the facility but
18 shall not be the person who executed the first certificate. If
19 a certificate has already been completed by a psychiatrist
20 following the respondent's admission, the respondent shall be
21 examined by another psychiatrist or by a clinical psychologist
22 or qualified examiner. If, as a result of this second
23 examination, a certificate is executed, the certificate shall
24 be promptly filed with the court. If the certificate states
25 that the respondent is subject to involuntary admission but not

1 in need of immediate hospitalization absent imminent danger,
2 the respondent may remain in his or her place of residence
3 pending a hearing on the petition unless he or she voluntarily
4 agrees to inpatient treatment. If the respondent is not
5 examined or if the psychiatrist, physician, clinical
6 psychologist, or qualified examiner does not execute a
7 certificate pursuant to Section 3-602, the respondent shall be
8 released forthwith.

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

10 (405 ILCS 5/3-702) (from Ch. 91 1/2, par. 3-702)

11 Sec. 3-702. (a) The petition may be accompanied by the
12 certificate of a physician, qualified examiner, psychiatrist,
13 or clinical psychologist which certifies that the respondent is
14 subject to involuntary admission and which contains the other
15 information specified in Section 3-602.

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

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

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

3 Sec. 3-703. If no certificate was filed, the respondent
4 shall be examined separately by a physician, or clinical
5 psychologist, or qualified examiner and by a psychiatrist. If a
6 certificate executed by a psychiatrist was filed, the
7 respondent shall be examined by a physician, clinical
8 psychologist, qualified examiner, or psychiatrist. If a
9 certificate executed by a qualified examiner, clinical
10 psychologist, or a physician who is not a psychiatrist was
11 filed, the respondent shall be examined by a psychiatrist. The
12 examining physician, clinical psychologist, qualified examiner
13 or psychiatrist may interview by telephone or in person any
14 witnesses or other persons listed in the petition for
15 involuntary admission. If, as a result of an examination, a
16 certificate is executed, the certificate shall be promptly
17 filed with the court. If a certificate is executed, the
18 examining physician, clinical psychologist, qualified examiner
19 or psychiatrist may also submit for filing with the court a
20 report in which his findings are described in detail, and may
21 rely upon such findings for his opinion that the respondent is
22 subject to involuntary admission. Copies of the certificates
23 shall be made available to the attorneys for the parties upon
24 request prior to the hearing. A certificate prepared in
25 compliance with this Article shall state whether or not the

1 respondent is in need of immediate hospitalization. However, if
2 both the certificates state that the respondent is not in need
3 of immediate hospitalization absent imminent danger, the
4 respondent may remain in his or her place of residence pending
5 a hearing on the petition unless he or she voluntarily agrees
6 to inpatient treatment.

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

8 Section 10. The Mental Health and Developmental
9 Disabilities Confidentiality Act is amended by changing
10 Sections 4, 9.2, and 10 as follows:

11 (740 ILCS 110/4) (from Ch. 91 1/2, par. 804)

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

15 (1) the parent or guardian of a recipient who is under
16 12 years of age;

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

18 (3) the parent or guardian of a recipient who is at
19 least 12 but under 18 years, if the recipient is informed
20 and does not object or if the therapist does not find that
21 there are compelling reasons for denying the access. The
22 parent or guardian who is denied access by either the
23 recipient or the therapist may petition a court for access
24 to the record. Nothing in this paragraph is intended to

1 prohibit the parent or guardian of a recipient who is at
2 least 12 but under 18 years from requesting and receiving
3 the following information: current physical and mental
4 condition, diagnosis, treatment needs, services provided,
5 and services needed, including medication, if any;

6 (4) the guardian of a recipient who is 18 years or
7 older;

8 (5) an attorney or guardian ad litem who represents a
9 minor 12 years of age or older in any judicial or
10 administrative proceeding, provided that the court or
11 administrative hearing officer has entered an order
12 granting the attorney this right; or

13 (6) an agent appointed under a recipient's power of
14 attorney for health care or for property, when the power of
15 attorney authorizes the access.

16 (b) Assistance in interpreting the record may be provided
17 without charge and shall be provided if the person inspecting
18 the record is under 18 years of age. However, access may in no
19 way be denied or limited if the person inspecting the record
20 refuses the assistance. A reasonable fee may be charged for
21 duplication of a record. However, when requested to do so in
22 writing by any indigent recipient, the custodian of the records
23 shall provide at no charge to the recipient, or to the
24 Guardianship and Advocacy Commission, the agency designated by
25 the Governor under Section 1 of the Protection and Advocacy for
26 Developmentally Disabled Persons Act or to any other

1 not-for-profit agency whose primary purpose is to provide free
2 legal services or advocacy for the indigent and who has
3 received written authorization from the recipient under
4 Section 5 of this Act to receive his records, one copy of any
5 records in its possession whose disclosure is authorized under
6 this Act.

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

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

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

20 (740 ILCS 110/9.2)

21 Sec. 9.2. Interagency disclosure of recipient information.
22 For the purposes of continuity of care, the Department of Human
23 Services (as successor to the Department of Mental Health and
24 Developmental Disabilities), community agencies funded by the
25 Department of Human Services in that capacity, licensed private

1 hospitals receiving payments from the Department of Human
2 Services or the Department of Healthcare and Family Services,
3 State correctional facilities ~~prisons operated by the~~
4 ~~Department of Corrections,~~ mental health facilities operated
5 by a county, and jails operated by any county of this State may
6 disclose a recipient's record or communications, without
7 consent, to each other, but only for the purpose of admission,
8 treatment, planning, or discharge. Entities shall not
9 redisclose any personally identifiable information, unless
10 necessary for admission, treatment, planning, or discharge of
11 the identified recipient to another setting. No records or
12 communications may be disclosed to a county jail or State
13 correctional facility ~~prison~~ pursuant to this Section unless
14 the Department has entered into a written agreement with the
15 county jail or State correctional facility ~~prison~~ requiring
16 that the county jail or State correctional facilities ~~prison~~
17 adopt written policies and procedures designed to ensure that
18 the records and communications are disclosed only to those
19 persons employed by or under contract to the county jail or
20 State correctional facilities ~~prison~~ who are involved in the
21 provision of mental health services to inmates and that the
22 records and communications are protected from further
23 disclosure.

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

25 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

1 Sec. 10. (a) Except as provided herein, in any civil,
2 criminal, administrative, or legislative proceeding, or in any
3 proceeding preliminary thereto, a recipient, and a therapist on
4 behalf and in the interest of a recipient, has the privilege to
5 refuse to disclose and to prevent the disclosure of the
6 recipient's record or communications.

7 (1) Records and communications may be disclosed in a
8 civil, criminal or administrative proceeding in which the
9 recipient introduces his mental condition or any aspect of
10 his services received for such condition as an element of
11 his claim or defense, if and only to the extent the court
12 in which the proceedings have been brought, or, in the case
13 of an administrative proceeding, the court to which an
14 appeal or other action for review of an administrative
15 determination may be taken, finds, after in camera
16 examination of testimony or other evidence, that it is
17 relevant, probative, not unduly prejudicial or
18 inflammatory, and otherwise clearly admissible; that other
19 satisfactory evidence is demonstrably unsatisfactory as
20 evidence of the facts sought to be established by such
21 evidence; and that disclosure is more important to the
22 interests of substantial justice than protection from
23 injury to the therapist-recipient relationship or to the
24 recipient or other whom disclosure is likely to harm.
25 Except in a criminal proceeding in which the recipient, who
26 is accused in that proceeding, raises the defense of

1 insanity, no record or communication between a therapist
2 and a recipient shall be deemed relevant for purposes of
3 this subsection, except the fact of treatment, the cost of
4 services and the ultimate diagnosis unless the party
5 seeking disclosure of the communication clearly
6 establishes in the trial court a compelling need for its
7 production. However, for purposes of this Act, in any
8 action brought or defended under the Illinois Marriage and
9 Dissolution of Marriage Act, or in any action in which pain
10 and suffering is an element of the claim, mental condition
11 shall not be deemed to be introduced merely by making such
12 claim and shall be deemed to be introduced only if the
13 recipient or a witness on his behalf first testifies
14 concerning the record or communication.

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

1 disclosure is likely to cause.

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

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

1 issues involving the recipient's physical or mental
2 condition and only to the extent that these are germane to
3 such proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 disclosed to the Inspector General of the Department of Human
2 Services within 10 business days of a request by the Inspector
3 General (i) in the course of an investigation authorized by the
4 Abused and Neglected Long Term Care Facility Residents
5 Reporting Act and applicable rule or (ii) during the course of
6 an assessment authorized by the Abuse of Adults with
7 Disabilities Intervention Act and applicable rule. The request
8 shall be in writing and signed by the Inspector General or his
9 or her designee. The request shall state the purpose for which
10 disclosure is sought. Any person who knowingly and willfully
11 refuses to comply with such a request is guilty of a Class A
12 misdemeanor.

13 (Source: P.A. 92-358, eff. 8-15-01; 92-708, eff. 7-19-02;
14 93-751, eff. 7-15-04.)

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

1 INDEX

2 Statutes amended in order of appearance

3 405 ILCS 5/1-104.5

4 405 ILCS 5/3-602 from Ch. 91 1/2, par. 3-602

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

6 405 ILCS 5/3-607 from Ch. 91 1/2, par. 3-607

7 405 ILCS 5/3-610 from Ch. 91 1/2, par. 3-610

8 405 ILCS 5/3-702 from Ch. 91 1/2, par. 3-702

9 405 ILCS 5/3-703 from Ch. 91 1/2, par. 3-703

10 740 ILCS 110/4 from Ch. 91 1/2, par. 804

11 740 ILCS 110/9.2

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