



Rep. Lindsey LaPointe

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10400HB5329ham002

LRB104 20662 KTG 36555 a

1 AMENDMENT TO HOUSE BILL 5329

2 AMENDMENT NO. _____. Amend House Bill 5329, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Mental Health and Developmental
6 Disabilities Code is amended by changing Sections 1-109,
7 1-129, 2-107, 2-107.1, 3-611, and 3-807 and by adding Section
8 1-103.5 as follows:

9 (405 ILCS 5/1-103.5 new)

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

13 (405 ILCS 5/1-109) (from Ch. 91 1/2, par. 1-109)

14 Sec. 1-109. "Discharge" means the full and physical
15 release of any person admitted or otherwise detained under

1 this Act from treatment, habilitation, or care and custody.

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

3 (405 ILCS 5/1-129)

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

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

14 (405 ILCS 5/2-107) (from Ch. 91 1/2, par. 2-107)

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

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

1 are refused, they shall not be given unless such services are
2 necessary to prevent the recipient from causing serious and
3 imminent physical harm to the recipient or others and no less
4 restrictive alternative is available. The facility director
5 shall inform a recipient, guardian, or substitute decision
6 maker, if any, who refuses such services of alternate services
7 available and the risks of such alternate services, as well as
8 the possible consequences to the recipient of refusal of such
9 services.

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

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

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

1 may continue in compliance with subsections (a), (b), and (c)
2 of this Section until the final outcome of the hearing on the
3 petition.

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

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

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

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

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

26 (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

1 her attorney, any known agent or attorney-in-fact, if any,
2 and the guardian, if any, no later than 3 days prior to the
3 date of the hearing. Service of the petition and notice of
4 the time and place of the hearing may be made upon parties
5 other than the respondent by transmitting them via
6 facsimile machine or by operation of an electronic filing
7 manager service authorized by the Supreme Court. Service
8 of the petition and notice of the time and place of the
9 hearing upon a respondent may be accomplished by any one
10 of the following:

11 (A) Personal service.

12 (B) Handing a copy of the petition and notice to
13 the respondent together with a waiver of personal
14 service. The waiver may be returned to the party
15 delivering the petition and notice. If the party
16 delivering the petition and notice to the respondent
17 does not receive the waiver, the service must be by
18 personal service.

19 (C) If the respondent is confined to a mental
20 health facility, handing a copy of the petition and
21 notice to the respondent, provided the party
22 delivering the petition and notice to the respondent
23 files within 24 hours a verified statement naming the
24 party served and stating the means, place, date, and
25 time of service. If no verification of service is
26 filed before the matter is set for hearing, then

1 ~~service must be made by personal service. to the~~
2 ~~respondent or other party. Upon receipt of the~~
3 ~~petition and notice, the party served, or the person~~
4 ~~delivering the petition and notice to the party~~
5 ~~served, shall acknowledge service. If the party~~
6 ~~sending the petition and notice does not receive~~
7 ~~acknowledgement of service within 24 hours, service~~
8 ~~must be made by personal service.~~

9 A petition requesting that the court authorize
10 treatment with psychotropic medication shall specify the
11 full names of the medications and anticipated range of
12 dosage that comprise such treatment. The petition also may
13 include a request that the court authorize alternative or
14 alternate treatments with psychotropic medications, but
15 only where the petition sets forth the psychotropic
16 medications and the anticipated range of dosages for each
17 alternative or alternate and each combination of
18 psychotropic medications that may be administered
19 simultaneously.

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

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

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

1 judicial proceeding and may be heard by the same trier of
2 fact or law as in that judicial proceeding.

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

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

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

19 (B) ~~That~~ because of said mental illness or
20 developmental disability, the recipient currently
21 exhibits any one of the following: (i) deterioration
22 of his or her ability to function, as compared to the
23 recipient's ability to function prior to the current
24 onset of symptoms of the mental illness or disability
25 for which treatment is presently sought, (ii)
26 suffering, or (iii) threatening behavior;~~:-~~

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

6 (D) ~~That~~ the benefits of the treatment outweigh
7 the harm;~~;~~

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

10 (F) ~~That~~ other less restrictive services have been
11 explored and found inappropriate; ~~and.~~

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

16 (4.5) In determining whether there is clear and
17 convincing evidence, the court may consider evidence
18 presented, if any, about a recipient's history of serious
19 violence, repeated past pattern of specific behavior
20 related to the recipient's illness, or outcomes of past
21 treatments.

22 (5) In no event shall an order issued under this
23 Section be effective for more than 90 days. A second
24 90-day period of involuntary treatment may be authorized
25 pursuant to a hearing that complies with the standards and
26 procedures of this subsection (a-5). Thereafter,

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

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

1 dosages for any alternative or alternate treatment that
2 the court authorizes shall be included in the order. Where
3 the simultaneous use of multiple psychotropic medications
4 is authorized, the order shall specify the combinations
5 that are authorized.

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

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

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

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

22 (e) Notwithstanding any of the provisions of this Section,
23 psychotropic medication or electroconvulsive therapy may be
24 administered pursuant to a power of attorney for health care
25 under the Powers of Attorney for Health Care Law or a
26 declaration for mental health treatment under the Mental

1 Health Treatment Preference Declaration Act over the objection
2 of the recipient if the recipient has not revoked the power of
3 attorney or declaration for mental health treatment as
4 provided in the relevant statute.

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

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

14 (405 ILCS 5/3-611) (from Ch. 91 1/2, par. 3-611)

15 Sec. 3-611. Filing petition, first certificate, and proof
16 of service.

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

23 (b) Upon completion of the second certificate, the
24 facility director shall promptly file it with the court and
25 provide a copy to the respondent.

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

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

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

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

22 (405 ILCS 5/3-807) (from Ch. 91 1/2, par. 3-807)

23 Sec. 3-807. Testimony. No respondent may be found subject
24 to involuntary admission on an inpatient or outpatient basis
25 unless at least one psychiatrist, clinical social worker,

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

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