

**MENTAL HEALTH  
AND  
DEVELOPMENTAL DISABILITIES  
CONFIDENTIALITY ACT**

**[740 ILCS 110]**

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**ILLINOIS DEPARTMENT OF HUMAN SERVICES**

**Includes amendments effective through July 25, 2002**

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Revised July 25, 2002  
622502

## PREFACE

In June 1992, the 87th General Assembly passed House Bill 3810 (P.A. 87-1005), effective September 3, 1992. This legislation required the Legislative Reference Bureau to file a compilation of the nearly 2,000 general Acts of Illinois. The compilation, known as the Illinois Compiled Statutes (ILCS), became effective January 1, 1993.

**Effective January 1, 1994, the Illinois Compiled Statutes are to be used exclusively.**

All amendments and additions to this edition of the Confidentiality Act made since the last published edition (effective through August 17, 2001) are indicated in bold face capital letters.

**MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CONFIDENTIALITY ACT  
(740 ILCS 110)**

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## AMENDMENTS

SECTION(S)	PUBLIC ACT/DATE
Amended 10	P.A. 82-163, eff. 8/13/81
Amended 5 & 12	P.A. 82-19, eff. 9/15/81
Added 12.1	P.A. 82-442, eff. 9/15/81
Amended 9	P.A. 82-209, eff. 7/1/82
Amended 10(9)	P.A. 82-900, eff. 1/1/83
Amended 5(a)(3)	P.A. 83-706, eff. 9/23/83
Amended 5	P.A. 83-111, eff. 1/1/84
Added 12.2	P.A. 83-111, eff. 1/1/84
Amended 12(c)	P.A. 83-106, eff. 7/1/84
Amended to correct language 5 & 12.2(a)	P.A. 83-1362, eff. 9/11/84
Amended 12.2	P.A. 83-1397, eff. 1/1/85
Amended 12	P.A. 84-25, eff. 7/18/85
Added 8.1	P.A. 84-673, eff. 9/20/85
Added 12.3	P.A. 84-539, eff. 9/17/85
Amended 4	P.A. 84-902, eff. 1/1/86
Amended 5(a)(2), (b)(6) & (7); 7(a), (b); 8.1; 9; 2; 12.2(b)(c)	P.A. 85-666, eff. 1/1/88
Amended 11	P.A. 85-666, eff. 1/1/88 & P.A. 85-557, eff. 9/18/87
Amended 9	P.A. 85-971, eff. 7/1/88
Amended 8.1	P.A. 85-1247, eff. 8/30/88
Amended 12	P.A. 86-922, eff. 9/12/89
Amended 8	P.A. 86-1013, eff. 1/3/90
Amended 9	P.A. 86-955, eff. 7/1/90

## AMENDMENTS

SECTION(S)	PUBLIC ACT/DATE
Added 9.1	P.A. 86-955, eff. 7/1/90
Amended 11	P.A. 86-844, eff. 1/1/90
Amended 2	P.A. 86-1417, eff. 9/11/90
Amended 3	P.A. 86-1417, eff. 9/11/90
Amended 4	P.A. 86-1417, eff. 9/11/90
Amended 5	P.A. 86-1417, eff. 9/11/90
Amended 7	P.A. 86-1417, eff. 9/11/90
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Amended 11	P.A. 86-1417, eff. 9/11/90
Amended 12.1	P.A. 86-1417, eff. 9/11/90
Amended 12.2	P.A. 86-1417, eff. 9/11/90
Amended 4	P.A. 87-447, eff. 9/11/91
Amended 8	P.A. 86-1475, eff. 1/10/91
Amended 10	P.A. 87-556, eff. 9/17/91 P.A. 87-124, eff. 8/13/91
Amended/technical correction 12	P.A. 87-300, eff. 9/5/91 P.A. 87-124, eff. 8/13/91 P.A. 87-299, eff. 1/1/92
Amended/technical correction 10, 12	P.A. 87-895, eff. 8/14/92
Amended 8.1	P.A. 88-380, eff. 8/20/93
Amended 2, 4, 7, 11	P.A. 88-484, eff. 9/10/93
Added 7.1, 9.2	P.A. 88-484, eff. 9/10/93
Amended 9, 10	P.A. 89-7, eff. 3/9/95
Amended 2	P.A. 89-58, eff. 1/1/96

## AMENDMENTS

SECTION(S)	PUBLIC ACT/DATE
Amended 4, 11, 12.3	P.A. 89-439, eff. 6/1/96
Amended 7.1, 9.1, 9.2, 11, 12, 17	P.A. 89-507, eff. 7/1/97
Amended 11, 12	P.A. 90-423, eff. 8/15/97
Amended 9	P.A. 90-512, eff. 8/22/97
Amended 2, 11	P.A. 90-538, eff. 12/1/97
Amended 7.1, 10	P.A. 90-608, eff. 6/30/98
Amended 5, 11	P.A. 90-655, eff. 7/1/98
Added 9.3	P.A. 90-793, eff. 8/14/98
Amended 11	P.A. 91-357, eff. 7/29/99
Amended 9.2	P.A. 91-536, eff. 1/1/00
Amended 10	P.A. 91-726, eff. 6/2/00
Amended 10	P.A. 92-358, eff. 8/15/01
Amended 9.3	P.A. 92-415, eff. 8/17/01
Amended 10	P.A. 92-708, eff. 7/19/02
Amended 12	P.A. 92-738, eff. 7/25/02

This Act shall be cited as 740 ILCS 110.

P.A. 87-895 resolved multiple actions of the 87th General Assembly and made certain technical corrections in P.A. 87-1 through 87-855.

The amendments made by P.A. 91-357 all involved formatting and punctuation.



**MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES  
CONFIDENTIALITY ACT**

**(740 ILCS 110)**

AN ACT to protect the confidentiality of records and communications of recipients of mental health or developmental disability services, and to amend and repeal certain Acts and Sections herein named in connection therewith. (P.A. 80-1508, certified and effective January 9, 1979.)

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

**110/1 Short title**

§ 1. This Act shall be known and may be cited as the "Mental Health and Developmental Disabilities Confidentiality Act".

**110/2 Definitions**

§ 2. The terms used in this Act, unless the context requires otherwise, have the meanings ascribed to them in this Section.

"Agent" means a person who has been legally appointed as an individual's agent under a power of attorney for health care or for property.

"Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient.

"Guardian" means a legally appointed guardian or conservator of the person.

"Mental health or developmental disabilities services" or "services" includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation.

"Personal notes" means:

(I) information disclosed to the therapist in confidence by other persons on condition that such information would never be disclosed to the recipient or other persons;

(ii) information disclosed to the therapist by the recipient which would be injurious to the recipient's relationships to other persons, and

(iii) the therapist's speculations, impressions, hunches, and reminders.

"Parent" means a parent or, in the absence of a parent or guardian, a person in loco parentis.

"Recipient" means a person who is receiving or has received mental health or developmental disabilities services.

"Record" means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities services to a recipient concerning the recipient and the services provided. "Records" includes all records maintained by a court that have been created in connection with, in preparation for, or as a result of the filing of any petition or certificate under Chapter II, Chapter III, or Chapter IV of the Mental Health and Developmental Disabilities Code and includes the petitions, certificates, dispositional reports, treatment plans, and reports of diagnostic evaluations and of hearings under Article VIII of Chapter III or under Article V of Chapter IV of that Code.

Record does not include the therapist's personal notes, if such notes are kept in the therapist's sole possession for his own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If at any time such notes are disclosed, they shall be considered part of the recipient's record for purposes of this Act.

"Record custodian" means a person responsible for maintaining a recipient's record.

"Therapist" means a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or developmental disabilities services or any other person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such person is permitted to do so. Therapist includes any successor of the therapist. (Amended by P.A. 86-1417, effective September 11, 1990; P.A. 88-484, effective September 10, 1993; P.A. 89-58, effective January 1, 1996, and P.A. 90-538, effective December 1, 1997.)

### **110/3 Records and communications - Personal notes of therapist - Psychological test material**

§ 3. (a) All records and communications shall be confidential and shall not be disclosed except as provided in this Act.

(b) A therapist is not required to but may, to the extent he determines it necessary and appropriate, keep personal notes regarding a recipient. Such personal notes are the work product and personal property of the therapist and shall not be subject to discovery in any judicial, administrative or legislative proceeding or any proceeding preliminary thereto.

(c) Psychological test material whose disclosure would compromise the objectivity or fairness of the testing process may not be disclosed to anyone including the subject of the test and is not subject to disclosure in any administrative, judicial or

legislative proceeding. However, any recipient who has been the subject of the psychological test shall have the right to have all records relating to that test disclosed to any psychologist designated by the recipient. Requests for such disclosure shall be in writing and shall comply with the requirements of subsection (b) of Section 5 of this Act. (Amended by P.A. 86-1417, effective September 11, 1990.)

**110/4 Persons entitled to inspect and copy recipient's record**

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

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

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

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

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

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

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

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

(c) Any person entitled to access to a record under this Section may submit a written statement concerning any disputed or new information, which statement shall be entered into the record. Whenever any disputed part of a record is disclosed, any

submitted statement relating thereto shall accompany the disclosed part. Additionally, any person entitled to access may request modification of any part of the record which he believes is incorrect or misleading. If the request is refused, the person may seek a court order to compel modification.

(d) Whenever access or modification is requested, the request and any action taken thereon shall be noted in the recipient's record. (Amended by P.A. 84-902, effective January 1, 1986; P.A. 86-1417, effective September 11, 1990; P.A. 87-447, effective September 11, 1991; P.A. 88-484, effective September 10, 1993, and P.A. 89-439, effective June 1, 1996.)

### **110/5 Disclosure/consent**

§ 5. (a) Except as provided in Sections 6 through 12.2 of this Act, records and communications may be disclosed to someone other than those persons listed in Section 4 of this Act only with the written consent of those persons who are entitled to inspect and copy a recipient's record pursuant to Section 4 of this Act.

(b) Every consent form shall be in writing and shall specify the following:

- (1) the person or agency to whom disclosure is to be made;
- (2) the purpose for which disclosure is to be made;
- (3) the nature of the information to be disclosed;
- (4) the right to inspect and copy the information to be disclosed;
- (5) the consequences of a refusal to consent, if any; and

(6) the calendar date on which the consent expires, provided that if no calendar date is stated, information may be released only on the day the consent form is received by the therapist; and

(7) the right to revoke the consent at any time.

The consent form shall be signed by the person entitled to give consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. A copy of the consent and a notation as to any action taken thereon shall be entered in the recipient's record. Any revocation of consent shall be in writing, signed by the person who gave the consent and the signature shall be witnessed by a person who can attest to the identity of the person so entitled. No written revocation of consent shall be effective to prevent disclosure of records and communications until it is received by the person otherwise authorized to disclose records and communications.

(c) Only information relevant to the purpose for which disclosure is sought may be disclosed. Blanket consent to the disclosure of unspecified information shall not

be valid. Advance consent may be valid only if the nature of the information to be disclosed is specified in detail and the duration of the consent is indicated. Consent may be revoked in writing at any time; any such revocation shall have no effect on disclosures made prior thereto.

(d) No person or agency to whom any information is disclosed under this Section may redisclose such information unless the person who consented to the disclosure specifically consents to such redisclosure.

(e) Except as otherwise provided in this Act, records and communications shall remain confidential after the death of a recipient and shall not be disclosed unless the recipient's representative, as defined in the Probate Act of 1975 and the therapist consent to such disclosure or unless disclosure is authorized by court order after in camera examination and upon good cause shown.

(f) Paragraphs (a) through (e) of this Section shall not apply to and shall not be construed to limit insurance companies writing Life, Accident or Health insurance as defined in Section 4 of the Illinois Insurance Code in obtaining general consents for the release to them or their designated representatives of any and all confidential communications and records kept by agencies, hospitals, therapists or record custodians, and utilizing such information in connection with the underwriting of applications for coverage for such policies or contracts, or in connection with evaluating claims or liability under such policies or contracts, or coordinating benefits pursuant to policy or contract provisions. (Amended by P.A. 82-19, effective June 30, 1981; P.A. 83-111, effective January 1, 1984; P.A. 83-706, effective September 23, 1983; P.A. 83-1362, effective September 11, 1984; P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988; P.A. 86-1417, effective September 11, 1990 and P.A. 90-655, effective July 1, 1998.)

#### **110/6 Information used in application for benefits - Disclosure without consent**

§ 6. Such information from a recipient's record as is necessary to enable him to apply for or receive benefits may be disclosed with consent obtained pursuant to Section 5 of this Act. Disclosure may be made without consent when despite every reasonable effort it is not possible to obtain consent because the person entitled to give consent is not capable of consenting or is not available to do so. The recipient shall be informed of any disclosure made without consent. The information disclosed without consent under this Section may include only the identity of the recipient and therapist and a description of the nature, purpose, quantity, and date of the services provided. Any request for additional information shall state with particularity what further information is needed and the reasons therefor. Refusal to consent to the disclosure of more information than is necessary to apply for or receive direct benefits shall not be grounds for in any way denying, limiting, or canceling such benefits or refusing to accept an application or renew such benefits. Such information shall not be redisclosed except with the consent of the person entitled to give consent.

#### **110/7 Review of therapist or agency; use of recipient's record**

§ 7. (a) When a therapist or agency which provides services is being reviewed for purposes of licensure, statistical compilation, research, evaluation, or other similar purpose, a recipient's record may be used by the person conducting the review to the extent that this is necessary to accomplish the purpose of the review, provided that personally identifiable data is removed from the record before the use. Personally identifiable data may be disclosed only with the consent obtained under Section 5 of this Act. Licensure and the like may not be withheld or withdrawn for failure to disclose personally identifiable data if consent is not obtained.

(b) When an agency which provides services is being reviewed for purposes of funding, accreditation, reimbursement or audit by a State or federal agency or accrediting body, a recipient's record may be used by the person conducting the review and personally identifiable information may be disclosed without consent, provided that the personally identifiable information is necessary to accomplish the purpose of the review.

For the purpose of this subsection, an inspection investigation or site visit by the United States Department of Justice regarding compliance with a pending consent decree is considered an audit by a federal agency.

(c) The Mental Health and Departmental Disabilities Medical Review Board shall be entitled to inspect and copy the records of any recipient. Information disclosed under this subsection may not be redisclosed without the written consent of one of the persons identified in Section 4 of this Act. (Amended by P.A. 85-66, effective January 1, 1988; P.A. 85-971, effective July 1, 1988; P.A. 86-1417, effective September 11, 1990, and P.A. 88-484, effective September 10, 1993.)

### **110/7.1 Interagency disclosures**

§ 7.1. (a) Nothing in this Act shall be construed to prevent the interagency disclosure of the name, social security number, and information concerning services rendered, currently being rendered, or proposed to be rendered regarding a recipient of services. This disclosure may be made only between agencies or departments of the state including, but not limited to: (i) the Department of Human Services, (ii) the Department of Public Aid, (iii) the Department of Public Health, (iv) the State Board of Education and (v) the Department of Children and Family Services for the purpose of a diligent search for a missing parent pursuant to Sections 2-15 and 2-16 of the Juvenile Court Act of 1987 if the Department of Children and Family Services has reason to believe the parent is residing in a mental health facility, when one or more agencies or departments of the State have entered into a prior interagency agreement, memorandum of understanding, or similar agreement to jointly provide or cooperate in the provision of or funding of mental health or developmental disabilities services.

The Department of Children and Family Services shall not redisclose the information received under this Section other than for purposes of service provision or as necessary for proceedings under the Juvenile Court Act of 1987.

(b) This Section applies to, but is not limited to, interagency disclosures

under interagency agreements entered into in compliance with the early intervention services systems act.

(c) Information disclosed under this Section shall be for the limited purpose of coordinating State efforts in providing efficient interagency service systems and avoiding duplication of interagency services.

(d) Information disclosed under this Section shall be limited to the recipient's name, address, social security number or other individually assigned identifying number, or information generally descriptive of services rendered or to be rendered. The disclosure of individual clinical or treatment records or other confidential information is not authorized by this Section. (Added by P.A. 88-484, effective September 10, 1993; amended by P.A. 89-507, effective July 1, 1997 and amended by P.A. 90-608, effective June 30, 1998.)

### **110/8 Regional human rights authority - Consent to inspect or copy recipient's record during investigations**

§ 8. In the course of an investigation, or in the course of monitoring issues concerning the rights of recipients or the services provided to recipients as authorized by subsection (l) of Section 5 of the Guardianship and Advocacy Act, a regional human rights authority of the Guardianship and Advocacy Commission created by the Guardianship and Advocacy Act may inspect and copy any recipient's records in the possession of a therapist, agency, Department or facility which provides services to a recipient, including reports of suspected abuse or neglect of a recipient and information regarding the disposition of such reports. However, a regional authority may not inspect or copy records containing personally identifiable data which cannot be removed without imposing an unreasonable burden on the therapist, agency, Department or facility which provides services, except as provided herein. The regional authority shall give written notice to the person entitled to give consent for the identifiable recipient of services under Section 4 that it is conducting an investigation or monitoring and indicating the nature and purpose of the investigation or monitoring and the need to inspect and copy the recipient's record. If the person notified objects in writing to such inspection and copying, the regional authority may not inspect or copy the record. The therapist, agency, Department or facility which provides services may not object on behalf of a recipient. (Amended by P.A. 86-820, effective September 7, 1989; P.A. 86-1013, effective January 3, 1990, and P.A. 86-1475, effective January 10, 1991.)

### **110/8.1 Access to records of developmentally disabled residing in facilities**

§ 8.1. The agency designated by the Governor under Section 1 of "An Act in relation to the protection and advocacy of the rights of persons with developmental disabilities, and amending Acts therein named", approved September 20, 1985, as now or hereafter amended, shall have access, for the purpose of inspection and copying, to the records of a person with developmental disabilities who resides in a developmental disability facility or mental health facility, as defined in Sections 1-107 and 1-114,

respectively, of the Mental Health and Developmental Disabilities Code, as now or hereafter amended, if (a) a complaint is received by such agency from or on behalf of the person with developmental disabilities, and (b) such person does not have a guardian of the person or the State or the designee of the State is his or her guardian of the person. The designated agency shall provide written notice of the receipt of a complaint to the custodian of the records of the person from whom or on whose behalf a complaint is received. The designated agency shall provide to the person with developmental disabilities and to his or her State guardian, if appointed, written notice of the nature of the complaint based upon which the designated agency has gained access to the records. No record or the contents of any record shall be redisclosed by the designated agency unless the person with developmental disabilities and the State guardian are provided 7 days advance written notice, except in emergency situations, of the designated agency's intent to redisclose such record, during which time the person with developmental disabilities or the State guardian may seek to judicially enjoin the designated agency's redisclosure of such record on the grounds that such redisclosure is contrary to the interests of the person with developmental disabilities. If a person with developmental disabilities resides in a developmental disability or mental health facility and has a guardian other than the State or the designee of the State, the facility director shall disclose the guardian's name, address and telephone number to the designated agency at the agency's request.

Upon written request and after the provision of written notice to the agency, facility or other body from which records and other materials are sought of the designated agency's investigation of problems affecting numbers of persons with developmental disabilities, the designated agency shall be entitled to inspect and copy any records or other materials which may further the agency's investigation of problems affecting numbers of persons with developmental disabilities. When required by law any personally identifiable information of persons with developmental disabilities shall be removed from the records. However, the designated agency may not inspect or copy records or other materials when the removal of personally identifiable information imposes an unreasonable burden on mental health and developmental disabilities facilities.

For the purposes of this Section, "developmental disability" means a severe, chronic disability of a person which -

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in 3 or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and



(E) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated. (Added by P.A. 84-673, effective September 20, 1985, and amended by P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988, and P.A. 85-1247, effective August 30, 1988.)

### **110/9 Therapist's disclosure without consent**

§ 9. In the course of providing services and after the conclusion of the provision of services, a therapist may disclose a record or communications without consent to:

(1) the therapist's supervisor, a consulting therapist, members of a staff team participating in the provision of services, a record custodian, or a person acting under the supervision and control of the therapist;

(2) persons conducting a peer review of the services being provided;

(3) the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities;

(4) an attorney or advocate consulted by a therapist or agency which provides services concerning the therapist's or agency's legal rights or duties in relation to the recipient and the services being provided; and

(5) The Inspector General of the Department of Children and Family Services when such records or communications are relevant to a pending investigation authorized by Section 35.5 of the Children and Family Services Act where:

(A) the recipient was either (i) a parent, foster parent, or caretaker who is an alleged perpetrator of abuse or neglect or the subject of a dependency investigation or (ii) a non-ward victim of alleged abuse or neglect , and

(B) available information demonstrates that the mental health of the recipient was or should have been an issue to the safety of the child.

In the course of providing services, a therapist may disclose a record or communications without consent to any department, agency, institution or facility which has custody of the recipient pursuant to State statute or any court order of commitment.

Information may be disclosed under this Section only to the extent that knowledge of the record or communications is essential to the purpose for which disclosure is made and only after the recipient is informed that such disclosure may be made. A person to whom disclosure is made under this Section shall not redisclose any information except as provided in this Act.

Notwithstanding any other provision of this Section, a therapist has the right to communicate at any time and in any fashion with his or her counsel or professional

liability insurance carrier, or both, concerning any care or treatment he or she provided, or assisted in providing, to any recipient. A therapist has the right to communicate at any time and in any fashion with his or her present or former employer, principal, partner, professional corporation, or professional liability insurance carrier, or counsel for any of those entities, concerning any care or treatment he or she provided, or assisted in providing, to the recipient within the scope of his or her employment, affiliation, or other agency with the employer, principal, partner, or professional corporation.

This amendatory Act of 1995 applies to cause of action filed on or after its effective date. (Amended by P.A. 82-209, effective July 1, 1982; P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988; P.A. 86-955, effective July 1, 1990; P.A. 89-7, effective March 9, 1995, and P.A. 90-512, effective August 22, 1997.)

#### **110/9.1 Disclosure without consent**

§ 9.1. The Department of Human Services, and other agencies and institutions which provide services, may disclose a recipient's record or communications, without consent, to the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities for purposes of research, education and treatment. The Institutes shall not redisclose any personally identifiable information, unless necessary for treatment of the identified recipient. (Added by P.A. 86-955, effective July 1, 1990 and amended by P.A. 89-507, effective July 1, 1997.)

#### **110/9.2 Interagency disclosure of recipient information**

§ 9.2. Interagency disclosure of recipient information. For the purposes of continuity of care, the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities), and community agencies funded by the Department of Human Services in that capacity, and jails operated by any county of this State may disclose a recipient's record or communications, without consent, to each other, but only for the purpose of admission, treatment, planning, or discharge. Entities shall not redisclose any personally identifiable information, unless necessary for admission, treatment, planning, or discharge of the identified recipient to another setting. No records or communications may be disclosed to a county jail pursuant to this Section unless the Department has entered into a written agreement with the county jail requiring that the county jail adopt written policies and procedures designed to ensure that the records and communications are disclosed only to those persons employed by or under contract to the county jail who are involved in the provision of mental health services to inmates and that the records and communications are protected from further disclosure. (Added by P.A. 88-484, effective September 10, 1993; amended by P.A. 89-507, effective July 1, 1997 and P.A. 91-536, effective January 1, 2000.)

#### **110/9.3 Disclosure without consent under the Sexually Violent Persons Commitment Act**

§ 9.3. Disclosure may be made without consent by any therapist or other

treatment provider providing mental health or developmental disabilities services pursuant to the provisions of the Sexually Violent Persons Commitment Act or who previously provided any type of mental health or developmental disabilities services to a person who is subject to an evaluation, investigation, or prosecution of a petition under the Sexually Violent Persons Commitment Act. Disclosure may be made to the Attorney General, the State's Attorney participating in the case, the Department of Human Services, the court, and any other party to whom the court directs disclosure to be made. The information disclosed may include any records or communications in the possession of the Department of Corrections if those records or communications were relied upon by the therapist in providing mental health or developmental disabilities services pursuant to the Sexually Violent Persons Commitment Act. Any records and any information obtained from those records under this Section may only be used in sexually violent persons commitment proceedings (Added by P.A. 90-793, effective August 14, 1998 and amended by P.A. 92-415, effective August 17, 2001.)

### **110/10 Disclosure in civil, criminal, and other proceedings**

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

(1) Records and communications may be disclosed in a civil, criminal or administrative proceeding in which the recipient introduces his mental condition or any aspect of his services received for such condition as an element of his claim or defense, if and only to the extent the court in which the proceedings have been brought, or, in the case of an administrative proceeding, the court to which an appeal or other action for review of an administrative determination may be taken, finds, after in camera examination of testimony or other evidence, that it is relevant, probative, not unduly prejudicial or inflammatory, and otherwise clearly admissible; that other satisfactory evidence is demonstrably unsatisfactory as evidence of the facts sought to be established by such evidence; and that disclosure is more important to the interest of substantial justice than protection from injury to the therapist-recipient relationship or to the recipient or other whom disclosure is likely to harm. Except in a criminal proceeding in which the recipient, who is accused in that proceeding, raises the defense of insanity, no record or communication between a therapist and a recipient shall be deemed relevant for purposes of this subsection, except the fact of treatment, the cost of services and the ultimate diagnosis unless the party seeking disclosure of the communication clearly establishes in the trial court a compelling need for its production. However, for purposes of this Act, in any action brought or defended under the "Illinois Marriage and Dissolution of Marriage Act", or in any action in which pain and suffering is an element of the claim, mental condition shall not be deemed to be introduced merely by making such claim and shall be deemed to be introduced only if the recipient or a witness on his behalf first testifies concerning the record or communication.

(2) Records or communications may be disclosed in a civil proceeding after the recipient's death when the recipient's physical or mental condition has been

introduced as an element of a claim or defense by any party claiming or defending through or as a beneficiary of the recipient, provided the court finds, after in camera examination of the evidence, that it is relevant, probative, and otherwise clearly admissible; that other satisfactory evidence is not available regarding the facts sought to be established by such evidence; and that disclosure is more important to the interests of substantial justice than protection from any injury which disclosure is likely to cause.

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

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

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

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

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

(8) Records or communications may be disclosed when such are relevant to a matter in issue in any action brought under this Act and proceedings preliminary

thereto, provided that any information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with such action or preliminary proceedings.

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

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

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

**(12) RECORDS AND COMMUNICATIONS OF A RECIPIENT MAY BE DISCLOSED WHEN DISCLOSURE IS NECESSARY TO COLLECT SUMS OR RECEIVE THIRD PARTY PAYMENT REPRESENTING CHARGES FOR MENTAL HEALTH OR DEVELOPMENTAL DISABILITIES SERVICES PROVIDED BY A THERAPIST OR AGENCY TO A RECIPIENT; HOWEVER, DISCLOSURE SHALL BE LIMITED TO INFORMATION NEEDED TO PURSUE COLLECTION, AND THE INFORMATION SO DISCLOSED MAY NOT BE USED FOR ANY OTHER PURPOSES NOR MAY IT BE REDISCLOSED EXCEPT IN CONNECTION WITH COLLECTION ACTIVITIES. WHENEVER RECORDS ARE DISCLOSED PURSUANT TO THIS SUBDIVISION (12), THE RECIPIENT OF THE RECORDS SHALL BE ADVISED IN WRITING THAT ANY PERSON WHO DISCLOSES MENTAL HEALTH RECORDS AND COMMUNICATIONS IN VIOLATION OF THIS ACT MAY BE SUBJECT TO CIVIL LIABILITY PURSUANT TO SECTION 15 OF THIS ACT OR TO CRIMINAL PENALTIES PURSUANT TO SECTION 16 OF THIS ACT OR BOTH.**

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

is sufficient to establish the facts in issue, except that a court may not prevent or limit disclosures between a therapist and his or her own counsel or between a therapist and his or her employer, principal, partner, professional corporation, or professional liability insurance carrier, or counsel for any of those entities. The court or agency may enter such orders as may be necessary in order to protect the confidentiality, privacy, and safety of the recipient or of other persons. Any order to disclose or to not disclose shall be considered a final order for purposes of appeal and shall be subject to interlocutory appeal.

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

The facility shall notify the recipient, or his guardian, and therapist in writing of any disclosure request under this subsection within 5 business days after such request. Such notification shall also inform the recipient, or guardian, and therapist of their right to object to the disclosure within 10 business days after receipt of the notification and shall include the name, address and telephone number of the committee, commission or subcommittee member or staff person with whom an objection shall be filed. If no objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications to the committee, commission or subcommittee. If an objection has been filed within 15 business days after the request for disclosure, the facility shall disclose the records and communications only after the committee, commission or subcommittee has permitted the recipient, guardian or therapist to present his objection in person before it and has renewed its request for disclosure by a majority vote of its members.

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

(d) No party to any proceeding described under paragraphs (1), (2), (3), (4), (7), or (8) of subsection (a) of this Section, nor his or her attorney, shall serve a subpoena seeking to obtain access to records or communications under this Act unless the subpoena is accompanied by a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. No person shall comply with a subpoena for records or communications under this Act, unless the subpoena is accompanied by a written order authorizing the issuance of the subpoena or the disclosure of the records.

(e) When a person has been transported by a peace officer to a mental health facility, then upon the request of a peace officer, if the person is allowed to leave the mental health facility within 48 hours of arrival, excluding Saturdays, Sundays, and holidays, the facility director shall notify the local law enforcement authority prior to the

release of the person. The local law enforcement authority may re-disclose the information as necessary to alert the appropriate enforcement or prosecuting authority.

(f) A recipient's records and communications shall be disclosed to the Inspector General of the Department of Human Services within 10 business days of a request by the Inspector General in the course of an investigation authorized by the Abused and Neglected Long-Term Care Residents Reporting Act and applicable rule. The request shall be in writing and signed by the Inspector General or his or her designee. The request shall state the purpose for which disclosure is sought. Any person who knowingly and willfully refuses to comply with such a request is guilty of a Class A misdemeanor. (Amended by P.A. 82-1631, effective August 13, 1981; P.A. 82-900, effective January 1, 1983; P.A. 86-1417, effective September 11, 1990; P.A. 87-124, effective August 13, 1991; P.A. 87-556, effective September 17, 1991; P.A. 87-895, effective August 14, 1992; P.A. 90-608, effective June 30, 1998; P.A. 91-726, effective June 2, 2000; P.A. 92-358, effective August 15, 2001 **AND P.A. 92-708, EFFECTIVE JULY 19, 2002.**)

### **110/11 Disclosure of records and communications**

§ 11. Disclosure of records and communications. Records and communications may be disclosed:

(i) in accordance with the provisions of the Abused and Neglected Child Reporting Act;

(ii) when, and to the extent, a therapist, in his or her sole discretion, determines that disclosure is necessary to initiate or continue civil commitment proceedings under the laws of this State or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another;

(iii) when, and to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder;

(iv) when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient under Chapter V of the Mental Health and Developmental Disabilities Code or to transfer debts under the Uncollected State Claims Act; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purposes nor shall it be redisclosed except in connection with collection activities;

(v) when requested by a family member, the Department of Human Services may assist in the location of the interment site of a deceased recipient who is interred in a cemetery established under Section 100-26 of the Mental Health and Developmental Disabilities Administrative Act;

(vi) in judicial proceedings under Article VIII of Chapter III and Article V of Chapter IV of the Mental Health and Developmental Disabilities Code and proceedings

and investigations preliminary thereto, to the State's Attorney for the county or residence of a person who is the subject of such proceedings, or in which the person is found, or in which the facility is located, to the attorney representing the recipient in the judicial proceedings, to any person or agency providing mental health services that are the subject of the proceedings and to that person's or agency's attorney, to any court personnel, including but not limited to judges and circuit court clerks, and to a guardian ad litem if one has been appointed by the court, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings or investigations;

(vii) when, and to the extent, disclosure is necessary to comply with the requirements of the Census Bureau in taking the federal Decennial Census;

(viii) when, and to the extent, in the therapist's sole discretion, disclosure is necessary to warn or protect a specific individual against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship;

(ix) in accordance with the Sex Offender Registration Act; and

(x) in accordance with the Rights of Crime Victims and Witnesses Act. Any person, institution, or agency, under this Act, participating in good faith in the making of a report under the Abused and Neglected Child Reporting Act, or in the disclosure of records and communications under this Section, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure under this Section, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed. (Amended by P.A. 85-557, effective September 18, 1987; P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988; P.A. 85-1209, effective August 30, 1988; P.A. 86-844, effective January 1, 1990; P.A. 86-1417, effective September 11, 1990; P.A. 88-484, effective September 10, 1993, P.A. 89-439, effective June 1, 1996; P.A. 89-507, effective July 1, 1997; P.A. 90-423, effective August 15, 1997; P.A. 90-538, effective December 1, 1997; P.A. 90-655, effective July 1, 1998 and P.A. 90-357, effective July 29, 1999.)

### **110/12 Information to be furnished to the United States Secret Services and Department of State Police**

§ 12. (a) If the United States Secret Service or the Department of State Police requests information from a mental health or developmental disability facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code relating to a specific recipient and the facility director determines that disclosure of such information may be necessary to protect the life of, or to prevent the infliction of great bodily harm to, a public official, or a person under the protection of the United States Secret Service, only the following information may be disclosed: the recipient's name, address, and age and the date of any admission to or discharge from a facility; and any information which would indicate whether or not the recipient has a history of violence or presents a danger of violence to the person under protection. Any information so disclosed shall be used for investigative purposes only and shall not be publicly disseminated. Any person participating in good faith in the disclosure of such



information in accordance with this provision shall have immunity from any liability, civil, criminal or otherwise, if such information is disclosed relying upon the representation of an officer of the United States Secret Service or the Department of State Police that a person is under the protection of the United States Secret Service or is a public official.

For the purpose of this subsection (a), the term "public official" means the Governor, Lieutenant Governor, Attorney General, Secretary of State, State Comptroller, State Treasurer or member of the General Assembly. The term shall also include the spouse, child or children of a public official.

(b) The Department of Human Services (acting as successor to the Department of Mental Health and Developmental Disabilities) and all private hospitals are required, as hereafter described in this subsection, to furnish the Department of State Police only such information as may be required for the sole purpose of determining whether an individual who may be or may have been a patient is disqualified because of that status from receiving or retaining a Firearm Owner's Identification Card under subsection (e) of Section 8 of the Firearm Owners Identification Card Act. All private hospitals shall, in the form and manner required by the Department, provide such information as shall be necessary for the Department to comply with the reporting requirements to the Department of State Police. Such information shall be furnished within 30 days after admission to a private hospital. Any such information disclosed under this subsection shall remain privileged and confidential, and shall not be redisclosed nor utilized for any other purpose. The method of requiring the providing of such information shall guarantee that no information is released beyond what is necessary for this purpose. In addition, the information disclosed shall be provided by the Department within the time period established by Section 24-3 of the Criminal Code of 1961 regarding the delivery of firearms. The method used shall be sufficient to provide the necessary information within the prescribed time period, which may include periodically providing lists to the Department of Human Services or any private hospital of Firearm Owner's Identification Card applicants on which the Department or hospital shall indicate the identities of those individuals who are to its knowledge disqualified from having a Firearm's Owner's Identification Card for reasons described herein. The Department may provide for a centralized source of information for the State on this subject under its jurisdiction.

Any person, institution, or agency, under this Act, participating in good faith in the reporting or disclosure of records and communications otherwise in accordance with this provision or with rules, regulations or guidelines issued by the Department shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of the action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure in accordance with this provision, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed. The full extent of the immunity provided in this subsection (b) shall apply to any person, institution or agency that fails to make a report or disclosure in the good faith belief that the report or disclosure would violate federal regulations governing the confidentiality of alcohol and drug abuse patient records implementing 42 U.S.C. 290dd-3 and 290ee-3.

For purposes of this subsection (b) only, the following terms shall have the meaning prescribed:

(1) "Hospital" means only that type of institution which is providing full-time residential facilities and treatment for in-patients and excludes institutions, such as community clinics, which only provide treatment to out-patients.

(2) "Patient" shall mean only a person who is an in-patient or resident of any hospital, not an out-patient or client seen solely for periodic consultation.

(c) Upon the request of a peace officer who takes a person into custody and transports such person to a mental health or developmental disability facility pursuant to Section 3-606 or 4-404 of the Mental Health and Disabilities Code or who transports a person from such facility, a facility director shall furnish said peace officer the name, address, age and name of the nearest relative of the person transported to or from the mental health or developmental disability facility. In no case shall the facility director disclose to the peace officer any information relating to the diagnosis, treatment or evaluation of the person's mental or physical health.

For the purpose of this subsection (c), the terms "mental health or developmental disability facility", "peace officer" and "facility director" shall have the meanings ascribed to them in the Mental Health and Developmental Disabilities Code.

(d) Upon the request of a peace officer or prosecuting authority who is conducting a bona fide investigation of a criminal offense, or attempting to apprehend a fugitive from justice, a facility director may disclose whether a person is present at the facility. **UPON REQUEST OF A PEACE OFFICER OR PROSECUTING AUTHORITY WHO HAS A VALID FORCIBLE FELONY WARRANT ISSUED, A FACILITY DIRECTOR SHALL DISCLOSE: (1) WHETHER THE PERSON WHO IS THE SUBJECT OF THE WARRANT IS PRESENT AT THE FACILITY AND (2) THE DATE OF THAT PERSON'S DISCHARGE OR FUTURE DISCHARGE FROM THE FACILITY.** The requesting peace officer or prosecuting authority must furnish a case number and the purpose of the investigation or an outstanding arrest warrant at the time of the request. Any person, institution, or agency participating in good faith in disclosing such information in accordance with the subsection (d) is immune from any liability, civil, criminal or otherwise, that might result by reason of the action. (Amended by P.A. 82-19, effective June 30, 1981; P.A. 83-1086, effective July 1, 1984; P.A. 84-25, effective July 18, 1985; P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988; P.A. 86-922, effective September 12, 1989; P.A. 87-124, effective August 13, 1991; P.A. 87-299, effective January 1, 1992; P.A. 87-300, effective September 5, 1991; P.A. 87-895, effective August 14, 1992; P.A. 89-507, effective July 1, 1997; P.A. 90-423, effective August 15, 1997 **AND P.A.. 92-738, EFFECTIVE JULY 25, 2002.**)

### **110/12.1 Report of violation or incident - Investigation**

§ 12.1. A facility director who has reason to believe that a violation of criminal law or other serious incident has occurred within a mental health or developmental disability facility shall report that violation or incident and the identity of individuals with personal knowledge of the facts related to the violation or incident, to the appropriate law enforcement and investigating agencies.

In the course of any investigation conducted pursuant to a report made under

this Section, any person with personal knowledge of the incident or the circumstances surrounding the incident shall disclose that information to the individuals conducting the investigation, except that information regarding a recipient of services shall be limited solely to information relating to the factual circumstances of the incident. (Added by P.A. 82-443, effective September 15, 1981, and amended by P.A. 86-1417, effective September 11, 1990.)

### **110/12.2 Recipients on unauthorized absence - Disclosure of identifying information**

§ 12.2 (a) When a recipient who has been judicially or involuntarily admitted, or is a forensic recipient admitted to a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, is on an unauthorized absence or otherwise has left the facility without being discharged or being free to do so, the facility director shall immediately furnish and disclose to the appropriate local law enforcement agency identifying information, as defined in this Section, and all further information unrelated to the diagnosis, treatment or evaluation of the recipient's mental or physical health that would aid the law enforcement agency in locating and apprehending the recipient and returning him to the facility.

(b) If a law enforcement agency requests information from a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, relating to a recipient who has been admitted to the facility and for whom a missing person report has been filed with a law enforcement agency, the facility director shall, except in the case of a voluntary recipient wherein the recipient's permission in writing must first be obtained, furnish and disclose to the law enforcement agency identifying information as is necessary to confirm or deny whether that person is, or has been since the missing person report was filed, a resident of that facility. The facility director shall notify the law enforcement agency if the missing person is admitted after the request. Any person participating in good faith in the disclosure of information in accordance with this provision shall have immunity from any liability, civil, criminal, or otherwise, if the information is disclosed relying upon the representation of an officer of a law enforcement agency that a missing person report has been filed.

(c) Upon the request of a law enforcement agency in connection with the investigation of a particular felony or sex offense, when the investigation case file number is furnished by the law enforcement agency, a facility director shall immediately disclose to that law enforcement agency identifying information on any forensic recipient who is admitted to a developmental disability or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, who was or may have been away from the facility at or about the time of the commission of a particular felony or sex offense, and: (1) whose description, clothing,

or both reasonably match the physical description of any person allegedly involved in that particular felony or sex offense; or (2) whose past modus operandi matches the modus operandi of that particular felony or sex offense.

(d) For the purposes of this Section and Section 12.1, "law enforcement agency" means an agency of the State or unit of local government that is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws or ordinances, the Federal Bureau of Investigation, the Central Intelligence Agency, and the United States Secret Service.

(e) For the purpose of this Section, "identifying information" means the name, address, age, and a physical description, including clothing, of the recipient of services, the names and addresses of the recipient's nearest known relatives, where the recipient was known to have been during any past unauthorized absences from a facility, whether the recipient may be suicidal, and the condition of the recipient's physical health as it relates to exposure to the weather. Except as provided in Section 11, in no case shall the facility director disclose to the law enforcement agency any information relating to the diagnosis, treatment, or evaluation of the recipient's mental or physical health, unless the disclosure is deemed necessary by the facility director to insure the safety of the investigating officers or general public.

(f) For the purpose of this Section, "forensic recipient" means a recipient who is placed in a developmental disability facility or mental health facility, as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code, pursuant to Article 104 of the Code of Criminal Procedure or Sections 3-8-5, 3-10-5 or 5-2-4 of the Unified Code of Corrections. (Added by P.A. 83-111, effective January 1, 1984, and amended by P.A. 83-1362, effective September 11, 1984; P.A. 83-1397, effective January 1, 1985; P.A. 85-666, effective January 1, 1988; P.A. 85-971, effective July 1, 1988, and P.A. 86-1417, effective September 11, 1990.)

### **110/12.3 Notice of discharge**

§ 12.3. Nothing in this act shall be construed to prevent compliance with the notice requirements of sections 3-902 and 4-704 of the Mental Health and Developmental Disabilities Code. (Added by P.A. 84-539, effective September 17, 1985, and amended by P.A. 89-439, effective June 1, 1996.)

### **110/13 Disclosure without consent**

§ 13. Whenever disclosure of a record or communication is made without consent pursuant to this Act or whenever a record is used pursuant to Sections 7 and 8 of this Act, a notation of the information disclosed and the purpose of such disclosure or use shall be noted in the recipient's record together with the date and the name of the person to whom disclosure was made or by whom the record was used.

### **110/14 Agreement to waive Act - Void**

§ 14. Any agreement purporting to waive any of the provisions of this Act is void.

**110/15 Actions by aggrieved parties for violation of Act - Fees and costs**

§ 15. Any person aggrieved by a violation of this Act may sue for damages, an injunction, or other appropriate relief. Reasonable attorney's fees and costs may be awarded to the successful plaintiff in any action under this Act.

**110/16 Violations - Penalty**

§ 16. Any person who knowingly and willfully violates any provision of this Act is guilty of a Class A misdemeanor.

**110/17 Rules and regulations**

§ 17. The Secretary of Human Services shall adopt rules and regulations to implement this Act. (Amended by P.A. 89-507, effective July 1, 1997.)

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