



# SENATE BILL No. 1038

May 21, 1996, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend sections 400, 498b, 498p, 500, 511, 600, 617, 716, 717, and 836 of Act No. 258 of the Public Acts of 1974, entitled as amended

"Mental health code,"

sections 400, 498b, 498p, 500, 511, 600, 716, 717, and 836 as amended by Act No. 290 of the Public Acts of 1995, being sections 330.1400, 330.1498b, 300.1498p, 330.1500, 330.1511, 330.1600, 330.1716, 330.1717, and 330.1836 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 400, 498b, 498p, 500, 511, 600, 617,  
2 716, 717, and 836 of Act No. 258 of the Public Acts of 1974,  
3 sections 400, 498b, 498p, 500, 511, 600, 716, 717, and 836 as  
4 amended by Act No. 290 of the Public Acts of 1995, being  
5 sections 330.1400, 330.1498b, 330.1498p, 330.1500, 330.1511,

1 330.1600, 330.1716, 330.1717, and 330.1836 of the Michigan  
2 Compiled Laws, are amended to read as follows:

3 Sec. 400. As used in this chapter, unless the context  
4 requires otherwise:

5 (a) "Clinical certificate" means the written conclusion and  
6 statements of a physician or a licensed psychologist that an  
7 individual is a person requiring treatment, together with the  
8 information and opinions, in reasonable detail, that underlie the  
9 conclusion, on the form prescribed by the department or on a sub-  
10 stantially similar form.

11 (b) "Competent clinical opinion" means the clinical judgment  
12 of a physician, psychiatrist, or licensed psychologist.

13 (c) "Court" means the ~~probate~~ FAMILY DIVISION OF CIRCUIT  
14 court ~~or the court with responsibility with regard to mental~~  
15 ~~health services~~ for the county of residence of the subject of a  
16 petition, or for the county in which the subject of a petition  
17 was found.

18 (d) "Formal voluntary hospitalization" means hospitalization  
19 of an individual based on both of the following:

20 (i) The individual's execution of an application for volun-  
21 tary hospitalization.

22 (ii) The hospital director's determination that the individ-  
23 ual is clinically suitable for voluntary hospitalization.

24 (e) "Informal voluntary hospitalization" means hospitaliza-  
25 tion of an individual based on all of the following:

26 (i) The individual's request for hospitalization.

1           (ii) The hospital director's determination that the  
2 individual is clinically suitable for voluntary hospitalization.

3           (iii) The individual's agreement to accept treatment.

4           (f) "Involuntary mental health treatment" means  
5 court-ordered hospitalization, alternative treatment, or combined  
6 hospitalization and alternative treatment as described in section  
7 468.

8           (g) "Mental illness" means a substantial disorder of thought  
9 or mood that significantly impairs judgment, behavior, capacity  
10 to recognize reality, or ability to cope with the ordinary  
11 demands of life.

12           (h) "Preadmission screening unit" means a service component  
13 of a community mental health services program established under  
14 section 409.

15           (i) "Private-pay patient" means a patient whose services and  
16 care are paid for from funding sources other than the community  
17 mental health services program, the department, or other state or  
18 county funding.

19           (j) "Release" means the transfer of an individual who is  
20 subject to an order of combined hospitalization and alternative  
21 treatment from 1 treatment program to another in accordance with  
22 his or her individual plan of services.

23           (k) "Subject of a petition" means an individual regarding  
24 whom a petition has been filed with the court asserting that the  
25 individual is or is not a person requiring treatment or for whom  
26 an objection to involuntary mental health treatment has been made  
27 under section 484.

1       Sec. 498b. As used in this chapter, unless the context  
2 requires otherwise:

3       (a) "Court" means the ~~probate~~ FAMILY DIVISION OF CIRCUIT  
4 court ~~or the court with responsibility with regard to mental~~  
5 ~~health services~~ for the county in which a minor who has  
6 requested hospitalization, for whom a request for hospitalization  
7 has been made, or who has been hospitalized pursuant to this  
8 chapter either resides or was found.

9       (b) "Minor requiring treatment" means either of the  
10 following:

11       (i) A minor with a substantial disorder of thought or mood  
12 that significantly impairs judgment, behavior, capacity to recog-  
13 nize reality, or ability to cope with the ordinary demands of  
14 life.

15       (ii) A minor having a severe or persistent emotional condi-  
16 tion characterized by seriously impaired personality development,  
17 individual adjustment, social adjustment, or emotional growth,  
18 which is demonstrated in behavior symptomatic of that  
19 impairment.

20       Sec. 498p. (1) Upon periodic review of a hospitalized minor  
21 under section 498l, or at any other time, if it is determined  
22 that the minor is no longer suitable for hospitalization, the  
23 director of the hospital shall discharge the minor from the  
24 hospital.

25       (2) If a minor discharged under subsection (1) has been hos-  
26 pitalized under a court order, or if court proceedings are

1 pending, the court shall be notified of the minor's discharge  
2 from the hospital.

3 (3) The director of a hospital shall notify the appropriate  
4 executive director of the pending discharge of a minor not less  
5 than 7 days before the minor is discharged from the hospital.

6 (4) Before a minor is discharged from a hospital under  
7 subsection (1), the executive director, with the assistance of  
8 the hospital, shall develop an individualized prerelease plan for  
9 the minor in accordance with section 209a.

10 (5) If the parent or guardian of a minor admitted to a hos-  
11 pital under this chapter refuses to assume custody of the minor  
12 upon discharge of the minor from the hospital, the hospital  
13 director shall file or cause to be filed a petition in the  
14 ~~juvenile~~ FAMILY division of ~~the probate~~ CIRCUIT court alleg-  
15 ing that the minor is within the provisions of section 2(b) of  
16 chapter XIIIA of Act No. 288 of the Public Acts of 1939, being  
17 section 712A.2 of the Michigan Compiled Laws, to ensure that the  
18 minor is provided with appropriate management, care, and  
19 residence. Arrangements considered suitable by the hospital  
20 director and agreed to by the parent or guardian for care of the  
21 minor outside the home of the parent or guardian do not consti-  
22 tute refusal to assume custody of the minor.

23 Sec. 500. As used in this chapter, unless the context  
24 requires otherwise:

25 (a) "Administrative admission" means the admission of an  
26 individual with a developmental disability to a center pursuant  
27 to section 509.

1 (b) "Court" means the ~~probate~~ FAMILY DIVISION OF CIRCUIT  
2 court ~~or the court with responsibility with regard to mental~~  
3 ~~health matters~~ for the county in which an individual with a  
4 developmental disability resides or was found.

5 (c) "Criteria for judicial admission" means the criteria  
6 specified in section 515 for admission of an adult with a devel-  
7 opmental disability to a center, private facility, or alternative  
8 program of care and treatment under section 518.

9 (d) "Private facility" means an adult foster care facility  
10 operated under contract with a community mental health services  
11 program or on a private pay basis that agrees to do both of the  
12 following:

13 (i) Accept the judicial admission of an individual with  
14 developmental disability.

15 (ii) Fulfill the duties of a center as described in this  
16 chapter.

17 Sec. 511. (1) Objection may be made to the admission of any  
18 administratively admitted resident. Objections may be filed with  
19 the court by a person found suitable by the court or by the resi-  
20 dent himself or herself if he or she is at least 13 years of  
21 age. An objection may be made not more than 30 days after admis-  
22 sion of the resident, and may be made subsequently at any 6-month  
23 interval following the date of the original objection or, if an  
24 original objection was not made, at any 6-month interval follow-  
25 ing the date of admission.

26 (2) An objection shall be made in writing, except that if  
27 made by the resident, an objection to admission may be

1 communicated to the court or judge of ~~probate~~ THE FAMILY  
2 DIVISION OF CIRCUIT COURT and the executive director of the com-  
3 munity mental health services program by any means, including but  
4 not limited to oral communication or informal letter. If the  
5 resident informs the center that he or she desires to object to  
6 the admission, the center shall assist the resident in submitting  
7 his or her objection to the court.

8 (3) Upon receiving notice of an objection, the court shall  
9 schedule a hearing to be held within 7 days, excluding Sundays  
10 and holidays. The court shall notify the person who objected,  
11 the resident, the person who executed the application, the execu-  
12 tive director, and the director of the center of the time and  
13 place of the hearing.

14 (4) The hearing shall be governed by those provisions of  
15 sections 517 to 522, including the appointment of counsel and an  
16 independent medical or psychological evaluation, that the court  
17 deems necessary to ensure that all relevant information is  
18 brought to its attention, and by the provisions of this section.

19 (5) The court shall sustain the objection and order the dis-  
20 charge of the resident if the resident is not in need of the care  
21 and treatment that is available at the center or if an alterna-  
22 tive to the care and treatment provided in a center is available  
23 and adequate to meet the resident's needs.

24 (6) Unless the court sustains the objection and orders the  
25 discharge of the resident, the center may continue to provide  
26 residential and other services to the resident.

1 (7) Unwillingness or inability of the parent, guardian, or  
2 person in loco parentis to provide for the resident's management,  
3 care, or residence shall not be grounds for refusing to sustain  
4 the objection and order discharge, but in that event the object-  
5 ing person may, or a person authorized by the court shall,  
6 promptly file a petition under section 637 or, if the resident is  
7 a juvenile, under section 2 of chapter XIIA of Act No. 288 of the  
8 Public Acts of 1939, being section 712A.2 of the Michigan  
9 Compiled Laws, to ensure that suitable management, care, or resi-  
10 dence is provided.

11 Sec. 600. As used in this chapter, unless the context  
12 requires otherwise:

13 (a) "Facility" means all of the following that regularly  
14 admit individuals with developmental disability and provide resi-  
15 dential and other services:

16 (i) A facility as defined in section 100b.

17 (ii) A child caring institution, a boarding school, a conva-  
18 lescent home, a nursing home or home for the aged, or a community  
19 residential program.

20 (b) "Court" means the ~~probate~~ FAMILY DIVISION OF CIRCUIT  
21 court ~~or the court with responsibility with regard to mental~~  
22 ~~health services~~ for the county of residence of an individual  
23 with developmental disability, or for the county in which the  
24 individual was found if a county of residence cannot be  
25 determined.

26 (c) "Interested person or entity" means an adult relative or  
27 friend of the respondent, an official or representative of a



1 public or private agency, corporation, or association concerned  
2 with the individual's welfare, or any other person found suitable  
3 by the court.

4 (d) "Plenary guardian" means a guardian who possesses the  
5 legal rights and powers of a full guardian of the person, or of  
6 the estate, or both.

7 (e) "Partial guardian" means a guardian who possesses fewer  
8 than all of the legal rights and powers of a plenary guardian,  
9 and whose rights, powers, and duties have been specifically enu-  
10 merated by court order.

11 (f) "Respondent" means the individual who is the subject of  
12 a petition for guardianship filed under this chapter.

13 Sec. 617. (1) A respondent in a guardianship proceeding  
14 conducted pursuant to this chapter may demand that a jury decide  
15 any issue or issues of fact. A jury shall consist of 6 persons  
16 to be chosen in the same manner as provided in ~~the probate~~  
17 court rules APPLICABLE TO THE CIRCUIT COURT.

18 (2) A respondent in a guardianship proceeding conducted pur-  
19 suant to this chapter shall have the right to present evidence,  
20 and to confront and cross-examine all witnesses.

21 (3) The hearing may be closed to the public on the request  
22 of the respondent or the respondent's legal counsel.

23 (4) The respondent shall be present at all proceedings con-  
24 ducted pursuant to this chapter. However, the respondent's pres-  
25 ence may be excused by the court only on a showing, supported by  
26 an affidavit signed by a physician or psychologist who has  
27 recently examined the respondent, that the respondent's

1 attendance would subject him or her to serious risk of physical  
2 or emotional harm.

3 (5) A guardian shall not be appointed under this section  
4 unless the person who prepared the report or at least 1 of the  
5 persons who performed an evaluation serving in part as basis for  
6 the report testifies in person in court.

7 (6) The respondent has the right, at his or her own expense,  
8 or if the respondent is indigent, at the expense of the state, to  
9 secure an independent evaluation. Compensation for an indepen-  
10 dent evaluation at public expense shall be in an amount which is  
11 reasonable and based upon time and expenses and approved by the  
12 court.

13 Sec. 716. (1) Except as provided in subsections (2) and  
14 (3), a recipient of mental health services shall not have surgery  
15 performed upon him or her unless consent is obtained from 1 of  
16 the following:

17 (a) The recipient if he or she is 18 years of age or over  
18 and does not have a guardian for medical purposes.

19 (b) The guardian of the recipient if the guardian is legally  
20 empowered to execute a consent to surgery.

21 (c) The parent of the recipient who has legal and physical  
22 custody of the recipient, if the recipient is less than 18 years  
23 of age.

24 (d) The representative authorized to consent under a durable  
25 power of attorney or other advance directive.

26 (2) If the life of a recipient is threatened and there is  
27 not time to obtain consent, surgery may be performed without

1 consent after the medical necessity for the procedure has been  
2 documented and the documentation has been entered into the record  
3 of the recipient.

4 (3) If surgery is considered advisable for a recipient, and  
5 if no one eligible under subsection (1) to give consent can be  
6 found after diligent effort, ~~a probate~~ THE FAMILY DIVISION OF  
7 CIRCUIT court may, upon petition and after hearing, consent to  
8 performance of the surgery in lieu of the individual eligible to  
9 give consent.

10 Sec. 717. (1) A recipient shall not be the subject of elec-  
11 troconvulsive therapy or a procedure intended to produce convul-  
12 sions or coma unless consent is obtained from the following:

13 (a) The recipient, if he or she is 18 years of age or older  
14 and does not have a guardian for medical purposes.

15 (b) The recipient's parent who has legal and physical cus-  
16 tody of the recipient, if the recipient is less than 18 years of  
17 age.

18 (c) The recipient's guardian, if the guardian has power to  
19 execute a consent to procedures described in this section.

20 (d) The recipient's designated representative, if a durable  
21 power of attorney or other advance directive grants the represen-  
22 tative authority to consent to procedures described in this  
23 section.

24 (2) If a guardian consents to a procedure described in this  
25 section, the procedure shall not be initiated until 2 psychia-  
26 trists have examined the recipient and documented in the

1 recipient's medical record their concurrence with the decision to  
2 administer the procedure.

3 (3) If a parent or guardian of a minor consents to a proce-  
4 dure described in this section, the procedure shall not be initi-  
5 ated until 2 child and adolescent psychiatrists, neither of whom  
6 may be the treating psychiatrist, have examined the minor and  
7 documented in the minor's medical record their concurrence with  
8 the decision to administer the procedure.

9 (4) A minor or an advocate designated by the minor may  
10 object to the administration of a procedure described in this  
11 section. The objection shall be made either orally or in writing  
12 to the ~~probate~~ FAMILY DIVISION OF CIRCUIT court. The procedure  
13 shall not be initiated before a court hearing on the minor's or  
14 advocate's objection.

15 (5) At least 72 hours, excluding Sundays or holidays, before  
16 the initiation of a procedure described in this section, a minor  
17 shall be informed that he or she has a right to object to the  
18 procedure.

19 (6) If a procedure described in this section is considered  
20 advisable for a recipient and an individual eligible to give con-  
21 sent for the procedure is not located after diligent effort, a  
22 ~~probate~~ FAMILY DIVISION OF CIRCUIT court may, upon petition and  
23 after a hearing, consent to administration of the procedure in  
24 lieu of the individual eligible to give consent.

25 Sec. 836. A responsible party may appeal a redetermination  
26 of ability to pay made under section 834(b) to the ~~probate~~

1 FAMILY DIVISION OF CIRCUIT court of the county in which he or she  
2 resides.

3 Section 2. This amendatory act applies to actions and pro-  
4 ceedings commenced on or after January 1, 1998.

5 Section 3. This amendatory act shall not take effect unless  
6 House Bill No. 5158 of the 88th Legislature is enacted into law.