

AN ACT concerning State government.

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

Section 1. Short title. This Act may be cited as the Developmental Disability and Mental Health Safety Act or Brian's Law.

Section 5. Legislative Findings. The General Assembly finds all of the following:

(a) As a result of decades of significant under-funding of Illinois' developmental disabilities and mental health service delivery system, the quality of life of individuals with disabilities has been negatively impacted and, in an unacceptable number of instances, has resulted in serious health consequences and even death.

(b) In response to growing concern over the safety of the State-operated developmental disability facilities, following a series of resident deaths, the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act opened a systemic investigation to examine all such deaths for a period of time, including the death of a young man in his twenties, Brian Kent, on October 30, 2002, and released a public report, "Life and Death in State-Operated Developmental Disability

Institutions," which included findings and recommendations aimed at preventing such tragedies in the future.

(c) The documentation of substandard medical care and treatment of individual residents living in the State-operated facilities cited in that report necessitate that the State of Illinois take immediate action to prevent further injuries and deaths.

(d) The agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act has also reviewed conditions and deaths of individuals with disabilities living in or transferred to community-based facilities and found similar problems in some of those settings.

(e) The circumstances associated with deaths in both State-operated facilities and community-based facilities, and review of the State's investigations and findings regarding these incidents, demonstrate that the current federal and State oversight and investigatory systems are seriously under-funded.

(f) An effective mortality review process enables state service systems to focus on individual deaths and consider the broader issues, policies, and practices that may contribute to these tragedies. This critical information, when shared with public and private facilities, can help to reduce circumstances that place individuals at high risk of serious harm and even death.

(g) The purpose of this Act is to establish within the Department of Human Services a low-cost, volunteer-based mortality review process conducted by an independent team of experts that will enhance the health and safety of the individuals served by Illinois' developmental disability and mental health service delivery systems.

(h) This independent team of experts will be comparable to 2 existing types of oversight teams: the Abuse Prevention Review Team created under the jurisdiction of the Department of Public Health, which examines deaths of individuals living in long-term care facilities, and Child Death Review Teams created under the jurisdiction of the Department of Children and Family Services, which reviews the deaths of children.

Section 10. Definitions. As used in this Act:

"Community agency" means (i) a community agency licensed, funded, or certified by the Department of Human Services, but not licensed or certified by any other human services agency of the State, to provide developmental disabilities service or mental health service or (ii) a program licensed, funded, or certified by the Department of Human Services, but not licensed or certified by any other human services agency of the State, to provide developmental disabilities service or mental health service.

"Facility" means a developmental disabilities facility or mental health facility operated by the Department of Human

Services.

Section 15. Mortality Review Process.

(a) The Department of Human Services shall develop an independent team of experts from the academic, private, and public sectors to examine all deaths at facilities and community agencies.

(b) The Secretary of Human Services, in consultation with the Director of Public Health, shall appoint members to the independent team of experts, which shall consist of at least one member from each of the following categories:

1. Physicians experienced in providing medical care to individuals with developmental disabilities.

2. Physicians experienced in providing medical care to individuals with mental illness.

3. Registered nurses experienced in providing medical care to individuals with developmental disabilities.

4. Registered nurses experienced in providing medical care to individuals with mental illness.

5. Psychiatrists.

6. Psychologists.

7. Representatives of the Department of Human Services who are not employed at the facility at which the death occurred.

8. Representatives of the Department of Public Health.

9. Representatives of the agency designated by the

Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act.

10. State's Attorneys or State's Attorneys' representatives.

11. Coroners or forensic pathologists.

12. Representatives of local hospitals, trauma centers, or providers of emergency medical services.

13. Other categories of persons, as the Secretary of Human Services may see fit.

The independent team of experts may make recommendations to the Secretary of Human Services concerning additional appointments. Each team member must have demonstrated experience and an interest in investigating, treating, or preventing the deaths of individuals with disabilities. The Secretary of Human Services shall appoint additional teams if the Secretary or the existing team determines that more teams are necessary to accomplish the purposes of this Act. The members of a team shall be appointed for 2-year staggered terms and shall be eligible for reappointment upon the expiration of their terms. Each independent team shall select a Chairperson from among its members.

(c) The independent team of experts shall examine the deaths of all individuals who have died while under the care of a facility or community agency.

(d) The purpose of the independent team of experts' examination of such deaths is to do the following:

1. Review the cause and manner of the individual's death.

2. Review all actions taken by the facility, State agencies, or other entities to address the cause or causes of death and the adequacy of medical care and treatment.

3. Evaluate the means, if any, by which the death might have been prevented.

4. Report its observations and conclusions to the Secretary of Human Services and make recommendations that may help to reduce the number of unnecessary deaths.

5. Promote continuing education for professionals involved in investigating and preventing the unnecessary deaths of individuals under the care of a facility or community agency.

6. Make specific recommendations to the Secretary of Human Services concerning the prevention of unnecessary deaths of individuals under the care of facilities and community agencies, including changes in policies and practices that will prevent harm to individuals with disabilities, and the establishment of protocols for investigating the deaths of these individuals.

(e) The independent team of experts must examine the cases submitted to it on a quarterly basis. The team shall meet at least once in each calendar quarter if there are cases to be examined. The Department of Human Services shall forward cases within 90 days after completion of a review or an investigation

into the death of an individual residing at a facility or community agency.

(f) Within 90 days after receiving recommendations made by the independent team of experts under subsection (d) of this Section, the Secretary of Human Services must review those recommendations, as feasible and appropriate, and shall respond to the team in writing to explain the implementation of those recommendations.

(g) The Secretary of Human Services shall establish protocols governing the operation of the independent team. Those protocols shall include the creation of sub-teams to review the case records or portions of the case records and report to the full team. The members of a sub-team shall be composed of team members specially qualified to examine those records. In any instance in which the independent team does not operate in accordance with established protocol, the Secretary of Human Services shall take any necessary actions to bring the team into compliance with the protocol.

Section 20. Independent team of experts' access to information.

(a) The Secretary of Human Services shall provide to the independent team of experts, on the request of the team Chairperson, all records and information in the Department's possession that are relevant to the team's examination of a death of the sort described in subsection (c) of Section 10,

including records and information concerning previous reports or investigations of any matter, as determined by the team.

(b) The independent team shall have access to all records and information that are relevant to its review of a death and in the possession of a State or local governmental agency or other entity. These records and information shall include, without limitation, death certificates, all relevant medical and mental health records, records of law enforcement agency investigations, records of coroner or medical examiner investigations, records of the Department of Corrections concerning a person's parole, records of a probation and court services department, and records of a social services agency that provided services to the person who died.

Section 25. Public access to and confidentiality of information.

(a) Meetings of the independent team of experts shall be closed to the public.

(b) Records and information provided to the independent team of experts are confidential. Nothing contained in this subsection (b) prevents the sharing or disclosure of records, other than those produced by the independent team, relating or pertaining to the death of an individual.

(c) Members of the independent team of experts are not subject to examination, in any civil or criminal proceeding, concerning information presented to members of the team or

opinions formed by members of the team based on that information. A person may, however, be examined concerning information provided to the team that is otherwise available to the public.

(d) Records and information produced by the team are not subject to discovery or subpoena and are not admissible as evidence in any civil or criminal proceeding. Those records and information are, however, subject to discovery or a subpoena, and are admissible as evidence to the extent they are otherwise available to the public.

Section 30. Indemnification. The State shall indemnify and hold harmless members of the independent team for all their acts, omissions, decisions, or other conduct arising out of the scope of their service on the team, except those involving willful or wanton misconduct. The method of providing indemnification shall be as provided in the State Employee Indemnification Act.

Section 35. Department's annual report. The Department of Human Services shall include in its annual report to the General Assembly a report of the activities of the independent team of experts, the results of the team's observations and conclusions, categories of members of the team as prescribed in Section 10 of this Act which are currently vacant, recommendations made by the team to the Governor, State

agencies, or other entities, and, as applicable, either (i) the implementation of the recommendations or (ii) the reasons the recommendations were not implemented.

Section 40. Rights information. The Department of Human Services shall ensure that individuals with disabilities and their guardians and families receive sufficient information regarding their rights, including the right to be safe, the right to be free from abuse and neglect, the right to receive quality services, and the right to an adequate discharge plan and timely transition to the least restrictive setting to meet their individual needs and desires. The Department shall provide this information, which shall be developed in collaboration with the agency designated by the Governor pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act, in order to allow individuals with disabilities and their guardians and families to make informed decisions regarding the provision of services that can meet the individual's needs and desires. The Department shall provide this information to all facilities and community agencies to be made available upon admission and at least annually thereafter for as long as the individual remains in the facility.

Section 90. The Open Meetings Act is amended by changing Section 2 as follows:

(5 ILCS 120/2) (from Ch. 102, par. 42)

Sec. 2. Open meetings.

(a) Openness required. All meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a.

(b) Construction of exceptions. The exceptions contained in subsection (c) are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be strictly construed, extending only to subjects clearly within their scope. The exceptions authorize but do not require the holding of a closed meeting to discuss a subject included within an enumerated exception.

(c) Exceptions. A public body may hold closed meetings to consider the following subjects:

(1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.

(2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

(3) The selection of a person to fill a public office,

as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance.

(4) Evidence or testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined in this Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning.

(5) The purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired.

(6) The setting of a price for sale or lease of property owned by the public body.

(7) The sale or purchase of securities, investments, or investment contracts.

(8) Security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff, the public, or public property.

(9) Student disciplinary cases.

(10) The placement of individual students in special

education programs and other matters relating to individual students.

(11) Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

(12) The establishment of reserves or settlement of claims as provided in the Local Governmental and Governmental Employees Tort Immunity Act, if otherwise the disposition of a claim or potential claim might be prejudiced, or the review or discussion of claims, loss or risk management information, records, data, advice or communications from or with respect to any insurer of the public body or any intergovernmental risk management association or self insurance pool of which the public body is a member.

(13) Conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.

(14) Informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or

future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

(15) Professional ethics or performance when considered by an advisory body appointed to advise a licensing or regulatory agency on matters germane to the advisory body's field of competence.

(16) Self evaluation, practices and procedures or professional ethics, when meeting with a representative of a statewide association of which the public body is a member.

(17) The recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.

(18) Deliberations for decisions of the Prisoner Review Board.

(19) Review or discussion of applications received under the Experimental Organ Transplantation Procedures Act.

(20) The classification and discussion of matters classified as confidential or continued confidential by the State Government Suggestion Award Board.

(21) Discussion of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as

mandated by Section 2.06.

(22) Deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board.

(23) The operation by a municipality of a municipal utility or the operation of a municipal power agency or municipal natural gas agency when the discussion involves (i) contracts relating to the purchase, sale, or delivery of electricity or natural gas or (ii) the results or conclusions of load forecast studies.

(24) Meetings of a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(25) Meetings of an independent team of experts under Brian's Law.

(d) Definitions. For purposes of this Section:

"Employee" means a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor.

"Public office" means a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term "public office" shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether

established by law or by a public body itself, that exist to assist the body in the conduct of its business.

"Quasi-judicative body" means an administrative body charged by law or ordinance with the responsibility to conduct hearings, receive evidence or testimony and make determinations based thereon, but does not include local electoral boards when such bodies are considering petition challenges.

(e) Final action. No final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted.

(Source: P.A. 94-931, eff. 6-26-06; 95-185, eff. 1-1-08.)

Section 95. The Freedom of Information Act is amended by changing Section 7.5 as follows:

(5 ILCS 140/7.5)

Sec. 7.5. Statutory Exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

(a) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.

(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.

(c) Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

(d) Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act.

(e) Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act.

(f) Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

(g) Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act.

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

(j) Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act.

(k) Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code.

(l) Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act.

(m) Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act, except to the extent authorized under that Article.

(n) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act. This subsection (n) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

(o) Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act.

(p) Security portions of system safety program plans,

investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(q) Information prohibited from being disclosed by the Personnel Records Review Act.

(r) Information prohibited from being disclosed by the Illinois School Student Records Act.

(s) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(t) Records and information provided to an independent team of experts under Brian's Law.

(Source: P.A. 96-542, eff. 1-1-10.)

Section 100. The State Employee Indemnification Act is amended by changing Section 1 as follows:

(5 ILCS 350/1) (from Ch. 127, par. 1301)

Sec. 1. Definitions. For the purpose of this Act:

(a) The term "State" means the State of Illinois, the General Assembly, the court, or any State office, department, division, bureau, board, commission, or committee, the governing boards of the public institutions of higher education created by the State, the Illinois National Guard, the Comprehensive Health Insurance Board, any poison control

center designated under the Poison Control System Act that receives State funding, or any other agency or instrumentality of the State. It does not mean any local public entity as that term is defined in Section 1-206 of the Local Governmental and Governmental Employees Tort Immunity Act or a pension fund.

(b) The term "employee" means any present or former elected or appointed officer, trustee or employee of the State, or of a pension fund, any present or former commissioner or employee of the Executive Ethics Commission or of the Legislative Ethics Commission, any present or former Executive, Legislative, or Auditor General's Inspector General, any present or former employee of an Office of an Executive, Legislative, or Auditor General's Inspector General, any present or former member of the Illinois National Guard while on active duty, individuals or organizations who contract with the Department of Corrections, the Comprehensive Health Insurance Board, or the Department of Veterans' Affairs to provide services, individuals or organizations who contract with the Department of Human Services (as successor to the Department of Mental Health and Developmental Disabilities) to provide services including but not limited to treatment and other services for sexually violent persons, individuals or organizations who contract with the Department of Military Affairs for youth programs, individuals or organizations who contract to perform carnival and amusement ride safety inspections for the Department of Labor, individual representatives of or

designated organizations authorized to represent the Office of State Long-Term Ombudsman for the Department on Aging, individual representatives of or organizations designated by the Department on Aging in the performance of their duties as elder abuse provider agencies or regional administrative agencies under the Elder Abuse and Neglect Act, individuals or organizations who perform volunteer services for the State where such volunteer relationship is reduced to writing, individuals who serve on any public entity (whether created by law or administrative action) described in paragraph (a) of this Section, individuals or not for profit organizations who, either as volunteers, where such volunteer relationship is reduced to writing, or pursuant to contract, furnish professional advice or consultation to any agency or instrumentality of the State, individuals who serve as foster parents for the Department of Children and Family Services when caring for a Department ward, individuals who serve as members of an independent team of experts under Brian's Law, and individuals who serve as arbitrators pursuant to Part 10A of Article II of the Code of Civil Procedure and the rules of the Supreme Court implementing Part 10A, each as now or hereafter amended, but does not mean an independent contractor except as provided in this Section. The term includes an individual appointed as an inspector by the Director of State Police when performing duties within the scope of the activities of a Metropolitan Enforcement Group or a law enforcement

organization established under the Intergovernmental Cooperation Act. An individual who renders professional advice and consultation to the State through an organization which qualifies as an "employee" under the Act is also an employee. The term includes the estate or personal representative of an employee.

(c) The term "pension fund" means a retirement system or pension fund created under the Illinois Pension Code.

(Source: P.A. 93-617, eff. 12-9-03.)

(405 ILCS 5/5-100A rep.)

Section 105. The Mental Health and Developmental Disabilities Code is amended by repealing Section 5-100A.

Section 110. The Mental Health and Developmental Disabilities Confidentiality Act is amended by changing Section 7 as follows:

(740 ILCS 110/7) (from Ch. 91 1/2, par. 807)

Sec. 7. Review of therapist or agency; use of recipient's record.

(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 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) An independent team of experts under Brian's Law ~~The Mental Health and Developmental Disabilities Medical Review Board~~ shall be entitled to inspect and copy the records of any recipient whose death is being examined by such a team pursuant to the mortality review process authorized by Brian's Law. 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.

Public Act 096-1235

HB5152 Enrolled

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(Source: P.A. 88-484.)