

CHAPTER NO. 730

SENATE BILL NO. 2957

By Person

Substituted for: House Bill No. 3134

By Stanley

AN ACT To amend Tennessee Code Annotated, Titles 10 and 33, relative to persons with mental illness, serious emotional disturbance, mental retardation, and developmental disabilities; the Department of Mental Health and Developmental Disabilities and its authority; and references to Title 33.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 33-1-101(18), is amended by:

(1) deleting the words "senior psychological examiner or certified psychological assistant" and substituting the words "or senior psychological examiner";

(2) deleting the words "Master's degreed nurse" and substituting "nurse who has a Master's degree in nursing";

(3) deleting the words "two (2) years of full time".

SECTION 2. Tennessee Code Annotated, Section 33-2-403(b), is amended by:

(1) Deleting the words "personal care" in subdivision (2) and substituting the words "service or support".

(2) Deleting the words "A person" in subdivisions (3) and (4) and substituting the words "An individual".

SECTION 3. Tennessee Code Annotated, Section 33-2-406, is amended by deleting the second sentence of subsection (h) and substituting the following: "A license may be issued only for the premises or services named in the application, must be posted in a conspicuous place at the service or facility, and may be renewed from year to year. A license is not assignable or transferable except as permitted by Section 4 of this act."

SECTION 4. Tennessee Code Annotated, Section 33-2-418, is amended by deleting the word "or" at the end of subdivision (1); by deleting the period at the end of subdivision (2) and substituting instead a semicolon and the word "or"; and by adding the following language as a new subdivision to be designated as follows:

(3) Housing for service recipients when the commissioner authorizes the transfer of a license at the same site to a successor provider if, and only if, the license holder's contract with the department is terminated, the transfer of license is necessary to sustain the quality of life of the service recipients, and the successor provider does not increase the number of service recipients at the site.

SECTION 5. Tennessee Code Annotated, Section 33-2-602, is amended by adding the following: "The procedure must ensure that each conflict is resolved within fourteen (14) days and the licensee may not cease to provide services and supports to a service recipient with a developmental disability during the pendency of the conflict resolution over the objection of the service recipient."

SECTION 6. Tennessee Code Annotated, Sections 33-2-603 and 33-2-604, are amended by deleting them in their entireties.

SECTION 7. Tennessee Code Annotated, Section 33-2-1109, is amended by deleting the language "§§ 33-5-402--33-5-403," from subdivision (a)(2).

SECTION 8. Tennessee Code Annotated, Title 33, Chapter 3, Part 1, is amended by adding the following section:

Section 33-3-126. A licensee or provider under this title may not discourage or preclude a service recipient from exercising the right to religious expression and shall inform each service recipient in a residential environment of this right. A licensee or provider of religious service may provide transportation for a service recipient under this section.

SECTION 9. (a) Tennessee Code Annotated, Section 33-3-102, is amended by deleting the last sentence of subsection (a).

(b) Tennessee Code Annotated, Section 33-3-102, is further amended by deleting the words "mental health treatment" from subsection (b) and substituting the words "health care".

(c) Tennessee Code Annotated, Title 33, Chapter 4, Part 1, is amended by adding the following as a new section:

Section 33-4-110. If the chief officer of a facility in which a service recipient is hospitalized or admitted is of the opinion that the service recipient is unable to exercise any of the rights afforded by Chapters 3 and 4, the chief officer shall notify immediately the service recipient and the service recipient's attorney, parent, legal custodian, spouse or other nearest known adult relative of the fact, and the chief officer may file for the appointment of a conservator and shall notify those persons as to whether the chief officer intends to do so.

SECTION 10. Tennessee Code Annotated, Section 33-3-105, is amended by deleting subsection (5) and substituting the following:

(5) A service recipient moves from one service provider to another and exchange of information is necessary for continuity of service; or

SECTION 11. Tennessee Code Annotated, Section 33-3-106, is amended by deleting the acronym "PAIIM" from the last sentence of subsection (a) and substituting the acronym "PAMII".

SECTION 12. Tennessee Code Annotated, Section 33-3-108, is amended by deleting it and substituting the following:

(a) Section 33-3-103 does not preclude making reports of harm or granting access to records if making reports of harm or granting access to records are expressly required by:

- (1) the Child Abuse Reporting Law, Title 37, Chapter 1, Part 4;
- (2) the Child Sexual Abuse Reporting Law, Title 37, Chapter 1, Part 6; or
- (3) the Adult Protective Services Law, Title 71, Chapter 6.

(b) The identity of a person who reports abuse, exploitation, fraud, neglect, or mistreatment to the department is confidential and may not be disclosed without the person's consent, except as follows:

- (1) as necessary to carry out the laws cited in subsection (a);
- (2) to employees of the department as necessary to investigate the report;
- (3) to the abuse registry;
- (4) to the appropriate district attorney;
- (5) by order of a court with jurisdiction over abuse, exploitation, fraud, neglect, or mistreatment;
- (6) by order of a court or administrative law judge in a proceeding involving sanctions or disciplinary actions against a caregiver or an entity accused of abuse, exploitation, fraud, neglect, or mistreatment, when it appears to such court or administrative law judge that the person making the report is or may be a witness to facts relevant to the proceeding.

The person's identity is irrelevant to any civil proceeding and is not subject to disclosure, except in cases where a caregiver or other person is the subject of a complaint and can make a showing that the complaint was made with malice so that the caregiver or other person may pursue such remedies as may be permitted by law. The person may be subpoenaed if the department or district attorney general deem it necessary to protect the service recipient who is the subject of the report, but the fact that the person made the report may not be disclosed.

SECTION 13. Tennessee Code Annotated, Section 33-3-109, is amended by deleting the second sentence and substituting the following:

Such records shall include only the finding of incompetence or competence, the court order that makes the finding and appoints the fiduciary, and the letters of conservatorship or guardianship; these records may be open for inspection by members of the public.

SECTION 14. Tennessee Code Annotated, Section 33-3-114, is amended by:

- (1) deleting the word "and" at the end of item (1);
- (2) deleting the period from the end of item (2) and substituting a semicolon; and
- (3) adding the following items:
 - (3) Judicial proceedings under Chapter 8, Part 3; and
 - (4) Guardianship, conservatorship, and veterans' guardianship proceedings under Title 34.

SECTION 15. Tennessee Code Annotated, Section 33-3-120, is amended by deleting the word "secluded" from subsection (f) and substituting the word "isolated".

SECTION 16. Tennessee Code Annotated, Section 33-3-201, is amended by deleting subdivision (a)(2) and substituting the following:

- (a)(2) "Counselor" means any psychiatrist, psychologist, licensed psychologist with health service provider designation, certified or licensed marital and family therapist, certified or licensed professional counselor, certified or licensed social worker, or other professional trained in the field of psychiatry or psychology, or any nonprofessional person acting under guidance or supervision of such professionals.

SECTION 17. Tennessee Code Annotated, Sections 33-3-206 and 33-3-208, are amended by deleting the words "physician, psychologist, psychological examiner, senior psychological examiner, certified psychological assistant, behavior analyst, or licensed clinical social worker" from subsection (1) of each section and substituting the words "qualified mental health professional or behavior analyst".

SECTION 18. Tennessee Code Annotated, Section 33-3-218, is amended by deleting subsection (1)(B) and substituting the following:

- (B) a service recipient, due to a diagnosed mental illness or serious emotional disorder, is unable to make an informed decision about application to a hospital or inpatient treatment resource under §33-6-201, requesting discharge under §33-6-206, inpatient mental health treatment, release of information, or getting information, AND

SECTION 19. Tennessee Code Annotated, Section 33-3-219, is amended by:

- (1) inserting after the words "developmental disability" the words "that is not based solely on a diagnosis of mental illness or serious emotional disturbance" in subsection (1) after each occurrence;
- (2) deleting subsection (2) and substituting the following:
 - (2)(A) a licensed dentist determines that the person lacks capacity to make a decision about a routine dental decision, OR

(B) a licensed psychologist with health service provider designation determines that the person lacks capacity to make a decision about routine mental health treatment, OR

(C) a licensed physician determines that the person lacks capacity to make a decision about routine medical or mental health treatment, AND

(3) deleting the words "physician or dentist" from subsections (3), (4), and (6) wherever they appear and substituting the words "physician, psychologist, or dentist".

SECTION 20. Tennessee Code Annotated, Sections 33-3-220 and 33-3-221, are amended by deleting the words "physician or dentist" wherever they appear and substituting the words "physician, psychologist, or dentist".

SECTION 21. Tennessee Code Annotated, Section 33-3-802, is amended by deleting the words "developmental disability" and substituting the words "mental retardation"; and by deleting the words "is in need of service" and substituting the words "meets the standards for involuntary commitment under Chapter 6, Part 5, or §§ 33-5-402 and 33-5-403".

SECTION 22. Tennessee Code Annotated, Section 33-3-803, is amended by:

(1) deleting the words "pursuant to the provisions governing procedures under this title" and substituting the words "under the governing provisions of this title"; and

(2) deleting the word "presently"; and

(3) deleting the words "a developmental disability" and substituting the words "mental retardation"; and

(4) deleting the comma after the word "petitioner" and substituting a semicolon.

SECTION 23. (a) Tennessee Code Annotated, § 33-4-102, is amended by deleting the section in its entirety.

(b) Tennessee Code Annotated, Section 33-3-101, is amended by adding the following language as a new subsection:

() A person with mental illness, serious emotional disturbance, or developmental disability shall be provided services or supports, to the extent that facilities, equipment and personnel are available, in accordance with community standards. The chief officer shall keep records detailing services or supports received by each person. Records shall be preserved by the chief officer for not less than ten (10) years after termination of service. The records may be generated, maintained, or transferred in whole or in part to any recording medium that assures accurate preservation of the record. If a record is transferred from one medium to another, the source record may be destroyed upon determination by the chief officer that the reproduced record is true and correct and will be accurately preserved. The reproduced record is deemed to be the original record.

SECTION 24. Tennessee Code Annotated, Section 33-4-106(a), is amended by:

(1) inserting the words "regardless of the length of the person's absence" at the end of the first sentence between the word "court" and the period; and

(2) inserting the following sentence at the end of subsection (a):

A person's absence beyond thirty (30) days does not limit the power of the court to order the person's return to a facility under this section.

SECTION 25. Tennessee Code Annotated, Section 33-5-106, is amended by deleting the first sentence and substituting the following:

A person with a developmental disability, a parent or legal guardian of a child with a developmental disability, a conservator of a person with a developmental disability, the Department of Children's Services on behalf of a person in its legal custody who has a developmental disability, the Department of Human Services on behalf of a person in its legal custody who has a developmental disability, referred to as the "applicant," may apply to the department through its designated entities for services and supports that they provide directly or by contract.

SECTION 26. Tennessee Code Annotated, Section 33-5-108, is amended by:

(1) deleting the words "Division of Developmental Disabilities" and "Division for Developmental Disabilities" from the first sentence and substituting the words "Division of Mental Retardation";

(2) deleting the words "developmental disabilities" from the second sentence and substituting the words "mental retardation".

SECTION 27. Tennessee Code Annotated, Section 33-5-208, is amended by:

(1) deleting the words "a severe" from the first sentence and substituting the word "severe";

(2) deleting the words "developmental disabilities council" from the second sentence and substituting the words "council on developmental disabilities";

(3) deleting the words "state disability coalition" from the second sentence and substituting the words "Tennessee Disability Coalition";

(4) deleting the words "community rehabilitation agencies" and substituting the words "Tennessee Network of Community Organizations".

SECTION 28. Tennessee Code Annotated, Section 33-5-304, is amended by deleting the words "the Division of Developmental Disabilities" from the first sentence of subsection (c) and substituting the words "a designee of the commissioner", and by deleting the word "division" from the second sentence of subsection (c) and substituting the words "designee of the commissioner".

SECTION 29. Tennessee Code Annotated, Section 33-5-405, is amended by deleting it and substituting the following: "A judicially committed defendant does not come into the custody

of the commissioner until the commissioner determines that the state has an available suitable accommodation and designates a licensed state facility to admit the defendant."

SECTION 30. Tennessee Code Annotated, Section 33-6-103, is amended by deleting the word "adults" from the first sentence of subsection (b) and substituting the word "persons".

SECTION 31. Tennessee Code Annotated, Section 33-6-104, is amended by deleting the words "maximize the service recipients" from subsection (a) and substituting the words "maximize each service recipient's".

SECTION 32. Tennessee Code Annotated, Section 33-6-105, is amended by deleting its contents and substituting the following:

A person with mental illness or serious emotional disturbance shall not be involuntarily admitted or committed to a state-owned or operated hospital or treatment resource under Chapter 6, Part 4, of this title unless a mandatory prescreening agent provides one of the certificates for each set of certificates of need required by §§33-6-309, 33-6-404, and 33-6-408. If a mandatory pre-screening agent cannot examine the person within two (2) hours of the request to examine the person, then a licensed physician or a licensed psychologist with health service provider designation may examine the person and may provide one of the certificates if the physician or psychologist, in consultation with a member of a crisis response service designated by the commissioner to serve the county, determines that all available less drastic alternatives to placement in a hospital or treatment resource are unsuitable to meet the needs of the person.

SECTION 33. Tennessee Code Annotated, Section 33-6-106, is amended by deleting it in its entirety and substituting the following:

(a) If a mandatory prescreening agent performs the initial evaluation of a person for admission and determines that the person does not meet admission criteria, the mandatory prescreening agent shall assure that the person has alternative services available and offered if appropriate. The mandatory prescreening agent shall contact the person within twelve (12) hours to determine outcome and complete follow-up as necessary. If the prescreening is performed by a physician or psychologist as authorized by § 33-6-105, the crisis response service shall contact the person within twelve (12) hours to determine outcome and complete follow-up as necessary.

(b) Transportation to and admission of a person to a state-owned or operated hospital or treatment resource shall not begin until a mandatory prescreening agent or physician or psychologist as authorized by Section 33-6-105 completes a certificate of need.

SECTION 34. Tennessee Code Annotated, Section 33-6-107, is amended by:

(1) deleting the words "or case management agencies, getting information from other treatment agencies, or release of information to a family member" from subsection (a) and substituting the following ", other treatment agencies, providers, or a family member, and getting information from other treatment agencies or providers";

(2) inserting the following between the words "older" and "to" in the fourth sentence of subsection (b) "and the conservator or surrogate decision maker on behalf of a service recipient who is sixteen (16) years of age or older";

(3) deleting the word "mental" from the last sentence of subsection (b).

SECTION 35. Tennessee Code Annotated, Section 33-6-201, is amended by deleting subsection (5) and substituting the following:

(5) A person's attorney in fact under a durable power of attorney for health care, under Title 34, Chapter 6, Part 2.

SECTION 36. Tennessee Code Annotated, Section 33-6-206, is amended by deleting the word "mental" from subsection (a)(3).

SECTION 37. Tennessee Code Annotated, Section 33-6-305, is amended by deleting the words "program's emergency room" and substituting the words "treatment resource".

SECTION 38. Tennessee Code Annotated, Section 33-6-309, is amended by:

(1) deleting the words "by the mandatory prescreening agent" from the second sentence; and

(2) adding the following to the end of the section "Evaluation for admission to a state-owned or operated hospital or treatment resource must conform to §33-6-105."

SECTION 39. Tennessee Code Annotated, Section 33-6-310, is amended by deleting the words "it is" and substituting the words "they are".

SECTION 40. Tennessee Code Annotated, Section 33-6-406, is amended by:

(1) adding the following at the end of subsection (a):

Transportation to a state-owned or operated hospital or treatment resource may not commence without a certificate of need executed by a mandatory prescreening agent, or by a physician or psychologist as authorized by Section 33-6-105.

(2) inserting the word "or" between the reference "(b)(1)" and the word "has" in the first sentence of subsection (b)(3).

SECTION 41. Tennessee Code Annotated, Section 33-6-409, is amended by deleting it.

SECTION 42. Tennessee Code Annotated, Section 33-6-421, is amended by deleting the words "either a psychologist qualified under § 33-6-427(a) or a person designated by the commissioner under § 33-6-427(b)" and substituting the words "a psychologist qualified under § 33-6-427(a)".

SECTION 43. Tennessee Code Annotated, Section 33-6-427, is amended by deleting the content of subsection (b)(1) and substituting the words "Is a qualified mental health professional under § 33-1-101;".

SECTION 44. Tennessee Code Annotated, Section 33-6-609, is amended by deleting the words "seventy-two (72) hours" in subsection (3) and substituting the words "five (5) business days".

SECTION 45. Tennessee Code Annotated, Section 33-6-616, is amended by deleting the words "seventy-two (72) hours" and substituting the words "five (5) business days".

SECTION 46. Tennessee Code Annotated, Section 33-6-802, is amended by deleting the words "certified psychological assistant" and substituting the words "clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker".

SECTION 47. Tennessee Code Annotated, Section 33-6-804, is amended by deleting the words "certified psychological assistant" from subsection (a) and substituting the words "clinical nurse specialist in psychiatry, licensed professional counselor, or licensed clinical social worker".

SECTION 48. Tennessee Code Annotated, Section 33-6-902, is amended by deleting the phrase "4 or" from the first sentences of both subsections (a) and (b).

SECTION 49. Tennessee Code Annotated, Section 33-6-1002, is amended by deleting the words "doctoral level psychologist with health services designation" from subsection (1)(B)(i)(b) and substituting the words "psychologist designated as a health service provider".

SECTION 50. Tennessee Code Annotated, Section 33-6-1014, is amended by deleting the word "retention" from subsection (c)(4) and substituting the word "remaining".

SECTION 51. Tennessee Code Annotated, Section 33-7-301, is amended by adding the following to the end of paragraph (5) of subsection (b):

If the court commits a person under this subsection, the person comes into the commissioner's custody only as follows:

(A) If the court determines that the person meets the standards of § 33-6-403, then the commissioner shall admit the person upon receipt of notice that the person has been committed.

(B) If the court determines that the person does not meet the standards of § 33-6-403 but does meet the standards of Chapter 6, Part 5, and the commissioner determines that a facility has a bed that is appropriate and adequately staffed, then the commissioner shall exert all reasonable efforts to admit the person within five (5) days of receipt of the order of commitment. If after the hearing the person's condition deteriorates to the standards of § 33-6-403, then the person's admission is governed by item (A).

SECTION 52. Tennessee Code Annotated, Section 33-7-303, is amended by adding the following to the end of subsection (c):

(3) If the court commits a person under this subsection, the person comes into the commissioner's custody only as follows:

(A) If the court determines that the person meets the standards of § 33-6-403, then the commissioner shall admit the person upon receipt of notice that the person has been committed.

(B) If the court determines that the person does not meet the standards of § 33-6-403 but does meet the standards of Chapter 6, Part 5, and the commissioner determines that a facility has a bed that is appropriate and adequately staffed, then the commissioner shall exert all reasonable efforts to admit the person within five (5) days of receipt of the order of commitment. If after the hearing the person's condition deteriorates to the standards of § 33-6-403, then the person's admission is governed by item (A).

SECTION 53. Tennessee Code Annotated, Section 10-7-504, is amended by:

(1) deleting the reference "§ 33-10-301" from subsection (a)(13)(A) and substituting "§ 33-1-101(18)";

(2) deleting the reference "Title 33, Chapter 10, Part 3" from subsection (a)(13)(D) and substituting "§§ 33-3-206--209".

SECTION 54. This act shall take effect on July 1, 2002, the public welfare requiring it.

PASSED: May 1, 2002


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 8th day of May 2002


DON SUNDQUIST, GOVERNOR