

### **IC 16-39-3**

Chapter 3. Release of Mental Health Records in Investigations and Legal Proceedings

#### **IC 16-39-3-1**

##### **Application of chapter**

Sec. 1. This chapter applies only to mental health records.

*As added by P.L.2-1993, SEC.22.*

#### **IC 16-39-3-2**

##### **Repealed**

*(Repealed by P.L.4-1997, SEC.14.)*

#### **IC 16-39-3-3**

##### **Petition for release of patient's records**

Sec. 3. A person:

- (1) seeking access to a patient's mental health record without the patient's written consent in an investigation or prosecution resulting from a report filed under IC 16-39-2-6(10); or
- (2) who has filed or is a party to a legal proceeding and who seeks access to a patient's mental health record without the patient's written consent;

may file a petition in a circuit or superior court requesting a release of the patient's mental health record.

*As added by P.L.2-1993, SEC.22. Amended by P.L.108-1996, SEC.5.*

#### **IC 16-39-3-4**

##### **Notice of hearing**

Sec. 4. Except as provided in section 8 of this chapter, notice of a hearing to be conducted under this chapter shall be served at least fifteen (15) days in advance on the following:

- (1) The patient.
- (2) The guardian, guardian ad litem or court appointed special advocate appointed for a minor, parent, or custodian of a patient who is incompetent.
- (3) The provider that maintains the record or the attorney general if the provider is a state institution.

*As added by P.L.2-1993, SEC.22.*

#### **IC 16-39-3-5**

##### **Right to counsel**

Sec. 5. If a patient has an attorney, the patient has the right to have an attorney present at a hearing conducted under this chapter. The notice served under section 4 of this chapter must state the patient's right to have an attorney present if the patient has an attorney. If the patient is under an inpatient commitment to a mental health facility at the time a petition under section 3 of this chapter is filed and the patient is unable to afford an attorney, the court shall appoint an attorney for the patient.

*As added by P.L.2-1993, SEC.22.*

**IC 16-39-3-6****Confidential hearing record**

Sec. 6. A hearing under this chapter shall be conducted in a manner that preserves the confidentiality of the record of the hearing. *As added by P.L.2-1993, SEC.22.*

**IC 16-39-3-7****Release of records; necessary findings**

Sec. 7. At the conclusion of the hearing, the court may order the release of the patient's mental health record if the court finds by a preponderance of the evidence that:

- (1) other reasonable methods of obtaining the information are not available or would not be effective; and
- (2) the need for disclosure outweighs the potential harm to the patient. In weighing the potential harm to the patient, the court shall consider the impact of disclosure on the provider-patient privilege and the patient's rehabilitative process.

*As added by P.L.2-1993, SEC.22.*

**IC 16-39-3-8****Child in need of services; petition for emergency hearing on request for records of parent, guardian, or custodian**

Sec. 8. If an emergency exists in which a child is alleged to be a child in need of services under IC 31-34-1 and the department of child services seeks access to the mental health records of the parent, guardian, or custodian of the child as a part of a preliminary inquiry under IC 31-34-7, the department of child services may file a verified petition, which sets forth the facts the department of child services alleges constitute an emergency, seeking an emergency hearing under this section. A request for access to a patient's mental health record under this section shall be heard by the juvenile court having jurisdiction under IC 31-30 through IC 31-40. Notice of a hearing to be conducted under this section shall be served not later than twenty-four (24) hours before the hearing to all persons entitled to receive notice under section 4 of this chapter. If actual notice cannot be given, the department of child services shall file with the court an affidavit stating that verbal notice or written notice left at the last known address of the respondent was attempted not less than twenty-four (24) hours before the hearing. A hearing under this section shall be held not later than forty-eight (48) hours after the petition for an emergency hearing is filed. The juvenile court shall enter written findings concerning the release or denial of the release of the mental health records of the parent, guardian, or custodian. The juvenile court shall order the release of the mental health records if the court finds the following by a preponderance of the evidence:

- (1) Other reasonable methods of obtaining the information sought are not available or would not be effective.
- (2) The need for disclosure in the best interests of the child outweighs the potential harm to the patient caused by a necessary disclosure. In weighing the potential harm to the

patient, the juvenile court shall consider the impact of disclosure on the provider-patient relationship and the patient's rehabilitative process.

*As added by P.L.2-1993, SEC.22. Amended by P.L.4-1993, SEC.245; P.L.5-1993, SEC.258; P.L.1-1997, SEC.97; P.L.146-2008, SEC.448.*

### **IC 16-39-3-9**

#### **Court order authorizing release of records; requisites**

Sec. 9. A court order authorizing release of a patient's mental health record under this chapter must do the following:

- (1) Limit disclosure to those parts of the patient's record that are essential to fulfill the objective of the order.
- (2) Limit disclosure to those persons whose need for information is the basis of the order.
- (3) Include other measures necessary to limit disclosure for the protection of the patient, the provider-patient privilege, and the rehabilitative process.

*As added by P.L.2-1993, SEC.22.*

### **IC 16-39-3-10**

#### **Admission of record or related testimony in evidence; confidentiality**

Sec. 10. If a patient's mental health record or testimony related to a patient's mental health is offered or admitted into evidence in a legal proceeding, the court shall maintain the record or transcript of the testimony as a confidential court record. The record or transcript may not be used in any other proceeding or for any other purpose.

*As added by P.L.2-1993, SEC.22.*

### **IC 16-39-3-11**

#### **Proceedings under IC 31-6; exception**

Sec. 11. Except as provided in section 8 of this chapter:

- (1) this chapter;
- (2) the hearing process described in this chapter; and
- (3) the standards described in this chapter;

do not apply to proceedings under IC 31-30 through IC 31-40. A proceeding for access to a patient's mental health records under IC 31-30 through IC 31-40 is subject to the Indiana Rules of Trial Procedure.

*As added by P.L.2-1993, SEC.22. Amended by P.L.1-1997, SEC.98.*

### **IC 16-39-3-12**

#### **Copying fees**

Sec. 12. IC 16-39-9 governs the fees that may be charged for making and providing copies of records under this chapter.

*As added by P.L.102-1994, SEC.4.*

### **IC 16-39-3-13**

#### **Application to other mental health records laws**

Sec. 13. This chapter does not prohibit the application to mental

health records of any law concerning health records that is not addressed by this chapter.

*As added by P.L.4-1997, SEC.10.*