

**KTJ**

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**SCHOOL LAW GROUP**

**Illinois Law Amended to Provide Up To Eight Counseling Sessions (up to 90 minutes per session) Now Authorized Without Parental Consent**

The former legal authority under the Illinois Mental Health and Developmental Disabilities Code (“Code”) for a minor at least 12 years old, and less than 17, to ask for and receive up to 5 counseling sessions of not more than 45 minutes a session, without prior parental consent, has now been expanded to 8 sessions not exceeding 90 minutes per session, prior to the requirement for such parent consent. The language of the Code is such however that it does not appear to regulate services by school counseling staff.

A more detailed summary of these changes is set forth herein.

A full copy of the Public Act can be found at:

[Public Act 100-0196](#)

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## SUMMARY OF CHANGES: Public Act 100-0196

### **“Service Providers” Can Provide Counseling Services of Up to 8 Sessions Prior to Mandatory Parent Consent**

Section 3-501 of the Mental Health and Developmental Disabilities Code (“Code”) has been amended to change the initial number and length of “outpatient” counseling services or psychotherapy provided to a minor under the age of 17 to not more than eight (8), 90-minute sessions. Previously the law provided for not more than 5 sessions, with such a session lasting not more than 45 minutes.

For covered service providers working with the Department of Mental Health, minors who are at least 12 years old and under 17, can seek counseling services or psychotherapy on their own on an outpatient basis until the consent of the minor’s parent, guardian, or person in loco parentis has been obtained, outpatient counseling services or psychotherapy provided to a minor under the age of 17 shall be initially limited to not more than 8 90-minute sessions.

### **Counseling and Determination Process and Standards Regarding Parent Consent**

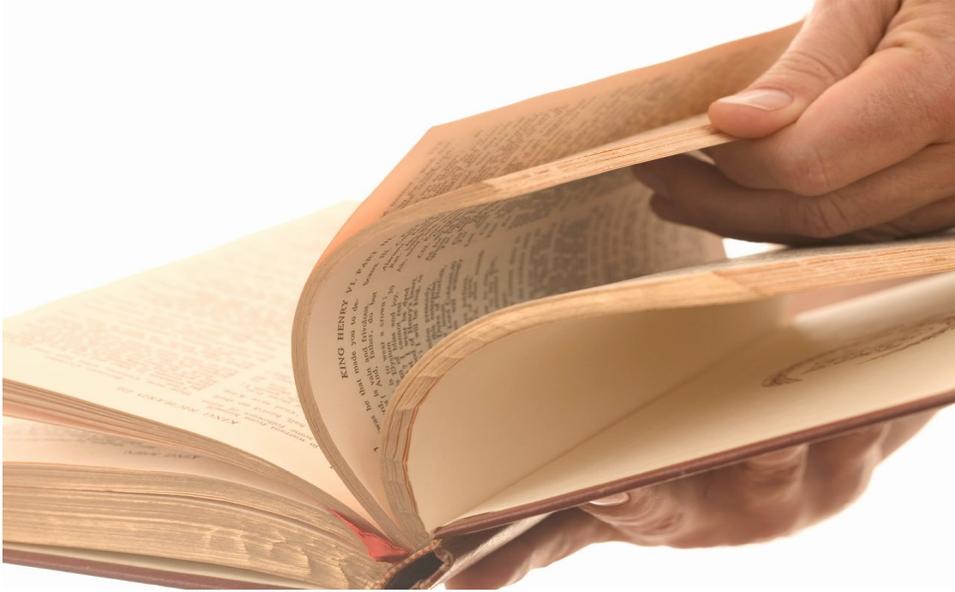
The service provider is required to consider several required factors<sup>1</sup> throughout the therapeutic process to determine, through consultation with the minor, whether attempting to obtain the consent of a parent or person in loco parentis would be detrimental to the minor’s well-being. When counseling services or psychotherapy are related to allegations of neglect, sexual abuse, or mental or physical abuse by the minor’s parent or person in loco parentis, obtaining consent of that parent or person in loco parentis shall be presumed to be detrimental to the minor’s well-being.

No later than the eighth session, the service provider shall determine and share with the minor the service provider’s determination, as follows:

- If the service provider finds that attempting to obtain consent would not be detrimental to the minor’s well-being, the provider shall notify the minor that the consent of a parent or person in loco parentis is required to continue counseling services or psychotherapy.
- If the minor does not permit the service provider to notify the parent or person in loco parentis for the purpose of consent after the eighth session the service provider shall discontinue counseling services or psychotherapy and shall not notify the parent, guardian, or person in loco parentis about the counseling services or psychotherapy.
- If the minor permits the service provider to notify the parent or person in loco parentis for the purpose of consent, without discontinuing counseling services or psychotherapy, the service provider shall make reasonable attempts to obtain consent.
  - ⇒ The service provider shall document each attempt to obtain consent in the minor’s clinical record. The service provider may continue to provide counseling services or psychotherapy without the consent of the minor’s parent or person in loco parentis if:

<sup>1</sup> Each of the following factors must be present in order for the service provider to find that obtaining the consent of a parent or person in loco parentis would be detrimental to the minor’s well-being:

- (1) requiring the consent or notification of a parent, or person in loco parentis would cause the minor to reject the counseling services or psychotherapy;
- (2) the failure to provide the counseling services or psychotherapy would be detrimental to the minor’s well being;
- (3) the minor has knowingly and voluntarily sought the counseling services or psychotherapy; and
- (4) in the opinion of the service provider, the minor is mature enough to participate in counseling services or psychotherapy productively.



- ◆ The service provider has made at least 2 unsuccessful attempts to contact the minor's parent, guardian, or person in loco parentis to obtain consent; and
- ◆ The service provider has obtained the minor's written consent.
- If, after the eighth session, the service provider of counseling services or psychotherapy determines that obtaining consent would be detrimental to the minor's well-being, the service provider shall consult with his or her supervisor when possible to review and authorize the above determination(s).
  - ⇒ The service provider shall document the basis for the determination in the minor's clinical record and may then accept the minor's written consent to continue to provide counseling services or psychotherapy without also obtaining the consent of a parent or person in loco parentis.
- If the minor continues to receive counseling services or psychotherapy without the consent of a parent, guardian, or person in loco parentis beyond 8 sessions, the service provider shall evaluate, in consultation with his or her supervisor when possible, his or her determination as above, and review the determination every 60 days until counseling services or psychotherapy ends or the minor reaches age 17.
  - ⇒ If it is determined appropriate to notify the parent or person in loco parentis and the minor consents, the service provider shall proceed, without discontinuing counseling services or psychotherapy, and shall make reasonable attempts to obtain consent.

### **Parent Not To Be Informed About Counseling**

The minor's parent or person in loco parentis cannot be informed of the counseling services or psychotherapy without the written consent of the minor unless the service provider believes the disclosure is necessary as determined above. If the service provider intends to disclose the fact of counseling services or psychotherapy, the minor shall be so informed and if the minor chooses to discontinue counseling services or psychotherapy after being informed of the decision of the facility director or service provider to disclose the fact of counseling services or psychotherapy to the parent or person in loco parentis, then the parent or person in loco parentis shall not be notified.

Under the Mental Health and Developmental Disabilities Confidentiality Act, the service provider shall not allow the minor's parent or person in loco parentis, upon request, to inspect or copy the minor's record or any part of the record if the

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service provider finds that there are compelling reasons for denying the access.

### School Counselors and Staff Do Not Appear To Be Covered

This amendment to Section 3-501 of the Mental Health and Developmental Disabilities Code ("Code") increases the initial number and length of "outpatient" counseling services or psychotherapy provided to a minor under the age of 17 without parental consent to not more than eight 90-minute sessions. While the Code specifically notes that clinically licensed social workers, marriage counselors and licensed clinical professional counselor, including psychologists are covered professionals, the amendment appears to be broader by not simply covering licensed, professional counseling personnel, but rather it refers to any "counseling services". While "outpatient" services are not defined by the Code, the Mental Health and Developmental Disabilities Code does appear to limit the application of its provisions as follows:

Sec. 1-105. "Department" means the Department of Human Services in its capacity as successor to the Department of Mental Health and Developmental Disabilities. Unless the context otherwise requires, direct or indirect references in this Code to the programs, employees, facilities, service providers, or service recipients of the Department shall be construed to refer only to those programs, employees, facilities, service providers, or service recipients of the Department that pertain to its mental health and developmental disabilities functions.  
405 ILCS 5/1-105

A "developmental disability" covers intellectual disabilities, cerebral palsy, epilepsy or autism or any other condition which results in impairment similar to that caused by an intellectual disability and which requires services similar to those required by persons with an intellectual disability. A "mental illness" includes any mental or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life<sup>2</sup>. The scope of covered services then for counseling related to a developmental disability or mental illness is broad.

So while "service provider" is also broad, the language of the Code does appear to limit its scope to service providers and recipients of the Department of Mental Health that relate to the mental health and developmental disability services of the Department.

It does not appear then that school personnel are covered by these provisions regarding counseling and parent consent.

<sup>2</sup> Mental illness here does not include a developmental disability, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.