

IC 11-10-4

Chapter 4. Care and Treatment of Mentally Ill Offenders

IC 11-10-4-1

Definitions

Sec. 1. (a) As used in this chapter, the terms used in IC 12-26 have the meanings set forth in IC 12-7-2.

(b) As used in this chapter, "qualified medical personnel" has the meaning set out in IC 11-10-3-1.

As added by Acts 1979, P.L.120, SEC.3. Amended by P.L.2-1992, SEC.103.

IC 11-10-4-2

Providing care and treatment

Sec. 2. The department shall provide for the care and treatment of every confined offender who is determined to be mentally ill by a psychiatrist employed or retained by the department. To provide that care and treatment, the department may:

- (1) establish and operate its own mental health facilities and programs;
- (2) transfer offenders to the division of mental health and addiction, subject to the approval of the director of the division of mental health and addiction; or
- (3) contract with any city, county, state, or federal authority or with other public or private organizations for the provision of care and treatment.

As added by Acts 1979, P.L.120, SEC.3. Amended by Acts 1980, P.L.87, SEC.1; P.L.2-1992, SEC.104; P.L.135-1993, SEC.2; P.L.215-2001, SEC.19.

IC 11-10-4-3

Involuntary transfers to division of mental health and addiction or to mental health facility

Sec. 3. (a) A committed offender may be involuntarily transferred to the division of mental health and addiction or to a mental health facility only if:

- (1) the offender has been examined by a psychiatrist employed or retained by the department and the psychiatrist reports to the department in writing that, in the psychiatrist's opinion, the offender has a mental illness and is in need of care and treatment by the division of mental health and addiction or in a mental health facility;
- (2) the director of mental health approves of the transfer if the offender is to be transferred to the division of mental health and addiction; and
- (3) the department affords the offender a hearing to determine the need for the transfer, which hearing must comply with the following minimum standards:

- (A) The offender shall be given at least ten (10) days advance written and verbal notice of the date, time, and

place of the hearing and the reason for the contemplated transfer. This notice must advise the offender of the rights enumerated in clauses (C) and (D). Notice must also be given to one (1) of the following:

- (i) The offender's spouse.
- (ii) The offender's parent.
- (iii) The offender's attorney.
- (iv) The offender's guardian.
- (v) The offender's custodian.
- (vi) The offender's relative.

(B) A copy of the psychiatrist's report must be given to the offender not later than at the time notice of the hearing is given.

(C) The offender is entitled to appear in person, speak in the offender's own behalf, call witnesses, present documentary evidence, and confront and cross-examine witnesses.

(D) The offender is entitled to be represented by counsel or other representative.

(E) The offender must be given a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken.

(F) A finding that the offender is in need of mental health care and treatment in the division of mental health and addiction or a mental health facility must be based upon clear and convincing evidence.

(b) If the official in charge of the facility or program to which the offender is assigned determines that emergency care and treatment in the division of mental health and addiction or a mental health facility is necessary to control a mentally ill offender who is either gravely disabled or dangerous, that offender may be involuntarily transferred, subject to the approval of the director of the division of mental health and addiction, before holding the hearing described in subsection (a)(3). However, this subsection does not deprive the offender of the offender's right to a hearing.

(c) The official in charge of the division of mental health and addiction or facility to which an offender is transferred under this section must give the offender a semiannual written report, based on a psychiatrist's examination, concerning the offender's mental condition and the need for continued care and treatment in the division of mental health and addiction or facility. If the report states that the offender is still in need of care and treatment in the division of mental health and addiction or a mental health facility, the division of mental health and addiction or facility shall, upon request of the offender or a representative in the offender's behalf, conduct a hearing to review the need for that continued care and treatment. The hearing must comply with the minimum standards established by subsection (a)(3). The division of mental health and addiction or facility to which the offender is transferred under this section may conduct a hearing under this subsection upon its initiative.

(d) If the division of mental health and addiction or facility to

which an offender is transferred under this section determines that the offender no longer needs care and treatment in the division of mental health and addiction or facility, the division of mental health and addiction or facility shall return the offender to the custody of the department of correction, and the department of correction shall reassign the offender to another facility or program.

(e) After an offender has been involuntarily transferred to and accepted by the division of mental health and addiction, the department shall transmit any information required by the division of state court administration for transmission to the NICS (as defined in IC 35-47-2.5-2.5) in accordance with IC 33-24-6-3.

As added by Acts 1979, P.L.120, SEC.3. Amended by Acts 1980, P.L.87, SEC.2; P.L.2-1992, SEC.105; P.L.215-2001, SEC.20; P.L.99-2007, SEC.39; P.L.110-2009, SEC.6.

IC 11-10-4-4

Voluntary transfers to division of mental health and addiction or mental health facility

Sec. 4. (a) An offender who believes the offender to have a mental illness and to be in need of care and treatment in the division of mental health and addiction or a mental health facility shall, at the offender's request for transfer, be examined by a psychiatrist employed or retained by the department of correction, who shall report the psychiatrist's findings to the department of correction. If the report states that the offender has a mental illness and is in need of care and treatment in the division of mental health and addiction or a mental health facility, the department of correction shall transfer the offender to the division of mental health and addiction, subject to the approval of the director of the division of mental health and addiction, or to a mental health facility. If the department of correction intends to transfer an offender to the division of mental health and addiction, the department of correction shall transmit a copy of the psychiatrist's report to the division of mental health and addiction.

(b) Section 3(c) and 3(d) of this chapter apply to transfers under this section.

As added by Acts 1979, P.L.120, SEC.3. Amended by Acts 1980, P.L.87, SEC.3; P.L.2-1992, SEC.106; P.L.215-2001, SEC.21; P.L.99-2007, SEC.40.

IC 11-10-4-5

Transfer not to extend offender's term of imprisonment or confinement; commitment proceedings

Sec. 5. A transfer under this chapter does not extend an offender's term of imprisonment or commitment. However, if it is determined that an offender transferred under this chapter will be in need of mental health care and treatment after the offender's term of imprisonment or commitment ends, the division of mental health and addiction or facility to which the offender was transferred may institute commitment proceedings under IC 12-26.

As added by Acts 1979, P.L.120, SEC.3. Amended by P.L.2-1992, SEC.107; P.L.215-2001, SEC.22.

IC 11-10-4-6

Administration of drug for controlling mental or emotional disorder; requirements

Sec. 6. The administration of a drug by the department for the purpose of controlling a mental or emotional disorder is subject to the following requirements:

- (1) The particular drug must be prescribed by a physician who has examined the offender.
- (2) The drug must be administered by either a physician or qualified medical personnel under the direct supervision of a physician.
- (3) The offender must be periodically observed, during the duration of the drug's effect, by qualified medical personnel.
- (4) A drug may be administered for a period longer than seventy-two (72) hours only if the administration is part of a psychotherapeutic program of treatment prescribed and detailed in writing by a physician.

As added by Acts 1979, P.L.120, SEC.3.

IC 11-10-4-6.6

Repealed

(Repealed by P.L.133-2012, SEC.66.)

IC 11-10-4-7

Rules

Sec. 7. The department may adopt, under IC 4-22-2, rules to implement this chapter.

As added by Acts 1979, P.L.120, SEC.3.

IC 11-10-4-8

Notification to division of mental health and addiction of commitment of offender; copy of evaluation

Sec. 8. Whenever an offender sentenced under IC 35-36-2-5 is committed to the department of correction, the department of correction shall immediately inform the division of mental health and addiction of the commitment and provide the division of mental health and addiction with a copy of the evaluation made by the department of correction under IC 11-10-1-2.

As added by P.L.127-1985, SEC.1. Amended by P.L.2-1992, SEC.108; P.L.215-2001, SEC.23.

IC 11-10-4-9

Transfer of mental health and health records

Sec. 9. (a) As used in this section, "mental health record" has the meaning set forth in IC 16-18-2-226.

(b) Subject to the conditions described in subsection (e), a psychiatrist or behavioral health care provider may, with or without

the offender's consent, provide a copy of an offender's health and mental health records to a facility, an agency, or a health care provider responsible for the incarceration of an offender. The facility or agency responsible for the incarceration of an offender shall maintain any health and mental health records provided under this subsection as part of the offender's health record.

(c) Subject to the conditions described in subsection (e), if an offender is transferred to a different facility, the operator of the facility or agency from which the offender is transferred shall provide the offender's health and mental health records to the facility that is used to:

- (1) house; or
- (2) provide mental health treatment to;

the offender, including a county jail or a community mental health center.

(d) The department shall maintain health and mental health records for each offender incarcerated by the department. Subject to the conditions described in subsection (e), after an offender is released from incarceration, the department shall provide the offender's health and mental health records, if any, to a mental health facility, mental health provider, or designated health care provider that is providing mental health treatment to the offender.

(e) An offender's health and mental health records may be disclosed under this section only if the records are necessary for:

- (1) the provision of health care to the offender;
- (2) the health and safety of the offender or other offenders;
- (3) the health and safety of others at the facility;
- (4) the health and safety of persons responsible for transporting or transferring the offender from one location to another;
- (5) law enforcement on the premises of a facility; or
- (6) the administration and maintenance of the safety, security, and good order of the facility.

(f) All records covered under this section are subject to privacy and confidentiality laws, rules, and procedures enacted by the state or federal government.

As added by P.L.93-2007, SEC.1.