

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1735

H. P. 1473

House of Representatives, April 25, 1977

On Motion of Mr. Talbot of Portland, referred to the Committee on Human Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Kany of Waterville.

Cosponsors: Mrs. Trafton of Auburn, Mr. Wyman of Pittsfield.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Establish a Bill of Rights for Mentally Retarded Persons.

Be it enacted by the People of the State of Maine, as follows:

34 MRSA c. 186-A is enacted to read:

CHAPTER 186-A

RIGHTS OF MENTALLY RETARDED PERSONS

§ 2141. Legislative intent and findings; rights of mentally retarded persons

1. Articulation of rights. It is the intent of the Legislature to articulate rights of mentally retarded persons, so that these rights may be exercised and protected. Each mentally retarded person shall have all the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been suspended as the result of court guardianship proceedings.

2. Normalization. The Legislature finds and declares that the rights of mentally retarded persons can be protected best under a system of care which operates according to the principles of normalization. The Legislature further finds and declares that the system of care for the mentally retarded citizens of the State shall operate according to these principles with the goals of:

A. Continuing the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client; and

B. Providing habilitation, education and other training to mentally retarded persons which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

3. Intent of act. It is the clear, unequivocal intent of this Act to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of mentally retarded persons.

§ 2142. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Bureau. "Bureau" means the Bureau of Mental Retardation of the Department of Mental Health and Corrections.

2. Client. "Client" means any mentally retarded person requesting or receiving services from the department or from an agency or facility licensed or funded to provide services to mentally retarded persons.

3. Day facility. "Day facility" means any nonresidential facility owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

4. Department. "Department" means the Department of Mental Health and Corrections.

5. Express and informed consent. "Express and informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

6. Habilitation. "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable him to cope with the demands of his own person and environment; to raise the level of his physical, mental and social efficiency; and to upgrade his sense of well-being. It includes, but is not limited to, programs of formal, structured education and treatment.

7. Normalization principle. "Normalization principle" means the principle of letting the mentally retarded persons obtain an existence as close to normal as possible and making available to them patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society.

8. Residential facility. "Residential facility" means a facility providing 24-hour residential care for mentally retarded persons which is owned, operated, licensed or funded, in whole or in part by the department or through the Department of Human Services.

9. Treatment. "Treatment" means the prevention, amelioration or cure of a patient's physical and mental disabilities or illness.

§ 2143. Rights and basic protections of mentally retarded clients

1. Humane care. Clients shall have the right to dignity, privacy and humane care.

2. Practice of religion. Clients shall have the right to religious freedom and practice. Nothing shall restrict or force infringement on a client's right to religious preference and practice.

3. Communication. Clients shall have a right to private communications:

A. Each client shall be allowed to receive, send and mail sealed, unopened correspondence. No person who owns or is employed by a day facility or a residential facility shall delay, hold or censor any incoming or outgoing correspondence of any client; or open any such correspondence without the consent of the client or his legal guardian;

B. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication; and

C. Clients shall have an unrestricted right to visitations. Nothing in this provision shall be construed to permit infringement upon other clients' rights to privacy.

4. Work. Clients engaged in work programs which require compliance with state and federal wage and hour laws shall be provided with fair compensation for labor in compliance with regulations of the United States Department of Labor.

5. Vote. No client shall be denied the right to vote, unless under guardianship, for reasons of mental illness as provided in the Constitution of Maine, Article II, section 1.

6. Personal property. Each client shall have the right to the possession and use of his own clothing, personal effects and money. The chief administrator of a day facility or a residential facility may take temporary custody of personal effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be immediately given to the client if competent or to his parent or legal guardian. The client shall have the right to benefit from his own funds.

7. Nutrition. Each client in a residential facility shall have the right to nutritious food in adequate quantities. Meals shall not be withheld for disciplinary reasons.

8. Medical care. Each client shall have the right to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community, unless the religion of the client so prohibits.

A. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

B. Daily notation of medication received by each client in a residential facility shall be kept in the client's records.

C. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.

D. Pharmacy services at each residential facility operated by the department, shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of Title 32, chapter 41.

E. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, the express and informed consent shall be obtained from the client, unless the client has been found to be legally incompetent, in which case the guardian of the client's person may consent. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:

- (1) The nature and consequences of such procedures;
- (2) The risks, benefits and purposes of such procedures; and
- (3) Alternate procedures available.

F. When the bureau is the guardian of the person for the client, as provided for in Title 18, chapter 501, nonemergency surgical procedure shall not be allowed without a determination of appropriateness by a court of competent jurisdiction. The client shall be physically present if he desires, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures.

(1) The express and informed consent of a person described in paragraph E may be withdrawn at any time, with or without cause, prior to treatment or surgery.

(2) The absence of express and informed consent notwithstanding emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease or condition may be provided if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.

9. Social activity. Each client shall have the right to have suitable opportunities for behavioral and leisure time activities which include social interaction.

10. Physical exercise. Each client shall have the right to have opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

11. **Discipline.** No client shall receive inhumane discipline. Each facility shall prepare a written statement of policies and procedures for the control and discipline of residents which is directed to the goal of maximizing the growth and development of the clients and to parents and guardians of clients.

A. Residents shall participate, as appropriate, in the formulation of such policies and procedures.

B. Corporal punishment shall not be permitted.

C. Seclusion, defined for the purposes of this chapter as the placement of a resident alone in a locked room, shall not be employed.

12. **Behavior modification.** No client shall be subject to a treatment program to eliminate bizarre or unusual behavior, without first being examined by a physician to rule out the possibility that such behaviors are organically caused. Treatment programs involving the use of noxious or painful stimuli shall be prohibited.

13. **Physical restraints.** Clients shall have the right to be free from physical restraints. Physical restraints shall be employed only in emergencies to protect the client from imminent injury to himself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for habilitative services. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

A. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation and allowance for change of position.

B. Totally enclosed cribs and barred enclosures shall be considered restraints.

C. Daily reports on the use of restraints shall be made to the appropriate chief administrator of the facility. A monthly summary of such reports shall be relayed to the Office of Advocacy. The reports shall summarize all such cases of restraints, the type used, the duration of usage and the reasons thereof.

14. **Records.** All client records shall remain confidential as provided for in section 1-B. The client, or his parent or legal guardian if the client is incompetent, shall have access to records upon request.

§ 2144. Violations; liability for violations

1. **Violations reported and investigated.** Any alleged violation of a client's rights shall be reported immediately to the Office of Advocacy of the department and to the Attorney General's office. The Office of Advocacy shall conduct an investigation of each alleged violation pursuant to

the provisions of section 1-A. This office shall submit a written report of the findings and results of the investigation to the chief administrative officer of the facility in which the client's rights were allegedly violated and to the commissioner of the department within 2 working days after the occurrence or discovery of the alleged incident.

2. Liability for violations. Any person who violated or abuses any rights or privileges of clients provided by this Act shall be liable for damages as determined by law. Good-faith compliance with the provisions of this Act in connection with evaluation, admission, habilitation programing, education, treatment or discharge of a client shall be a defense to an action for civil or criminal liability under this Act. Intentional violation of the provisions of this Act shall be punishable as a Class E crime, punishable by imprisonment not to exceed 6 months or a fine as provided in Title 17-A, section 1301. Civil damages may be awarded for negligent or international violations of this Act.

§ 2145. Notice of rights

Each client and parent or legal guardian of each client, if the client has been adjudged incompetent, shall promptly receive from the Department of Mental Health and Corrections a written copy of this Act and of section 1-B. Each client shall be promptly informed in clear language of the legal rights of mentally retarded persons. A copy of this Act shall be posted in each residential and day facility.

§ 2146. Client government

Upon request of a client, a residential facility shall initiate and develop a program of client government to hear the views and represent the interests of all clients served by the facility. The client government shall be composed of residents elected by other residents and staff advisors skilled in the administration of community organizations. The client government shall work closely with the bureau and the Office of Advocacy to promote the interests and welfare of all residents in the facility.

§ 2147. System of care for mentally retarded clients

1. System of care. The Legislature declares that the system of care, through which the State provides services to and programs for mentally retarded persons, shall be designed not only to protect the integrity of the legal and human rights of these persons, but also to meet the needs of these persons.

2. Responsibilities of the department. To facilitate the development of a system which meets the needs of mentally retarded persons the department, through the bureau, shall:

A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to mentally retarded persons. This mechanism shall include an habilitation program for every client served by the department;

B. Divert mentally retarded persons from institutional care, whenever professional diagnosis and evaluation, the personal preference of the client or his legal guardian, and the availability of appropriate services indicate that these persons should be placed in community environments and programs;

C. Provide programs, so far as resources permit, for the proper habilitation and treatment of mentally retarded persons, which shall include, but need not be limited to, comprehensive medical care, education, recreation, physical therapy, training, social services and habilitation and rehabilitation services suited to the needs of the individual regardless of age, degree of retardation or handicapping condition. No mentally retarded person shall be deprived of these enumerated services by reason of inability to pay;

D. Work toward effectuating the normalization principle through the establishment of community services for the mentally retarded person as a viable and practical alternative to institutional care at each stage of individual life development. If care in an institutional facility becomes necessary, it should be in the least restrictive setting, consistent with the proper care of the mentally retarded person;

E. Eliminate its own duplicative and unnecessary administrative procedures and practices in the system of care for mentally retarded persons and encourage other departments to do the same; and clearly define areas of responsibility in order to economically utilize present resources;

F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment which is beneficial to the mentally retarded clients; and

G. Encourage other departments to provide to mentally retarded persons those services which are required by law. In particular, the department shall:

(1) Work actively to ensure that its mentally retarded clients, as provided for in Title 20, chapter 404, shall receive education and training services beginning at age 6 regardless of the degree of retardation, or accompanying disabilities or handicaps;

(2) Advise the Department of Human Services about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licensing procedures and other areas which affect mentally retarded persons residing in facilities licensed by the Department of Human Services; and

(3) Inform the Joint Standing Committee on Health and Institutional Services of the Legislature about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to mentally retarded persons.

3. Plan. The department, through the bureau, shall prepare a plan, subject to the following provisions:

A. The plan shall indicate the most effective and efficient manner in which to implement services and programs for mentally retarded persons, while safeguarding and respecting the legal and human rights of these persons;

B. The plan shall be prepared biennially and shall be submitted to the Joint Standing Committee on Health and Institutional Services of the Legislature by no later than January 15th of every odd-numbered year; and

C. The committee shall study the plan and shall make recommendations to the Legislature with respect to funding improvements in programs and services to mentally retarded persons.

STATEMENT OF FACT

Rights of Mentally Retarded Persons

The primary purpose of this bill is to articulate and protect the rights of mentally retarded citizens of Maine.

Section 2141 of the bill makes a general statement about the basic civil and legal rights of mentally retarded persons, including their rights to dignity, liberty and the pursuit of happiness.

Section 2143 includes specific rights of mentally retarded persons. These rights are: The right to humane care; the right to religious freedom and practice; the right to private communications and private records; the right to work and to be fairly compensated for the work; the right to vote; the right to possess and use one's own clothing, personal effects and money; the right to have nutritious food; the right to receive prompt and appropriate medical and dental treatment; and the rights to have opportunities for social and leisure time activities and to have opportunities for physical exercise.

In addition, section 2143 protects mentally retarded persons from being subjected to inhumane discipline, unwarranted behavior modification, and inappropriate physical restraints.

Section 2144 of the bill provides that alleged violations of the rights of the mentally retarded persons be reported to both the Office of Advocacy in the Department of Mental Health and Corrections and to the Attorney General's office. The former office is required to investigate incidents of reported violations and to make a report within 2 working days to both the commissioner of the department and to the facility in which the incident allegedly occurred.

Section 2145 requires that a copy of this Act be given to each mentally retarded client and each parent or legal guardian. It also requires that a copy be posted in each residential and day facility which provides mental retardation services.

Section 2146 requires each residential facility to establish a program of client government, if requested to do so by any client.

Services for Mentally Retarded Persons

A second purpose of this bill, addressed in section 2147, is to encourage the development of a system of services which meets the needs of mentally retarded persons. To accomplish this purpose, the department, through the Bureau of Mental Retardation, is required to:

1. Develop a program plan of services for every client served by the department;
2. Provide programs, so far as resources permit, for the habilitation and treatment of mentally retarded persons;
3. Work toward effectuating the "normalization principle";
4. Eliminate duplicative and unnecessary administrative procedures; and
5. Encourage other departments to provide to mentally retarded persons the services required by law.

Section 2147 requires the department to submit a plan for these services, on a biennial basis, to the Joint Standing Committee on Health and Institutional Services of the Legislature.