

MAINE STATE LEGISLATURE

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L.D. 1284

(Filing No. H- 437)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 955, L.D. 1284, Bill, "An Act to Amend the Bill of Rights for Persons with Mental Retardation"

Amend the bill by inserting after the enacting clause the following:

Sec. 1. 34-B MRSA c. 5, sub-c. IV, first 2 lines are repealed and the following enacted in their place:

SUBCHAPTER IV

RIGHTS OF PERSONS WITH MENTAL
RETARDATION OR AUTISM'

Further amend the bill by striking out all of sections 2 to 5 and inserting in their place the following:

Sec. 2. 34-B MRSA §5601, sub-§5, as enacted by PL 1983, c. 459, §7, is amended to read:

5. Normalization principle. "Normalization principle" means the principle of letting assisting the mentally--retarded person with mental retardation or autism to obtain an existence as close to normal as possible and making available to him that person patterns and conditions of everyday life which that are as close as possible to the norms and patterns of the mainstream of society.

Sec. 3. 34-B MRSA §5601, sub-§5-A is enacted to read:

5-A. Person receiving services. "Person receiving services" means a person with mental retardation or autism receiving services from the bureau or from an agency or facility

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2 licensed or funded to provide services to persons with mental
3 retardation or autism except those presently serving sentences
4 for crime.

6 Sec. 4. 34-B MRSA §5601, sub-§§6 and 7, as enacted by PL 1983,
c. 459, §7, are amended to read:

8 6. Residential facility. "Residential facility" means a
9 facility providing 24-hour residential care services for mentally
10 retarded persons which with mental retardation or autism that is
11 owned, operated, licensed or funded, in whole or in part, by the
12 department or through the Department of Human Services.

14 7. Seclusion. "Seclusion" means the solitary placement of
15 a client-alone person receiving services in a locked room for a
16 period-in-excess-of-one-hour any period of time.

18 Sec. 5. 34-B MRSA §5601, sub-§7-A is enacted to read:

20 7-A. Supports. "Supports" are those actions or that
21 assistance that permits a person with mental retardation or
22 autism to carry out life activities as the person desires.'

24 Further amend the bill by striking all of sections 7 to 9
25 and inserting in their place the following:

28 Sec. 7. 34-B MRSA §§5602 to 5604, as enacted by PL 1983, c.
c. 459, §7, are amended to read:

30 §5602. Purpose

32 It is the intent of the Legislature to guarantee individual
33 dignity, liberty, pursuit of happiness and the protection of the
34 civil and legal rights of mentally-retarded persons with mental
35 retardation or autism and to articulate rights of mentally
36 retarded persons with mental retardation or autism, so that these
37 rights may be exercised and protected.

38 §5603. Entitlement

40 Each mentally--retarded person with mental retardation or
41 autism is entitled to the rights enjoyed by citizens of the State
42 and of the United States, unless some of these rights have been
43 suspended as the result of court guardianship proceedings.

46 §5604. Protection

48 The Legislature finds and declares that the rights of
49 mentally-retarded persons with mental retardation or autism can
50 be protected best under a system of care--which services that
operates according to the principles of normalization and full

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inclusion and that the state's State's system of care--shall services must operate according to these principles with the goals of:

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

2. Independence and productivity. Providing habilitation, education and other training to mentally-retarded persons which with mental retardation or autism that will maximize their potential to lead independent and productive lives and which that will afford opportunities for outward mobility from institutions.

Sec. 8. 34-B MRSA §5605, as amended by PL 1987, c. 769, Pt. A, §129, is further amended to read:

§5605. Rights and basic protections of a person with mental retardation or autism

~~Mentally--retarded--clients--are~~ A person with mental retardation or autism is entitled to the following rights and basic protections.

1. Humane treatment. ~~Clients--are~~ A person with mental retardation or autism is entitled to dignity, privacy and humane care treatment.

2. Practice of religion. ~~Clients--are~~ A person with mental retardation or autism is entitled to religious freedom and practice without any restriction or forced infringement on a client's that person's right to religious preference and practice.

3. Communications. ~~Clients--are~~ A person with mental retardation or autism is entitled to private communications.

A. ~~Each-client~~ A person with mental retardation or autism is entitled to receive, send and mail sealed, unopened correspondence. ~~Ne~~ A person who owns or is employed by a day facility or a residential facility may not delay, hold or censor any incoming or outgoing correspondence of any client person with mental retardation or autism, nor may he--open any such correspondence be opened without the consent of the client person or his the person's legal guardian.

B. ~~Clients~~ A person with mental retardation or autism in a residential facilities--are facility is entitled to reasonable opportunities for telephone communication.

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2 C. ~~Clients~~-are A person with mental retardation or autism
3 is entitled to an unrestricted right to visitations during
4 reasonable hours, except that nothing in this provision may
5 be construed to permit infringement upon ~~ether--clients'~~
6 others' rights to privacy.

7 4. **Work.** ~~Clients~~ A person with mental retardation or
8 autism engaged in work programs which that require compliance
9 with state and federal wage and hour laws are is entitled to fair
10 compensation for labor in compliance with regulations of the
11 United States Department of Labor.

12 5. **Vote.** ~~No--client~~ A person with mental retardation or
13 autism may not be denied the right to vote for reasons of mental
14 illness, as provided in the Constitution of Maine, Article II,
15 Section 1, unless under guardianship.

16 6. **Personal property.** ~~Each--client~~ A person with mental
17 retardation or autism is entitled to the possession and use of
18 his that person's own clothing, personal effects and money,
19 except that, when necessary to protect the elient person or
20 others from imminent injury, the chief administrator of a day
21 facility or a residential facility may take temporary custody of
22 clothing or personal effects, which he the administrator shall
23 immediately return when the emergency ends.

24 7. **Nutrition.** ~~Each--elient~~ A person with mental retardation
25 or autism in a residential facility is entitled to nutritious
26 food in adequate quantities and meals may not be withheld for
27 disciplinary reasons.

28 8. **Medical care.** ~~Each--elient~~ A person with mental
29 retardation or autism is entitled to receive prompt and
30 appropriate medical and dental treatment and care for physical
31 and mental ailments and for the prevention of any illness or
32 disability, and medical treatment shall must be consistent with
33 the accepted standards of medical practice in the community,
34 unless the religion of the elient person with mental retardation
35 or autism so prohibits.

36 A. Medication may be administered only at the written order
37 of a physician.

38 B. Medication may not be used as punishment, for the
39 convenience of staff, as a substitute for a habilitation
40 plan or in unnecessary or excessive quantities.

41 C. Daily notation of medication received by each elient
42 person with mental retardation or autism in a residential

1 facility shall must be kept in the elient's records of the
2 person with mental retardation or autism.

4 D. Periodically, but no less frequently than every 6
6 months, the drug regimen of each elient person with mental
8 retardation or autism in a residential facility shall must
10 be reviewed by the attending physician or other appropriate
12 monitoring body, consistent with appropriate standards of
14 medical practice.

16 E. All prescriptions shall must have a termination date.

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

26 G. Prior to instituting a plan of experimental medical
28 treatment or carrying out any surgical procedure, express
30 and informed consent shall must be obtained from the elient
32 person with mental retardation or autism, unless the elient
34 person has been found to be legally incompetent, in which
36 case the elient's person's guardian may consent.

(1) Before making a treatment or surgical decision,
the elient--shall person must be given information,
including, but not limited to, the nature and
consequences of the procedures, the risks, benefits and
purposes of the procedures and the availability of
alternate procedures.

(2) The elient person or, if legally incompetent, his
that person's guardian may withdraw his express and
informed consent at any time, with or without cause,
before treatment or surgery.

38 H. Notwithstanding the absence of express and informed
40 consent, emergency medical care or treatment may be provided
42 to any elient person with mental retardation or autism who
44 has been injured or who is suffering from an acute illness,
46 disease or condition if delay in initiation of emergency
48 medical care or treatment would endanger the health of the
elient person.

I. Notwithstanding the absence of express and informed
consent, emergency surgical procedures may be provided to
any elient person with mental retardation or autism who has
been injured or who is suffering from an acute illness,
disease or condition if delay in initiation of emergency

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2 surgery would substantially endanger the health of the
3 client person.

4 **9. Sterilization.** A client person with mental retardation
5 or autism may not be sterilized, except in accordance with
6 chapter 7.

8 **10. Social activity.** Each--client A person with mental
9 retardation or autism is entitled to suitable opportunities for
10 behavioral and leisure time activities which that include social
11 interaction.

12 **11. Physical exercise.** Each--client A person with mental
13 retardation or autism is entitled to opportunities for
14 appropriate physical exercise, including the use of available
15 indoor and outdoor facilities and equipment.

16 **12. Discipline.** Discipline of clients persons with mental
17 retardation or autism is governed as follows.

18 A. The chief administrative officer of each facility shall
19 prepare a written statement of policies and procedures for
20 the control and discipline of clients,--which persons
21 receiving services that is directed to the goal of
22 maximizing the growth and development of the clients persons
23 receiving services.
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25 (1) Clients Persons receiving services are entitled to
26 participate, as appropriate, in the formulation of the
27 policies and procedures.

28 (2) Copies of the statement of policies and procedures
29 shall must be given to each client person receiving
30 services and, if the client person has been adjudged
31 incompetent, to his that person's parent or legal
32 guardian.

33 (3) Copies of the statement of policies and procedures
34 shall must be posted in each residential and day
35 facility.

36 B. Corporal punishment or any form of inhumane discipline
37 is not permitted.

38 C. Seclusion is not permitted.

39 ~~D. The placement of a resident alone in a locked room for~~
40 ~~less than an hour is permitted, but:~~
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~~(1) -- Is only permitted in emergencies to protect the client or others from imminent injury, and~~

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~~(2) -- A staff person shall visually check a client so placed at 10-minute intervals throughout the duration of the placement.~~

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13. Behavior modification. Behavior modification of clients persons receiving services is governed as follows.

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A. ~~No client~~ A person receiving services may not be subjected 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~~ the behavior is organically caused.

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B. Treatment programs involving the use of noxious or painful stimuli may be used only to correct behavior more harmful to the ~~client~~ person receiving services than is the treatment program:

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(1) On the recommendation of a physician or psychologist; and

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(2) With the approval, following a case-by-case review, of the chief administrative officer of the residential facility and a ~~client~~ an advocate of the department.

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14. Physical restraints. Clients Persons with mental retardation or autism are entitled to be free from physical restraints, which include totally enclosed cribs and barred enclosures, but physical restraints may be employed only in emergencies to protect the ~~client~~ person from imminent injury to himself that person or others.

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A. Physical restraints may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services.

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B. Physical restraints may impose only the least possible restrictions consistent with their purpose and shall must be removed when the emergency ends.

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C. Physical restraints may not cause physical injury to the ~~client~~ person receiving services and shall must be designed to allow the greatest possible comfort.

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D. Mechanical supports used in normative situations to achieve proper body position and balance are not considered

2 restraints, but mechanical supports shall must be
3 prescriptively designed and applied under the supervision of
4 a qualified professional with concern for principles of good
5 body alignment, circulation and allowance for change of
6 position.

7 E. Daily reports on the use of restraints shall must be
8 made to the appropriate chief administrative officer of the
9 facility.

10 (1) The reports shall must summarize all cases
11 involving the use of restraints, the type of restraints
12 used, the duration of usage and the reasons for the
13 usage.

14 (2) A monthly summary of the reports shall must be
15 relayed to the Office of Advocacy.

16 15. Records. All client records of persons receiving
17 services shall must remain confidential as provided in section
18 1207.

19 A. The client person with mental retardation or autism or,
20 if the client person is incompetent, a parent or guardian is
21 entitled to have access to the records upon request.

22 B. The commissioner is entitled to have access to the
23 records of a day facility or a residential facility if
24 necessary to carry out the statutory functions of the
25 commissioner's office.

26 **Sec. 9. 34-B MRSA §5606**, as enacted by PL 1983, c. 459, §7,
27 is amended to read:

28 **§5606. Violations**

29 1. **Report and investigation.** Any alleged violation of a
30 client's the rights shall of a person receiving services must be
31 reported immediately to the Office of Advocacy of the department
32 and to the Attorney General's office.

33 A. The Office of Advocacy shall conduct an investigation of
34 each alleged violation pursuant to section 1205.

35 B. The Office of Advocacy shall submit a written report of
36 the findings and results of the investigation to the chief
37 administrative officer of the facility in which the client's
38 rights of the person receiving services were allegedly
39 violated and to the commissioner within 2 working days after

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the day of the occurrence or discovery of the alleged incident.

2. Civil liability. Any person who violates or abuses any rights or privileges of clients persons receiving services granted by this subchapter is liable for damages as determined by law.

A. Civil damages may be awarded for negligent or intentional violations of this subchapter.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client person receiving services is a defense to a civil action under this subchapter.

3. Prohibited acts; penalty; defense. A person is guilty of violation of the rights of a mentally-retarded-client person with mental retardation or autism who is receiving services if he that person intentionally violates or abuses any rights or privileges of clients persons receiving services granted by this subchapter.

A. Violation of the rights of a mentally-retarded-client person with mental retardation or autism who is receiving services is a Class E crime.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client person receiving services is a defense to prosecution under this subchapter.

Further amend the bill in section 11 in that part designated "§5608." by striking out all of subsection 2 and inserting in its place the following:

'2. Duties. The client government of the persons receiving services shall work closely with the bureau and the Office of Advocacy to promote the interests and welfare of all residents in the facility.'

Further amend the bill by renumbering the sections to read consecutively.

STATEMENT OF FACT

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This amendment changes references to "persons with mental retardation" to "persons with mental retardation or autism" to reflect the Bureau of Mental Retardation's current statutory responsibility to provide services to people with autism. The amendment also repeals a section of the statutes that allows persons with mental retardation or autism to be isolated in a locked room. The amendment also makes a technical correction to the bill.

Reported by the Committee on Human Resources
Reproduced and distributed under the direction of the Clerk of the House
5/25/93 (Filing No. H-437)