

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

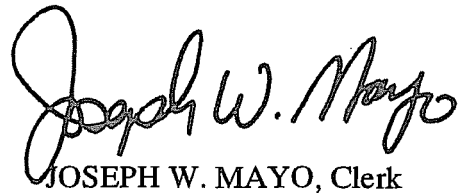
No. 1284

H.P. 955

House of Representatives, April 15, 1993

An Act to Amend the Bill of Rights for Persons with Mental Retardation.

Reference to the Committee on Human Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative GEAN of Alfred.

Cosponsored by Representative: FITZPATRICK of Durham, Senator: BUSTIN of Kennebec.

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

2
4 **Sec. 1.** 34-B MRSA §5601, sub-§1, as enacted by PL 1983, c.
459, §7, is repealed.

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

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

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

20 **5-A. Person receiving services.** "Person receiving
22 services" means a person with mental retardation receiving
24 services from the bureau or from an agency or facility licensed
or funded to provide services to persons with mental retardation
except those presently serving sentences for crime.

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

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

34 **7. Seclusion.** "Seclusion" means the placement of a client
36 person receiving services alone in a locked room for a period in
excess of one hour.

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

40 **7-A. Supports.** "Supports" are those actions or that
42 assistance that permits a person with mental retardation to carry
out life activities as the person desires.

44 **Sec. 6.** 34-B MRSA §5601, sub-§8, as enacted by PL 1983, c.
459, §7, is amended to read:

46 **8. Treatment.** "Treatment" means the prevention,
48 amelioration or cure of a--client's physical and mental
disabilities or illness of a person receiving services.

50 **Sec. 7.** 34-B MRSA §§5602 to 5604, as enacted by PL 1983, c.
52 459, §7, are amended to read:

2 **§5602. Purpose**

4 It is the intent of the Legislature to guarantee individual
6 dignity, liberty, pursuit of happiness and the protection of the
8 civil and legal rights of mentally-retarded persons with mental
retardation and to articulate rights of mentally-retarded persons
with mental retardation, so that these rights may be exercised
and protected.

10 **§5603. Entitlement**

12 Each ~~mentally-retarded~~ person with mental retardation is
14 entitled to the rights enjoyed by citizens of the State and of
16 the United States, unless some of these rights have been
suspended as the result of court guardianship proceedings.

18 **§5604. Protection**

20 The Legislature finds and declares that the rights of
22 ~~mentally-retarded~~ persons with mental retardation can be
24 protected best under a system of ~~care--which~~ services that
operates according to the principles of normalization and full
inclusion and that the ~~state's~~ State's system of ~~care--shall~~
services must operate according to these principles with the
goals of:

26 1. **Community-based services.** Continuing the development of
28 community-based services ~~which~~ that provide reasonable
30 alternatives to institutionalization in settings that are least
restrictive to the ~~elient~~ person receiving services; and

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

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

42 **§5605. Rights and basic protections of a person with mental
retardation**

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

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

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

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

8 A. ~~Each-client~~ A person with mental retardation is entitled
10 to receive, send and mail sealed, unopened correspondence.
No A person who owns or is employed by a day facility or a
12 residential facility may not delay, hold or censor any
incoming or outgoing correspondence of any client person
14 with mental retardation, nor may he--open any such
correspondence be opened without the consent of the client
16 person or ~~his~~ the person's legal guardian.

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

22 C. ~~Clients-are~~ A person with mental retardation is entitled
to an unrestricted right to visitations during reasonable
24 hours, except that nothing in this provision may be
construed to permit infringement upon ~~other-clients'~~ others'
26 rights to privacy.

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

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

38 **6. Personal property.** ~~Each-client~~ A person with mental
40 retardation is entitled to the possession and use of ~~his~~ that
person's own clothing, personal effects and money, except that,
42 when necessary to protect the client person or others from
imminent injury, the chief administrator of a day facility or a
44 residential facility may take temporary custody of clothing or
personal effects, which ~~he~~ the administrator shall immediately
46 return when the emergency ends.

48 **7. Nutrition.** ~~Each---~~ A person with mental
retardation in a residential facility is entitled to nutritious
50 food in adequate quantities and meals may not be withheld for
disciplinary reasons.

52

2 **8. Medical care.** Each--client A person with mental
3 retardation is entitled to receive prompt and appropriate medical
4 and dental treatment and care for physical and mental ailments
5 and for the prevention of any illness or disability, and medical
6 treatment shall must be consistent with the accepted standards of
7 medical practice in the community, unless the religion of the
8 client person with mental retardation so prohibits.

9
10 A. Medication may be administered only at the written order
11 of a physician.

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

15 C. Daily notation of medication received by each client
16 person with mental retardation in a residential facility
17 shall must be kept in the client's records of the person
18 with mental retardation.

19 D. Periodically, but no less frequently than every 6
20 months, the drug regimen of each client person with mental
21 retardation in a residential facility shall must be reviewed
22 by the attending physician or other appropriate monitoring
23 body, consistent with appropriate standards of medical
24 practice.

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

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

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

36 (1) Before making a treatment or surgical decision,
37 the client shall person must be given information,
38 including, but not limited to, the nature and
39 consequences of the procedures, the risks, benefits and
40 purposes of the procedures and the availability of
41 alternate procedures.

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

2 H. Notwithstanding the absence of express and informed
4 consent, emergency medical care or treatment may be provided
6 to any client person with mental retardation who has been
8 injured or who is suffering from an acute illness, disease
or condition if delay in initiation of emergency medical
care or treatment would endanger the health of the client
person.

10 I. Notwithstanding the absence of express and informed
12 consent, emergency surgical procedures may be provided to
14 any client person with mental retardation who has been
injured or who is suffering from an acute illness, disease
or condition if delay in initiation of emergency surgery
would substantially endanger the health of the client person.

16 9. **Sterilization.** A client person with mental retardation
18 may not be sterilized, except in accordance with chapter 7.

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

24 11. **Physical exercise.** Each--client A person with mental
26 retardation is entitled to opportunities for appropriate physical
exercise, including the use of available indoor and outdoor
facilities and equipment.

28 12. **Discipline.** Discipline of clients persons with mental
30 retardation is governed as follows.

32 A. The chief administrative officer of each facility shall
34 prepare a written statement of policies and procedures for
36 the control and discipline of clients persons receiving
services, which is directed to the goal of maximizing the
growth and development of the--clients persons receiving
services.

38 (1) Clients Persons receiving services are entitled to
40 participate, as appropriate, in the formulation of the
policies and procedures.

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

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

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

4 C. Seclusion is not permitted.

6 D. The placement of a ~~resident~~ person receiving services
8 alone in a locked room for less than an hour is permitted,
but:

10 (1) Is only permitted in emergencies to protect the
12 client person receiving services or others from
imminent injury; and

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

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

22 A. ~~No--client~~ A person receiving services may not be
subjected to a treatment program to eliminate bizarre or
24 unusual behavior without first being examined by a physician
to rule out the possibility that ~~such-behaviors--are~~ the
26 behavior is organically caused.

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

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

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

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

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

B. Physical restraints may impose only the least possible

2 restrictions consistent with their purpose and shall must be
removed when the emergency ends.

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

8 D. Mechanical supports used in normative situations to
10 achieve proper body position and balance are not considered
12 restraints, but mechanical supports shall must be
14 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.

16 E. Daily reports on the use of restraints shall must be
18 made to the appropriate chief administrative officer of the
facility.

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

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

28 **15. Records.** All elient records of persons receiving
30 services shall must remain confidential as provided in section
1207.

32 A. The elient person with mental retardation or, if the
34 elient person is incompetent, a parent or guardian is
entitled to have access to the records upon request.

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

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

44 **§5606. Violations**

46 **1. Report and investigation.** Any alleged violation of a
48 elient's the rights shall of a person receiving services must be
reported immediately to the Office of Advocacy of the department
and to the Attorney General's office.

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

2 B. The Office of Advocacy shall submit a written report of
the findings and results of the investigation to the chief
4 administrative officer of the facility in which the elient's
rights of the person receiving services were allegedly
6 violated and to the commissioner within 2 working days after
the day of the occurrence or discovery of the alleged
incident.

8
2. **Civil liability.** Any person who violates or abuses any
10 rights or privileges of elients persons receiving services
granted by this subchapter is liable for damages as determined by
12 law.

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

16
18 B. Good-faith compliance with the provisions of this
subchapter in connection with evaluation, admission,
20 habilitation programming, education, treatment or discharge
of a elient person receiving services is a defense to a
civil action under this subchapter.

22
24 3. **Prohibited acts; penalty; defense.** A person is guilty
of violation of the rights of a mentally-retarded-elient person
26 with mental retardation who is receiving services if he that
person intentionally violates or abuses any rights or privileges
of elients persons receiving services granted by this subchapter.

28
30 A. Violation of the rights of a mentally-retarded-elient
person with mental retardation who is receiving services is
a Class E crime.

32
34 B. Good-faith compliance with the provisions of this
subchapter in connection with evaluation, admission,
36 habilitation programming, education, treatment or discharge
of a elient person receiving services is a defense to
prosecution under this subchapter.

38
40 **Sec. 10. 34-B MRSA §5607**, as amended by PL 1987, c. 769, Pt.
A, §130, is further amended to read:

42 **§5607. Notice of rights**

44 The commissioner shall provide a written copy of this
subchapter and of section 1207 to each elient person receiving
46 services and, if the elient person receiving services has been
adjudged incompetent, to the parent or guardian of the elient
48 person receiving services.

50 1. **Prompt notification.** Each elient-shall person receiving
services must be promptly informed in clear language of the that
52 person's legal rights of mentally-retarded-persons.

2 **2. Posting requirement.** A copy of this subchapter shall
3 must be posted in each residential and day facility.

4 **Sec. 11. 34-B MRSA §5608**, as enacted by PL 1983, c. 459, §7,
5 is amended to read:

6 **§5608. Government**

7
8 Upon request of a client person receiving services, the
9 chief administrative officer of a residential facility shall
10 initiate and develop a program of client government to hear the
11 views and represent the interests of all clients--served--by
12 persons receiving services at the facility.

13
14 **1. Composition.** The client government shall of the persons
15 receiving services must be composed of residents elected by other
16 residents and staff advisors skilled in the administration of
17 community organizations.

18
19 **2. Duties.** The client government shall of the persons
20 receiving services work closely with the bureau and the Office of
21 Advocacy to promote the interests and welfare of all residents in
22 the facility.

23
24 **Sec. 12. 34-B MRSA §5609**, as amended by PL 1989, c. 328, is
25 further amended to read:

26 **§5609. Habilitation and vocational rehabilitation services**

27
28 **1. Habilitation services.** The Department of Mental Health
29 and Mental Retardation, through the Bureau of Mental Retardation,
30 and the Department of Human Services, through the Bureau of
31 Rehabilitation, shall provide, to the extent of the resources
32 available, for those habilitation and vocational rehabilitation
33 services, defined in Title 22, section 3054, subsection 8, and
34 any other service, including, but not limited to, supported
35 employment including work in rehabilitation facilities and work
36 centers, as defined in Title 5, chapter 155, subchapter II; job
37 coaching; transportation, recreational and leisure services; and
38 respite or day programs designed in consultation with an
39 interdisciplinary team, ~~as defined in section 5461, subsection 7,~~
40 in order to make available to clients persons receiving services,
41 ~~as defined in section 5461, subsection 2,~~ those services that are
42 otherwise not obtainable, in the following order of priority:

43 A. Those clients persons receiving services who are living
44 at home or in unsubsidized foster care who are between the
45 ages of 20 and 26 and are not receiving any day program; and

46 B. All other clients persons receiving services who are
47 between the ages of 20 and 26 and are not receiving an
48 appropriate day program.

2 C. ~~All clients served under this program prior to their~~
26th birthday shall be allowed to continue to receive
3 services through the voucher system established by
4 subsection 2.

6 All persons receiving services who are served under this program
prior to their 26th birthday must be allowed to continue to
8 receive services through the voucher system established by
subsection 2.

10 For purposes of this section, an interdisciplinary team shall
12 include ~~includes~~ the client ~~person~~ receiving services and a
14 member of the client's ~~person's~~ family or the client's guardian
of the person receiving services.

16 **2. Payment for service.** The Bureau of Mental Retardation
shall establish a voucher system to allow the interdisciplinary
18 team to incorporate only those services deemed determined
critical and otherwise unavailable into a program, including
20 work, habilitation and other services designated in subsection 1,
when appropriate. The bureau shall establish a limit on the
22 amount of transitional services available to clients ~~persons~~
receiving services eligible for services under this section.

24 **3. Rules.** The Bureau of Mental Retardation shall
26 ~~promulgate~~ adopt rules in accordance with the Maine
Administrative Procedure Act, ~~Title 5, Chapter 375,~~ to establish
28 a transitional program under subsections 1 and 2.

30 **STATEMENT OF FACT**

32 The purpose of this bill is to amend the laws governing
34 rights for persons with mental retardation so that it reflects
current philosophy in the field. It changes the language with
36 regard to people with disabilities and it makes revisions in
habilitation and behavior management approaches.