

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1607

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H.P. 1184

House of Representatives, March 13, 2001

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**An Act to Further Protect the Rights of Persons with Mental Retardation  
or Autism.**

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Submitted by the Department of Mental Health, Mental Retardation and Substance Abuse  
Services pursuant to Joint Rule 204.

Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative FULLER of Manchester.

Cosponsored by Senator TURNER of Cumberland and

Representatives: BERRY of Livermore, BROOKS of Winterport, DUDLEY of Portland,  
DUGAY of Cherryfield, NUTTING of Oakland, O'BRIEN of Augusta, SNOWE-MELLO of  
Poland.

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

**Sec. 1. 34-B MRSA §5605, sub-§13**, as amended by PL 1993, c. 326, §9, is further amended to read:

**13. Behavioral treatment.** ~~Behavior-modification~~ Behavioral treatment of persons-receiving-services a person with mental retardation or autism is governed as follows.

A. A person ~~receiving-services with mental retardation or autism~~ may not be subjected to a treatment program to eliminate ~~bizarre--or--unusual~~ dangerous or maladaptive behavior without first being examined by a physician to rule out the possibility that the behavior is organically caused.

A-1. Behavioral treatment programs may contain both behavior modification and behavior management components. Behavior modification components consist of interventions designed to assist a person with mental retardation or autism to learn to replace dangerous or maladaptive behavior with safer and more adaptive behavior. Behavior management components consist of systematic strategies to prevent the occurrence of dangerous or maladaptive behaviors by minimizing or eliminating environmental or other factors that cause those behaviors.

B. Treatment programs involving the use of noxious or painful stimuli or other aversive or severely intrusive techniques may be used only to correct behavior more harmful to the person ~~receiving-services with mental retardation or autism~~ than is the treatment program and only:

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

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

**Sec. 2. 34-B MRSA §5605, sub-§14, ¶C**, as amended by PL 1993, c. 326, §9, is further amended to read:

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

**Sec. 3. 34-B MRSA §5605, sub-§14, ¶D-1** is enacted to read:

D-1. A safety device whose effect is to reduce or inhibit the movement of a person with mental retardation or autism

2 in any way, but whose purpose is to maintain or ensure  
3 safety of that person, may be used only as allowed by  
4 applicable state law and federal rule and regulation.

6 **Sec. 4. 34-B MRSA §5605, sub-§14, ¶E,** as amended by PL 1993,  
c. 326, §9, is further amended to read:

8 E. Daily reports on the use of restraints must be made to  
9 the appropriate chief administrative officer of the  
10 facility. The report must be reported to the department in  
11 any manner required by the department.

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

16 (2) A monthly summary of the reports must be relayed  
17 to the Office of Advocacy.

## 20 SUMMARY

22 This bill enhances protections afforded to persons with  
23 mental retardation or autism served by the Department of Mental  
24 Health, Mental Retardation and Substance Abuse Services. It  
25 updates the law by applying more modern and appropriate concepts  
26 regarding behavioral treatment and interventions. This updating  
27 of the law also provides a new and more contemporary basis for  
28 department rulemaking in this area.