
By: **Delegate C. Davis**

Introduced and read first time: February 11, 2005

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Mentally Ill Individuals' Bill of Rights**

3 FOR the purpose of providing mentally ill individuals certain substantive and
4 procedural rights relating to custodial jurisdiction, prescription medications,
5 emergency evaluation intake proceedings, emergency evaluation release,
6 judicial proceedings for involuntary admissions, clinical review of involuntary
7 admissions, voluntary admissions, and social worker consultations; providing
8 for a clinical review panel, membership, duties, and procedures; and generally
9 relating to the substantive and procedural rights of mentally ill individuals.

10 BY adding to

11 Article - Health - General

12 Section 10-1601 through 10-1608, inclusive, to be under the new subtitle

13 "Subtitle 16. Mentally Ill Individuals' Bill of Rights"

14 Annotated Code of Maryland

15 (2000 Replacement Volume and 2004 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Health - General**

19 **SUBTITLE 16. MENTALLY ILL INDIVIDUALS' BILL OF RIGHTS.**

20 10-1601.

21 (A) EVERY MENTALLY ILL INDIVIDUAL SHALL BE AFFORDED THE
22 OPPORTUNITY TO REACH THAT INDIVIDUAL'S FULL POTENTIAL.

23 (B) A MENTAL DISORDER DIAGNOSIS OR ENROLLMENT IN A NONRESIDENTIAL
24 SERVICES PROGRAM FOR INDIVIDUALS WHO HAVE MENTAL DISORDERS,
25 DETERMINED BY EMERGENCY EVALUATION OR THROUGH AN INPATIENT FACILITY,
26 DOES NOT CONFER CUSTODIAL JURISDICTION OVER THE INDIVIDUAL TO A STATE
27 FACILITY OR VETERANS' ADMINISTRATION HOSPITAL IN THE STATE UNLESS
28 OTHERWISE AUTHORIZED BY LAW.

1 (C) MENTAL RETARDATION MAY NOT BE INFERRED FROM A DIAGNOSIS OF A
2 MENTAL DISORDER.

3 10-1602.

4 (A) IF A MENTALLY ILL INDIVIDUAL IS PRESCRIBED A LOW-COST OR NO-COST
5 MEDICATION ON AN OUTPATIENT BASIS, THE NAME OF THE DRUG, ITS GENERIC
6 EQUIVALENT, THE PHARMACEUTICAL REPRESENTATIVE, AND THE
7 PHARMACEUTICAL COMPANY PROVIDING THE PRESCRIPTION SHALL BE RECORDED
8 IN THAT INDIVIDUAL'S MEDICAL RECORD.

9 (B) IF A MENTALLY ILL INDIVIDUAL IS PRESCRIBED A PROPRIETARY
10 MEDICATION ON AN INPATIENT BASIS, THE FOLLOWING INFORMATION SHALL BE
11 RECORDED IN THE INDIVIDUAL'S MEDICAL RECORD:

12 (1) THE NAME OF THE PHARMACEUTICAL COMPANY PROVIDING
13 MARKETING AND PROMOTION OF THE MEDICATION; AND

14 (2) THE VISITING SCHEDULE OF THE PHARMACEUTICAL
15 REPRESENTATIVE DELIVERING THE MEDICATION.

16 (C) IF A MENTALLY ILL INDIVIDUAL IS PRESCRIBED A PROPRIETARY
17 MEDICATION EITHER ON AN INPATIENT OR OUTPATIENT BASIS:

18 (1) THE INDIVIDUAL SHALL BE INFORMED OF THE MOST COMMON SIDE
19 EFFECTS OF THE MEDICATION PRIOR TO INGESTING THE MEDICATION;

20 (2) THE INDIVIDUAL MAY DECLINE THE MEDICATION WITHOUT
21 REPERCUSSION;

22 (3) THE INDIVIDUAL'S MEDICAL RECORD SHALL REFLECT THE
23 INDIVIDUAL'S COMPLETE AND CORRECT MEDICATION REGIMEN ON AN ONGOING
24 BASIS; AND

25 (4) IF, AFTER INGESTING THE MEDICATION, THE INDIVIDUAL EXHIBITS
26 SIDE EFFECTS THAT ARE NOT RECOGNIZED SIDE EFFECTS OF THAT MEDICATION,
27 THE HEALTH CARE PROVIDER SHALL REPORT THE NEW SIDE EFFECTS TO THE
28 UNITED STATES FOOD AND DRUG ADMINISTRATION.

29 10-1603.

30 (A) (1) THE COURT, ON PETITION FOR EMERGENCY EVALUATION OF AN
31 INDIVIDUAL, SHALL ENSURE THAT THE REQUIREMENTS OF THIS SUBTITLE ARE MET,
32 INCLUDING:

33 (I) WHETHER THE PETITIONER EXAMINED THE INDIVIDUAL AND
34 THE DATE OF THE EXAMINATION; AND

35 (II) WHETHER THE INDIVIDUAL PRESENTS A DANGER TO THE LIFE
36 OR SAFETY OF THE INDIVIDUAL OR OF OTHERS.

1 (2) THE COURT SHALL EXAMINE THE ORIGIN AND VERACITY OF ANY
2 STATEMENT IN THE PETITION THAT THE INDIVIDUAL CONTINUES TO TAKE
3 PRESCRIBED MEDICATION.

4 (3) THE PETITION SHALL DISCLOSE THE IDENTITY OF ANY INDIVIDUAL
5 RELIED ON IN PREPARING THE PETITION, INCLUDING THE INDIVIDUAL'S
6 RELATIONSHIP TO THE PETITIONER.

7 (4) IF ANY STATEMENT IN THE EMERGENCY EVALUATION PETITION IS
8 DETERMINED TO BE DELIBERATELY FALSIFIED, THE EVALUEE IS ENTITLED TO NO
9 LESS THAN \$5,000 LIQUIDATED DAMAGES FROM THE PETITIONER.

10 (B) (1) THE FORMS USED BY THE COURT FOR PURPOSES OF EMERGENCY
11 EVALUATION PETITIONS SHALL BE IN COMPLIANCE WITH THIS SUBTITLE.

12 (2) (I) THE PETITION SHALL BE FILED IN DUPLICATE.

13 (II) THE FIRST COPY OF THE PETITION SHALL BE FILED IN THE
14 PERMANENT MEDICAL RECORD OF THE EVALUEE AND THE SECOND COPY SHALL BE
15 FILED IN THE PEACE OFFICER'S RECORD OF THE INCIDENT THAT GAVE RISE TO THE
16 PETITION.

17 (3) THE PETITION SHALL LIST ONLY THOSE MEDICATIONS PRESCRIBED
18 TO THE EVALUEE AS OF THE DATE OF THE EMERGENCY EVALUATION.

19 (C) (1) DURING THE EMERGENCY EVALUATION OF AN INDIVIDUAL, THE
20 INDIVIDUAL'S COMPLIANCE AND ABILITY TO COMPLETE INTAKE PROCEDURES
21 SHALL BE RECORDED.

22 (2) (I) THE SEARCH OF AN EVALUEE'S PERSONAL BELONGINGS SHALL
23 BE WITNESSED BY AT LEAST ONE OTHER INDIVIDUAL EMPLOYED BY THE FACILITY.

24 (II) 1. AN INVENTORY OF THE EVALUEE'S PERSONAL
25 BELONGINGS SHALL BE PREPARED AND COSIGNED BY AT LEAST TWO INDIVIDUALS
26 EMPLOYED BY THE FACILITY.

27 2. THE INVENTORY SHALL BECOME PART OF THE EVALUEE'S
28 MEDICAL RECORD.

29 (III) ANY CIGARETTES IN THE EVALUEE'S PERSONAL BELONGINGS:

30 1. SHALL BE INCLUDED IN THE INVENTORY;

31 2. MAY NOT BE CONSIDERED CONTRABAND; AND

32 3. MAY NOT BE RETAINED BY THE STAFF.

33 (D) (1) THE EVALUEE SHALL BE SERVED A FULL MEAL WITHIN 2 HOURS OF
34 THE EVALUEE'S ADMITTANCE AND A MINIMUM OF EVERY 4 HOURS THEREAFTER.

1 (2) THE EMERGENCY EVALUATION MAY NOT PROCEED WITHOUT
2 DOCUMENTATION THAT THE EVALUEE WAS OFFERED AND SERVED A FULL MEAL
3 PRIOR TO THE EXAMINATION.

4 (E) THE RESULTS OF THE EMERGENCY EVALUATION SHALL ACCOMPANY THE
5 PETITION AND SHALL BE AVAILABLE TO RESIDENT AND ATTENDING PHYSICIANS.

6 (F) (1) IF THE EVALUEE IS RELEASED FROM THE EMERGENCY
7 EVALUATION, A SECOND EVALUATION MAY NOT BE INITIATED ABSENT A
8 DEMONSTRATION OF NEW SYMPTOMS, AS REQUIRED UNDER THIS SUBTITLE.

9 (2) ON THE EVALUEE'S RELEASE, THE EVALUEE SHALL BE PROVIDED
10 TRANSPORTATION AS EXPEDITIOUSLY AS POSSIBLE, AT THE FACILITY'S EXPENSE,
11 BACK TO THE EVALUEE'S POINT OF ORIGIN OR, IN THE ALTERNATIVE, TO A POINT OF
12 SAFETY.

13 10-1604.

14 (A) (1) A FACILITY MAY NOT INVOLUNTARILY ADMIT A MENTALLY ILL
15 INDIVIDUAL UNLESS:

16 (I) THE INDIVIDUAL PRESENTS A DANGER TO THE LIFE OR SAFETY
17 OF THE INDIVIDUAL OR OF OTHERS; AND

18 (II) EACH CERTIFYING PHYSICIAN:

19 1. PERSONALLY EXAMINED THE INDIVIDUAL;

20 2. ATTEMPTED, AT LEAST ONCE, TO MAKE EYE CONTACT
21 WITH THE INDIVIDUAL; AND

22 3. ATTEMPTED, AT LEAST ONCE, TO ENGAGE IN
23 CONVERSATION WITH THE INDIVIDUAL.

24 (2) IF A CERTIFYING PHYSICIAN FAILS TO COMPLY WITH THE
25 PROVISIONS OF SUBSECTION (A)(1)(II) OF THIS SECTION, AN INDIVIDUAL IS NOT
26 CERTIFIED AND SHALL BE RELEASED OR DISCHARGED.

27 (B) EVERY EXAMINATION OF THE MENTALLY ILL INDIVIDUAL BY A
28 PHYSICIAN, PHYSICIAN'S ASSISTANT, OR SOCIAL WORKER SHALL BE RECORDED IN
29 THE INDIVIDUAL'S MEDICAL RECORD.

30 (C) THE AVAILABILITY OF BED SPACE OR INSURANCE COVERAGE MAY NOT BE
31 CRITERIA FOR INVOLUNTARY ADMISSION.

32 (D) A MENTALLY ILL INDIVIDUAL MAY NOT BE COMPELLED OR COERCED INTO
33 SIGNING A WAIVER FORM EITHER BEFORE OR AFTER THE INVOLUNTARY ADMISSION.
34 10-1605.

35 (A) THIS SECTION APPLIES TO HEARINGS FOR INVOLUNTARY ADMISSION.

1 (B) ALL EMERGENCY EVALUATIONS AND THE FINDINGS FROM EACH
2 EMERGENCY EVALUATION OCCURRING WITHIN 30 DAYS OF THE CURRENT HEARING
3 SHALL BE DISCLOSED TO THE HEARING OFFICER.

4 (C) (1) THE RECORD SHALL DISCLOSE WHETHER ONE OR MORE
5 CERTIFYING PHYSICIANS DID IN FACT EXAMINE THE EVALUEE, AS REQUIRED UNDER
6 § 10-1604 OF THIS SUBTITLE.

7 (2) AN ATTENDING PHYSICIAN MAY NOT DELEGATE THE PHYSICIAN'S
8 AUTHORITY AS A CERTIFYING PHYSICIAN TO A RESIDENT PHYSICIAN OR ANY OTHER
9 INDIVIDUAL.

10 (D) (1) THE PETITION FOR THE EMERGENCY EVALUATION EXAMINED BY
11 THE HEARING OFFICER SHALL BE DISCLOSED TO THE EVALUEE AND THE EVALUEE'S
12 COUNSEL AT LEAST 1 HOUR IN ADVANCE OF THE HEARING.

13 (2) THE CONTENTS OF THE PETITION SHALL BE REVIEWED AND
14 DISCLOSED ON THE TAPE OR TRANSCRIPT OF THE HEARING AND THE EVALUEE OR
15 THE EVALUEE'S COUNSEL SHALL BE AFFORDED THE OPPORTUNITY TO RESPOND TO
16 THE CONTENTS OF THE PETITION.

17 (E) (1) A FIRST-YEAR RESIDENT PHYSICIAN MAY NOT BE CONSIDERED AN
18 EXPERT WITNESS.

19 (2) THE EVALUEE'S COMPLIANCE AND ABILITY TO COMPLETE INTAKE
20 PROCEDURES SHALL BE ADMITTED INTO EVIDENCE.

21 (3) NURSING NOTES ARE NOT ADMISSIBLE INTO EVIDENCE UNLESS THE
22 SOURCE OF THE WRITTEN NOTES IS DISCLOSED AT THE HEARING.

23 (4) THE ACADEMIC CREDENTIALS AND TITLES OF HEARSAY WITNESSES
24 SHALL BE DISCLOSED AND ENTERED INTO THE RECORD.

25 (5) THE EMERGENCY EVALUATION PETITIONER SHALL BE AVAILABLE
26 FOR CROSS-EXAMINATION AND, IF UNAVAILABLE TO TESTIFY, ANY TESTIMONY OF
27 THE PETITIONER OTHERWISE PRESENTED AS EVIDENCE SHALL BE DISREGARDED.

28 (6) STANDARDS FOR EFFECTIVENESS OF COUNSEL IN A CRIMINAL TRIAL
29 SHALL BE APPLICABLE IN A HEARING FOR INVOLUNTARY ADMISSION.

30 (F) IF ANY STATEMENT MADE DURING THE HEARING IS DETERMINED TO BE
31 DELIBERATELY FALSIFIED OR GROSSLY INACCURATE, THE EVALUEE IS ENTITLED
32 TO NO LESS THAN \$5,000 LIQUIDATED DAMAGES.

33 10-1606.

34 (A) IN THIS SECTION, "CLINICAL REVIEW PANEL" MEANS AN
35 INTERDISCIPLINARY PANEL THAT REVIEWS THE PLACEMENT OF THE EMERGENCY
36 EVALUEE WITHIN THE FACILITY AND REVIEWS THE PROPRIETY OF THE CONTINUED
37 DETENTION OF THE EMERGENCY EVALUEE.

1 (B) (1) A CLINICAL REVIEW PANEL SHALL CONSIST OF AT LEAST SIX
2 MEMBERS, WHICH SHALL INCLUDE:

3 (I) TWO ATTENDING PHYSICIANS AT THE FACILITY WHO HAVE
4 EXAMINED THE EVALUEE, AS REQUIRED UNDER § 10-1604 OF THIS SUBTITLE;

5 (II) A CLINICAL SOCIAL WORKER WHO HAS INTERVIEWED THE
6 INDIVIDUAL FOR AT LEAST 45 MINUTES;

7 (III) TWO OR MORE RESIDENT PHYSICIANS WHO HAVE EACH SPENT
8 AT LEAST 30 MINUTES COMMUNICATING WITH THE INDIVIDUAL; AND

9 (IV) A CERTIFIED OCCUPATIONAL THERAPIST WHO HAS WORKED
10 WITH THE INDIVIDUAL FOR AT LEAST 30 MINUTES AND OBSERVED THE INDIVIDUAL
11 FOR AT LEAST 45 MINUTES.

12 (2) AN ATTENDING PHYSICIAN MAY NOT DELEGATE THE PHYSICIAN'S
13 AUTHORITY AS A CLINICAL REVIEW PANEL MEMBER TO A RESIDENT PHYSICIAN OR
14 ANY OTHER INDIVIDUAL.

15 (3) EACH MEMBER OF A CLINICAL REVIEW PANEL SHALL EXAMINE THE
16 EVALUEE BEFORE REVIEWING THE EVALUEE'S PLACEMENT OR CONTINUED
17 DETENTION.

18 (4) IF ANY SOCIAL WORKER SERVES AS A MEMBER OF A CLINICAL
19 REVIEW PANEL, THE SOCIAL WORKER SHALL BE CERTIFIED.

20 (5) THE CHAIRMAN OF A CLINICAL REVIEW PANEL MAY NOT HAVE
21 INITIATED A PETITION FOR AN EMERGENCY EVALUATION OF THE EVALUEE BEFORE
22 THE PANEL.

23 (6) AN INDIVIDUAL WITHOUT AN ADVANCED DEGREE MAY LISTEN TO
24 THE PANEL'S DELIBERATIONS, BUT MAY NOT PARTICIPATE IN THE DECISION
25 MAKING OF THE PANEL.

26 (C) THE ATTENDANCE RECORD OF A CLINICAL REVIEW PANEL SHALL BE
27 ENTERED INTO THE EVALUEE'S MEDICAL RECORD AT THE TIME OF THE REVIEW
28 SESSION AND SHALL BE INITIALED BY EACH MEMBER ATTENDING THE EVALUEE'S
29 REVIEW SESSION.

30 (D) A RECORDING OF A CLINICAL REVIEW PANEL'S SESSIONS SHALL BE
31 PRESERVED FOR POTENTIAL APPELLATE REVIEW.

32 10-1607.

33 (A) IF AN EVALUEE ELECTS TO BE TREATED IN A STATE FACILITY INSTEAD OF
34 INDEFINITE DETENTION IN A LOCAL FACILITY OR PLACEMENT IN A GROUP HOME, A
35 SECOND INVOLUNTARY COMMITMENT FORM IS NOT REQUIRED TO BE FILED.

1 (B) ON ADMISSION TO A STATE FACILITY AS DESCRIBED IN SUBSECTION (A)
2 OF THIS SECTION, THE MEDICAL RECORD SHALL DISCLOSE THAT THE PATIENT'S
3 ADMISSION IS VOLUNTARY.

4 (C) (1) THE ADMISSION AND DISCHARGE SUMMARIES FROM THE
5 ORIGINATING FACILITY SHALL BE MADE AVAILABLE TO THE EVALUEE ON THE
6 EVALUEE'S REQUEST.

7 (2) THE STATE FACILITY SHALL PERMIT THE EVALUEE TO CORRECT ANY
8 FACTUAL ERRORS CONTAINED IN THE ADMISSION SUMMARY OR DISCHARGE
9 SUMMARY.

10 10-1608.

11 ALL SESSIONS BETWEEN A SOCIAL WORKER AND A PATIENT SHALL BE
12 CONDUCTED IN PRIVATE.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2005.