

# HOUSE BILL 1358

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By: **Delegates Conway, Cane, Donoghue, Eckardt, Elmore, Haddaway, Mathias, Rudolph, Shewell, Smigiel, Sossi, and Walkup**

Introduced and read first time: March 2, 2007

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Intermediate Care Facilities for Individuals with Developmental Disability –**  
3 **Freedom of Choice**

4 FOR the purpose of providing that it is the policy of the State to recognize the right of  
5 individuals with developmental disability who need residential services to live  
6 in the setting of their choice, including a State residential center; requiring the  
7 Secretary of Health and Mental Hygiene to approve the admission of an  
8 individual with developmental disability to a residential center only if the  
9 individual chooses to receive services in a residential center; prohibiting the  
10 Secretary from approving admission of an individual with developmental  
11 disability to a State residential center if the individual has chosen not to receive  
12 services; requiring the Secretary to provide an individual with developmental  
13 disability with the option to choose between services in a State residential  
14 center or a certain appropriate least restrictive service; requiring that at a  
15 certain hearing on admission it must be shown that an individual has chosen to  
16 receive services in a State residential center; requiring that each year an  
17 individual with mental retardation who is admitted to a State residential center  
18 shall be reevaluated to determine whether the individual continues to choose to  
19 receive services in a State residential center; providing for a delayed effective  
20 date; and generally relating to providing an individual with developmental  
21 disability with the choice of whether to receive services in a State residential  
22 center.

23 BY repealing and reenacting, with amendments,  
24 Article – Health – General

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 7-102, 7-502, 7-503, 7-505, 7-507, and 7-508  
2 Annotated Code of Maryland  
3 (2005 Replacement Volume and 2006 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Health - General**

7 7-102.

8 To advance the public interest, it is the policy of this State:

9 (1) To promote, protect, and preserve the human dignity,  
10 constitutional rights and liberties, social well-being, and general welfare of  
11 individuals with developmental disability in this State;

12 (2) To encourage the full development of the ability and potential of  
13 each individual with developmental disability in this State, no matter how severe the  
14 individual's disability;

15 (3) To promote the economic security, standard of living, and  
16 meaningful employment of individuals with developmental disability;

17 (4) To foster the integration of individuals with developmental  
18 disability into the ordinary life of the communities where these individuals live;

19 (5) To support and provide resources to operate community services to  
20 sustain individuals with developmental disability in the community[, rather than in  
21 institutions];

22 (6) To require the Administration to designate sufficient resources to  
23 foster and strengthen a permanent comprehensive system of community programming  
24 for individuals with developmental disability as an alternative **OPTION** to  
25 institutional care **BASED ON THE FREE CHOICE OF THE INDIVIDUAL**;

26 (7) To recognize the right of those individuals with developmental  
27 disability who need residential services to live in [surroundings as normal as possible]  
28 **THE SETTING OF THEIR CHOICE** and to provide adequate facilities for this purpose;

1           (8) To provide appropriate social and protective services for those  
2 individuals with developmental disability who are unable to manage their own affairs  
3 with ordinary prudence;

4           (9) To protect the rights of parents and to help parents and guardians  
5 in planning for and assisting those individuals with developmental disability who are  
6 unable to manage their own affairs;

7           (10) To promote and provide for the development, maintenance, and  
8 coordination of all programs for individuals with developmental disability;

9           (11) To advance research and professional training related to  
10 developmental disability; and

11           (12) To promote public understanding of these policies and programs  
12 provided in this title.

13 7-502.

14           (a) The Secretary shall approve the admission of an individual to a State  
15 residential center only if:

16           (1) The findings of the evaluation are that the individual:

17                   (i) Has mental retardation; and

18                   (ii) For adequate habilitation, needs residential services; and

19           (2) ~~[There]~~ **TO THE EXTENT THERE** is ~~[no]~~ **A** less restrictive setting  
20 in which the needed services can be provided and that is available to the individual or  
21 will be available to the individual within a reasonable time, **THE INDIVIDUAL**  
22 **CHOOSES TO RECEIVE SERVICES IN A STATE RESIDENTIAL CENTER.**

23           (b) The Secretary may not approve the admission of an individual to a State  
24 residential center if:

25           (1) The findings of the evaluation are that the individual:

26                   (i) Does not have mental retardation; or

27                   (ii) Has mental retardation but does not need residential  
28 services for adequate habilitation; or

1           (2) [There is a less restrictive setting in which the needed services can  
2 be provided that is available to the individual or will be available to the individual  
3 within a reasonable time] **THE INDIVIDUAL HAS CHOSEN NOT TO RECEIVE**  
4 **SERVICES IN A STATE RESIDENTIAL CENTER.**

5           (c) The Secretary shall provide an individual with the **OPTION TO CHOOSE**  
6 **BETWEEN SERVICES IN A STATE RESIDENTIAL CENTER AND AN** appropriate least  
7 restrictive service consistent with the individual's welfare, safety, and plan of  
8 habilitation, if the individual:

9           (1) Has an application for services that has been approved under §  
10 7-404(c) of this title; or

11           (2) Is considered eligible for transfer under Subtitle 8 of this title by  
12 the Director or the Director's designee.

13 7-503.

14           (a) Within 21 days after the admission of an individual to a State residential  
15 center, a hearing officer of the Department shall hold a hearing on the admission in  
16 accordance with the rules and regulations that the Secretary adopts.

17           (b) Written notice of the admission of an individual and of the date, time,  
18 and place of the individual's hearing on admission shall be given:

19           (1) On admission, to the individual; and

20           (2) As soon as possible, but not later than 5 days after the admission,  
21 to legal counsel for the individual and to the proponent of admission.

22           (c) The notice also shall state:

23           (1) The name of each proponent of the admission;

24           (2) The right of the individual who has been admitted:

25           (i) To consult with and be represented by a lawyer; and

26           (ii) To call witnesses and offer evidence at the hearing on  
27 admission;

1           (3)    The availability of the services of the legal aid bureaus, lawyer  
2 referral services, and other agencies that exist for the referral of individuals who need  
3 legal counsel;

4           (4)    The rights of individuals with developmental disability under  
5 Subtitle 10 and § 7-1102 of this title; and

6           (5)    The rights of individuals to release under §§ 7-506, 7-507, and  
7 7-508 of this title.

8           (d)    The Department shall prepare and provide each State residential center  
9 with standard forms that set forth, in clear and simple words, the notice provisions of  
10 this section.

11          (e)    (1)    At the hearing, in order to certify the admission of the individual,  
12 it must be affirmatively shown by clear and convincing evidence that the conclusions  
13 leading to the decision to admit the individual are supported by the following findings:

14                   (i)    The individual has mental retardation;

15                   (ii)   The individual needs residential services for the individual's  
16 adequate habilitation; and

17                   (iii)  [There] **TO THE EXTENT THERE** is [no] A less restrictive  
18 setting in which the needed services can be provided that is available to the individual  
19 or will be available to the individual within a reasonable time after the hearing, **THE**  
20 **INDIVIDUAL HAS CHOSEN TO RECEIVE SERVICES IN A STATE RESIDENTIAL**  
21 **CENTER.**

22          (2)    If the hearing officer shall find from the admissible evidence that  
23 the conclusions leading to the admission are not proved, the hearing officer shall so  
24 certify and the individual shall be released from the State residential center.

25          (3)    If the hearing officer shall find from clear and convincing evidence  
26 that all of the admission requirements have been proved, the hearing officer shall so  
27 certify and the individual's admission shall be considered approved.

28          (4)    If the hearing officer certifies the admission of an individual to a  
29 State residential center, the hearing officer shall, at the conclusion of the hearing,  
30 write on the certification form any additional services of habilitation that are not  
31 included in the evaluation report, but that the hearing officer finds from the evidence  
32 are needed by the individual.

1           (5) If the hearing officer certifies the admission of an individual to a  
2 State residential center, the hearing officer shall, at the conclusion of the hearing,  
3 advise that individual and the legal counsel of the individual's right to seek judicial  
4 release from the State residential center under § 7-507 of this subtitle. The hearing  
5 officer shall also advise that individual and the legal counsel of:

6                   (i) The individual's rights under the appeal provisions of §§  
7 10-222 and 10-223 of the State Government Article; and

8                   (ii) The individual's right to file a petition for habeas corpus  
9 under § 7-506 of this subtitle.

10 7-505.

11           (a) At least once a year, each individual with mental retardation who is  
12 admitted to a State residential center shall be reevaluated to determine:

13                   (1) Whether the individual continues to meet the requirements of this  
14 subtitle for admission to a State residential center;

15                   (2) Whether the services which the individual requires can be  
16 provided in a less restrictive setting;

17                   (3) Whether the individual's plan of habilitation as required by §  
18 7-1006 of this title is adequate and suitable; [and]

19                   (4) Whether the State residential center has complied with and  
20 executed the individual's plan of habilitation in accordance with the rules, regulations,  
21 and standards that the Secretary adopts; **AND**

22                   **(5) WHETHER THE INDIVIDUAL CONTINUES TO CHOOSE TO**  
23 **RECEIVE SERVICES IN A STATE RESIDENTIAL CENTER.**

24           (b) If the Secretary finds that any individual no longer meets the admission  
25 requirements of this subtitle, the Secretary shall begin appropriate proceedings for  
26 release or transfer of that individual.

27 7-507.

1           (a) Subject to the limitations in this section, a petition for the release of an  
2 individual who is held under this subtitle from a State residential center may be filed,  
3 at any time, by:

4           (1) The individual; or

5           (2) Any person who has a legitimate interest in the welfare of the  
6 individual.

7           (b) The petition shall be filed in a circuit court for the county:

8           (1) Where the individual resides or resided at the time of the  
9 admission; or

10          (2) Where the State residential center is located.

11          (c) The Administration shall be the respondent in a petition under this  
12 section.

13          (d) The petition shall be in the form and contain the information that the  
14 Maryland Rules require.

15          (e) If the petitioner requests trial by jury, the trial shall be held with a jury  
16 as in a civil action at law.

17          (f) The trier of fact shall determine:

18          (1) Whether the individual has mental retardation;

19          (2) Whether for adequate habilitation, the individual needs residential  
20 services; and

21          (3) Whether, **TO THE EXTENT** there is a less restrictive setting in  
22 which the needed services can be provided that is available to the individual or will be  
23 available to the individual within a reasonable time, **THE INDIVIDUAL HAS CHOSEN**  
24 **TO RECEIVE SERVICES IN A STATE RESIDENTIAL CENTER.**

25          (g) (1) The court shall remand the individual to the custody of the State  
26 residential center, if the trier of fact determines that:

27               (i) The individual has mental retardation;

1 (ii) For adequate habilitation the individual needs residential  
2 services; and

3 (iii) **1.** There is no less restrictive setting in which those  
4 services needed can be provided and which is available to the individual or will be  
5 available to the individual within a reasonable time; **OR**

6 **2. TO THE EXTENT THERE IS A LESS RESTRICTIVE**  
7 **SETTING IN WHICH THOSE SERVICES NEEDED CAN BE PROVIDED AND THAT IS**  
8 **AVAILABLE TO THE INDIVIDUAL OR WILL BE AVAILABLE TO THE INDIVIDUAL**  
9 **WITHIN A REASONABLE TIME, THE INDIVIDUAL HAS CHOSEN TO RECEIVE**  
10 **SERVICES IN A STATE RESIDENTIAL CENTER.**

11 (2) The court shall order that appropriate less restrictive services be  
12 offered to an individual, if the trier of fact determines that:

13 (i) The individual has mental retardation;

14 (ii) For adequate habilitation the individual needs residential  
15 services; and

16 (iii) There is a less restrictive setting in which the service can be  
17 provided, and which from evidence submitted by the Director is available or will be  
18 available to the individual within a reasonable time.

19 (3) The individual shall be released from the State residential center,  
20 if the trier of fact determines that:

21 (i) The individual does not have mental retardation;

22 (ii) For adequate habilitation the individual does not need  
23 residential services; or

24 (iii) **[There] TO THE EXTENT THERE** is a less restrictive setting  
25 in which the needed services can be provided that is available to the individual or will  
26 be available to the individual within a reasonable time, **THE INDIVIDUAL HAS NOT**  
27 **CHOSEN TO RECEIVE SERVICES IN A STATE RESIDENTIAL CENTER.**

28 (h) Any party may appeal from a decision on the petition as in any other civil  
29 case.

1 (i) Appropriate records of the proceeding under this section shall be made a  
2 permanent part of the individual's record.

3 (j) (1) After a determination on the merits of a petition under this  
4 section, a court may not hear a later petition for the individual within 1 year after that  
5 determination, unless:

6 (i) The petition is verified, and alleges an improvement in the  
7 condition of the individual with mental retardation after the determination; and

8 (ii) The court, after review of the verified petition, determines  
9 that the matter should be reopened.

10 (2) If the matter is reopened, the petition shall be heard as provided in  
11 this section.

12 7-508.

13 (a) At the direction of the Secretary, an individual who has been admitted  
14 under this subtitle shall be released from a State residential center if:

15 (1) The individual is not an individual with mental retardation;

16 (2) The individual is an individual with mental retardation but does  
17 not need residential services; or

18 (3) There is an available, less restrictive kind of service that is  
19 consistent with the welfare and safety of the individual **AND THE INDIVIDUAL HAS**  
20 **NOT CHOSEN TO RECEIVE SERVICES IN A STATE RESIDENTIAL CENTER.**

21 (b) (1) At the direction of the Secretary, any individual who has been  
22 admitted under this subtitle may be released conditionally from a State residential  
23 center for individuals with mental retardation, if, in the judgment of the Secretary, the  
24 individual:

25 (i) Would be cared for properly by the individual or another  
26 person; [and]

27 (ii) Would not endanger the individual or the person or property  
28 of another; **AND**

29 **(III) AGREES TO THE CONDITIONAL RELEASE.**

1           (2)    The Secretary may set the conditions for release that the Secretary  
2 considers reasonable. The conditions may relate to:

3                   (i)    The duration of the release;

4                   (ii)   Treatment during release; or

5                   (iii)   Placement under supervised care in an approved setting.

6           (3)    An individual with mental retardation released conditionally is  
7 considered to be held by the State residential center from which the individual was  
8 released.

9           (c)    Each determination of any release of an individual, whether full or  
10 conditional, including a summary of the reasons for the determination, shall be made  
11 a permanent part of the individual's record.

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2008.