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By: **Delegate Hubbard**

Introduced and read first time: February 10, 2003

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Mental Health - Individuals in Facilities - Use of Restraints and Seclusions**

3 FOR the purpose of requiring that an individual in a certain facility be free of certain  
4 restraints or seclusions unless the individual's behavior causes a certain risk;  
5 requiring that an individual in a certain facility be free from certain physical  
6 restraints or holds; establishing the Task Force On the Use of Restraint and  
7 Seclusion in Mental Health Facilities and Programs; providing for the  
8 composition, chairman, and staff for the Task Force; providing for the duties of  
9 the Task Force; requiring the Task Force to submit a certain report on or before  
10 a certain date; providing for the termination of certain provisions of this Act; and  
11 generally relating to the individuals in mental health facilities.

12 BY repealing and reenacting, with amendments,  
13 Article - Health - General  
14 Section 10-701  
15 Annotated Code of Maryland  
16 (2000 Replacement Volume and 2002 Supplement)

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

19 **Article - Health - General**

20 10-701.

21 (a) (1) In this subtitle the following words have the meanings indicated.

22 (2) "Facility" does not include an acute general care hospital that does  
23 not have a separately identified inpatient psychiatric service.

24 (3) (i) "Mental abuse" means any persistent course of conduct  
25 resulting in or maliciously intended to produce emotional harm.

26 (ii) "Mental abuse" does not include the performance of an accepted  
27 clinical procedure.

1 (b) It is the policy of this State that each mentally ill individual who receives  
2 any service in a facility has, in addition to any other rights, the rights provided in this  
3 subtitle.

4 (c) Each individual in a facility shall:

5 (1) Receive appropriate humane treatment and services in a manner  
6 that restricts the individual's personal liberty within a facility only to the extent  
7 necessary and consistent with the individual's treatment needs and applicable legal  
8 requirements;

9 (2) Receive treatment in accordance with the applicable individualized  
10 plan of rehabilitation or the individualized treatment plan provided for in § 10-706 of  
11 this subtitle;

12 (3) Be free from restraints or locked door seclusions except for restraints  
13 or locked door seclusions that are:

14 (i) [1.] Used only during an emergency where the INDIVIDUAL'S  
15 BEHAVIOR PLACES THE INDIVIDUAL OR OTHERS AT IMMEDIATE RISK OF VIOLENCE  
16 OR INJURY IF NO INTERVENTION OCCURS [individual presents a danger to the life or  
17 safety of the individual or of others; or

18 2. Used only to prevent serious disruption to the therapeutic  
19 environment]; and

20 (ii) 1. Ordered by a physician in writing; or

21 2. Directed by a registered nurse if a physician's order is  
22 obtained within 2 hours of the action;

23 (4) BE FREE FROM PHYSICAL RESTRAINTS OR HOLDS THAT:

24 (I) PLACE THE INDIVIDUAL FACEDOWN AND PLACE PRESSURE ON  
25 THE INDIVIDUAL'S BACK;

26 (II) OBSTRUCT THE AIRWAYS OF THE INDIVIDUAL OR IMPAIR THE  
27 BREATHING OF THE INDIVIDUAL;

28 (III) OBSTRUCT A STAFF MEMBER'S VIEW OF THE INDIVIDUAL'S  
29 FACE; OR

30 (IV) RESTRICT THE INDIVIDUAL'S ABILITY TO COMMUNICATE;

31 (5) Be free from mental abuse; and

32 [(5)] (6) Be protected from harm or abuse as provided in this subtitle.

33 (d) Subject to the provisions of §§ 4-301 through 4-309 of this article, the  
34 records of each individual in a facility are confidential.

1 (e) (1) Notwithstanding any other provision of law, when the State  
2 designated protection and advocacy agency for persons with developmental  
3 disabilities has received and documented a request for an investigation of a possible  
4 violation of the rights of an individual in a facility that is owned and operated by the  
5 Department or under contract to the Department to provide mental health services in  
6 the community under this subtitle, the executive director of the protection and  
7 advocacy agency or the executive director's designee:

8 (i) Before pursuing any investigation:

9 1. Shall interview the individual whose rights have been  
10 allegedly violated; and

11 2. Shall attempt to obtain written consent from the  
12 individual; and

13 (ii) If the individual is unable to give written consent but does not  
14 object to the investigation:

15 1. Shall document this fact; and

16 2. Shall request, in writing, access to the individual's records  
17 from the Director of the Mental Hygiene Administration.

18 (2) On receipt of the request for access to the individual's records, the  
19 Director of the Mental Hygiene Administration shall authorize access to the  
20 individual's records.

21 (3) After satisfying the provisions of paragraphs (1) and (2) of this  
22 subsection, the executive director of the protection and advocacy agency, or the  
23 executive director's designee, may pursue an investigation and as part of that  
24 investigation, shall continue to have access to the records of the individual whose  
25 rights have been allegedly violated.

26 (f) (1) On admission to a facility, an individual shall be informed of the  
27 rights provided in this subtitle in language and terms that are appropriate to the  
28 individual's condition and ability to understand.

29 (2) A facility shall post notices in locations accessible to the individual  
30 and to visitors describing the rights provided in this subtitle in language and terms  
31 that may be readily understood.

32 (g) A facility shall implement an impartial, timely complaint procedure that  
33 affords an individual the ability to exercise the rights provided in this subtitle.

34 SECTION 2. AND BE IT FURTHER ENACTED, That:

35 (a) There is a Task Force On the Use of Restraint and Seclusion in Mental  
36 Health Facilities and Programs.

1 (b) The Task Force consists of the following members, appointed by the  
2 Secretary of Health and Mental Hygiene:

3 (1) three representatives of the Mental Hygiene Administration,  
4 including:

5 (i) at least one representative with knowledge of inpatient  
6 psychiatric settings; and

7 (ii) at least two representatives with knowledge of special  
8 populations, including children and adolescents in residential treatment settings, and  
9 individuals who have experienced sexual or physical abuse;

10 (2) one consumer representative of On Our Own of Maryland, Inc. who  
11 has experienced restraint or seclusion;

12 (3) one representative of the Maryland Disability Law Center who has  
13 knowledge of restraint and seclusion practices and laws;

14 (4) one representative of the Brain Injury Association of Maryland who  
15 has knowledge of positive behavioral interventions for individuals with traumatic  
16 brain injury;

17 (5) one representative of the ARC of Maryland who has knowledge of  
18 positive behavioral interventions for individuals with a dual diagnosis of mental  
19 illness and mental retardation or other developmental disability;

20 (6) one representative of a community mental health services provider  
21 agency with experience in positive behavioral interventions; and

22 (7) one representative of the Maryland Coalition of Families for  
23 Children's Mental Health who has knowledge of positive behavioral interventions for  
24 children and adolescents.

25 (c) The Secretary of Health and Mental Hygiene shall designate the chairman  
26 of the Task Force.

27 (d) The Mental Hygiene Administration shall provide staff for the Task Force.

28 (e) The Task Force shall:

29 (1) review and propose policies and regulations regarding the use of  
30 restraint and seclusion in facilities licensed or operated by the Mental Hygiene  
31 Administration;

32 (2) consider current Mental Hygiene Administration policies and make  
33 recommendations to reduce the use of restraint and seclusion in all mental health  
34 facilities in the State;

35 (3) recommend regulations that relate to:

- 1 (i) the use of restraint and seclusion;
- 2 (ii) types of permissible and prohibited physical holds;
- 3 (iii) assessments of patients or residents upon admission to identify  
4 conditions that relate to the use of restraint or seclusion;
- 5 (iv) needs of special populations of individuals in facilities;
- 6 (v) the identification of staff with the authority to authorize,  
7 initiate, or participate in restraint or seclusion; and
- 8 (vi) training requirements for staff members at facilities, including  
9 the use of positive behavioral interventions and the need to individualize positive  
10 behavioral interventions; and
- 11 (4) consult with representatives of the Department of Education and the  
12 Developmental Disabilities Administration to ensure that, to the extent possible,  
13 restraint and seclusion practices are uniform across settings and populations.
- 14 (f) The Task Force shall report its findings and recommendations to the  
15 Governor and, subject to § 2-1246 of the State Government Article, the General  
16 Assembly on or before June 30, 2004.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 July 1, 2003. Section 2 of this Act shall remain effective for a period of 1 year and 1  
19 month and, at the end of July 31, 2004, with no further action required by the General  
20 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.