
By: **Senator Stoltzfus**
Introduced and read first time: February 23, 2004
Assigned to: Rules

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 a 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; and generally relating to providing
20 an individual with developmental disability with the choice of whether to
21 receive services in a State residential center.

22 BY repealing and reenacting, with amendments,
23 Article - Health - General
24 Section 7-102, 7-502, 7-503, 7-505, 7-507, and 7-508
25 Annotated Code of Maryland
26 (2000 Replacement Volume and 2003 Supplement)

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

1 **Article - Health - General**

2 7-102.

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

4 (1) To promote, protect, and preserve the human dignity, constitutional
5 rights and liberties, social well-being, and general welfare of individuals with
6 developmental disability in this State;7 (2) To encourage the full development of the ability and potential of each
8 individual with developmental disability in this State, no matter how severe the
9 individual's disability;10 (3) To promote the economic security, standard of living, and meaningful
11 employment of individuals with developmental disability;12 (4) To foster the integration of individuals with developmental disability
13 into the ordinary life of the communities where these individuals live;14 (5) To support and provide resources to operate community services to
15 sustain individuals with developmental disability in the community[, rather than in
16 institutions];17 (6) To require the Administration to designate sufficient resources to
18 foster and strengthen a permanent comprehensive system of community
19 programming for individuals with developmental disability as an alternative OPTION
20 to institutional care BASED UPON THE FREE CHOICE OF THE INDIVIDUAL;21 (7) To recognize the right of those individuals with developmental
22 disability who need residential services to live in [surroundings as normal as
23 possible] THE SETTING OF THEIR CHOICE and to provide adequate facilities for this
24 purpose;25 (8) To provide appropriate social and protective services for those
26 individuals with developmental disability who are unable to manage their own affairs
27 with ordinary prudence;28 (9) To protect the rights of parents and to help parents and guardians in
29 planning for and assisting those individuals with developmental disability who are
30 unable to manage their own affairs;31 (10) To promote and provide for the development, maintenance, and
32 coordination of all programs for individuals with developmental disability;33 (11) To advance research and professional training related to
34 developmental disability; and35 (12) To promote public understanding of these policies and programs
36 provided in this title.

1 7-502.

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

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

5 (i) Has mental retardation; and

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

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

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

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

14 (i) Does not have mental retardation; or

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

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

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

25 (1) Has an application for services that has been approved under §
26 7-404(c) of this title; or

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

29 7-503.

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

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

- 1 (1) On admission, to the individual; and
- 2 (2) As soon as possible, but not later than 5 days after the admission, to
3 legal counsel for the individual and to the proponent of admission.
- 4 (c) The notice also shall state:
- 5 (1) The name of each proponent of the admission;
- 6 (2) The right of the individual who has been admitted:
- 7 (i) To consult with and be represented by a lawyer; and
- 8 (ii) To call witnesses and offer evidence at the hearing on
9 admission;
- 10 (3) The availability of the services of the legal aid bureaus, lawyer
11 referral services, and other agencies that exist for the referral of individuals who need
12 legal counsel;
- 13 (4) The rights of individuals with developmental disability under
14 Subtitle 10 and § 7-1102 of this title; and
- 15 (5) The rights of individuals to release under §§ 7-506, 7-507, and 7-508
16 of this title.
- 17 (d) The Department shall prepare and provide each State residential center
18 with standard forms that set forth, in clear and simple words, the notice provisions of
19 this section.
- 20 (e) (1) At the hearing, in order to certify the admission of the individual, it
21 must be affirmatively shown by clear and convincing evidence that the conclusions
22 leading to the decision to admit the individual are supported by the following
23 findings:
- 24 (i) The individual has mental retardation;
- 25 (ii) The individual needs residential services for the individual's
26 adequate habilitation; and
- 27 (iii) [There] TO THE EXTENT THERE is [no] A less restrictive
28 setting in which the needed services can be provided that is available to the
29 individual or will be available to the individual within a reasonable time after the
30 hearing, THE INDIVIDUAL HAS CHOSEN TO RECEIVE SERVICES IN A STATE
31 RESIDENTIAL CENTER.
- 32 (2) If the hearing officer shall find from the admissible evidence that the
33 conclusions leading to the admission are not proved, the hearing officer shall so
34 certify and the individual shall be released from the State residential center.

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

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

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

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

16 (ii) The individual's right to file a petition for habeas corpus under
17 § 7-506 of this subtitle.

18 7-505.

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

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

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

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

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

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

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

1 7-507.

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

5 (1) The individual; or

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

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

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

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

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

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

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

18 (f) The trier of fact shall determine:

19 (1) Whether the individual has mental retardation;

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

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

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

28 (i) The individual has mental retardation;

29 (ii) For adequate habilitation the individual needs residential
30 services; and

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

1 2. TO THE EXTENT THERE IS A LESS RESTRICTIVE SETTING
2 IN WHICH THOSE SERVICES NEEDED CAN BE PROVIDED AND WHICH IS AVAILABLE
3 TO THE INDIVIDUAL OR WILL BE AVAILABLE TO THE INDIVIDUAL WITHIN A
4 REASONABLE PERIOD OF TIME, THE INDIVIDUAL HAS CHOSEN TO RECEIVE SERVICES
5 IN A STATE RESIDENTIAL CENTER.

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

8 (i) The individual has mental retardation;

9 (ii) For adequate habilitation the individual needs residential
10 services; and

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

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

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

17 (ii) For adequate habilitation the individual does not need
18 residential services; or

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

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

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

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

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

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

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

1 7-508.

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

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

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

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

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

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

16 (ii) Would not endanger the individual or the person or property of
17 another; AND

18 (III) AGREES TO THE CONDITIONAL RELEASE.

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

21 (i) The duration of the release;

22 (ii) Treatment during release; or

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

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

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

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2004.