

# HOUSE BILL 640

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CF SB 646

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By: **Delegates Kullen, Benson, Costa, Hubbard, Kipke, Nathan-Pulliam,  
Pena-Melnyk, and Rosenberg**

Introduced and read first time: February 8, 2007

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Mental Hygiene Facilities – Patient Rights**

3 FOR the purpose of altering the requirement that individuals in certain facilities be  
4 free from certain restraints and seclusions; establishing that individuals in  
5 certain facilities be free from certain physical restraints and holds; establishing  
6 certain rights for individuals in certain State–operated psychiatric facilities;  
7 providing that the rights established in a certain subtitle may not be limited by  
8 certain privilege systems; establishing that certain individuals, guardians, and  
9 persons may file certain complaints in certain courts; requiring that certain  
10 complainants granted injunctive relief be awarded certain costs and attorney’s  
11 fees; and generally relating to patients rights in mental hygiene facilities.

12 BY repealing and reenacting, with amendments,  
13 Article – Health – General  
14 Section 10–701  
15 Annotated Code of Maryland  
16 (2005 Replacement Volume and 2006 Supplement)

17 BY adding to  
18 Article – Health – General  
19 Section 10–701.1  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2006 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Health – General**

4 10–701.

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

6 (2) “Facility” does not include an acute general care hospital that does  
7 not have a separately identified inpatient psychiatric service.

8 (3) (i) “Mental abuse” means any persistent course of conduct  
9 resulting in or maliciously intended to produce emotional harm.

10 (ii) “Mental abuse” does not include the performance of an  
11 accepted clinical procedure.

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

15 (c) Each individual in a facility shall:

16 (1) Receive appropriate humane treatment and services in a manner  
17 that restricts the individual’s personal liberty within a facility only to the extent  
18 necessary and consistent with the individual’s treatment needs and applicable legal  
19 requirements;

20 (2) Receive treatment in accordance with the applicable individualized  
21 plan of rehabilitation or the individualized treatment plan provided for in § 10–706 of  
22 this subtitle;

23 (3) Be free from restraints or [locked door] seclusions except for  
24 restraints or [locked door] seclusions that are:

25 (i) [1.] Used only during an emergency [where the individual  
26 presents a danger to the life or safety of the individual or of others; or

27 2. Used only to prevent serious disruption to the  
28 therapeutic environment] **IN WHICH THE BEHAVIOR OF THE INDIVIDUAL IS**

1 UNANTICIPATED AND PLACES THE INDIVIDUAL OR OTHERS AT SERIOUS THREAT  
2 OF VIOLENCE OR INJURY; and

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

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

6 (4) BE FREE FROM PHYSICAL RESTRAINT OR HOLD THAT:

7 (I) PLACES THE INDIVIDUAL FACE DOWN WITH PRESSURE  
8 APPLIED TO THE BACK;

9 (II) OBSTRUCTS THE AIRWAY OF THE INDIVIDUAL OR  
10 IMPAIRS THE INDIVIDUAL'S ABILITY TO BREATHE;

11 (III) OBSTRUCTS A STAFF MEMBER'S VIEW OF THE  
12 INDIVIDUAL'S FACE; OR

13 (IV) RESTRICTS THE INDIVIDUAL'S ABILITY TO  
14 COMMUNICATE;

15 [(4)] (5) Be free from mental abuse; and

16 [(5)] (6) Be protected from harm or abuse as provided in this subtitle.

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

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

26 (i) Before pursuing any investigation:

27 1. Shall interview the individual whose rights have been  
28 allegedly violated; and

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

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

5 1. Shall document this fact; and

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

8 (2) On receipt of the request for access to the individual's records, the  
9 Director of the Mental Hygiene Administration shall authorize access to the  
10 individual's records.

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

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

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

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

24 **10-701.1.**

25 (A) **IN ADDITION TO THE RIGHTS SPECIFIED IN THIS SUBTITLE,**  
26 **INDIVIDUALS IN STATE-OPERATED PSYCHIATRIC FACILITIES SHALL HAVE THE**  
27 **RIGHT TO:**

28 (1) **A SAFE ENVIRONMENT THAT IS ADEQUATELY STAFFED WITH**  
29 **TRAINED PROFESSIONALS;**

1           (2) PROMPT MEDICAL CARE AND TREATMENT INCLUDING  
2 TREATMENT FOR ANY EMERGENCY MEDICAL CONDITION THAT WILL  
3 DETERIORATE FROM FAILURE TO PROVIDE SUCH TREATMENT;

4           (3) A COMPREHENSIVE ASSESSMENT TO IDENTIFY ANY  
5 CO-OCCURRING DISORDERS, DISABILITIES, AND HISTORIES OF TRAUMA;

6           (4) PARTICIPATE IN AND RECEIVE AN INDIVIDUAL TREATMENT  
7 AND DISCHARGE PLAN, WHICH IN ADDITION TO THE REQUIREMENTS OF §  
8 10-706 OF THIS SUBTITLE, SPECIFICALLY ADDRESSES THE INDIVIDUAL'S NEEDS  
9 AS IDENTIFIED THROUGH THE ASSESSMENT;

10           (5) A SELF-DIRECTED PLAN OF ACTIVITIES THAT ARE SOOTHING  
11 AND CALMING TO THE INDIVIDUAL AND AVAILABLE ON REASONABLE REQUEST  
12 BY THE INDIVIDUAL, INCLUDING LISTENING TO MUSIC, READING, JOURNALING,  
13 WALKING, AND OTHER FORMS OF EXERCISE;

14           (6) CHOOSE FROM AN ADEQUATE ARRAY OF THERAPEUTIC  
15 PROGRAMS THAT PROMOTE RECOVERY;

16           (7) BE FREE FROM MEDICATION USED AS A SUBSTITUTE FOR  
17 THERAPEUTIC PROGRAMS, OR IN QUANTITIES THAT INTERFERE WITH THE  
18 PERSON'S ABILITY TO THINK OR ACT INDEPENDENTLY;

19           (8) REFUSE PROPOSED TREATMENT OR THERAPEUTIC  
20 PROGRAMS WITHOUT BEING SUBJECT TO PUNITIVE MEASURES, INCLUDING  
21 LOSS OF PRIVILEGE LEVEL BASED SOLELY ON THE REFUSAL, IF:

22                   (I) THE INDIVIDUAL IS COMPETENT TO MAKE TREATMENT  
23 DECISIONS; AND

24                   (II) TREATMENT IS NOT AUTHORIZED UNDER § 10-708 OF  
25 THIS SUBTITLE;

26           (9) HAVE TREATMENT PREFERENCES IN AN ADVANCE DIRECTIVE  
27 HONORED IF THE INDIVIDUAL IS FOUND CAPABLE OF MAKING AN INFORMED  
28 DECISION REGARDING TREATMENT UNDER § 5-606 OF THIS ARTICLE;

1           **(10) HAVE A PRIVILEGE LEVEL SYSTEM USED BY A FACILITY**  
2 **INDIVIDUALIZED TO ACCOMMODATE ANY EXISTING LIMITATION IN COGNITIVE**  
3 **FUNCTION OR PHYSICAL DISABILITY;**

4           **(11) RELIGIOUS FREEDOM AND PRACTICE;**

5           **(12) REGULAR SOCIAL INTERACTION AND PARTICIPATION IN**  
6 **AVAILABLE COMMUNITY ACTIVITIES UNLESS:**

7                   **(I) A COURT ORDER LIMITS THE INDIVIDUAL'S ABILITY TO**  
8 **PARTICIPATE; OR**

9                   **(II) DOCUMENTED EVIDENCE SHOWS THAT THE**  
10 **INDIVIDUAL'S PRESENT CONDITION PREVENTS THE PARTICIPATION;**

11           **(13) PARTICIPATION IN PUBLICLY SUPPORTED EDUCATION**  
12 **PROGRAMS OR EDUCATION PROGRAMS THAT THE INDIVIDUAL FINANCES;**

13           **(14) ACCESS TO A TOILET AT ANY TIME;**

14           **(15) REGULAR PHYSICAL EXERCISE, RECREATIONAL**  
15 **OPPORTUNITIES, AND OUTDOOR ACTIVITIES;**

16           **(16) AN ADEQUATE ALLOWANCE OF NEAT, CLEAN, AND**  
17 **SEASONABLE PERSONAL CLOTHING IF THE INDIVIDUAL IS UNABLE TO PROVIDE**  
18 **THE CLOTHING;**

19           **(17) ADAPTIVE DEVICES INCLUDING EYEGLASSES, HEARING AIDS,**  
20 **DENTURES, WALKERS, WHEELCHAIRS, AND COMMUNICATION DEVICES; AND**

21           **(18) FOOD THAT IS NUTRITIOUS AND APPETIZING.**

22           **(B) THE RIGHTS PROVIDED IN THIS SUBTITLE MAY NOT BE LIMITED BY**  
23 **A PRIVILEGE LEVEL SYSTEM USED BY A FACILITY.**

24           **(C) (1) IN ADDITION TO ANY INTERNAL COMPLAINT MECHANISM THE**  
25 **FACILITY HAS, AN INDIVIDUAL MAY FILE A CIVIL COMPLAINT, INCLUDING A**  
26 **REQUEST FOR INJUNCTIVE RELIEF, IN A COURT OF COMPETENT JURISDICTION.**

1                   **(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY AN**  
2 **INDIVIDUAL, GUARDIAN, OR PERSON ACTING ON BEHALF OF SIMILARLY**  
3 **SITUATED INDIVIDUALS.**

4                   **(3) A COMPLAINANT GRANTED INJUNCTIVE RELIEF SHALL BE**  
5 **AWARDED REASONABLE COSTS AND ATTORNEY'S FEES.**

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 October 1, 2007.