

# SENATE BILL 646

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71r2789  
CF 71r1851

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By: **Senator Exum**

Introduced and read first time: February 2, 2007

Assigned to: Finance

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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)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.





- 1 (ii) 1. Ordered by a physician in writing; or
- 2 2. Directed by a registered nurse if a physician's order is
- 3 obtained within 2 hours of the action;

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

5 (I) **PLACES THE INDIVIDUAL FACE DOWN WITH PRESSURE**  
 6 **APPLIED TO THE BACK;**

7 (II) **OBSTRUCTS THE AIRWAY OF THE INDIVIDUAL OR**  
 8 **IMPAIRS THE INDIVIDUAL'S ABILITY TO BREATHE;**

9 (III) **OBSTRUCTS A STAFF MEMBER'S VIEW OF THE**  
 10 **INDIVIDUAL'S FACE; OR**

11 (IV) **RESTRICTS THE INDIVIDUAL'S ABILITY TO**  
 12 **COMMUNICATE;**

13 [(4)] (5) Be free from mental abuse; and

14 [(5)] (6) Be protected from harm or abuse as provided in this subtitle.

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

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

24 (i) Before pursuing any investigation:

25 1. Shall interview the individual whose rights have been  
 26 allegedly violated; and

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

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

3 1. Shall document this fact; and

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

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

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

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

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

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

22 **10-701.1.**

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

26 (1) **A SAFE ENVIRONMENT THAT IS ADEQUATELY STAFFED WITH**  
27 **TRAINED PROFESSIONALS;**

28 (2) **PROMPT MEDICAL CARE AND TREATMENT INCLUDING**  
29 **TREATMENT FOR ANY EMERGENCY MEDICAL CONDITION THAT WILL**  
30 **DETERIORATE FROM FAILURE TO PROVIDE SUCH TREATMENT;**

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

3           **(4) PARTICIPATE IN AND RECEIVE AN INDIVIDUAL TREATMENT**  
4 **AND DISCHARGE PLAN, WHICH IN ADDITION TO THE REQUIREMENTS OF §**  
5 **10-706 OF THIS SUBTITLE, SPECIFICALLY ADDRESSES THE INDIVIDUAL'S NEEDS**  
6 **AS IDENTIFIED THROUGH THE ASSESSMENT;**

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

11           **(6) CHOOSE FROM AN ADEQUATE ARRAY OF THERAPEUTIC**  
12 **PROGRAMS THAT PROMOTE RECOVERY;**

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

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

19                   **(I) THE INDIVIDUAL IS COMPETENT TO MAKE TREATMENT**  
20 **DECISIONS; AND**

21                   **(II) TREATMENT IS NOT AUTHORIZED UNDER § 10-708 OF**  
22 **THIS SUBTITLE;**

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

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

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

2           **(12) REGULAR SOCIAL INTERACTION AND PARTICIPATION IN**  
3 **AVAILABLE COMMUNITY ACTIVITIES UNLESS:**

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

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

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

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

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

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

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

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

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

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

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

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

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