

SENATE BILL 646

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71r2789
CF HB 640

By: **Senator Exum**

Introduced and read first time: February 2, 2007

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2007

CHAPTER _____

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~~ providing that a certain requirement does not prohibit a certain action;
12 requiring certain facilities to have a written policy specifying a certain method;
13 requiring certain facilities to ensure that certain staff are trained in the
14 method; and generally relating to patients rights in mental hygiene facilities.

15 BY repealing and reenacting, with amendments,
16 Article - Health - General
17 Section 10-701
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~BY adding to~~
 2 ~~Article – Health – General~~
 3 ~~Section 10–701.1~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2005 Replacement Volume and 2006 Supplement)~~

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

8 **Article – Health – General**

9 10–701.

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

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

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

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

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

20 (c) Each individual in a facility shall:

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

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

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

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

3 2. Used only to prevent serious disruption to the
4 therapeutic environment] **IN WHICH THE BEHAVIOR OF THE INDIVIDUAL IS**
5 **~~UNANTICIPATED AND~~ PLACES THE INDIVIDUAL OR OTHERS AT SERIOUS THREAT**
6 **OF VIOLENCE OR INJURY; and**

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

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

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

11 **(I) PLACES THE INDIVIDUAL FACE DOWN WITH PRESSURE**
12 **APPLIED TO THE BACK;**

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

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

17 **(IV) RESTRICTS THE INDIVIDUAL'S ABILITY TO**
18 **COMMUNICATE DISTRESS;**

19 **[(4)] (5) Be free from mental abuse; and**

20 **[(5)] (6) Be protected from harm or abuse as provided in this subtitle.**

21 **(D) SUBSECTION (C)(4) OF THIS SECTION DOES NOT PROHIBIT PLACING**
22 **AN INDIVIDUAL MOMENTARILY FACE DOWN TO TRANSITION THE INDIVIDUAL TO**
23 **A RESTRAINT POSITION.**

24 **(E) A FACILITY SHALL:**

25 **(1) HAVE A WRITTEN POLICY SPECIFYING THE METHOD USED TO**
26 **ENSURE THAT AN INDIVIDUAL WHOSE PRIMARY LANGUAGE OR METHOD OF**
27 **COMMUNICATION IS NONVERBAL IS ABLE TO EFFECTIVELY COMMUNICATE**
28 **DISTRESS DURING A PHYSICAL RESTRAINT OR HOLD; AND**

1 **(2) ENSURE THAT ALL STAFF AT THE FACILITY WHO ARE**
 2 **AUTHORIZED TO PARTICIPATE IN A PHYSICAL RESTRAINT OR HOLD OF**
 3 **INDIVIDUALS ARE TRAINED IN THE METHOD SPECIFIED IN THE WRITTEN POLICY**
 4 **REQUIRED UNDER ITEM (1) THIS SUBSECTION.**

5 ~~(d)~~ **(F)** Subject to the provisions of §§ 4–301 through 4–309 of this article, the
 6 records of each individual in a facility are confidential.

7 ~~(e)~~ **(G)** (1) Notwithstanding any other provision of law, when the State
 8 designated protection and advocacy agency for persons with developmental disabilities
 9 has received and documented a request for an investigation of a possible violation of
 10 the rights of an individual in a facility that is owned and operated by the Department
 11 or under contract to the Department to provide mental health services in the
 12 community under this subtitle, the executive director of the protection and advocacy
 13 agency or the executive director’s designee:

14 (i) Before pursuing any investigation:

- 15 1. Shall interview the individual whose rights have been
 16 allegedly violated; and
- 17 2. Shall attempt to obtain written consent from the
 18 individual; and

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

- 21 1. Shall document this fact; and
- 22 2. Shall request, in writing, access to the individual’s
 23 records from the Director of the Mental Hygiene Administration.

24 (2) On receipt of the request for access to the individual’s records, the
 25 Director of the Mental Hygiene Administration shall authorize access to the
 26 individual’s records.

27 (3) After satisfying the provisions of paragraphs (1) and (2) of this
 28 subsection, the executive director of the protection and advocacy agency, or the
 29 executive director’s designee, may pursue an investigation and as part of that
 30 investigation, shall continue to have access to the records of the individual whose
 31 rights have been allegedly violated.

1 ~~(F)~~ **(H)** (1) On admission to a facility, an individual shall be informed of the
2 rights provided in this subtitle in language and terms that are appropriate to the
3 individual's condition and ability to understand.

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

7 ~~(g)~~ **(I)** A facility shall implement an impartial, timely complaint procedure that
8 affords an individual the ability to exercise the rights provided in this subtitle.

9 ~~**10-701.1.**~~

10 ~~**(A) IN ADDITION TO THE RIGHTS SPECIFIED IN THIS SUBTITLE,**~~
11 ~~**INDIVIDUALS IN STATE-OPERATED PSYCHIATRIC FACILITIES SHALL HAVE THE**~~
12 ~~**RIGHT TO:**~~

13 ~~**(1) A SAFE ENVIRONMENT THAT IS ADEQUATELY STAFFED WITH**~~
14 ~~**TRAINED PROFESSIONALS;**~~

15 ~~**(2) PROMPT MEDICAL CARE AND TREATMENT INCLUDING**~~
16 ~~**TREATMENT FOR ANY EMERGENCY MEDICAL CONDITION THAT WILL**~~
17 ~~**DETERIORATE FROM FAILURE TO PROVIDE SUCH TREATMENT;**~~

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

20 ~~**(4) PARTICIPATE IN AND RECEIVE AN INDIVIDUAL TREATMENT**~~
21 ~~**AND DISCHARGE PLAN, WHICH IN ADDITION TO THE REQUIREMENTS OF §**~~
22 ~~**10-706 OF THIS SUBTITLE, SPECIFICALLY ADDRESSES THE INDIVIDUAL'S NEEDS**~~
23 ~~**AS IDENTIFIED THROUGH THE ASSESSMENT;**~~

24 ~~**(5) A SELF-DIRECTED PLAN OF ACTIVITIES THAT ARE SOOTHING**~~
25 ~~**AND CALMING TO THE INDIVIDUAL AND AVAILABLE ON REASONABLE REQUEST**~~
26 ~~**BY THE INDIVIDUAL, INCLUDING LISTENING TO MUSIC, READING, JOURNALING,**~~
27 ~~**WALKING, AND OTHER FORMS OF EXERCISE;**~~

28 ~~**(6) CHOOSE FROM AN ADEQUATE ARRAY OF THERAPEUTIC**~~
29 ~~**PROGRAMS THAT PROMOTE RECOVERY;**~~

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

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

7 ~~(I) THE INDIVIDUAL IS COMPETENT TO MAKE TREATMENT~~
8 ~~DECISIONS; AND~~

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

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

14 ~~(10) HAVE A PRIVILEGE LEVEL SYSTEM USED BY A FACILITY~~
15 ~~INDIVIDUALIZED TO ACCOMMODATE ANY EXISTING LIMITATION IN COGNITIVE~~
16 ~~FUNCTION OR PHYSICAL DISABILITY;~~

17 ~~(11) RELIGIOUS FREEDOM AND PRACTICE;~~

18 ~~(12) REGULAR SOCIAL INTERACTION AND PARTICIPATION IN~~
19 ~~AVAILABLE COMMUNITY ACTIVITIES UNLESS:~~

20 ~~(I) A COURT ORDER LIMITS THE INDIVIDUAL'S ABILITY TO~~
21 ~~PARTICIPATE; OR~~

22 ~~(II) DOCUMENTED EVIDENCE SHOWS THAT THE~~
23 ~~INDIVIDUAL'S PRESENT CONDITION PREVENTS THE PARTICIPATION;~~

24 ~~(13) PARTICIPATION IN PUBLICLY SUPPORTED EDUCATION~~
25 ~~PROGRAMS OR EDUCATION PROGRAMS THAT THE INDIVIDUAL FINANCES;~~

26 ~~(14) ACCESS TO A TOILET AT ANY TIME;~~

27 ~~(15) REGULAR PHYSICAL EXERCISE, RECREATIONAL~~
28 ~~OPPORTUNITIES, AND OUTDOOR ACTIVITIES;~~

1 ~~(16) AN ADEQUATE ALLOWANCE OF NEAT, CLEAN, AND~~
2 ~~SEASONABLE PERSONAL CLOTHING IF THE INDIVIDUAL IS UNABLE TO PROVIDE~~
3 ~~THE CLOTHING;~~

4 ~~(17) ADAPTIVE DEVICES INCLUDING EYEGLASSES, HEARING AIDS,~~
5 ~~DENTURES, WALKERS, WHEEL CHAIRS, AND COMMUNICATION DEVICES; AND~~

6 ~~(18) FOOD THAT IS NUTRITIOUS AND APPETIZING.~~

7 ~~(B) THE RIGHTS PROVIDED IN THIS SUBTITLE MAY NOT BE LIMITED BY~~
8 ~~A PRIVILEGE LEVEL SYSTEM USED BY A FACILITY.~~

9 ~~(C) (1) IN ADDITION TO ANY INTERNAL COMPLAINT MECHANISM THE~~
10 ~~FACILITY HAS, AN INDIVIDUAL MAY FILE A CIVIL COMPLAINT, INCLUDING A~~
11 ~~REQUEST FOR INJUNCTIVE RELIEF, IN A COURT OF COMPETENT JURISDICTION.~~

12 ~~(2) AN ACTION UNDER THIS SUBSECTION MAY BE BROUGHT BY AN~~
13 ~~INDIVIDUAL, GUARDIAN, OR PERSON ACTING ON BEHALF OF SIMILARLY~~
14 ~~SITUATED INDIVIDUALS.~~

15 ~~(3) A COMPLAINANT GRANTED INJUNCTIVE RELIEF SHALL BE~~
16 ~~AWARDED REASONABLE COSTS AND ATTORNEY'S FEES.~~

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.