

SENATE BILL 874

J1

(9lr2945)

ENROLLED BILL

—Finance/Health and Government Operations—

Introduced by **Senators Exum and Pugh**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Mental Hygiene Administration – Rights of Individuals with Mental**
3 **Disorders in Facilities**

4 FOR the purpose of altering certain policies of the State concerning the rights of
5 individuals with mental disorders who receive services in certain facilities;
6 repealing the authority of staff in certain facilities to use a certain technique to
7 transition individuals to a restraint position; providing for the construction of
8 certain provisions of this Act; defining certain terms; and generally relating to
9 the rights of individuals with mental disorders in facilities that provide
10 treatment to individuals with mental disorders.

11 BY repealing and reenacting, with amendments,
12 Article – Health – General
13 Section 10–701
14 Annotated Code of Maryland

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.

Italics indicate opposite chamber / conference committee amendments.



1 (2005 Replacement Volume and 2008 Supplement)

2 Preamble

3 WHEREAS, The mission of the Mental Hygiene Administration is to provide
4 treatment and rehabilitation for people with a mental disorder in a safe, supportive,
5 and recovery-oriented environment that encourages self-empowerment; and

6 WHEREAS, Prone restraints are face-down, physical holds that pose an
7 unacceptable risk of death and serious injury to individuals in inpatient psychiatric
8 facilities; and

9 WHEREAS, Selecting a family member or friend as an advocate to assist with
10 treatment and discharge plans will empower individuals in inpatient psychiatric
11 facilities, promote recovery, and sustain patients' community supports; and

12 WHEREAS, Advance directives for mental health care allow individuals to
13 specify treatment preferences in the event they are found incapable of making health
14 care decisions, are less restrictive than guardianship appointments, empower
15 individuals with a mental disorder by honoring their treatment preferences, and
16 expedite the administration of desired mental health treatment in an efficient and safe
17 manner; now, therefore,

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

20 **Article - Health - General**

21 10-701.

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

23 **(2) (I) "ADVOCATE" MEANS A PERSON WHO PROVIDES**
24 **SUPPORT AND GUIDANCE TO AN INDIVIDUAL IN A FACILITY.**

25 **(II) "ADVOCATE" INCLUDES A FAMILY MEMBER OR FRIEND.**

26 **(III) "ADVOCATE" DOES NOT INCLUDE AN ATTORNEY ACTING**
27 **IN THE CAPACITY OF LEGAL COUNSEL TO AN INDIVIDUAL IN A FACILITY DURING**
28 **THE TREATMENT PLANNING AND DISCHARGE PLANNING PROCESS.**

29 **[(2)] (3) "Facility" does not include an acute general care hospital**
30 **that does not have a separately identified inpatient psychiatric service.**

31 **[(3)] (4) (i) "Mental abuse" means any persistent course of**
32 **conduct resulting in or maliciously intended to produce emotional harm.**

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

3 (5) (I) **"PRONE RESTRAINT" MEANS RESTRICTING THE FREE**
4 **MOVEMENT OF ALL OR A PORTION OF AN INDIVIDUAL'S BODY THROUGH THE**
5 **USE OF PHYSICAL FORCE OR MECHANICAL DEVICES WHILE THE INDIVIDUAL IS**
6 **IN A PRONE POSITION.**

7 (II) **"PRONE RESTRAINT" DOES NOT INCLUDE A TECHNIQUE**
8 **FOR TRANSITIONING AN INDIVIDUAL TO A RESTRAINT POSITION THAT INVOLVES**
9 **MOMENTARILY PLACING THE INDIVIDUAL FACE DOWN.**

10 (b) It is the policy of this State that each [mentally ill] individual **WITH A**
11 **MENTAL DISORDER** who receives any service in a facility has, in addition to any other
12 rights, the rights provided in this subtitle.

13 (c) Each individual in a facility shall:

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

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

21 (3) Be free from restraints or seclusions except for restraints or
22 seclusions that are:

23 (i) Used only during an emergency in which the behavior of the
24 individual places the individual or others at serious threat of violence or injury; and

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

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

28 (4) **BE FREE FROM PRONE RESTRAINT;**

29 [(4)] (5) Be free from [physical] restraint [or hold] that:

30 (i) [Places the individual face down with] **APPLIES** pressure
31 [applied] to the **INDIVIDUAL'S** back;

1 (ii) Obstructs the airway of the individual or impairs the
2 individual's ability to breathe;

3 (iii) Obstructs a staff member's view of the individual's face; or

4 (iv) Restricts the individual's ability to communicate distress;

5 [(5)] (6) Be free from mental abuse; [and]

6 [(6)] (7) Be protected from harm or abuse as provided in this subtitle;

7 ~~(8) EXCEPT WHEN THE INDIVIDUAL IS A CHILD AND THE CHILD'S~~
8 ~~LEGAL GUARDIAN HAS SUBMITTED A WRITTEN REQUEST THAT A SPECIFIC~~
9 ~~ADVOCATE NOT PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE~~
10 ~~PLANNING PROCESS, HAVE THE RIGHT TO AN ADVOCATE OF THE INDIVIDUAL'S~~
11 ~~CHOICE PARTICIPATE IN THE TREATMENT PLANNING AND DISCHARGE~~
12 ~~PLANNING PROCESS; AND~~

13 (8) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
14 AND SUBJECT TO SUBSECTION (J) OF THIS SECTION, HAVE THE RIGHT TO AN
15 ADVOCATE OF THE INDIVIDUAL'S CHOICE PARTICIPATE IN THE TREATMENT
16 PLANNING AND DISCHARGE PLANNING PROCESS; AND

17 ~~(9) IF~~ SUBJECT TO THE PROVISIONS OF § 10-708 OF THIS
18 SUBTITLE, IF THE INDIVIDUAL HAS AN ADVANCE DIRECTIVE FOR MENTAL
19 HEALTH SERVICES PROVIDED FOR IN § 5-602.1 OF THIS ARTICLE, RECEIVE
20 TREATMENT IN ACCORDANCE WITH THE PREFERENCES IN THE ADVANCE
21 DIRECTIVE.

22 [(d) Nothing in subsection (c)(4) of this section shall prohibit staff from using
23 a technique for transitioning the individual to a restraint position that involves
24 momentarily:

25 (1) Placing an individual face down; or

26 (2) Obstructing the view of an individual's face.

27 (e)] (D) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (C)(8)
28 OF THIS SECTION, A FACILITY MAY PROHIBIT AN ADVOCATE FROM
29 PARTICIPATING IN THE TREATMENT PLANNING OR DISCHARGE PLANNING
30 PROCESS FOR AN INDIVIDUAL IF:

31 (1) (I) THE INDIVIDUAL IS A MINOR OR AN ADULT UNDER
32 GUARDIANSHIP IN ACCORDANCE WITH § 13-705 OF THE ESTATES AND TRUSTS
33 ARTICLE AND ARTICLE; AND

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

3 (2) On receipt of the request for access to the individual's records, the
4 Director of the Mental Hygiene Administration shall authorize access to the
5 individual's records.

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

11 ~~[(h)] (G)~~ (1) On admission to a facility, an individual shall be informed of
12 the rights provided in this subtitle in language and terms that are appropriate to the
13 individual's condition and ability to understand.

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

17 ~~[(i)] (H)~~ A facility shall implement an impartial, timely complaint
18 procedure that affords an individual the ability to exercise the rights provided in this
19 subtitle.

20 **(J) THIS SECTION MAY NOT BE CONSTRUED TO:**

21 **(1) GRANT THE ADVOCATE OF AN INDIVIDUAL LEGAL AUTHORITY**
22 **THAT THE ADVOCATE DOES NOT OTHERWISE HAVE UNDER LAW TO MAKE**
23 **DECISIONS ON BEHALF OF THE INDIVIDUAL REGARDING TREATMENT OR**
24 **DISCHARGE;**

25 **(2) GRANT THE ADVOCATE ACCESS TO THE MEDICAL RECORDS OF**
26 **THE INDIVIDUAL OR OTHER CONFIDENTIAL INFORMATION THAT THE ADVOCATE**
27 **DOES NOT OTHERWISE HAVE ACCESS TO UNDER LAW; OR**

28 **(3) LIMIT THE LEGAL AUTHORITY THAT AN ATTORNEY OR OTHER**
29 **PERSON OTHERWISE HAS UNDER LAW TO PARTICIPATE IN THE TREATMENT**
30 **PLANNING AND DISCHARGE PLANNING PROCESS OR TO OTHERWISE ACT ON**
31 **BEHALF OF AN INDIVIDUAL IN A FACILITY.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.