

D.C. LAW 2-137

**MENTALLY RETARDED CITIZENS CONSTITUTIONAL RIGHTS AND DIGNITY ACT
OF 1978**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 8, 1978

To secure constitutional rights to mentally retarded persons; to provide and define rights of procedural due process and rights to habilitation and care for such persons; to assure the fullest normalization which is possible; and for other purposes.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978".

TITLE I
STATEMENT OF PURPOSE AND DEFINITIONS

Sec. 102. Statement of Purpose.

(a) It is the intent of the Council of the District of Columbia to:

- (1) assure that mentally retarded persons shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;
- (2) secure of each person who may be mentally retarded, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;
- (3) encourage and promote the development of the ability and potential of each mentally retarded person in the District to the fullest possible extent, no matter how severe his or her degree of disability;
- (4) promote the economic security, standard of living and meaningful employment of mentally retarded persons;
- (5) Maximize the assimilation of mentally retarded persons into the ordinary life of the community in which they live; and
- (6) provide a mechanism for the identification of persons with mental retardation at the earliest age possible.

(b) To accomplish these purposes, the Council of the District of Columbia finds and declares that the design and delivery of care and habilitation services for mentally retarded persons shall be directed by the principles of normalization, and therefore:

- (1) community-based services and residential facilities that are least restrictive to the personal liberty of the individual shall be established for mentally retarded person at each stage of life development;
- (2) the use of institutionalization shall be abated to the greatest extent possible;

(3) whenever care in an institution or residential facility is required, it shall be in the least restrictive setting; and

(4) individuals placed in institutions shall be transferred to community or home environments whenever possible, consistent with professional diagnoses and recommendations.

Sec. 103. Definitions.

As used in this act:

(a) "admission" means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility;

(b) "at least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency;

(c) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of mentally retarded persons, and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for mentally retarded persons to provide or supervise habilitation and care for residents of the facility;

(d) "commitment" means the placement in facility, pursuant to a court order, of an individual who is at least moderately mentally retarded at the request of the individual's parent or guardian without the consent of the individual; except it shall not include placement for respite care;

(e) "community-based services" means non-residential specialized or generic services for the valuation, care and habilitation of mentally retarded persons, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a mentally retarded person. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the mentally retarded person and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who are mentally retarded;

(f) "comprehensive evaluation" means a study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions of any, by a group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons. The evaluation shall include, but not be limited to, a physical examination, and educational and/or vocational evaluation, psychological evaluation, a social and recreational evaluation, and a speech and hearing evaluation;

(g) "Council" means the Council of the District of Columbia;

(h) "Court" means the Superior Court of the District of Columbia;

(i) "Department of Human Resources" means the Department of Human Resources of the District of Columbia;

(j) "Director" means the administrative head of a facility, or community-based service and includes superintendents;

(k) "District" means the District of Columbia government;

(l) "education" means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a mentally retarded person;

(m) "facility" means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes and supervised group residence for mentally retarded persons under eighteen (18) years of age;

(n) "habilitation" means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his for her own environment and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. Habilitation includes, but is not limited to, the provision of community-based services;

(o) "informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion;

(p) "least restrictive alternative" means that living and/or habitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual to smaller facilities; (3) larger to smaller living units; (4) group to individual residences; (5) segregated from the community to integrated with community living and programming; and/or (6) dependent to independent living;

(q) "Mayor" means the Mayor of the District of Columbia;

(r) "Mental Retardation Advocate" means the group of advocated created pursuant to section 413 of this act;

(s) "mentally retarded" means a significantly sub-average general intellectual level determined in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency, existing concurrently with impairment in adaptive behavior, which originates during the development period;

(t) "normalization principal" means the principle aiding mentally retarded persons to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of every day life which are as close as possible to the patterns of mainstream society;

(u) "Qualified Mental Retardation Progressional" means a psychologist with at least a master's degree from an accredited program and with specialized training or one (1) year of experience in mental retardation; or a physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in mental retardation with one (1) year of experience in treating the mentally retarded; or an educator with a degree in education from

an accredited program and with specialized training or one (1) year of experience in working with mentally retarded persons; or a social worker with (i) a master's degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with one (1) year of experience in working with mentally retarded persons; or (ii) with a bachelor's degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in (i) above, and who has specialized training in mental retardation or one (1) year of experience in working with mentally retarded persons; or a rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification Chicago, Illinois) and who has specialized training in mental retardation or one (1) year of experience in working with mentally retarded persons; or a physical or occupational therapist with a bachelor's degree from an accredited program in physical or occupational therapy and who has specialized training or one (1) year of experience in working with mentally retarded persons; or a therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or one (1) year of experience in working with mentally retarded persons;

(v) "resident" means a person admitted or committed to a facility pursuant to title III of this act for habilitation services;

(w) "respite care" means temporary overnight care provided to a mentally retarded person in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person;

(x) "respondent" means the person whose commitment or continued commitment is being sought in any proceeding under this act;

(y) "time out" means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

TITLE II DETERMINATION OF THE NEED FOR MENTAL RETARDATION FACILITIES AND SERVICES IN THE DISTRICT

Sec. 201. Determination for the Need for Mental Retardation Facilities and Services in the District.

The Mayor shall determine and report to the Council within one (1) year of the enactment of this act the current and projected needs in the District for facilities and services for mentally retarded person, giving due consideration to the Statement of Purpose as noted in section 102 of this act, and a timetable for establishing such facilities or services. The report shall be developed with the assistance, as necessary, from the Department of Human Resources, the District of Columbia Developmental Disabilities Council, the District of Columbia State Health Coordinating Council, the Board of Education of the District of Columbia, the Department of Recreation, the Department of Housing and Community Development, the Department

of transportation and the Department of General Services. It shall be based on a determination of the projected incidence of mental retardation in the District, and on comprehensive evaluations conducted within eight (8) months of the enactment of this act of all residents in the facility four the mentally retarded known as Forest Haven. It shall also be based on evaluations of the needs of mentally retarded person who present themselves for services within six (6) months of the enactment of this act, by the Director of such services. The report shall include, but not be limited to, an in-depth analysis of the need for and cost of infant stimulation programs, facilities, work and programs, recreation programs, transportation services and other community-based services as set forth in subsection (e) of section 103 of this act for mildly, moderately, severely and profoundly mentally retarded persons.

TITLE III
ADMISSION, COMMITMENT,
DISCHARGE, TRANSFER, RESPITE CARE

SEC. 301. No individual fourteen (14) years of age or older who is or is believed to be mentally retarded shall be committed to a facility if the individual is determined by the court to be committed to facility if the individual is determined by the court to be competent to refuse such commitment. For purposes of this act, person fourteen (14) years of age and older shall be presumed competent to refuse commitment.

Sec. 320. (a) Any individual fourteen (14) years of age or older who is, may be or has been diagnosed mentally retarded may apply to a Director of a facility for habilitation and care. The Director may admit the individual: PROVIDED, That the Director has determined that the individual is at least fourteen (14) years of age;

(b) Within three (3) days of the admission, the Director shall not notify the court of the admission and shall certify to the court that comprehensive evaluation shall be conducted and an individual habilitation plan developed within ten (10) days of the admission.

(c) The court shall promptly appoint an appropriate officer to determine whether the individual is competent to admit himself or herself to the facility and whether the admission is voluntary.

The determination of competency shall consider, but not be limited to, an inquiry into the individual's understanding of what habilitation and care will provided in the facility, and what alternative means of habilitation and care available from community-based services. If the officer determines that there is a substantial question regarding either the voluntariness of the admission or the competency of the individual, the officer shall so advise the court, and the court shall promptly conduct a hearing in accordance with the procedures established in title IV of this act to resolve the issues of competency and/or voluntariness.

If the court determines that he admissions not voluntary, the court shall order that the individual be discharged from the facility. If the court finds that the individual is not

competent to admit himself or herself, it may order that person be discharged if it determines that discharge would be in the individual's best interest, or it may appoint a guardian ad litem to represent the individual in a subsequent hearing to be held promptly to determine the appropriate placement, if any, of the individual. The individual may remain in the facility until the court hearing unless the court decides that this would not be in the individual's best interest.

Sec. 303. Any individual fourteen (14) years of age or older who is, may be or has been diagnosed mentally retarded may apply to any hospital, clinic or facility, or other community-based service owned or operated by, or under contract with, the District for out-patient nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, facility or service, or to the Department of Human Resources. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the individual to the Department of Human Resources, and the Department of Human Resources shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation.

Sec. 304. A written petition by a parent or guardian may be filed with the court to have an individual fourteen (14) years of age or older, who is or is believed to be mentally retarded, committed to a facility. Upon the filing of such petition, the court shall promptly conduct a hearing in accordance with the procedures set forth in title IV of this act. If the court determines that the individual is competent to refuse such commitment and the individual so refuses, the court shall dismiss the petition and order that the individual not be committed to a facility.

If the court determines that the individual is not competent to refuse commitment, the court shall determine whether to order the commitment. The court shall order the commitment only if it determines beyond a reasonable doubt that:

(a) based on a comprehensive evaluation of the individual performed within six (6) months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(b) commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required and defined under section 403 of this act;

(c) the facility to which commitment is sought, its sponsoring agency, or the Department of Human Resources is capable of providing the required habilitation; and

(d) commitment to that facility would be the least restrictive means of providing the habilitation.

The facility, its sponsoring agency, or the Department of Human Resources shall provide a written certification to the court, before commitment to the facility is ordered, that the habilitation plan will be implemented.

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Sec. 305. Any parent or guardian may apply on behalf of an individual under fourteen (14) years of age who is or is believed to be mentally retarded to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for non-residential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department of Human Resources. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community based service cannot provide the necessary habilitation, he or she shall refer the parent or guardian to the Department of Human Resources and the Department of Human Resources shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation.

Sec. 306. A parent or guardian may file a written petition with the court to have an individual under fourteen (14) years of age who is or is believed to be mentally retarded committed to a facility. the court shall promptly conduct a hearing in accordance with the procedures set forth in title IV of this act to determine whether the court shall order the commitment. the court shall order such commitment only if it determines beyond a reasonable doubt that:

(a) based on a comprehensive evaluation of the individual performed within six (6) months prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(b) commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under section 403 of this act;

(c) the facility to which commitment is sought, its sponsoring agency, or the Department of Human Resources is capable of providing the required habilitation; and

(d) commitment to that facility would be the least restrictive means of providing the habilitation.

the facility, its sponsoring agency, or the Department of Human Resources shall provide a written statement to the court, before commitment to the facility is ordered, that the habilitation plan will be implemented.

Sec. 307. Any individual fourteen (14) years of age or older who is admitted to a facility shall have the right to immediate discharge from the facility upon written request to the Director of the facility.

Sec. 308. Residents committed pursuant to section 304 or section 306 of this act shall be discharged if the parent or guardian who petitioned for the commitment requests the resident's release in writing to the court and the court determines, based on consultation with the resident, his or her counsel and the resident's mental retardation advocate, if one has been appointed, that the resident consents to such release. Such residents also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their fourteenth (14th) birthday. A hearing may be conducted pursuant to provisions of title IV of this act to determine the question of competence.

Sec. 309. (a) the Director of a facility may recommend to the court that a resident committed to the facility be transferred to another facility if the Director determines that it would be beneficial and consistent with the habilitation needs of the resident to do so. Notice of the recommendation shall be served on the resident, the resident's counsel, the resident's parent or guardian who petitioned for the commitment and the resident's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in title IV of their act. If the court determines that the proposed transfer would be to a less restrictive facility, a court hearing shall be held only if the resident or his or her parent or guardian requests a hearing by petitioning the court in writing within ten (10) days of being notified by the court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. Due consideration shall be given to the relationship of the resident to his or her family, guardian or friend so as to maintain relationships and encourage visits beneficial to the relationship.

(b) A resident admitted to a facility can be transferred to another facility if the resident consent to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of a resident to a health care facility without prior court approval in an emergency situation when the life of the resident is in danger. In such circumstances, consent of the resident, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the resident cannot consent and there is a person who can be reasonably contacted, such transfer may be made upon the authorization of the Director of the facility, with notice promptly given to the parent or guardian.

Sec. 310. the Director shall discharge any resident admitted to committed pursuant to this title if in the judgment of the Chief Program Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. If the resident, the resident's parent or guardian, the resident's counsel, or the mental retardation advocate objects to the discharge, he or she may file a petition with the court requesting a hearing in accordance with the procedures set forth in title IV of this act. the resident shall not be discharged prior to the hearing.

Sec. 311. No mentally retarded person who resides in the District shall be denied habilitation in facilities or from community-based services owned or operated by, or under contract with, the District because of inability to pay for such habilitation.

Sec. 312. Not mentally retarded person shall be committed to a facility under this act prior to the court hearing required under this title.

Sec. 313. A determination by the court under this title that individual fourteen (14) years of age or older is incompetent to refuse commitment shall not be relevant to a determination of the individual's competency with respect to other matters not considered by the court. Sec. 314. (a) the Department of Human Resources shall promulgate rules and regulations governing the provision of respite care for mentally retarded persons. These shall provide the periods of respite care shall not exceed forty-two (42) days in a twelve (12) month period without specific authorization by the court after a hearing conducted in accordance with title IV of this act.

(b) Should any person be detained for respite care for a period exceeding forty-two (42) days in a twelve (12) month period without specific authorization by the court after hearing conducted in accordance with the title IV, he or she shall be promptly discharged.

TITLE IV HEARING AND REVIEW PROCEDURES

Sec. 401. Proceedings for the commitment of an individual pursuant to title III of this act shall be commenced by the filing of a written petition with the court in the manner and form prescribed by the court. The petition may be filed by a parent or guardian with respect to an individual who is or is believed to be mentally retarded. If filed by the parent or guardian, a copy of the petition shall be served on the respondent and on his or her counsel, retained or appointed pursuant to section 402 of this act.

Sec. 402. Individuals whose admission to a facility under section 302 of this act has been questioned on grounds of their competency or the voluntariness of the admission, have the right to be represented by counsel, retained or appointed by the court, in any proceeding held before the court in accordance with section 302(c) of this act, and they shall be informed by the court of this right.

Respondents shall be represented by counsel in any proceeding before the court, and shall be so informed by the court. If an individual whose admission is questioned requests the appointment of counsel or if a respondent fails or refuses to obtain counsel, the court shall appoint counsel to represent the individual or respondent. Whenever possible, counsel shall be appointed who has had experience in the mental retardation area. Counsel appointed to represent respondents, and counsel appointed to represent individuals whose admission has been questioned but who are unable to pay for such counsel, shall be awarded compensation by the court for his or her services in an amount determined by the court to be fair and reasonable.

Sec. 403. (a) If a petition filed in accordance with section 401 is not accompanied by a comprehensive evaluation report based on an evaluation which has been performed within six (6) months prior to the hearing and an individual habilitation plan which has been prepared within thirty (30) days of the filing of the petition, the court shall immediately order that a comprehensive evaluation be conducted and an individual habilitation plan be written.

(b) A written report setting forth the results of the comprehensive evaluation and a copy of the habilitation plan shall be submitted to the court. The report shall indicate:

- (1) whether or to what degree the individual or respondent is mentally retarded;
- (2) what habilitation is needed; and
- (3) the record of habilitation and care, if any.

(c) The individual habilitation plan shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person's parent or guardian who petitioned for the commitment. In cases where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the court shall designate the appropriate and professionally qualified person to develop the plan. The plan shall contain the following:

- (1) a statement of the nature of the specific strengths, limitations and specific need of the person who is subject to the plan;
- (2) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;
- (3) a statement of, and an explanation for, the plan of habilitation designed to achieve these intermediate and long-range goals;
- (4) a statement of the objective criteria, and an evaluation procedure and schedule for determining whether the goals are being achieved;
- (5) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals; and
- (6) criteria for release to less restrictive settings for habilitation and living, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.

(d) A copy of the report and the plan shall be provided to the individual or respondent and his or her counsel, and to the parent or guardian if the petition was filed under section 304 or section 306 of this act, at least ten (10) days prior to the hearing. If the petition was accompanied by a comprehensive evaluation and plan, copies of the report and plan shall be provided to the respondent and his or her counsel within three (3) days of the filing of the petition.

Sec. 304. Respondents and their counsel shall be informed by the court of the right to have an independent comprehensive evaluation and habilitation plan developed and, if unable to pay for it, as proved to the satisfaction of the court, to have such evaluation conducted and a plan developed at the expense of the District.

Sec. 405. The hearing in commitment proceedings shall be conducted promptly after filing of the petition.

Sec. 406. Hearings shall be conducted in as informal a manner as may be consistent with orderly procedure. Individuals whose admission has been questioned or respondents

have the right to be present during hearing and to testify, but shall not be compelled to testify, and shall be so advised by the court. They shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. The presence of the respondent may be waived only if the court finds that the respondent has knowingly and voluntarily waived his or her right to be present, or if the court determines that the respondent is unable to be present by virtue of his or her physically handicapping condition.

Section. 407. If the petition was filed pursuant to section 304 of this act, the parent or guardian, or his or her counsel if so represented, shall present evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment.

Sec. 408. Hearings shall be closed to the public unless the mentally retarded person, or his or her counsel, requests that a hearing be open to the public.

Sec. 409. (a) Upon completion of the hearing, the court shall order that a respondent shall not be committed to a facility if the court finds that:

- (1) the respondent is not at least moderately mentally retarded; or
- (2) a respondent fourteen (14) years of age or older is competent to refuse commitment.

(b) Only if the court determines that the conditions set forth in section 304 section 306 are satisfied shall it order commitment to a facility, consistent with the comprehensive evaluation and individual habilitation plan of the mentally retarded person.

(c) If the court determines that respondent should not be committed to a facility, the court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate and necessary, or it may order no habilitation and care.

(d) For persons whose admission to facilities has been questioned under section 302, the court shall enter an appropriate order as set forth under that section.

Sec. 410. Any commitment order of the court may be appealed in a like manner as other civil actions.

Sec. 411. (a) Any decision of the court ordering commitment of a mentally retarded person to a facility shall be reviewed in a court hearing every six (6) months for two (2) years, and once a year thereafter. The mentally retarded individual shall be discharged unless there is a finding of the following:

- (1) the court determines that the mentally retarded individual has benefited from the habilitation; and
- (2) the facility, its sponsoring agency or the Department of Human Resources demonstrates that continued residential habilitation is necessary for the habilitation program.

(b) If a mentally retarded individual is discharged in accordance with the provisions of section 411(a)(1) above but

continues to evidence the need for habilitation and care, it shall be the responsibility of the Department of Human Resources to arrange for suitable services for the person.

Sec. 412. Cost and expenses of all proceedings held under this act shall be paid as follows:

- (a) to expert witnesses designated by the court, and amount determined by the court;
- (b) to attorney appointed under this act, fees as authorized under the Criminal Justice Act (D.C. Code, sec. 11-2601);
- (c) to other witness, the same fees and mileage, as for attendance at court to be paid upon the approval of the court.

Sec. 413. (a) Mentally retarded persons who admit themselves to a facility under section 302 of this act, and mentally retarded persons whose commitments sought under section 304 or section 306 of this act, shall have the assistance of a mental retardation advocate in every proceeding and at each stage in such proceedings under this act.

(b) Upon receipt of the petition for commitment or notification of admission as provided in section 302, section 304 and section 306 of this act, the court shall appoint a qualified mental retardation advocate selected from a list of such advocates it maintains.

(c) Mental retardation advocates shall have the following powers and duties:

- (1) to inform persons subject to the procedures set forth in this act of their rights;
- (2) to consult with the person, his or her family and other concerned with his or her habilitation and well-being;
- (3) to ensure by all means, including case referral to legal services, agencies and other practicing lawyer, that the person is afforded all rights under the law; and
- (4) to guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

(d) the mental retardation advocate shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

(e) the mental retardation advocate shall have access to all records, reports and documents affecting his or her client.

(f) the mental retardation advocate shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice: PROVIDED, That he or she shows reasonable cause for visiting at times other than visiting hours.

(g) the mental retardation advocate shall be a person with training and experience in the field of mental retardation.

(h) Advocates shall be provided directly by the court or by a contract with individuals or organizations including local associations for consumers of mental retardation services; however, the court shall ensure that the contracts and other arrangements for selection and provision of advocates provide that each mental retardation advocate shall be independent of any public or private agency which provides services to persons subject to this act.

(i) In the selection, training and development of the advocacy provision of this section, the court shall explore and seek out potential sources of funding at the federal and District levels.

(j) Advocates shall be provided with facilities, supplies, and secretarial and the support services sufficient to enable them to carry out their duties under this act.

(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

(l) the court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

(m) Mentally retarded persons subject to this act may knowingly reject the services of a mental retardation advocate and shall be so advised by the court. Advocates whose services have been rejected by the mentally retarded person shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section.

TITLE V
RIGHTS OF MENTALLY RETARDED PERSONS

Sec. 501.

(a) All mentally retarded persons have right to habilitation and care suited to their needs, regardless of age, degree of retardation or handicapping condition.

(b) Each resident has a right to a habilitation program which will maximize his or her human abilities, enhance his or her ability to cope with his or her environment and create a reasonable opportunity for progress toward the goal of independent community living.

Sec. 502. Residents shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Residents shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living.

Sec. 503. Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution or residential facility shall move residents from (a) more to less structured living; (b) larger to smaller facilities; (c) larger to smaller living units; (d) group to individual residence; (e) segregated to integrated community living; or (f) dependent to independent

living. If at any time, the Director decides that a resident should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the court pursuant to section 309 of this act. Notice shall be provided to the resident, the resident's counsel, the resident's mental retardation advocate, if one has been appointed, and their resident's parent or guardian who petitioned for commitment.

Sec. 504. (a) All residents committed pursuant to this act shall have received prior to their commitment pursuant to section 403, and annually thereafter, a comprehensive evaluation and an individual habilitation plan. Residents admitted to a facility shall have, within ten (10) days of their admission, and annually thereafter, a comprehensive evaluation and an individual habilitation plan.

(b) Within ten (10) days of admission or commitment, professionals or staff members responsible for implementing or overseeing the implementation of the resident's individual habilitation plan shall be designated by the facility, its sponsoring agency, or the Department of Human Resources. Each District or other agency or service responsible for providing the habilitation indicated by the plan shall also be designated within ten (10) days, and implementation of the plan shall begin within ten (10) days. The plan shall specify the role and objectives with respect to the plan of all such agencies or services.

(c) All residents shall receive habilitation and Care consistent with the habilitation plan. The Department of Human Resources shall set standards for habilitation and care provided to such residents, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and other Developmentally Disabled Persons, including staff-resident and professional-resident ratios. In the interests of continuity of care, one qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the resident should be released to a less restrictive setting and for continually reviewing the plan.

Sec. 505. (a) Subject to restrictions by a physician for good cause, each resident has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the resident and his or her visitors. Notwithstanding the above, each resident has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the resident's use in writing letters and the communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The resident shall have the right to send and receive

sealed and uncensored mail. the resident has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communication are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A resident who is unable to pay shall be furnished such writing, postage and telephone facilities without charge.

(c) Each resident shall have the right to follow or abstain from the practice of religion. the facility shall provide appropriate assistance in this connection including reasonable accommodations for religious workshop and/or transportation to nearby religious services. Residents who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each resident shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, or his or her personal possessions. A record shall be kept of each resident's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each resident shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each resident has the right to a nourishing, well-balanced, varied and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each resident shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All residents have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within twenty-four (24) hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. the attending physician shall review on a regular basis the drug regimen of each resident under his or her care. All prescriptions for psychotropic medications shall be written with termination date, which shall not exceed thirty (30) days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs or in quantities that interfere with the resident's habilitation program.

Sec. 506. No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving adverse stimuli or deprivation of rights set forth in title V of this act shall be administered to any resident.

Sec. 507. If, in a medical emergency, it is the judgment of one licensed physician with the concurring judgment of another licensed physician that delay in obtaining consent for surgery

would create a grave danger to the health of the resident, essential surgery may be administered without the consent of the resident if the necessary information is provided to the resident's parent, guardian, spouse or next of kin to enable such person to give informed, knowing and intelligent consent and such consent is given prior to the surgical procedure. In the event that there is no person who can be reasonably contacted, such surgery may be performed upon the authorization of the chief medical officer of the facility.

Sec. 503. No resident of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility.

Sec. 509. Residents shall have a right not to be subjected to experimental research without the express and informed consent of the resident, or if the resident cannot give informed consent, of the resident's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department of Human Resources before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health, Education and Welfare for projects supported by that agency.

Sec. 510. (a) Mistreatment, neglect or abuse in any form of any resident shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a resident from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied if alternative techniques have been attempted and failed (such failure to be documented in the resident's record) and only if such restraints imposed the least possible restriction consistent with their purposes. Each facility shall have a written policy defining (1) the use of restraints, (2) the professionals who may authorize such use, and (3) the mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over twelve (12) hours. A resident placed in restraint shall be checked at least every thirty (30) minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the resident. Opportunity for motion and exercise shall be provided for a period of not less than ten (10) minutes during each two (2) hours in which restraint is employed.

(d) Seclusion, defined as the placement of a resident alone in a locked room, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any resident shall be reported immediately to the Director and the Director shall inform the resident's counsel, parent or guardian who petitioned for the commitment and the resident's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect or abuse shall not be subjected to adverse action by the facility because of the report. (f) A resident's counsel, parent or guardian who petitioned for commitment and a resident's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs.

Sec. 511. (a) No resident shall be compelled to perform labor which involves the operation, support or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of residents who volunteer to perform such labor, which rules and regulations shall be consistent with U.S. Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A resident may be required to perform rehabilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the resident's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A resident may be required to perform tasks of a housekeeping nature for his or her own person only.

Sec. 512. Complete records for each resident shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular resident and to the Department of Human Resources without divulging the identity of the resident.

All information contained in a resident's records shall be considered privileged and confidential. The resident's parent or guardian who petitioned for the commitment, the resident's counsel, the resident's mental retardation advocate and any person properly authorized in writing by the resident, if such resident is capable of giving such authorization, shall be permitted access to the resident's records. These records shall include:

(1) identification data, including the resident's legal status;

(2) the resident's history, including but not limited to:

(A) family data, educational background and employment record;

(B) prior medical history, both physical and mental, including prior institutionalization;

(3) the resident's grievances, if any;

(4) an inventory of the resident's life skills;

(5) a record of each physical examination which describes the results of the examination;

(6) a copy of the individual habilitation plan; and modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the resident's program;

(7) the findings made in periodic reviews of the habilitation plan which findings shall include an analysis of success and failure of the habilitation program and shall direct whatever modifications are necessary;

(8) a medication history and status;

(9) a summary of each significant contact by a professional person with a resident;

(10) a summary of the resident's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to section 504(c) to supervise the resident's rehabilitation;

(11) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(12) a signed order by a professional person, as set forth in section 510(b) of this act, for any physical restraint;

(13) a description of any extraordinary incident or accident in the facility involving the resident; to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports and investigations of resident's mistreatment;

(14) a summary of family visits and contacts;

(15) a summary of attendance and leaves from the facility; and

(16) a record of any seizures, illnesses, treatments thereof, and immunizations.

Sec. 513. (a) Any interested party shall have the right to initiate an action in the court to compel the rights afforded mentally retarded persons under this act.

(b) Any residents shall have the right to a civil remedy of an amount not less than twenty-five dollars (\$25) per day from the Director or the District of Columbia, separately or jointly for each day in which said resident at a facility is not provided a program adequate for habilitation and moralization pursuant to the resident's individual habilitation plan.

(c) Sovereign immunity shall not bar an action under this section.

(d) The good faith belief that a habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the resident within five (5) days of a court's decision that the program is inappropriate.

(e) Reasonable attorney's fees and court costs shall be available for actions brought under this section.

Sec. 514. (a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for mental retardation.

(b) Any person who has been admitted or committed to a facility under the provisions of this act retains all rights not specifically denied him or her under this act, including rights

of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this act shall be liable for damages as determined by law, for court costs and for reasonable attorney's fees. Any person who acts in good faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance.

TITLE VI
MISCELLANEOUS PROVISIONS; EFFECTIVE DATE

Sec. 601. The responsible party must be provided with notice and a reasonable opportunity for a hearing before increased financial responsibility, resulting from a change in the court's commitment order, may be charged for the support of a mentally retarded person.

Sec. 602. Should any provision of this act be declared to be unconstitutional or beyond the statutory authority of the Council, the remaining provisions of this act shall remain in effect.

Sec. 603. There is hereby authorized to be appropriated such District funds as may be necessary to implement the provisions of this act, including funds for the development, and the support, of community-based services for mentally retarded persons.

Sec. 604. (a) The act entitled "An Act to enact Part III of the District of Columbia Code, entitled Decedents' Estates and Fiduciary Relations, codifying the general and permanent laws relating to decedents' estates and fiduciary relations in the District of Columbia", approved September 14, 1965 (79 Stat. 766; D.C. Code, sec. 21-1101 et seq.) is amended as follows:

(1) The following sections are hereby repealed: sec. 21-1102 through and including sec. 21-1108A; sec. 21-1113; sec. 21-1116 through and including sec. 21-1118; sec. 1120 through and including sec. 21-1123.

(2) D.C. Code, sec. 21-1114 is hereby amended as follows: delete "substantially retarded within the meaning of this chapter", insert "at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act"; delete "and direct a suitable officer... under this chapter", insert "and direct the child's parent or a guardian appointed by the court to file a petition under that act".

(3) D.C. Code, sec. 21-1115(a) is hereby amended as follows: delete "substantially retarded within the meaning of this chapter", insert "at least moderately mentally retarded as defined in the Mentally Retarded Citizens Constitutional Rights and Dignity Act"; delete "petition be filed pursuant to this chapter", insert "parent or guardian appointed by the court file a petition under that act".

(4) D.C. Code, sec. 21-1115(c) is hereby amended as follows: delete "substantially retarded", insert "at least moderately mentally retarded".

(5) D.C. Code, sec. 21-1101 is hereby amended by deleting from "substantially retarded" to the end of that

section.

(b) The following sections of the act entitled, "An Act provide for commitments to, maintenance in, and discharges from the District Training School, and for other purposes", approved March 3, 1925 (43 Stat. 1135; D.C. Code, sec. 32-601 et seq.) are hereby repealed: section 2, 3 and 4 (D.C. Code, sec. 32- through and including 32-605).

Sec. 605. Nothing herein shall be constructed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to title 31 of the District of Columbia Code and applicable federal laws and regulations.

Sec. 606. This act shall take effect pursuant to the provisions of section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 814; D.C. Code, sec. 1-147(c)(1)). With respect to persons who are residents in facilities on the effective date of this act, the provisions of the act will take effect immediately, with the exception of the admissions and commitment hearing procedures established in titles III and IV. The court shall begin hearings under titles III and IV to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such person, as soon as possible, but not later than one hundred eighty (180) days after the effective date of this act. All court hearings to review admission or commitment of persons residing in facilities on the effective date of this act shall be completed within three (3) years of the effective date of this act.

Source

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 1-108, on first and second readings, September 19, 1978 and October 3, 1978 respectively. Following the signature of the Mayor on November 8, 1978, this legislation was assigned Act No. 2-237, published in the December 1, 1978, edition of the D.C. Register, (Vol. 13 page 5094) and transmitted to Congress on January 18, 1979 for a 10-day review, in accordance with Section 602 (c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 10-day Congressional Review Period has expired, and, therefore, cites the following legislation as D.C. Law 2-137, effective March 3, 1979.