

30:4-24.1 and 30:4-24.2

LEGISLATIVE HISTORY CHECKLIST

NJSA 30:4-24.1 and 30:4-24.2

Laws of 1975 Chapter 85

Bill No. S 1117

Sponsor(s) Menza & others

Date Introduced April 22, 1974

Committee: Assembly Institutions, Health & Welfare

Senate " " "

Amended during passage Yes Amendments during passage denoted by asterisks

Date of passage: Assembly Dec. 17, 1974; re-enacted 4/17/75

Senate June 17, 1974; re-enacted 4/10/75

Date of approval May 7, 1975

Following statements are attached if available:

Sponsor statement Yes

Committee Statement: Assembly No

Senate No

Fiscal Note No

Veto message Yes

Message on signing Yes

Following were printed:

Reports No

Hearings No

Bill mentioned in:

974.90 New Jersey. Legislature. Joint Mental Health Subcommittee.
M549 Final report to the Legislature (Pursuant to SCR 89 of 1974)
1975a Page 73

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APPROVED 5-7-75

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SENATE, No. 1117

STATE OF NEW JERSEY

INTRODUCED APRIL 22, 1974

By Senators MENZA, LIPMAN, SCARDINO and HIRKALA

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the civil rights of the mentally ill ******[and the mentally retarded,]****** and amending sections 9 and 10 of P. L. 1965, c. 59.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 9 of P. L. 1965, c. 59 (C. 30:4-24.1) is amended to
2 read as follows:

3 9. Every individual who is mentally ill ******[or mentally re-
4 tarded]****** shall be entitled to *******[humane care and treatment]*******
5 *****fundamental civil rights***** and *****[, to the extent that facilities,
6 equipment and personnel are available,]***** to medical care and other
7 professional services in accordance with *******[the highest]*******
8 accepted standards*******, *provided however that this shall not be*
9 *construed to require capital construction****. Every individual
9A between the ages of 5 and 20 years shall be entitled to education
9B and training suited to his age and attainments.

10 Every patient shall have the right to participate in planning for
11 his own treatment to the extent that his condition permits.

12 **[**Mechanical restraints, including isolation, shall not be applied
13 in the care or treatment of any mentally ill or mentally retarded
14 individual unless required by his medical needs; every use of a
15 restraint and the reasons therefor shall be made a part of the
16 clinical record.

17 Nothing in this act shall preclude the application of measures
18 in emergency situations for the control of violent, disturbed or
19 depressed behavior. The emergency nature of the measures shall
20 be fully recorded in the clinical record.]

1 2. Section 10 of P. L. 1965, c. 59 (C. 30:4-24.2) is amended to
2 read as follows:

3 10. **[**Subject to the general rules and regulations of the facility

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

4 and except to the extent that the head of the facility determines
5 that it is necessary for the medical care and treatment of the par-
6 ticular individual to impose restrictions, every patient shall be
7 entitled:

8 (1) To exercise all civil and religious rights provided for under
9 the Constitutions and the laws of the State of New Jersey and the
10 United States, unless he has been adjudicated incompetent and has
11 not been restored to legal capacity;

12 (2) To communicate by sealed mail or otherwise with persons,
13 including official agencies, inside or outside the facility; and

14 (3) To receive visitors.

15 Any limitations imposed by the head of the facility on the exer-
16 cise of these rights by the individual and the reasons for such limi-
17 tations shall be made a part of the clinical record of the individual.】

18 【Notwithstanding any limitations authorized under this section
19 on the right of communication, every individual shall be entitled
20 to communicate by sealed mail with the commissioner and with the
21 court, if any, which ordered his commitment and with his attorney,
22 and on his request shall be provided with the necessary means for
23 doing so.

24 For the purpose of a patient's exercising his civil rights there
25 shall be no presumption of his incompetency or unsoundness of
26 mind merely because of his admission to a mental hospital.】

27 a. ****【Notwithstanding】**** ***Subject to** any other provisions*
28 *of law **and the Constitution of New Jersey and the United*
29 *States***, no patient shall be deprived of any civil right solely by
30 reason of his receiving treatment under the provisions of this Title
31 nor shall such treatment modify or vary any legal or civil right of
32 any such patient including but not limited to the right to register for
33 and to vote at elections, or rights relating to the granting, forfei-
33A ture, or denial of a license, permit, privilege, or benefit pursuant to
33B any law.

34 b. *Every patient in treatment shall be entitled to all rights set*
35 *forth in this act and shall retain all rights not specifically denied*
36 *him under this Title. *A notice of the rights set forth in this act shall*
36A *be given to every patient within 5 days of his admission to treat-*
36B *ment. Such notice shall be in writing and in simple understandable*
36C *language. It shall be in a language the patient understands and if*
36D *the patient cannot read it shall be read to him. In the case of an*
36E *adjudicated incompetent patient, such procedure shall be followed*
36F *for the patient's guardian. Receipt of this notice shall be acknowl-*
36G *edged in writing with a copy placed in the patient's file. If the*
36H *patient or guardian refuses to acknowledge receipt of the notice,*

36i the person delivering the notice shall state this in writing with a
36j copy placed in the patient's file.*

37 c. No patient may be presumed to be incompetent because he
38 has been examined or treated for mental illness, regardless of
39 whether such evaluation or treatment was voluntarily or involun-
40 tarily received. Any patient who leaves a mental health program
41 following evaluation or treatment for mental illness, regardless of
42 whether that evaluation or treatment was voluntarily or involun-
43 tarily received, shall be given a written statement of the substance
44 of this act.

45 d. Each patient in treatment shall have the following rights, a
46 list of which shall be prominently posted in all facilities providing
47 such services and otherwise brought to his attention by such addi-
48 tional means as the department may designate:

49 (1) To be free from unnecessary or excessive medication. No
50 medication shall be administered unless at the written order of a
51 physician. ****[The use of medication shall not exceed standards or**
52 **use that are established by the United States Food and Drug Ad-**
53 **ministration.]**** Notation of each patient's medication shall be kept
54 in his treatment records. At least weekly, the attending physician
55 shall review the drug regimen of each patient under his care. All
56 ****physician's orders or**** prescriptions shall be written with a
57 termination date, which shall not exceed 30 days. Medication shall
58 not be used as punishment, for the convenience of staff, as a sub-
59 stitute for a treatment program, or in quantities that interfere with
60 the patient's treatment program. ****Voluntarily committed patients**
60A **shall have the right to refuse medication.****

61 (2) Not to be subjected to experimental research, shock treat-
62 ment, ****[lobotomy, or surgery, other than emergency surgery,]****
63 ****psychosurgery or sterilization,**** without the express and in-
64 formed consent of the patient ***[or his parent or guardian]***
65 after consultation with counsel or interested party of the
65A patient's choice. ***Such consent shall be made in writing, a**
66 **copy of which shall be placed in the patient's treatment record. If**
67 the patient has been adjudicated incompetent a court of competent
67A jurisdiction shall hold a hearing to determine the necessity of such
67B procedure at which the client is physically present, represented by
67C counsel, and provided the right and opportunity to be confronted
67D with and to cross-examine all witnesses alleging the necessity of
67E such procedures. In such proceedings, the burden of proof shall be
67F on the party alleging the necessity of such procedures. In the event
67G that a patient cannot afford counsel, the court shall appoint an
67H attorney not less than 10 days before the hearing. An attorney so

67I appointed shall be entitled to a reasonable fee to be determined by
 67J the court and paid by the county from which the patient was
 67K admitted.* Under no circumstances may a patient in treatment be
 67L subjected to experimental research which is not directly related to
 67M the specific goals of his treatment program.

68 (3) To be free from physical restraint and isolation. Except for
 69 emergency situations, in which ***[it is substantially likely that a**
 70 **patient could harm]*** *a patient has caused substantial property
 70A damage or ****[harmed]*** **has attempted to harm** himself or
 71 others and in which less restrictive means of restraint are not
 72 feasible, a patient may be physically restrained or placed in isola-
 73 tion only on a medical director's written order **or that of his
 74 physician designee** which explains the rationale for such action.
 75 The written order may be entered only after the medical director
 76 **or his physician designee** has personally seen the patient con-
 77 cerned, and evaluated whatever episode or situation is said to
 78 require restraint or isolation. Emergency use of restraints or
 79 isolation shall be for no more than 1 hour, by which time the medical
 80 director **or his physician designee** shall have been consulted
 81 and shall have entered an appropriate order in writing. Such
 82 written order shall be effective for no more than 24 hours and shall
 82A be renewed if restraint and isolation are continued. While in
 82B restraint or isolation, the patient must be bathed every 12 hours
 82C *and checked by an attendant every 2 hours with a notation in writ-
 82D ing of such checks placed in the patient's treatment record along
 82E with the order for restraint or isolation*.

83 (4) To be free from corporal punishment.

84 e. Each patient receiving treatment pursuant to this Title, shall
 85 have the following rights, a list of which shall be prominently
 86 posted in all facilities providing such services and otherwise
 87 brought to his attention by such additional means as the commis-
 88 sioner may designate:

89 (1) To privacy and dignity.

90 (2) To the least restrictive conditions necessary to achieve the
 91 purposes of treatment.

92 (3) To wear his own clothes; to keep and use his personal pos-
 93 sessions including his toilet articles; and to keep and be allowed
 94 to spend a reasonable sum of his own money for canteen expenses
 95 and small purchases.

96 (4) To have access to individual storage space for his private
 97 use.

98 (5) To see visitors each day.

99 (6) *To have reasonable access to and use of telephones, both to*
 100 *make and receive confidential calls.*

101 (7) *To have ready access to letter writing materials, including*
 102 *stamps, and to mail and receive unopened correspondence.*

103 (8) *To regular physical exercise several times a week. It shall*
 104 *be the duty of the hospital to provide facilities and equipment for*
 105 *such exercise.*

106 (9) *To be outdoors at regular and frequent intervals, in the*
 107 *absence of medical considerations.*

108 (10) *To suitable opportunities for interaction with members of*
 109 *the opposite sex, with adequate supervision.*

110 (11) *To practice the religion of his choice or abstain from re-*
 111 *ligious practices. Provisions for such worship shall be made avail-*
 112 *able to each person on a nondiscriminatory basis.*

113 (12) *To receive prompt and adequate medical treatment for any*
 114 *physical ailment.*

115 *f. Rights designated under subsection d. of this section may not*
 116 *be denied under any circumstances.*

117 *g. (1) A patient's rights designated under subsection e. of this*
 118 *section may be denied for good cause in any instance in which the*
 119 *director of the program in which the patient is receiving treatment*
 120 *feels it is imperative to deny any of these rights*; provided, how-*
 121 *ever, under no circumstances shall a patient's right to communicate*
 122 *with his attorney, physician or the courts be restricted*. Any such*
 123 *denial of a patient's rights shall take effect only after a written*
 123A *notice of the denial has been filed in the patient's treatment record*
 123B *and shall include an explanation of the reason for the denial.*

124 (2) *A denial of rights shall be effective for a period not to ex-*
 125 *ceed 30 days and shall be renewed for additional 30-day periods*
 126 *only by a written statement entered by the director of the program*
 127 *in the patient's treatment record which indicates the detailed rea-*
 128 *son for such renewal of the denial.*

129 (3) *In each instance of a denial or a renewal, the patient, his*
 130 *attorney, ***[or]*** *and* his guardian*, if the patient has been ad-*
 130A *judicated incompetent,* and the department shall be given written*
 131 *notice of the denial or renewal and the reason therefor.*

132 *h. Any individual ****[detained pursuant]**** **subject** to this*
 133 ***[act]** Title shall be entitled to a writ of habeas corpus upon proper*
 134 *petition by himself, by a relative, or a friend to any court of*
 135 *competent jurisdiction in the county in which he is detained **and*
 136 *shall further be entitled to enforce any of the rights herein stated*
 137 *by civil action or other remedies otherwise available by common*
 138 *law or statute**.*

1 3. This act shall take effect immediately.

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134 self, by a relative, or a friend to any court of competent jurisdic-
135 tion in the county in which he is detained.

1 3. This act shall take effect immediately.

Sponsor STATEMENT

This bill would incorporate in New Jersey law an affirmative and detailed section on civil rights for the mentally ill and mentally retarded. It is patterned after laws recently enacted in California, Florida, Illinois, Massachusetts, Maryland and New York. Although New Jersey law currently contains general references to civil rights of persons confined because of mental illness or mental retardation, experience indicates that a comprehensive and explicit version of these rights should be in the law. The bill reflects the decisions in a growing number of lawsuits throughout the Nation which have directed that there shall be a greater awareness of the basic human rights of persons confined because of mental illness or mental retardation.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

March 19, 1975

SENATE BILL NO. 1117

To the Senate:

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 1117, with my objections, for reconsideration.

This bill would amend the present law to define more specifically those civil rights which are guaranteed to every individual who is mentally ill. It would guarantee that every such person is entitled to medical care and other professional services in accordance with the highest accepted standards. The bill provides that no patient may be denied any civil right solely by reason of his receiving treatment, including the right to register for and vote at elections. It further prohibits a presumption of incompetency based on prior treatment of or prior examination for mental illness. There is an enumeration of rights which could not be denied under any circumstances. These include freedom from unnecessary medication; freedom from non-consensual research, shock treatment, psychosurgery or sterilization; freedom from physical restraint and isolation unless upon written orders of a physician; and freedom from corporal punishment. The bill further enumerates other rights which may be denied under specified circumstances. These include the right to privacy, to wear personal clothing, to have daily visitation, to use the telephone and to receive uncensored mail.

Certainly these are rights which most of us take for granted. They are clearly rights which should not be denied any citizen of this State, most especially those who may be incapable of protecting their own interests. With respect to this group the State has a special burden -- a burden which I acknowledged in my Annual Message and a burden which I now urge you to assume. We must do everything possible to guarantee that those in our mental institutions do not become second class citizens, or worse, simply forgotten ones.

Enactment of this bill would be a substantial step towards assuming our burden. It would be a significant advance in the treatment of the mentally ill, but I cannot sign the bill in its present form. The law now provides that the mentally ill "shall be entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and other professional services in accordance with the highest accepted standards."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 1117

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N.J.S.A. 30:4-24.1. This bill would delete the limiting language, "to the extent that facilities, equipment and personnel are available." I fully support the concept behind this deletion. But there can be no doubt that it imposes substantial additional costs on the State. Our Department of Institutions and Agencies has estimated that to provide every patient who is mentally ill with care and treatment "in accordance with the highest professional standards" would necessitate an expenditure of \$7.8 million in the first year alone, and \$19.3 million in the second. This estimate is based on the construction, renovation, equipment purchase and additional staffing which would be necessary to meet the standards promulgated by the Joint Committee on Accreditation of Hospitals, which are the acknowledged "highest professional standards" in the care and treatment of the mentally ill. Indeed, these standards have been the yardstick which the legislative committee from this House has used to measure the effectiveness of several of the State institutions.

I need not tell you that in our present fiscal situation, when many programs have been cut or eliminated and many plans have been postponed, there simply are no funds to meet the fiscal demands of this bill. Nor is there an appropriation in the bill. I must therefore return it and ask that additional burdens not be imposed without providing funds sufficient to implement them.

By returning this bill without my approval I am not denying the patients in our mental institutions their civil rights. Indeed, the present law grants them "all civil and religious rights provided for under the Constitution and the laws of the State of New Jersey and the United States." What I am doing is not holding out the false hope of immediately improved conditions. To do otherwise would be to perpetrate a cruel fraud on our citizens.

I will not promise what I know we cannot deliver. I do promise to move in this area immediately and with the highest priority, as soon as you give me the means to accomplish the goals set forth in this bill.

Accordingly, I herewith return Senate Bill No. 1117 for reconsideration and recommend that it be amended as follows:

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 1117

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Page 1, Section 1, Line 4: Delete "humane care and treatment"
insert "fundamental civil rights"

Page 1, Section 1, Line 7: Delete "the highest"

Page 1, Section 1, Line 7: After "standards" insert ", provided
however that this shall not be construed to require capital construction"

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Donald Lan

EXECUTIVE SECRETARY TO THE GOVERNOR

FROM THE OFFICE OF THE GOVERNOR

MAY 7, 1975

DICK CAMPBELL

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

Governor Brendan Byrne signed into law Wednesday a bill designed to guarantee the civil rights of the mentally ill.

The measure, S 1117, sponsored by Sen. Alexander J. Menza, D-Union, was signed by the Governor at a public ceremony in his outer office.

The bill provides that no patient may be denied any civil right, including the right to register and vote solely by reason of his receiving treatment.

The bill specifies certain rights which are guaranteed and cannot be denied under any circumstances. They include:

- Freedom from unnecessary medication. The administration of medicine would require the written order of a physician and must be reviewed weekly.
- Freedom from non-consensual research, shock treatment, psychosurgery or sterilization.
- Freedom from physical restraint and isolation unless upon written orders of a physician which includes the rationale for such action.
- Freedom from corporal punishment.

Patients would be entitled to enforce the guaranteed rights by civil action or other available remedy.

The measure is effective immediately.

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MAY 19 1975

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