

30:6D-1 to 30:6D-12

LEGISLATIVE HISTORY CHECKLIST

HJSA 30:6D-1 to 30:6D-12 (Developmentally Disabled Rights Act")

LAWS OF 1977 CHAPTER 82

Bill No. S1384

Sponsor(s) Menza and others

Date Introduced April 26, 1976

Committee: Assembly Institutions, Health & Welfare

Senate Institutions, Health & Welfare

Amended during passage Yes ~~XX~~

Amendments during passage denoted by asterisks

Date of Passage: Assembly Nov. 23, 1976

Senate June 10, 1976

Date of approval May 5, 1977

Following statements are attached if available:

Sponsor statement Yes ~~XX~~

Committee Statement: Assembly Yes ~~XX~~

Senate Yes ~~XX~~

Fiscal Note ~~XXX~~ No

Veto Message ~~XXX~~ No

Message on signing Yes ~~XX~~

Following were printed:

Reports ~~XXX~~ No

Hearings ~~XXX~~ No

According to both committee statements, much of the language of the bill was derived from the Federal "Developmentally Disabled Assistance and Bill of Rights Act." (P.L.94-103).

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For background see:

974.90 N.J. Developmental Disabilities Council.  
H236 Appraisal of selected governmental  
1976b programs in relation to normalization  
goals for the developmentally disabled in  
N.J. 1976.

974.90 N.J. Developmental Disabilities Council.  
H236 The N.J. Comprehensive plan for  
1975 the developmentally disabled. 1975.

82  
5-5-77

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1384

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators MENZA, HIRKALA, SCARDINO, BUEHLER,  
ORECHIO, GARRAMONE, FAY and MARTINDELL

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning the rights of the developmentally disabled.

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

1 1. This act shall be known and may be cited as the "Develop-  
2 mentally Disabled Rights Act."

1 2. The Legislature finds and declares that the developmentally  
2 disabled are entitled to certain fundamental rights as citizens and  
3 that these rights shall not be abrogated solely by reason of admis-  
4 sion to any facility or receipt of any service for developmentally  
5 disabled persons; that services which are offered to the develop-  
6 mentally disabled shall be provided in a manner which respects the  
7 dignity individuality and constitutional, civil and legal rights of  
8 each developmentally disabled person; and that it is the purpose  
9 of this act to denote such rights and establish standards for the  
10 provision of such services.

1 3. As used in this act, unless a different meaning clearly appears  
2 from the context:

3 a. "Developmental disability" means a disability of a person  
4 which

5 (1) is attributable to:

6 (a) mental retardation, cerebral palsy, epilepsy or autism;

7 (b) any other condition found to be closely related to mental  
8 retardation because such condition results in impairment of  
9 general intellectual functioning or adaptive behavior similar  
10 to impairment resulting from mental retardation or which  
11 requires treatment and services similar to those required for  
12 mental retardation; or

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

13 (c) dyslexia resulting from a disability described in sub-  
14 paragraphs (a) and (b);

15 (2) originates before such person attains age 18;

16 (3) has continued or can be expected to continue indefinitely; and

17 (4) constitutes a substantial handicap to such person's ability  
18 to function normally in society;

19 b. "Services" or "services for persons with developmental dis-  
20 abilities" means specialized services or special adaptations of  
21 generic services *\*\*provided by any public or private agency, or-*  
22 *ganization or institution and\*\** directed toward the alleviation of  
23 a developmental disability or toward the social, personal, physical,  
24 or economic habilitation or rehabilitation of an individual with  
25 such a disability; and such term includes diagnosis, evaluation,  
26 treatment, personal care, day care, domiciliary care, special living  
27 arrangements, training, education, sheltered employment, recrea-  
28 tion, counseling of the individual with such disability and of his  
29 family, protective and other social and socio-legal services, infor-  
30 mation and referral services, follow-along services, and transpor-  
31 tation services necessary to assure delivery of services to persons  
32 with developmental disabilities;

33 c. "Facility" or "facility for persons with developmental dis-  
34 abilities" means *\*\*a facility operated by\*\** any public or private  
35 agency, organization or institution *\*\*[which provides]\*\** *\*\*for*  
36 *the provision of\*\** services for persons with developmental dis-  
37 abilities.

1 4. No developmentally disabled person shall be presumed to be  
2 incompetent or shall be discriminated against or shall be deprived  
3 of any constitutional, civil or legal right solely by reason of  
4 admission to or residence at a facility or solely by reason of receipt  
5 of any service for developmentally disabled persons. No such  
6 admission, residence or receipt of services shall modify or vary  
7 any constitutional, civil or legal right of such person, including,  
8 but not necessarily limited to;

9 a. Register and vote at elections;

10 b. Free exercise of religion;

11 c. Receive and send unopened correspondence and, upon request,  
12 to obtain assistance in the writing and mailing of such cor-  
13 respondence;

14 d. Private visitations and private telephone conversations with-  
15 out prior notice to the facility during such reasonable hours as  
16 may be established by the facility with parents, guardians, repre-  
17 sentatives of guardian services, relatives, friends, physicians,  
18 attorneys, government officials, and any other persons;

19 e. Reasonable opportunities for interaction with members of the  
20 opposite sex;

21 f. Confidential handling of personal and medical records.

1 5. a. No person receiving services for the developmentally dis-  
2 abled at any facility shall:

3 (1) be subjected to any corporal punishment;

4 (2) be administered any medication or chemical restraint, except  
5 upon the written authorization of a physician when necessary and  
6 appropriate as an element of the service being received or as a  
7 treatment of any medical or physical condition in conformity with  
8 accepted standards for such treatment. The nature, amount of,  
9 and reasons for the administration of any medication or chemical  
10 restraint shall be promptly recorded in such person's medical  
11 record;

12 (3) be physically or chemically restrained or isolated in any  
13 manner, except in emergency situations for the control of violent,  
14 disturbed or depressed behavior which may immediately result  
15 in or has resulted in harm to such person or other person or in  
16 substantial property damage.

17 The chief administrator of the facility, or his designee, shall be  
18 notified immediately upon the application of any such restraint or  
19 isolation, and thereafter such restraint or isolation shall be con-  
20 tinued only upon the written order of the administrator or designee.  
21 Such order shall be effective for not more than 24 hours, and may  
22 be renewed for additional periods of not more than 24 hours each  
23 if the administrator or designee shall determine that such continued  
24 restraint or isolation is necessary. While in restraint or isolation,  
25 such person shall be checked by an attendant every 15 minutes,  
26 and bathed every **\*[12]\* \*24\*** hours. Such restraint or isolation  
27 shall be terminated at any time if an attending physician shall find  
28 such restraint or isolation to be medically contraindicated. The  
29 nature, duration of, reasons for and notation of attendant checks  
30 shall be promptly recorded in such person's medical record;

31 (4) be subjected to shock treatment, psychosurgery, sterilization  
32 or **\*[experimental]\* \*medical\*\*[or clinical investigation and]\*\***  
33 **\*\*behavioral or pharmacological\*\*** research without the express  
34 and informed consent of such person **[and such person's parents**  
35 **or guardian ad litem]\* \***, *if a competent adult, or of such person's*  
36 *guardian ad litem specifically appointed by a court for the matter*  
37 *of consent to these proceedings, if a minor or an incompetent*  
38 *adult\* \*\*or a person administratively determined to be mentally*  
39 *deficient\*\**. Such consent shall be made in writing and shall be  
40 placed in such person's record.

41     \*\*[If the patient has been adjudicated incompetent]\*\* *Either*  
 42 *the party alleging the necessity of such procedure or such person*  
 43 *or such person's guardian ad litem may petition* a court of com-  
 44 petent jurisdiction **[shall]** *to* hold a hearing to determine  
 45 the necessity of such procedure at which the client is physically  
 46 present, represented by counsel, and provided the right and op-  
 47 portunity to be confronted with and to cross-examine all witnesses  
 48 alleging the necessity of such procedure. In such proceedings, the  
 49 burden of proof shall be on the party alleging the necessity of  
 50 such procedure. In the event that a **[patient]** *person*  
 51 cannot afford counsel, the court shall appoint an attorney not less  
 52 than 10 days before the hearing. An attorney so appointed shall  
 53 be entitled to a reasonable fee to be determined by the court and  
 54 paid by the county from which the **[patient]** *person* was  
 55 admitted. Under no circumstances may a **[patient]** *person*  
 56 in treatment be subjected to *hazardous or intrusive* experi-  
 57 mental research which is not directly related to the specific goals  
 58 of his treatment program.

59     b. Every developmentally disabled person in residence **[or**  
 60 **attendance]** at any facility shall be provided with a nutritionally  
 61 adequate and sufficient diet and shall receive appropriate and  
 62 sufficient medical and dental care on a regular basis and whenever  
 63 otherwise necessary.

64     c. Every developmentally disabled person between the ages of  
 65 5 and 21, inclusive, in residence or *full-time* attendance at any  
 66 facility shall be provided a thorough and efficient education suited  
 67 to such person's age and abilities.

1     6. Every **[facility]** *public or private agency, organiza-*  
 2 *tion or institution providing services* for persons with develop-  
 3 mental disabilities shall take affirmative action to employ and  
 4 advance in employment persons with developmental disabilities  
 5 to the extent feasible and practicable.

1     7. Every developmentally disabled person in residence or attend-  
 2 ance at any facility shall be entitled to a writ of habeas corpus  
 3 upon proper petition by such person, or a parent, guardian, repre-  
 4 sentative of guardian services, attorney or other interested party,  
 5 to any court of competent jurisdiction in the county in which such  
 6 person is residing *or in which such facility is located*, and shall  
 7 further be entitled to enforce any of the rights herein stated by  
 8 civil action or other remedy otherwise available by common law  
 9 or statute.

1     8. The chief administrator of any facility for persons with  
 2 developmental disabilities shall cause a written notice of the rights,

3 obligations and prohibitions set forth in this act to be given every  
4 developmentally disabled person and such person's parent or  
5 guardian or representative of guardianship services, within 5 days  
6 of the admission of such person to such facility. In addition, the  
7 substance of such rights, obligations and prohibitions shall be  
8 explained to each such person *\*\*over the age of 10 years\*\** in sim-  
9 ple, understandable language, reasonably calculated to assure that  
10 the person comprehends the substance to the best of the person's  
11 ability. A full list of such rights, obligations and prohibitions shall  
12 be prominently posted in all wards and public rooms of the facility.

1 9. Every service for persons with developmental disabilities  
2 offered by any facility shall be designed to maximize the develop-  
3 mental potential of such persons and shall be provided in a humane  
4 manner in accordance with generally accepted standards for the  
5 delivery of such service and with full recognition and respect for  
6 the dignity, individuality and constitutional, civil and legal rights  
7 of each person receiving such service, and in a setting and manner  
8 which is least restrictive of each person's personal liberty.

1 10. **\*\*[The chief administrator of every facility]\*\*** *\*\*Every*  
2 *agency, organization or institution providing services\*\** for persons  
3 with developmental disabilities shall cause a written, individualized  
4 habilitation plan to be developed and placed into effect for each  
5 person **\*\*[in residence or attendance at such facility]\*\*** *\*\*for*  
6 *whom such agency, organization or institution is primarily re-*  
7 *sponsible for the delivery or for coordinating the delivery of ser-*  
8 *vices\*\** within **\*\*[7]\*\*** *\*30\** days following the admission of such  
9 person. In the case of persons **\*\*[in residence or attendance]\*\***  
10 *\*\*receiving services through such agency, organization or institu-*  
11 *tion\*\** at the time of enactment of this act, such plan shall be ef-  
12 fected within 60 days following enactment. Such plan shall be  
13 developed and may be revised from time to time by appropriate  
14 representatives of such **\*\*[facility]\*\*** *\*\*agency, organization or*  
15 *institution\*\** in consultation with such person and such person's  
16 parents, guardian, representative of guardianship services or other  
17 interested party.

1 11. Such plan shall **\*\*[contain]\*\***:

2 a. **\*\*[A]\*\*** *\*\*Include a\*\** statement of the long-term habilitation  
3 goals for such person and the intermediate objectives relating to  
4 the attainments of such goals. Such objectives shall be stated  
5 specifically and in sequence and shall be expressed in behavioral  
6 or other terms that provide measurable indices of progress;

7 b. Describe how the objectives will be achieved and the barriers  
8 that might interfere with the achievement of them;

9 c. State an objective criteria and an evaluation procedure and  
10 schedule for determining whether such objective and goals are  
11 being achieved;

12 d. Provide a coordinator who will be responsible for the imple-  
13 mentation of the plan;

14 e. Specify habilitation services to be provided;

15 f. Describe the personnel, including their qualifications, neces-  
16 sary for the provision of the services described in such plan;

17 g. Specify the date of initiation and the anticipated duration of  
18 each service to be provided;

19 h. Specify the role and objectives of all parties to the imple-  
20 mentation of the plan.

1 12. The plan coordinator shall review such plan at least every  
2 ~~\*[60 days]\*~~ *\*12 months\** and shall provide an opportunity at least  
3 ~~\*[semiannually]\*~~ *\*annually\** for the person for whom the plan is  
4 designed and such person's parents, guardian, representative of  
5 guardianship services or other interested party to review such plan.

1 13. This act shall take effect immediately.



## STATEMENT

This bill declares that persons with developmental disabilities are entitled to certain fundamental rights as citizens; that these rights shall not be abrogated solely by reason of admission to any facility or receipt of any service for developmentally disabled persons; and that services for the developmentally disabled shall be offered in a manner which respects the dignity, individuality and constitutional, civil and legal rights of such persons.

The bill specifies certain rights which the developmentally disabled are entitled to while in residence or attendance at any facility for the developmentally disabled, including the right to register and vote, to exercise one's religion, to communicate privately by mail, telephone or personal visitation, and to confidential handling of records.

The bill also prohibits a facility from employing corporal punishment; the use of medication except where necessary and appropriate as an element of the treatment being provided; any restraint or isolation except in certain violent situations; and the administration of any shock treatment, psychosurgery, sterilization or experimental research without the express and informed consent of the person.

A major provision of the bill requires that each developmentally disabled person in a facility shall receive services in accordance with an individualized habilitation plan which shall state the intermediate objectives and long-term goals of treatment and specific services to be provided under the guidance of a plan coordinator.

ASSEMBLY INSTITUTIONS, HEALTH AND  
WELFARE COMMITTEE

STATEMENT TO

**SENATE, No. 1384**

[OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: JULY 30, 1976

## BACKGROUND AND PURPOSE:

Chapter 85 of 1975, which provided a guarantee of civil rights and treatment standards for the mentally ill, deleted existing statutory references to the proper care and treatment of the mentally retarded. As a result, a void technically exists at present with regard to the rights of the retarded. In addition, a recent Federal law, "The Developmentally Disabled Assistance and Bill of Rights Act," requires that each state, as a condition of continuing to receive Federal funds for programs dealing with the developmentally disabled (i.e., conditions such as mental retardation, cerebral palsy, epilepsy, autism and similar disorders), have in effect by October, 1977 a program to, among other things, establish and protect the rights of the developmentally disabled and provide treatment in accordance with an individualized habilitation plan. Much of the language in this bill is patterned after the Federal act.

## PROVISIONS:

The provisions of this bill, in its amended form, apply to persons in residence or attendance at any public or private facility for the developmentally disabled. It declares that such persons are entitled to certain fundamental rights as citizens; that these rights shall not be abrogated solely by reason of admission to any facility or receipt of any service for the developmentally disabled; and that services be offered to such persons in a manner which respects their dignity, individuality and constitutional, civil and legal rights.

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shock treatment, psychosurgery, sterilization or medical, behavioral or pharmacological research without the express and informed consent of the person or such person's guardian ad litem.

A major provision of the bill requires that each developmentally disabled person shall receive services in accordance with an individualized habilitation plan which shall state the intermediate objectives and long-term goals of treatment and specific services to be provided under the guidance of plan coordinator.

SENATE INSTITUTIONS, HEALTH AND WELFARE  
COMMITTEE

STATEMENT TO

**SENATE, No. 1384**

with Senate committee amendment

**STATE OF NEW JERSEY**

DATED: MAY 17, 1976

BACKGROUND AND PURPOSE

Chapter 85 of 1975, which provided a guarantee of civil rights and treatment standards for the mentally ill, deleted existing statutory references to the proper care and treatment of the mentally retarded. As a result, a void technically exists at present with regard to the rights of the retarded. In addition, a recent Federal law, "The Developmentally Disabled Assistance and Bill of Rights Act," requires that each state, as a condition of continuing to receive Federal funds for programs dealing with the developmentally disabled (i.e., conditions such as mental retardation, cerebral palsy, epilepsy, autism and similar disorders), have in effect by October, 1977 a program to among other things, establish and protect the rights of the developmentally disabled and provide treatment in accordance with an individualized habilitation plan. Much of the language in this bill is patterned after the Federal act.

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The bill specifies certain rights which the developmentally disabled are entitled to while in residence or attendance at any facility for the developmentally disabled, including the right to register and vote, to exercise one's religion, to communicate privately by mail, telephone or personal visitation, and to confidential handling of records.

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A major provision of the bill requires that each developmentally disabled person in a facility shall receive services in accordance with an individualized habilitation plan which shall state the intermediate objectives and long-term goals of treatment and specific services to be provided under the guidance of a plan coordinator.

#### AMENDMENTS

Certain minor amendments were adopted by the committee at the suggestion of the Division of Mental Retardation in the Department of Institutions and Agencies. These amendments do the following:

a. Provide for bathing of patients in isolation every 24 hours rather than every 12;

b. Redefine the prohibition against "experimental research" without consent as a prohibition against "medical or clinical investigation or research." The latter term was considered to be a more appropriate description for the type of risk experimentation which has been conducted in the past without the patient's knowledge or consent;

c. Insure that a minor or a mentally incompetent adult will have the protection of a guardian *ad litem* at the time that consent is requested for any shock treatment, psychosurgery, sterilization or medical or clinical investigation or research; and

d. Lengthen the time limit for the establishment of a habilitation plan from 7 to 30 days following admittance, and the time for review of the plan from every 60 days to annually.

#### POSITIONS OF INTERESTED PARTIES

Support was expressed for the bill during the committee meeting by the Division of Mental Retardation in the Department of Institutions and Agencies; the Division of Mental Health Advocacy in the Department of the Public Advocate; and the New Jersey Association for Retarded Citizens.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

MAY 5, 1977

FOR FURTHER INFORMATION

ANNE BURNS

Governor Brendan Byrne has signed S-1384, sponsored by Senator Alexander J. Menza (D-Union), the Developmentally Disabled Rights Act.

The bill states that people with developmental disabilities are entitled to certain fundamental rights as citizens and that these rights cannot be abolished simply because the person is admitted to any facility for the disabled or because they receive special services or treatment for their disability.

The bill also establishes procedures by which physical or chemical restraints, isolation or certain types of treatment may be administered.

In addition, the bill requires that an individual plan for treatment with intermediate and long range goals be prepared for each patient receiving services.

Included in the bill's definition of developmental disabilities are mental retardation, cerebral palsy, epilepsy, autism and dyslexia.

In approving the bill the Governor noted a controversy over whether dyslexia should be included in the definition.

"While parents of children with dyslexia have argued persuasively that this is not a developmental disability, there is a possibility that federal funding will be jeopardized if we do not include dyslexia in the definition," the Governor said.

"If the federal task force studying this issue reports that dyslexia should be excluded from the definition, I will support legislation to amend this bill," he continued.

The Governor also stated that no appropriation is provided for by the bill, and that no provision has been made in the pending appropriations bill to provide the funding for this legislation.

"The Department of Human Services estimates that implementation for fiscal year 1978 will cost a minimum of \$900,000," the Governor said.

"As I have said many times, before, I am concerned that the Legislature does not raise the expectation of citizens who would benefit from this bill and then dash those hopes by failing to provide the funds to properly implement this bill" he said.

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