

DISTRICT OF
COLUMBIA
OFFICIAL CODE
for
MENTALLY
RETARDED
CITIZENS

CHAPTER 13 MENTALLY RETARDED CITIZENS

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7-1301.03. Definitions

As used in this chapter:

(1) "Admission" means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility.

(2) "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.

(2A) "Cause injury to others as a result of the individual's mental retardation" means cause injury to others as a result of deficits in adaptive functioning associated with mental retardation.

(3) "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 customers of the facility.

(4) "Commitment" means the placement in a 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 or of an individual found incompetent in a criminal case at the request of the District; except it shall not include placement for respite care.

(5) "Community-based services" means non-residential specialized or generic services for the evaluation, 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.

(5A) "Competent" means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an unambiguous manner.

(6) "Comprehensive evaluation" means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include, but not be limited to, a physical examination that includes the person's medical

history; an educational evaluation, vocational evaluation, or both; a psychological evaluation, including an evaluation of cognitive and adaptive functioning levels; a social evaluation; and a dental examination.

(7) "Council" means the Council of the District of Columbia.

(8) "Court" means the Superior Court of the District of Columbia.

(8A) "Crime of violence" has the same meaning as in § 23-1331(4).

(8B) "Customer" means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care.

(9) "Department of Human Services" means the Department of Human Services of the District of Columbia.

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

(11) "District" means the District of Columbia government.

(11A) "DSM-IV" means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(11B) "DSM-IV 'V' Codes" means "V" codes as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

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

(13) "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 any supervised group residence for mentally retarded persons under 18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term "facility" may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term "facility" does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for the mentally ill within the meaning of § 24-501.

(14) "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 or her own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, 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.

(14A) "ICD-9-CM" means the most recent version of the International Classification of Diseases Code Manual.

(14B) "Individual found incompetent in a criminal case" means an individual who:

(A) Is at least mildly mentally retarded;

(B) Is charged with a crime of violence or sex offense;

(C) Has been found incompetent to stand trial, or to participate in sentencing or transfer proceedings; and

(D) Has been found not likely to gain competence in the foreseeable future.

(15) "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.

(16) "Least restrictive alternative" means that living and/or habilitation 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 from:

(A) More to less structured living;

(B) Larger to smaller facilities;

(C) Larger to smaller living units;

(D) Group to individual residences;

(E) Segregated from the community to integrated with community living and programming; and/or

(F) Dependent to independent living.

(17) "Mayor" means the Mayor of the District of Columbia.

(17A) "Mental illness" means a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV "V" codes, substance abuse disorders, mental retardation, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

(18) "Mental retardation advocate" means a member of the group of advocates created pursuant to § 7-1304.13.

(19) "Mental retardation" or "mentally retarded" means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly subaverage intellectual functioning, existing concurrently with 2 or more significant limitations in adaptive functioning.

(19A) "MRDDA" means the Mental Retardation and Developmental Disabilities Administration of the District of Columbia, Department of Human Services.

(20) "Normalization principle" means the principle of aiding mentally retarded persons to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society.

(21) "Qualified mental retardation professional" means:

(A) A psychologist with at least a master's degree from an accredited program and with specialized training or 1 year of experience in mental retardation; or

(B) 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 or with 1 year of experience in treating the mentally retarded; or

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with mentally retarded persons; or

(D) 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 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 subparagraph (i) of this subparagraph, and who has specialized training in mental retardation or 1 year of experience in working with mentally retarded persons; or

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with mentally retarded persons; or

(F) 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 1 year of experience in working with mentally retarded persons; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with mentally retarded persons.

(22) "Resident of the District of Columbia" means a person who maintains his or her principal place of abode in the District of Columbia, including a person with mental retardation who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with mental retardation who is under 21 years of age shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with mental retardation is a resident of the District of Columbia.

(23) "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.

(24) "Respondent" means the person whose commitment or continued commitment is being sought in any proceeding under this chapter.

(24A) "Screening" means an assessment of a person with mental retardation in accordance with standards issued by the Accreditation Council for Services for People

with Developmental Disabilities, which is designed to determine if a further evaluation of the person with mental retardation or other interventions are indicated.

(24B) "Sex offenses" means offenses in § 22-3001 et seq., but does not include any offense described in § 22-4016(b).

(25) "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.

(26) "Transfer proceedings" means the proceedings pursuant to § 16-2307 to transfer an individual less than 18 years of age from Family Court to Criminal Court in the Superior Court of the District of Columbia to face adult criminal charges.

§ 7-1302.01. Determination of need for mental retardation facilities and services in the District.

§ 7-1303.01. Competence of individual to refuse commitment [Formerly § 6-1921]

(a) Except as provided in subsection (b) of this section, no individual 14 years of age or older who has or is believed to have mental retardation shall be committed to a facility if the individual is determined by the Court to be competent to refuse such commitment. For purposes of this chapter, persons 14 years of age and older shall be presumed competent to refuse commitment.

(b) The Court may commit an individual pursuant to § 7-1304.06a irrespective of the individual's competence to refuse such commitment.

§ 7-1303.02. Voluntary admission

(a) Any individual 14 years of age or older who has mental retardation, may have mental retardation, or has been diagnosed with mental retardation may apply to a Director of a facility for voluntary admission to that facility for habilitation and care. The Director may admit the individual; provided, that the Director has determined that the individual is at least 14 years of age.

(b) Within 10 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 30 days of the admission.

(c) (1) 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.

(2) The determination of competency shall consider, but not be limited to, an inquiry into the individual's understanding of what habilitation and care will be provided in the facility, and what alternative means of habilitation and care are available from

community-based services.

(3) 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 subchapter IV of this chapter to resolve the issues of competency and/or voluntariness.

(4) If the Court determines that the admission is 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 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.

§ 7-1303.03. Application by individual for out-patient nonresidential habilitation

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Any individual 14 years of age or older who has mental retardation, may have mental retardation, or has been diagnosed with mental retardation 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 Services. 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 Services, and the Department of Human Services shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation.

§ 7-1303.04. Petition for commitment of individual 14 years of age or older filed by parent or guardian or by the District

(a) A written petition by a parent or guardian may be filed with the Court to have an individual 14 years of age or older, who is or is believed to have mental retardation, 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 subchapter IV of this chapter. 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.

(b) If, on a petition filed pursuant to subsection (a) of this section, 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:

(1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) 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 § 7-1304.03;

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

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b-1) For an individual found incompetent in a criminal case, a written petition by the District may be filed with the Court to have the individual committed to a facility. Upon the filing of the petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter [§ 7-1304.11 et seq.].

(c) The facility, its sponsoring agency, or the Department of Human Services shall provide a written certification to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual habitation plan will be implemented.

1303.05. Application by parent or guardian for nonresidential habilitation

Any parent or guardian may apply on behalf of an individual under 14 years of age who is or is believed to have mental retardation to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department of Human Services. 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 Services, and the Department of Human Services shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation.

§ 7-1303.06. Petition for commitment of individual under 14 years of age filed by parent or guardian

(a) A parent or guardian may file a written petition with the Court to have an individual under 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 subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within one year

prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under § 7-1304.03;

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

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b) The facility, its sponsoring agency, or the Department of Human Services shall provide a written statement to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual's habilitation plan will be implemented.

§ 7-1303.07. Immediate discharge from facility upon request by individual

Any individual 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. -1303.08. Discharge from commitment upon request by parent or guardian

Customers committed pursuant to § 7-1303.04(b) or § 7-1303.06 shall be discharged if the parent or guardian who petitioned for the commitment requests the customer's release in writing to the Court and the Court determines, based on consultation with the customer, his or her counsel and the customer's mental retardation advocate, if one has been appointed, that the customer consents to such release. Such customers also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence.

§ 7-1303.09. Transfer of individual from one facility to another

(a) The Department of Human Services may recommend to the Court that an individual committed to the facility be transferred to another facility if the Department of Human Services determines that it would be beneficial and consistent with the habilitation needs of the individual to do so. Notice of the recommendation shall be served on the individual, the individual's counsel, the individual's parent or guardian who petitioned for the commitment and the individual'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 subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the individual, the individual's parent or guardian, or, in the case of an individual committed under § 7-1304.06a, the District requests a hearing by petitioning the Court in writing within 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. In the case of an individual committed under § 7-1304.06a, the Court shall also consider whether the proposed placement can provide sufficient supervision or security to prevent the individual from causing injury to others as a result of the individual's mental retardation. Due consideration shall be given to the relationship of the individual to his or her family, guardian, or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) An individual admitted to a facility can be transferred to another facility if the individual consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of an individual to a health care facility without prior Court approval in an emergency situation when the life of the individual is in danger. In such circumstances, consent of the individual, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the individual cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Department of Human Services, with notice promptly given to the parent or guardian. Consent of the individual, parent, or guardian is not required if the District sought commitment. The parent, guardian, counsel for the individual, and mental retardation advocate shall be notified promptly of the transfer.

§ 7-1303.10. Discharge from residential care

(a) The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. In the case of an individual committed under § 7-1304.06a, the Director shall also consider whether the individual would be likely to cause injury to others as a result of his or her mental retardation if the individual were to be discharged from residential care.

(b) Notice of the proposed discharge under subsection (a) of this section shall be served on the resident, the resident's parent or guardian, the resident's counsel, the mental retardation advocate, and, in the case of an individual committed under § 7-1304.06a, the District at least 30 days prior to the proposed discharge. If the resident, the resident's parent or guardian, the resident's counsel, the mental retardation advocate, or, in the case of an individual committed under § 7-1304.06a, the District objects to the discharge, he or she, or the District, may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. Any objecting party shall file the petition requesting a hearing with the Court within 10 days of receiving the notice. The hearing, if one is requested, shall be held on or before the discharge date. The resident shall not be discharged prior to the hearing.

§ 7-1303.11. Payment for habilitation and care

(a) A person with mental retardation, or the father, mother, spouse, or adult child of a person with mental retardation, who receives habilitation, care, or both from the District pursuant to this chapter, shall pay to the District the costs of habilitation, care, or both received by the person with mental retardation if the person with mental retardation, or the father, mother, spouse, or adult child of the person with mental retardation, or the estate of the person with mental retardation is able to pay the costs of habilitation, care, or both received.

(b) If any person made liable by subsection (a) of this section does not pay the costs of habilitation, care, or both received by the person with mental retardation, the court shall issue to the liable person a citation to show cause why that person should not be adjudged to pay a portion or all of the expenses of habilitation, care, or both of the person with mental retardation. The citation shall be served at least 10 days before the show cause hearing. If, upon the hearing, it appears to the court that the person made liable by subsection (a) of this section does not have sufficient resources to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of a reasonable amount of the costs of habilitation, care, or both received based on the liable person's resources. The court may order the liable person to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced against any property of the liable person as if the order were an order for temporary alimony in a divorce case.

(c) The Mayor may examine, under oath, the father, mother, spouse, adult child, and the executor of the estate of the person with mental retardation who receives habilitation, care, or both if the person lives in the District of Columbia, to ascertain the person's ability, or the ability of the estate, to pay the full costs or contribute to the costs of habilitation, care, or both of the person with mental retardation.

§ 7-1303.12. Court hearing required prior to commitment

Except as provided in § 7-1303.12a, no person with mental retardation shall be committed to a facility under this chapter prior to the Court hearing required under this subchapter. § 7-1303.12a. Placement pending petition and commitment proceedings

(a) In the case of an individual found incompetent in a criminal case, the District shall have no more than 30 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future in which to file a petition pursuant to § 7-1303.04(b-1). For extraordinary cause shown, the Court may extend the period of time within which the petition must be filed.

(b) In the case of an individual found incompetent in a criminal case prior to October 17, 2002, the District shall have 60 days following October 17, 2002, in which to file a petition pursuant to § 7-1303.04(b-1) for commitment of an individual who is committed pursuant to § 7-1303.04(a), or of an individual whom the Court, within 365 days prior to

October 17, 2002, found incompetent and not likely to gain competency in the foreseeable future.

(c) While awaiting the District's decision pursuant to subsection (a) of this section and during the pendency of any resultant commitment proceedings, the Court may order the individual placed with MRDDA for placement in a setting that MRDDA preliminarily determines can provide habilitation services consistent with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of his or her mental retardation.

(d) If the Court or MRDDA places the person in a setting that does not meet the definition of a facility contained in § 7-1301.03(13), the hearing pursuant to § 7-1304.06a shall commence no later than 90 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future. If the hearing does not commence before the expiration of the 90-day time period, the Court shall place the individual with the MRDDA for placement in a facility that does satisfy § 7-1301.03(13) and that MRDDA preliminarily determines can provide habilitation services consistent with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of the individual's mental retardation.

§ 7-1303.13. Effect of determination of incompetency to refuse commitment

A determination by the Court under this subchapter that an individual 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.

§ 7-1303.14. Rules and regulations governing respite care

(a) The Department of Human Services shall promulgate rules and regulations governing the provision of respite care for persons with mental retardation. These shall provide that periods of respite care shall not exceed 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter.

(b) Should any person be detained for respite care for a period exceeding 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter, he or she shall be promptly discharged.

§ 7-1304 SUBCHAPTER IV. HEARING AND REVIEW PROCEDURES (NOT PRINTED HERE)

§ 7-1305.01. Habilitation and care; habilitation program

(a) To the extent that appropriated funds are available to carry out the purposes of this chapter, no District resident with mental retardation shall be denied habilitation, care, or both suited to the person's needs regardless of the person's age, degree of retardation, or handicapping condition.

(b) To the extent that appropriated funds are available to carry out the purposes of this chapter, each customer shall be provided a habilitation program that will maximize the customer's human abilities, enhance the customer's ability to cope with the customer's environment, and create a reasonable opportunity for progress toward the goal of independent living.

(c) Notwithstanding subsection (a) of this section, no individual subject to commitment pursuant to § 7-1304.06a shall be denied habilitation, care, or both suited to the person's needs, regardless of the person's age, degree of retardation, or handicapping condition.

(d) Notwithstanding subsection (b) of this section, an individual subject to commitment pursuant to § 7-1304.06a shall be provided a habilitation program that will maximize the person's human abilities, enhance the person's ability to cope with the person's environment, and create a reasonable opportunity for progress toward the goal of independent living.

§ 7-1305.02. Living conditions; teaching of skills

Customers shall be provided with the least restrictive and most normal living conditions possible. Individuals with mental retardation found incompetent in a criminal case shall be provided with the least restrictive and most normal living conditions possible consistent with preventing the individual from causing injury to others as a result of the individual's mental retardation. 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. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living and, in the case of an individual committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses.

§ 7-1305.03. Least restrictive conditions

Customers shall have a right to the least restrictive conditions necessary and available to achieve the purposes of habilitation. To this end, the institution or residential facility shall move customers from: (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a customer should be transferred out of the facility to a less restrictive environment, he or she shall immediately notify the Court pursuant to § 7-1303.09. Notice shall be provided to the customer, the customer's counsel, the customer's mental retardation advocate, if one has been appointed, and the customer's parent or guardian who petitioned for the commitment.

§ 7-1305.04. Comprehensive evaluation and individual habilitation plan

(a) Prior to each customer's commitment pursuant to § 7-1304.03, the customer shall receive a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to § 7-1303.02, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan. Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team in accordance with Accreditation Council for Services for People with Developmental Disabilities Standards.

(b) Within 10 days of a customer's commitment pursuant to § 7-1304.03, or within 30 days of admission pursuant to § 7-1303.02, the facility, the facility's sponsoring agency, or the Department of Human Services shall:

(1) Designate each professional or staff member who is responsible for implementing or overseeing the implementation of a customer's individual habilitation plan;

(2) Designate each District agency, private agency, or service responsible for providing the habilitation included in the plan; and

(3) Specify the role and objectives of each District agency, private agency, or service with respect to the plan.

(c) To the extent of funds appropriated for the purposes of this chapter, each customer shall receive habilitation, care, or both consistent with the recommendations included in the customer's individual habilitation plan. The Department of Human Services shall set standards for habilitation and care provided to such customers, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons, including staff-customer and professional-customer ratios. In the interests of continuity of care, 1 qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the customer should be released to a less restrictive setting and for continually reviewing the plan.

§ 7-1305.05. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication

(a) Subject to restrictions by a physician for good cause, each customer 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 the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the customer and his or her visitors. Notwithstanding the above, each customer 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 customer's

use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The customer shall have the right to send and receive sealed and uncensored mail. The customer has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded reasonable use of long distance calls. A customer who is unable to pay shall be furnished such writing, postage, and telephone facilities without charge.

(c) Each customer 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 worship and/or transportation to nearby religious services. Customers who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each customer 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, for his or her personal possessions. A record shall be kept of each customer'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 customer shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each customer 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 customer 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 customers 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 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 a 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 customer under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 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 customer's habilitation program.

§ 7-1305.06. Prohibited psychological therapies

No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving aversive stimuli or deprivation of rights set forth in this subchapter shall be administered to any resident.

§ 7-1305.07. Essential surgery in medical emergency

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 customer, essential surgery may be administered without the consent of the customer if the necessary information is provided to the customer'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.

§ 7-1305.08. Sterilization

No customer 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.

§ 7-1305.09. Experimental research

Customers shall have a right not to be subjected to experimental research without the express and informed consent of the customer, or if the customer cannot give informed consent, of the customer's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department of Human Services 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 and Human Services for projects supported by that agency.

§ 7-1305.10. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures

(a) Mistreatment, neglect or abuse in any form of any customer 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 customer 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 customer's record) and only if such restraints impose 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 12 hours. A customer placed in restraint shall be checked at least every 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 customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a customer 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 customer shall be reported immediately to the Director and the Director shall inform the customer's counsel, parent or guardian who petitioned for the commitment, and the customer'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 customer's counsel, parent or guardian who petitioned for commitment and a customer's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs.

§ 7-1305.11. Performance of labor

(a) No customer 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 customers who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum

wages.

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

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

§ 7-1305.12. Maintenance of records; information considered privileged and confidential; access; contents

Complete records for each customer shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular customer and to the Department of Human Services without divulging the identity of the customer. All information contained in a customer's records shall be considered privileged and confidential. The customer's parent or guardian who petitioned for the commitment, the customer's counsel, the customer's mental retardation advocate and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records. These records shall include:

- (1) Identification data, including the customer's legal status;
- (2) The customer'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 customer's grievances, if any;
- (4) An inventory of the customer'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 any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the customer's program;
- (7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures 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 customer;
- (10) A summary of the customer's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 7-1305.04(c) to supervise the customer's habilitation;
- (11) A monthly summary of the extent and nature of the customer's work activities and the effect of such activity upon the customer's progress along the habilitation plan;
- (12) A signed order by a professional person, as set forth in § 7-1305.10(b), for any physical restraints;
- (13) A description of any extraordinary incident or accident in the facility involving the customer, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of customer'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.

§ 7-1305.13. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses

- (a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded persons with mental retardation under this chapter.
- (b) Any customer shall have the right to a civil remedy in an amount not less than \$ 25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said customer at a facility is not provided a program adequate for habilitation and normalization pursuant to the customer's individual habilitation plan, unless the District is unable to pay the cost of recommended services because available funds appropriated for the purposes of this chapter are insufficient to pay the costs.
- (c) Sovereign immunity shall not bar an action under this section.
- (d) The good faith belief that an 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 customer within 5 days of a Court's decision that the program is inappropriate.

(e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section.

§ 7-1305.14. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions

(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 chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter 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.

§ 7-1305.15. Coordination of services for dually diagnosed individuals

If an individual is committed by the Court to MRDDA pursuant to this chapter or committed by the Court to the Department of Mental Health pursuant to subchapter IV of Chapter 5 of Title 21, or if an individual is temporarily placed with MRDDA pursuant to § 7-1303.12a during the pendency of commitment proceedings, and MRDDA or the Department of Mental Health has reason to believe that the committed individual or the individual temporarily placed with MRDDA pursuant to § 7-1303.12a is dually diagnosed as having both mental illness and mental retardation, MRDDA and the Department of Mental Health shall collaborate in assessing the individual and shall jointly provide appropriate supports and services for the individual

§ 7-1306.01. Increased financial responsibility

§ 7-1306.02. Severability

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

§ 7-1306.03. Appropriations

There is hereby authorized to be appropriated such District funds as may be necessary and available to implement the provisions of this chapter, including funds for the development, and the support, of community-based services for persons with mental retardation.

§ 7-1306.03a. Rules for implementation

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

§ 7-1306.04. Authority of Board of Education unchanged

Nothing herein shall be construed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to Title 38 of the District of Columbia Code and applicable federal laws and regulations.

§ 7-1306.05. Effective date

This chapter shall take effect pursuant to the provisions of § 1-206.02(c)(1). With respect to persons who are residents in facilities on the effective date of this chapter, the provisions of the chapter will take effect immediately, with the exception of the admission and commitment hearing procedures established in subchapters III and IV of this chapter. The Court shall begin hearings under subchapters III and IV of this chapter to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such persons, as soon as possible, but not later than 180 days after the effective date of this chapter. All Court hearings to review the admission or commitment of persons residing in facilities on the effective date of this chapter shall be completed within 3 years of the effective date of this chapter.

HISTORY: 1973 Ed., § 6-1652; Mar. 3, 1979, D.C. Law 2-137, § 103, 25 DCR 5094; 1981 Ed., § 6-1902; Sept. 26, 1995, D.C. Law 11-52, § 506(b), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(a), 49 DCR 7647.

NOTES:

SECTION REFERENCES. --This section is referenced in § 7-1303.12a and § 16-2315.

EFFECT OF AMENDMENTS. --D.C. Law 14-199 added (2A); added "or of an individual found incompetent in a criminal case at the request of the District" in (4); inserted present (8A) and redesignated former (8A) as (8B); added (11A) and (11B); added the last two sentences in (13); inserted "including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex

offenses" in (14); added (14A), (14B), and (17A); rewrote (19); and added (19A), (24B), and (26).

EMERGENCY ACT AMENDMENTS. --For temporary amendment of this section, see § 2(a) of the Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 13-383, June 12, 2002, 49 DCR 5701).

For temporary amendment of section, see § 2(a) of the Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

LEGISLATIVE HISTORY OF LAW 2-137. --See note to § 7-1301.02.

LEGISLATIVE HISTORY OF LAW 10-253. --See note to § 7-1301.02.

LEGISLATIVE HISTORY OF LAW 11-52. --See note to § 7-1301.02.

LEGISLATIVE HISTORY OF LAW 14-199. --Law 14-199, the "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002," was introduced in Council and assigned Bill No. 14-616. The Bill was adopted on first and second readings on June 4, 2002 and July 2, 2002, respectively. Signed by the Mayor on July 17, 2002, it was assigned Act No. 14-432 and transmitted to Congress for its review. D.C. Law 14-199 became effective on October 17, 2002.

ANALYSIS

Construction
Guardian

CONSTRUCTION.

When construing D.C. Code 7-1301.03(1), as it applies to a person who is only mildly retarded, the inclusion of the words "at least moderately mentally retarded" in the definition of "admission" was an oversight by the City Council, and as such, voluntary admissions are available to mentally retarded persons regardless of their degree of retardation. *In re Bicksler, App. D.C., 501 A.2d 1 (1985)*.

GUARDIAN.

The term "guardian", as used in the definition of respite care under D.C. Code § 7-1301.03(23), does not include a government entity such as the Department of Human Services, even if it acts as a provider of care to a mentally retarded person given the emphasis in the legislative history on maintaining family ties with a mentally retarded person. *In re Williams, App. D.C., 471 A.2d 263 (1984)*.