
By Mr. Olver, a petition (accompanied by bill, Senate, No. 511) of John W. Olver, Alan D. Sisitsky, Jack H. Backman and John G. King for legislation to establish rights of the developmentally disabled. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-eight.

AN ACT ESTABLISHING RIGHTS OF THE DEVELOPMENTALLY DISABLED.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. For the purposes of this act, developmentally
2 disabled shall mean any person who because of a temporary
3 or more permanent adjustment difficulties or attributes arising
4 from intellectual, sensory, emotional or physical factors,
5 cerebral dysfunctions, perceptual factors, or other specific
6 learning disabilities or any combination thereof, is prohibited
7 from fully developing his or her educational, vocational or
8 social potential.

1 SECTION 2. No developmentally disabled person shall be
2 presumed to be incompetent or shall be discriminated against
3 or shall be deprived of any constitutional, civil or legal right
4 solely by reason of admission to or residence at a facility or
5 solely by reason of receipt of any services for developmentally
6 disabled persons. The following rights are fully preserved:

- 7 a) To register and vote at elections.
- 8 b) Free exercise of religion.
- 9 c) To receive and send unopened correspondence and, upon
10 request, to obtain assistance in writing and reading such
11 correspondence.
- 12 d) Private visitations and private telephone conversations
13 without prior notice during reasonably set visiting hours
14 with any one of the developmentally disabled person's
15 choice.
- 16 e) Reasonable opportunities for interaction with members
17 of the opposite sex.

18 f) Confidential handling of personal and medical records.

1 SECTION 3.

2 a) Medication or chemical restraint can be administered
3 only with the written authorization of a physician for
4 sound medical or behavioral reasons. All such drugs
5 must be promptly recorded in the person's medical rec-
6 ord.

7 b) The retarded person may be restrained or isolated only
8 in emergency situations for the control of violent, dis-
9 turbed or depressed behavior which has resulted in, or
10 may immediately result in, harm to himself, some other
11 person, or substantial property damage. Conditions for
12 restraint or isolation are rigidly controlled and call for:
13 twenty-four hour authorizations by administrator or his
14 designee, checks by an attendant every fifteen minutes,
15 and a bath once every twenty-four hours. Restraint or
16 isolation must be terminated if the attending physician
17 finds the procedure medically unsound.

18 c) Shock treatment, psychosurgery sterilization, or medi-
19 cal, behavioral, or pharmacological research require the
20 person's consent, if competent. If the person is a minor
21 or incompetent, a special guardian ad litem must be
22 appointed. Either the party alleging the necessity for the
23 procedure or the guardian ad litem may petition the
24 court to hold a hearing at which the person is present
25 and represented by counsel.

26 The burden of proof is on the party proposing the pro-
27 cedure. Hazardous or intrusive experimental research
28 not related to specific goals of the person's treatment
29 program is prohibited.

30 d) Corporeal punishment is absolutely prohibited.

1 SECTION 4. Every developmentally disabled person in resi-
2 dential care must receive a nutritionally adequate and suf-
3 ficient diet and appropriate, sufficient and timely medical and
4 dental care.

5 Every person between the ages of five and twenty-one in-
6 clusive in residence or full-time attendance at any facility

7 must receive a thorough and efficient education suited to his
8 age and abilities.

9 Every public or private agency, organization, or institution
10 providing services to developmentally disabled persons must
11 take affirmative action to employ and advance in employment
12 developmentally disabled persons to the extent feasible and
13 practicable.

14 Every developmentally disabled person in residence or at-
15 tendance at any facility is entitled to a writ of habeas corpus
16 upon petition by himself or any concerned person. Access to
17 the courts for enforcement of any of the rights stated in this
18 act is assured.

19 A statement of the rights, obligations and prohibitions con-
20 tained in the act must be supplied to the developmentally dis-
21 abled person and his parent or guardian within five days of ad-
22 mission to a facility. The substance of such statement must
23 be explained in understandable language to each person over
24 ten years old. Notices of such rights, obligations and pro-
25 hibitions must be prominently posted in all wards and public
26 rooms of each facility.

27 Every service offered by any facility must be provided in
28 a humane manner designed to maximize the development of
29 developmentally disabled persons in the least restrictive en-
30 vironment.

1 SECTION 5. Requires that a written, individualized habilita-
2 tion plan be prepared for each person receiving services by the
3 facility primarily responsible for the delivery or coordinating
4 the delivery of services within thirty days following admission.
5 The plans are required for all facilities, residential or other-
6 wise.

7 Features of the plan must:

- 8 a) include a statement of long-term habilitation goals and
9 intermediate objectives.
- 10 b) describe how the goals are to be achieved and the bar-
11 riers involved.
- 12 c) state objective criteria and an evaluation procedure and
13 schedule for determining whether goals are being
14 achieved.

- 15 d) provide a coordinator who is responsible for imple-
16 mentation of the plan.
- 17 e) specify habilitation services to be provided.
- 18 f) name the personnel, including their qualifications, to
19 provide services described in the plan.
- 20 g) specify a date of initiation and anticipated duration of
21 each service.
- 22 h) include a review of each plan annually by the coordinator
23 and provide an opportunity for review by the develop-
24 mentally disabled person and his parents, guardian or
25 other interested party.