



Rules of the Road: **Florida Law**

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“You have to learn the rules of the game.”

Albert Einstein

Legislative Intent For Personal Treatment

of Persons who are Developmentally Disabled
As found in Chapter 393.13, Florida Statutes (F.S.)

Short Title:

The Bill of Rights of Persons Who Are Developmentally Disabled



(a) The Legislature finds and declares that the system of care provided to individuals who are developmentally disabled must be designed to meet the needs of the clients as well as protect the integrity of their legal and human rights.

(b) The Legislature further finds and declares that the design and delivery of treatment and services to persons who are developmentally disabled should be directed by the principles of normalization and therefore should:

1. Abate the use of large institutions.
2. Continue the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client.
3. Provide training and education to individuals who are developmentally disabled which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.
4. Reduce the use of sheltered workshops and other noncompetitive employment day activities and promote opportunities for gainful employment for persons with developmental disabilities who choose to seek such employment.

(c) It is the intent of the Legislature that duplicative and unnecessary administrative procedures and practices shall be eliminated, and areas of responsibility shall be clearly defined and consolidated in order to economically utilize present resources. Furthermore, personnel providing services should be sufficiently qualified and experienced to meet the needs of the clients, and they must be sufficient in number to provide treatment in a manner which is beneficial to the clients.

(d) It is the intent of the Legislature:

1. To articulate the existing legal and human rights of persons who are developmentally disabled so that they may be exercised and protected. Persons with developmental disabilities shall have all the rights enjoyed by citizens of the state and the United States.
2. To provide a mechanism for the identification, evaluation, and treatment of persons

with developmental disabilities.

3. To divert those individuals from institutional commitment who, by virtue of comprehensive assessment, can be placed in less costly, more effective community environments and programs.
4. To fund improvements in the program in accordance with the availability of state resources and yearly priorities determined by the Legislature.
5. To ensure that persons with developmental disabilities receive treatment and habilitation which fosters the developmental potential of the individual.
6. To provide programs for the proper habilitation and treatment of persons with developmental disabilities which shall include, but not be limited to, comprehensive medical/dental care, education, recreation, specialized therapies, training, social services, transportation, guardianship, family care programs, day habilitation services, and habilitative and rehabilitative services suited to the needs of the individual regardless of age, degree of disability, or handicapping condition. No person with developmental disabilities shall be deprived of these enumerated services by reason of inability to pay.
7. To fully effectuate the normalization principle through the establishment of community services for persons with developmental disabilities as a viable and practical alternative to institutional care at each stage of individual life development. If care in a residential facility becomes necessary, it shall be in the least restrictive setting.



(e) It is the clear, unequivocal intent of this act to guarantee individual dignity, liberty, pursuit of happiness, and protection of the civil and legal rights of persons with developmental disabilities.

Rights of All Persons with

Developmental Disabilities

The rights described in 393.13(3) F.S., shall apply to all persons with developmental disabilities, whether or not such persons are clients of the agency.

- (a) Persons with developmental disabilities shall have a right to dignity, privacy, and humane care, including the right to be free from sexual abuse in residential facilities.



- (b) Persons with developmental disabilities shall have the right to religious freedom and practice. Nothing shall restrict or infringe on a person's right to religious preference and practice.



- (c) Persons with developmental disabilities shall receive services, within available sources, which protect the personal liberty of the individual and which are provided in the least restrictive conditions necessary to achieve the purpose of treatment.



- (d) Persons who are developmentally disabled shall have a right to participate in an appropriate program of quality education and training services, within available resources, regardless of chronological age or degree of disability. Such persons may be provided with instruction in sex education, marriage, and family planning.



- (e) Persons who are developmentally disabled shall have a right to social interaction and to participate in community activities.



- (f) Persons who are developmentally disabled shall have a right to physical exercise and recreational opportunities.



- (g) Persons who are developmentally disabled shall have a right to be free from harm, including unnecessary physical, chemical, or mechanical restraint, isolation, excessive medication, abuse, or neglect.



- (h) Persons who are developmentally disabled shall have a right to consent to or refuse treatment, subject to the provisions of s. 393.12(2)(a), F.S., or chapter 744.



- (i) No otherwise qualified person shall, by reason of having a developmental disability, be excluded from participation in, or be denied the benefits of, or be subject to discrimination under, any program or activity which receives public funds, and all prohibitions set forth under any other statute shall be actionable under this statute.



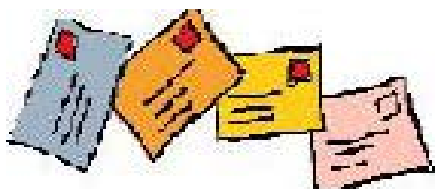
- (j) No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections.



Client Rights

(4) CLIENT RIGHTS.—For purposes of this subsection, the term “client,” as defined in s. 393.063, F.S., shall also include any person served in a facility licensed pursuant to s. 393.067 F.S.

(a) **Clients shall have an unrestricted right to communication:**



1. Each client shall be allowed to receive, send, and mail sealed, unopened correspondence. No client’s incoming or outgoing correspondence shall be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances which may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable examination of such mail and regulate the disposition of such items or substances.

2. Clients in residential facilities shall be afforded reasonable opportunities for telephone communication, to make and receive confidential calls, unless there is reason to believe that the content of the telephone communication may be harmful to the client or others, in which case the chief administrator of the facility may direct reasonable observation and monitoring to the telephone communication.



3. Clients shall have an unrestricted right to visitation subject to reasonable rules of the facility. However, nothing in this provision shall be construed to permit infringement upon other clients’ rights to privacy.

(b) **Each client has the right to the possession and use of his or her own clothing and personal effects**, except in those specific instances where the use of some of these items as reinforcers is essential for training the client as part of an appropriately approved behavioral program. The chief administrator of the facility may take temporary custody of such effects when it is essential to do so for medical or safety reasons. Custody of such personal effects shall be promptly recorded in the client’s record, and a receipt for such effects shall be immediately given to the client, if competent, or the client’s parent or legal guardian.



1. All money belonging to a client held by the agency shall be held in compliance with s. 402.17(2), F.S.
2. All interest on money received and held for the personal use and benefit of a client shall be the property of that client and shall not accrue to the general welfare of all clients or be used to defray the cost of residential care. Interest so accrued shall be

used or conserved for the personal use or benefit of the individual client as provided in s. 402.17(2), F.S.

3. Upon the discharge or death of a client, a final accounting shall be made of all personal effects and money belonging to the client held by the agency. All such personal effects and money, including interest, shall be promptly turned over to the client or his or her heirs.



(c) **Each client shall receive prompt and appropriate medical treatment and care** for physical and mental ailments and for the prevention of any illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community.



1. Medication shall be administered only at the written order of a physician. Medication shall not be used as punishment, for the convenience of staff, as a substitute for implementation of an individual or family support plan or behavior modification programming, or in unnecessary or excessive quantities.



2. Daily notation of medication received by each client in a residential facility shall be kept in the client's record.

3. Periodically, but no less frequently than every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice. All prescriptions shall have a termination date.



4. When pharmacy services are provided at any residential facility, such services shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of chapter 465.

5. Pharmacy services shall be delivered in accordance with the provisions of chapter 465.

6. Prior to instituting a plan of experimental medical treatment or carrying out any necessary surgical procedure, express and informed consent shall be obtained from the client, if competent, or the client's parent or legal guardian. Information upon which the client shall make necessary treatment and surgery decisions shall include, but not be limited to:

- a. The nature and consequences of such procedures.
- b. The risks, benefits, and purposes of such procedures.
- c. Alternate procedures available.

7. When the parent or legal guardian of the client is unknown or



unlocatable and the physician is unwilling to perform surgery based solely on the client's consent, a court of competent jurisdiction shall hold a hearing to determine the appropriateness of the surgical procedure. The client shall be physically present, unless the client's medical condition precludes such presence, represented by counsel, and provided the right and opportunity to be confronted with, and to cross-examine, all witnesses alleging the appropriateness of such procedure. In such proceedings, the burden of proof by clear and convincing evidence shall be on the party alleging the appropriateness of such procedures. The express and informed consent of a person described in subparagraph 6. may be withdrawn at any time, with or without cause, prior to treatment or surgery.

- 8. The absence of express and informed consent notwithstanding, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment would endanger the health of the client.



- (d) **Each client shall have access to individual storage space for his or her private use.**



- (e) **Each client shall be provided with appropriate physical exercise** as prescribed in the client's individual or family support plan. Indoor and outdoor facilities and equipment for such physical exercise shall be provided.



- (f) **Each client shall receive humane discipline.**



- (g) **No client shall be subjected to a treatment program to eliminate bizarre or unusual behaviors** without first being examined by a physician who in his or her best judgment determines that such behaviors are not organically caused.

1. Treatment programs involving the use of noxious or painful stimuli shall be prohibited.

2. All alleged violations of this paragraph shall be reported immediately to the chief administrative officer of the facility or the district administrator, the agency head, and the Florida local advocacy council. A thorough investigation of each incident shall be conducted and a written report of the finding and results of such investigation shall be submitted to the chief administrative officer of the facility or the district administrator and to the agency head within 24 hours of the occurrence or discovery of the incident.



3. The agency shall adopt by rule a system for the oversight of behavioral programs. Such system shall establish guidelines and procedures governing the design, approval, implementation, and monitoring of all behavioral programs involving clients. The system shall ensure statewide and local review by committees of professionals certified as behavior analysts pursuant to s. 393.17, F.S. No behavioral program shall be implemented unless reviewed according to the rules established by the agency under this section. Nothing stated in this section shall prohibit the review of programs by the Florida statewide or local advocacy councils.

(h) **Each client engaged in work programs which require compliance with federal wage and hour laws** shall be provided with minimum wage protection and fair compensation for labor in accordance with the federal wage-per-hour regulations.



(i) **Clients shall have the right to be free from unnecessary physical, chemical, or mechanical restraint.** Restraints shall be employed only in emergencies or to protect the client from imminent injury to himself or herself or others. Restraints shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitative plan. Restraints shall impose the least possible restrictions consistent with their purpose and shall be removed when the emergency ends. Restraints shall not cause physical injury to the client and shall be designed to allow the greatest possible comfort.



1. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered restraints, but shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation, and allowance for change of position.
2. Totally enclosed cribs and barred enclosures shall be considered restraints.
3. Daily reports on the employment of physical, chemical, or mechanical restraints by those specialists authorized in the use of such restraints shall be made to the appropriate chief administrator of the facility, and a monthly summary of such reports shall be relayed to the district administrator and the Florida local advocacy council. The reports shall summarize all such cases of restraints, the type used, the duration of usage, and the reasons therefor. Districts shall submit districtwide quarterly reports of these summaries to the state Developmental Disabilities Program Office.



4. The agency shall post a copy of the rules adopted under this section in each living unit of residential facilities. A copy of the rules adopted under this section shall be given to all staff members of licensed facilities and made a part of all pre-service and in-service training programs.

(j) **Each client shall have a central record.**

1. The record shall include data pertaining to admission and such other information as may be required under rules of the agency.

2. Unless waived by the client, if competent, or the client's parent or legal guardian if the client is incompetent, the client's central record shall be confidential and exempt from the provisions of s. 119.07(1), F.S., and no part of it shall be released except:

- a. The record may be released to physicians, attorneys, and government agencies having need of the record to aid the client, as designated by the client, if competent, or the client's parent or legal guardian, if the client is incompetent.
- b. The record shall be produced in response to a subpoena or released to persons authorized by order of court, excluding matters privileged by other provisions of law.
- c. The record or any part thereof may be disclosed to a qualified researcher, a staff member of the facility, or an employee of the agency when the administrator of the facility or the director of the agency deems it necessary for the treatment of the client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.
- d. Information from the records may be used for statistical and research purposes if the information is abstracted in such a way to protect the identity of individuals.

3. All central records for each client in residential facilities shall be kept on uniform forms distributed by the agency. The central record shall accurately summarize each client's history and present condition.

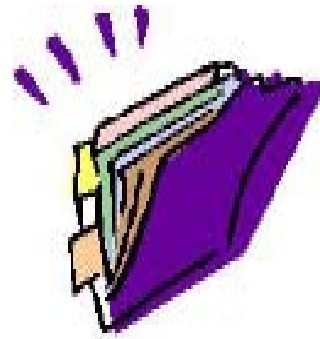
4. The client, if competent, or the client's parent or legal guardian if the client is incompetent, shall be supplied with a copy of the client's central record upon request.



(k) **Each client residing in a residential facility who is eligible to vote in public elections according to the laws of the state shall have the right to vote.** Facilities operators shall arrange the means to exercise the client's right to vote.

(5) **LIABILITY FOR VIOLATIONS.**—Any person who violates or abuses any rights or privileges of persons who are developmentally disabled provided by this act shall be liable for damages as determined by law. Any person who acts in good faith compliance with the provisions of this act shall be immune from civil or criminal liability for actions in connection with evaluation, admission, habilitative programming, education, treatment, or discharge of a client. However, this section shall not relieve any person from liability if such person is guilty of negligence, misfeasance, nonfeasance, or malfeasance.

(6) **NOTICE OF RIGHTS.**—Each person with developmental disabilities, if competent, or



parent or legal guardian of such person if the person is incompetent, shall promptly receive from the agency or the Department of Education a written copy of this act. Each person with developmental disabilities able to comprehend shall be promptly informed, in the language or other mode of communication which such person understands, of the above legal rights of persons with developmental disabilities.

(7) **RESIDENT GOVERNMENT.**—Each residential facility providing services to clients who are desirous and capable of participating shall initiate and develop a program of resident government to hear the views and represent the interests of all clients served by the facility. The resident government shall be composed of residents elected by other residents, staff advisers skilled in the administration of community organizations, and a representative of the Florida local advocacy council. The resident government shall work closely with the Florida local advocacy council and the district administrator to promote the interests and welfare of all residents in the facility.



History.—ss. 1, 2, 3, 4, 5, 6, 7, ch. 75-259; s. 1, ch. 77-174; s. 7, ch. 77-335; s. 7, ch. 79-12; s. 9, ch. 79-320; s. 18, ch. 89-308; s. 3, ch. 90-333; s. 39, ch. 90-347; s. 11, ch. 93-200; s. 16, ch. 94-154; s. 1050, ch. 95-148; s. 208, ch. 96-406; s. 90, ch. 99-8; s. 47, ch. 2000-139; s. 8, ch. 2000-263; s. 79, ch. 2004-267.

