

AN ACT

Codification
District of
Columbia
Official Code

2001 Edition

2002 Winter
Supp.

West Group
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 to establish an involuntary commitment procedure for persons with mental retardation who have been charged with a crime of violence or a sex offense and who have been found incompetent to stand trial, or to participate in sentencing or transfer proceedings, and have been found not likely to gain competence in the foreseeable future.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002".

Sec. 2. The Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*), is amended as follows:

(a) Section 103 (D.C. Official Code § 7-1301.03) is amended as follows:

Amend
§ 7-1301.03

(1) A new paragraph (2A) is added to read as follows:

"(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."

(2) Paragraph (4) is amended by striking the phrase "consent of the individual;" and inserting the phrase "consent of the individual or of an individual found incompetent in a criminal case at the request of the District;" in its place.

(3) Redesignate Paragraph (8A) as Paragraph (8B).

(4) A new paragraph (8A) is added to read as follows:

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

(5) New paragraphs (11A) and (11B) are added to read as follows:

"(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."

(6) Paragraph (13) is amended by striking the phrase "18 years of age." and inserting the phrase "18 years of age. For persons committed or for whom commitment may be sought under section 406a, 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 section 927 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1340; D.C. Official Code § 24-501)." in its place.

(7) Paragraph (14) is amended by striking the phrase "own environment," and inserting the phrase "own environment, including, in the case of a person committed under section 406a, to refrain from committing crimes of violence or sex offenses," in its place.

(8) New paragraph (14A) and (14B) are added to read as follows:

"(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."

(9) A new paragraph (17A) is added to read as follows:

"(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."

(10) Paragraph 19 is amended to read as follows:

"(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."

(11) A new paragraph (19A) is added to read as follows:

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

(12) A new paragraph (24B) is added to read as follows:

ENROLLED ORIGINAL

"(24B) "Sex offenses" means offenses in the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 *et seq.*), but does not include any offense described in section 17(b) of the Sex Offender Registration Act of 1999, effective July 11, 2000 (D.C. Law 13-137; D.C. Official Code § 22-4016(b)).".

(13) A new paragraph (26) is added to read as follows:

"(26) "Transfer proceedings" means the proceedings pursuant to D.C. Official Code § 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.".

(b) Section 301 (D.C. Official Code § 7-1303.01) is amended as follows:

**Amend
§ 7-1303.01**

(1) Designate the existing language as subsection (a).

(2) The newly designated subsection (a) is amended by striking the phrase "No individual" and inserting the phrase "Except as provided in subsection (b) of this section, no individual" in its place.

(3) A new subsection (b) is added to read as follows:

"(b) The Court may commit an individual pursuant to section 406a irrespective of the individual's competence to refuse such commitment.".

(c) Section 304 (D.C. Official Code § 7-1303.04) is amended as follows:

**Amend
§ 7-1303.04**

(1) The section heading is amended by striking the word "guardian" and inserting the phrase "guardian or by the District" in its place.

(2) Subsection (b) is amended by striking the phrase "If the Court" and inserting the phrase "If, on a petition filed pursuant to subsection (a) of this section, the Court" in its place.

(3) A new subsection (b-1) is added to read as follows:

"(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 title IV.".

(d) Section 308 (D.C. Official Code § 7-1303.08) is amended by striking the phrase "section 304" and inserting the phrase "section 304(b)" in its place.

**Amend
§ 7-1303.08**

(e) Section 309 (D.C. Official Code § 7-1303.09) is amended to read as follows:

**Amend
§ 7-1303.09**

"Sec. 309. 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 title IV. 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 section 406a, 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 section 406a, 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."

(f) Section 310 (D.C. Official Code § 7-1303.10) is amended to read as follows:

Amend
§ 7-1303.10

"Sec. 310. Discharge from residential care.

"(a) The Director shall discharge any resident admitted or committed pursuant to this title 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 section 406a, 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 section 406a, 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 section 406a, 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 title IV. Any objecting party shall file the petition requesting a hearing with the Court within 10 days

ENROLLED ORIGINAL

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."

(g) Section 312 (D.C. Official Code § 7-1303.12) is amended by striking the word "No" and inserting the phrase "Except as provided in section 312a, no" in its place.

**Amend
§ 7-1303.12**

(h) A new section 312a is added to read as follows:

**New
§ 7-1303.12a**

"Sec. 312a. 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 section 304(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 the effective date of the Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002, passed on 2nd reading on July 2, 2002 (Enrolled version of Bill 14-626) ("Civil Commitment Act"), the District shall have 60 days following the effective date of the Civil Commitment Act in which to file a petition pursuant to section 304(b-1) for commitment of an individual who is committed pursuant to section 304(a), or of an individual whom the Court, within 365 days prior to the effective date of the Civil Commitment Act, 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 section 103(13), the hearing pursuant to section 406a 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 section 103(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."

(i) Section 401 (D.C. Official Code § 7-1304.01) is amended by adding at the end the phrase "The petition may be filed by the District in the case of an individual with mental retardation found incompetent in a criminal case. If filed by the District, a copy of the petition shall be served on the individual, the individual's counsel, the individual's parent or guardian, and the individual's mental retardation advocate."

**Amend
§ 7-1304.01**

ENROLLED ORIGINAL

(j) Section 405 (D.C. Official Code § 7-1304.05) is amended as follows:

**Amend
§ 7-1304.05**

(1) The existing language is designated as subsection (a).

(2) The newly designated subsection (a) is amended by striking the word "petition" and inserting the phrase "petition pursuant to section 304(a)" in its place.

(3) A new subsection (b) is added to read as follows:

"(b) A status hearing shall be held promptly after filing of the petition pursuant to section 304(b-1)."

(k) Section 406 (D.C. Official Code § 7-1304.06) is amended by striking the word "Hearings" and inserting the phrase "Except as provided in section 406a, hearings" in its place.

**Amend
§ 7-1304.06**

(l) A new section 406a is added to read as follows:

"Sec. 406a. Hearing and determination by Court or jury.

**Amend
§ 7-1304.06a**

"(a) For a commitment hearing on a petition filed pursuant to section 304(b-1), an individual found incompetent in a criminal case may demand a jury trial, and shall be so informed of this right. The demand shall be made at the status hearing held pursuant to section 405(b). If a timely demand for jury trial is not made, the Court shall serve as the factfinder at the hearing. A hearing by the Court or jury shall be accorded with all reasonable speed.

"(b) The comprehensive evaluation report and individual habilitation plan required by section 403 shall be completed prior to the hearing.

"(c) The individual found incompetent in a criminal case shall have the right to be present during the trial or hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. The individual shall have the right to be represented by counsel, retained or appointed by the Court, in any hearing or trial, and shall be so informed by the Court of this right. The individual shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses.

"(d) If the Court or jury finds that the individual is not mentally retarded or that the individual is not likely to cause injury to others as a result of the individual's mental retardation if allowed to remain at liberty, the Court shall dismiss the petition. If the Court or jury finds that the individual is mentally retarded and is likely to cause injury to others as a result of the individual's mental retardation if allowed to remain at liberty, the Court shall order commitment to MRDDA for placement in a facility that would be the least restrictive means of providing the habilitation indicated by the individual habilitation plan required under section 403 and of preventing the individual from causing injury to others as a result of the individual's mental retardation."

(m) Section 407 (D.C. Official Code § 7-1304.07) is amended as follows:

**Amend
§ 7-1304.07**

(1) Designate the existing language as subsection (a).

(2) The newly designated subsection (a) is amended by striking the phrase "section 304" and inserting the phrase "section 304(a)" in its place.

(3) A new subsection (b) is added to read as follows:

ENROLLED ORIGINAL

"(b) If the petition was filed pursuant to section 304(b-1), the District shall present clear and convincing evidence that shows that the respondent is likely to cause injury to others as a result of mental retardation if allowed to remain at liberty."

(n) Section 409 (D.C. Official Code § 7-1304.09) is amended as follows:

**Amend
§ 7-1304.09**

(1) Subsection (a) is amended by striking the word "hearing" and inserting the phrase "hearing on a petition filed pursuant to section 304(a)" in its place.

(2) Subsection (b) is amended by striking the phrase "section 304" and inserting the phrase "section 304(b)" in its place.

(3) Subsection (c) is amended by striking the word "determines" and inserting the phrase "determines, pursuant to subsections (a) and (b) of this subsection," in its place."

(o) Section 411 (D.C. Official Code § 7-1304.11) is amended as follows:

**Amend
§ 7-1304.11**

(1) Subsection (a) is amended by striking the word "facility" and inserting the phrase "facility pursuant to section 409" in its place.

(2) A new subsection (a-1) is added to read as follows:

"(a-1) Any decision of the Court ordering commitment of an individual found incompetent in a criminal case to MRDDA pursuant to section 406a shall be reviewed in a court hearing annually. The individual shall not be discharged if the Court finds that the individual is likely to cause injury to others as a result of his or her mental retardation if allowed to regain his or her liberty."

(3) Subsection (b) is amended by striking the phrase "section 411(a)(1) above" and inserting the phrase "subsection (a) or subsection (a-1) of this section" in its place.

(p) Section 501 (D.C. Official Code § 7-1305.01) is amended by adding new subsections

**Amend
§ 7-1305.01**

(c) and (d) to read as follows:

"(c) Notwithstanding subsection (a) of this section, no individual subject to commitment pursuant to section 406a 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 section 406a 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."

(q) Section 502 (D.C. Official Code § 7-1305.02) is amended as follows:

**Amend
§ 7-1305.02**

(1) Add at the end of the first sentence the following sentence: "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."

(2) Strike the phrase "daily living" and insert the phrase "daily living and, in the case of an individual committed under section 406a, to refrain from committing crimes of violence or sex offenses" in its place.

(r) A new section 515 is added to read as follows:

ENROLLED ORIGINAL

"Sec. 515. Coordination of services for dually diagnosed individuals.

New
§ 7-1305.15

"If an individual is committed by the Court to MRDDA pursuant to this act or committed by the Court to the Department of Mental Health pursuant to subchapter IV of Chapter V of Title 21 of the District of Columbia Official Code, or if an individual is temporarily placed with MRDDA pursuant to section 312a 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 section 312a 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."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia