



2015 SEP 21 AM 9:56
OFFICE OF THE
MAYOR

MURIEL BOWSER
MAYOR

SEP 21 2015

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Suite 504
Washington, D.C. 20004

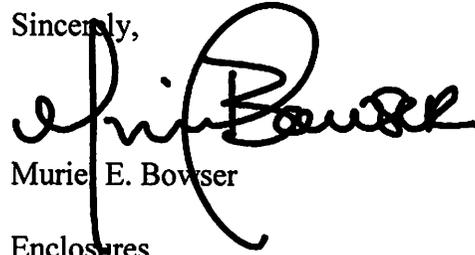
Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is proposed permanent legislation entitled the "Citizens with Intellectual Disabilities Civil Rights Restoration Act of 2015." As the title suggests, this legislation restores the civil rights of persons supported by the Department on Disability Services (DDS) so that civil commitment is no longer required in order to receive residential services, as currently required by law.

Specifically, this legislation proposes to (a) repeal and replace various sections of D.C. Law 2-137, the "Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978," D.C. Official Code § 7-1301.01 *et seq.*, to cease new civil commitments of persons with intellectual disabilities, with the exception of persons found in a criminal case to be incompetent to stand trial, and to automatically terminate existing commitments unless a person or his or her substitute decision-maker provides informed consent to continue commitment to the Superior Court within 90 days of the effective date of the legislation; and (b) amend D.C. Law 16-264, the "Department on Disability Services Establishment Act of 2006," D.C. Official Code § 7-761.01 *et seq.*, to add to the duties of DDS the need to work in partnership with the Superior Court to end civil commitment, and to add three new sections that create the legal framework for supported decision-making that is intended to restore decision-making rights to people with intellectual disabilities so that they can exercise choices in their lives with the support of their families and other people who know them best; and (c) make conforming amendments to the guardianship provisions in Chapter 20 of Title 21 of the D.C. Official Code and to the criminal provisions in Chapter 5 of Title 24 in order to implement the changes to civil commitment and substitute decision-making contemplated in the first two titles of the legislation.

I urge you and the Council to take prompt and favorable action on the enclosed legislation. If you have any questions, please contact Laura L. Nuss, Director of the Department on Disability Services, at (202) 730-1607.

Sincerely,

A handwritten signature in black ink, appearing to read "Murie E. Bowser". The signature is written in a cursive style with a large, prominent initial "M".

Murie E. Bowser

Enclosures



Chairman Phil Mendelson
At the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill, which was referred to the Committee on _____.

To restore the decision-making authority of District of Columbia residents with intellectual and developmental disabilities who have been civilly committed and receive services and supports from the Department on Disability Services; to end the civil commitment of adults with intellectual disabilities in the District of Columbia; and to create a Supported Decision-Making Agreement.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Citizens with Intellectual Disabilities Civil Rights Restoration Act of 2015”.

TITLE I. CITIZENS WITH INTELLECTUAL DISABILITIES CIVIL RIGHTS RESTORATION ACT OF 2015

Sec. 101. Short title.

This title may be cited as the “Citizens with Intellectual Disabilities Civil Rights Restoration Act of 2015”.

Sec. 102. The Citizens with Intellectual Disabilities 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:

1 (1) A new paragraph 24(D) is inserted to read as follows:

2 “(24D) “Supported decision making agreement” means an agreement between
3 an adult with a disability and a supporter entered into under this Act.”.

4 (2) A new paragraph 24(E) is inserted to read as follows:

5 “(24E) “Supporter” means an adult who has entered into a supported decision-
6 making agreement with an adult with a disability.”.

7 (b) Sections 301-303 (D.C. Official Code §§ 7-1303.01 to 7-1303.03), sections 305-
8 307 (D.C. Official Code §§ 7-1303.05 to 7-1303.07), section 310 (D.C. Official Code § 7-
9 1303.10), and section 314 (D.C. Official Code § 7-1303.14) are repealed.

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

11 (1) Paragraph (a) is amended to read as follows:

12 “(a) After the effective date of this act, no person shall be newly
13 committed to a facility with the exception of an individual found incompetent in a criminal case
14 and committed in accordance with paragraph (b-1).”.

15 (2) Paragraph (b) is amended by striking the sentence “If, on a petition filed
16 pursuant to subsection (a) of this section, the Court determines that the individual is not
17 competent to refuse commitment, the Court shall determine whether to order the commitment.”.

18 (d) Section 309(b) (D.C. Official Code § 7-1303.09(b)) is repealed.

19 (e) Section 311(a) (D.C. Official Code § 7-1303.11(a)) is amended by replacing the
20 phrase “habilitation, care, or both from the District pursuant to this chapter” with “services and/
21 or supports from the Department on Disability Services, Developmental Disabilities
22 Administration”.

23 (f) Section 401 (D.C. Official Code § 7-1304.01) is amended to read as follows:

1 “Proceedings for the commitment of an individual found incompetent in a
2 criminal case shall be commenced by the filing of a written petition by the District with the
3 Court in a manner and form prescribed by the Court. A copy of the petition shall be served on
4 the individual, the individual’s counsel, and the individual’s guardian, if any. A status hearing
5 shall be held promptly after filing of the petition pursuant to § 7-1303.04(b-1).”.

6 (g) Section 402 (D.C. Official Code § 7-1304.02) is amended to read as follows:

7 “Individuals who have been committed to a facility have the right to be
8 represented by counsel, retained or appointed by the Court, in any proceeding held before the
9 Court in accordance with this chapter, and they shall be informed by the Court of this right. The
10 Court shall appoint counsel to represent the individual. Whenever possible, counsel shall be
11 appointed who has had experience in the intellectual disability area. Counsel appointed to
12 represent individuals who are unable to pay for such counsel shall be awarded compensation by
13 the Court for his or her services in an amount determined by the Court to be fair and
14 reasonable.”.

15 (h) Section 403(d) (D.C. Official Code § 7-1304.03(d)) is amended by striking the
16 phrase “or § 7-1303.06”.

17 (i) Section 405 (D.C. Official Code § 7-1304.05) is repealed.

18 (j) Section 407 (D.C. Official Code § 7-1304.07) is amended to read as follows:

19 “In a proceeding for the commitment of an individual found incompetent in a
20 criminal case filed under § 7-1303.04(b-1), the District shall present clear and convincing
21 evidence that shows that the individual is likely to cause injury to others as the result of an
22 intellectual disability if allowed to remain at liberty.”.

1 (k) Section 409 (D.C. Official Code § 7-1304.09) is amended to read as follows:

2 “Ninety (90) days from the effective date of this Act, an individual who has been
3 committed to a facility prior to the effective date of this act pursuant to the Citizens with
4 Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979
5 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*) shall have his commitment
6 automatically terminated, unless the individual or his or her authorized substitute decision-maker
7 files a notice of informed consent to the Court to continue their commitment. Thereafter, § 7-
8 1304.11 shall govern any commitment that is voluntarily continued under this section”.

9 (l) Section 411(a)(4) (D.C. Official Code § 7-1304.11(a)(4)) is amended by striking
10 the phrase “§§ 7-1303.04(b) and 7-1303.06(a)” and replacing it with “§ 7-1303.04(b) and the
11 person or his or her substitute decision-maker provides informed consent to continue their
12 commitment pursuant to D.C. Official Code § 7-761.13. For the purpose of this subsection, the
13 prior court decision to commit the person is not determinative of whether the person can provide
14 informed consent to end his or her court commitment.”.

15 (m) Section 413(a) (D.C. Official Code § 7-1304.13(a)) is amended by striking the
16 phrase “Persons with an intellectual who admit themselves to a facility under § 7-1303.02, and
17 persons with an intellectual disability whose commitment is sought under § 7-1303.04 or § 7-
18 1303.06,” and replacing it with the phrase “Persons with an intellectual disability who have been
19 committed to a facility and persons found incompetent in a criminal case filed under § 7-
20 1303.04(b-1)”.

21 (n) Section 413(b) (D.C. Official Code § 7-1304.13(b)) is amended to read as
22 follows:

1 “(14) “Supported decision-making” means “a process of supporting and
2 accommodating an adult with a disability to enable the adult to make life decisions, including
3 decisions related to where and with whom the adult wants to live, the services, supports, and
4 medical care the adult wants to receive, and where the adult wants to work, without impeding the
5 self-determination of the adult.”

6 (4) By inserting a new paragraph (15) to read as follows:

7 “(15) “Supported decision-making agreement” is “an agreement between
8 an adult with a disability and a supporter entered into under this chapter.”

9 (5) By inserting a new paragraph (16) to read as follows

10 “(16) “Supporter” means “a person who has entered into a supported
11 decision-making agreement with an adult with a disability.”

12 (b) Section 104 (D.C. Official Code § 7-761.04) is amended by inserting a new
13 subsection (c) to read as follows:

14 “(c) The Department includes the following administrations:

15 (1) The Developmental Disabilities Administration; and

16 (2) The Rehabilitation Services Administration.”.

17 (c) Section 105 (D.C. Official Code § 7-761.05) is amended by inserting a new
18 paragraph (10) to read as follows:

19 “(10) In partnership with the Court, coordinate the termination of commitment
20 for people committed to facilities by the Court pursuant to the Citizens with Intellectual
21 Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law
22 2-137; D.C. Official Code § 7-1301.01 *et seq.*), with the exception of people committed pursuant

1 to § 7-1303.04(b-1), and provided that anyone who is committed to a facility may give informed
2 consent to continue their commitment in accordance with the act.”.

3 (d) A new section 113 is added to read as follows:

4 “Section 113. Termination of Admission and Commitment.

5 “(a) “Ninety (90) days from the effective date of this Act, an individual who has
6 been committed to a facility prior to the effective date of this act pursuant to the Citizens with
7 Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979
8 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 et seq.) shall have his commitment
9 automatically terminated, unless the individual or his or her authorized substitute decision-maker
10 files a notice of informed consent to the Court to continue their commitment. Thereafter, § 7-
11 1304.11 shall govern any commitment that is voluntarily continued under this section”.”.

12 “(1) To the extent that a person does not have capacity to give informed
13 consent to continue his or her commitment, even with the assistance of a supporter if one has
14 been designated the following individuals, in the order of priority set forth below, shall be
15 authorized to seek continuation of commitment:

16 “(A) A court-appointed guardian or conservator of the person, if
17 the consent is within the scope of the guardianship or conservatorship;

18 “(B) The spouse or domestic partner of the person;

19 “(C) An adult child of the person;

20 “(D) A parent of the person;

21 “(E) An adult sibling of the person;

22 “(F) A religious superior of the person, if the person is a
23 member of a religious order or a diocesan priest;

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“(G) A close adult friend of the person; or

“(H) The nearest living, adult relative of the person.

“(2) A decision to grant, refuse or withdraw consent made pursuant to this section shall be based on the expressed wishes of the person or, if the wishes of the person are unknown and cannot be ascertained, on a good faith belief as to the best interests of the person.

“(3) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decision-making shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

“(4) The order of priority established in this section creates a presumption that may be rebutted if a person of lower priority is found to have better knowledge of the wishes of the person, or, if the wishes of the person are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the person.

“(c) Nothing in this section shall be construed to void the commitment of a person who has been found incompetent in a criminal case, and who has been committed to the care of the DDS by the Court pursuant to section 406a of the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.06a), for placement in a facility consistent with the person’s individual support plan, the person’s assessed needs, and supervision or security sufficient to prevent the person from causing injury to others as a result of his or her intellectual disability.”

(e) A new Section 114 is added to read as follows:

“Section 114. Supported Decision-Making Agreement.

1 “(a) Scope of Supported Decision-Making Agreement. An adult with a
2 disability may voluntarily, without undue influence or coercion, enter into a supported decision-
3 making agreement with a person who is 18 or older, under which the adult with a disability
4 authorizes the supporter to do any or all of the following:

5 “(1) provide supported decision-making, including assistance in
6 understanding the options, responsibilities, and consequences of the adult’s life decisions,
7 without making those decisions on behalf of the adult with a disability;

8 “(2) assist the adult in accessing, collecting, and obtaining information
9 that is relevant to a given life decision, including medical, psychological, financial, educational,
10 or treatment records, from any person;

11 “(3) assist the adult with a disability in communicating the adult’s
12 decisions to appropriate persons.

13 “(b) Conflict of Interest

14 “(1) The following individuals are considered to have a conflict of
15 interest that disqualifies them for being designated or serving as a supporter in a supported
16 decision-making agreement.

17 (A) An individual who provides physical, mental or behavioral
18 health care or disability services or the owner/operator of such services, except when the
19 individual is the supported person’s relative.

20 (B) An individual who works for a government agency that is
21 financially responsible for the person’s care, except when the individual is the supported
22 person’s relative.

1 “(c) Authority of Supporter: A supporter may exercise the authority granted to
2 the supporter in the supported decision-making agreement.

3 “(d) Term of Agreement.

4 “An individual may not enter into an agreement to serve as a supporter,
5 and any existing supported decision-making agreement is automatically terminated if:

6 (1) the supported person expresses the wish not to enter into a
7 supported decision-making agreement with the individual, or the wish to terminate an existing
8 agreement;

9 (2) there is a finding by a government agency that the adult with a
10 disability is or has been abused, neglected or exploited by the individual, or the individual is or
11 has been the subject of an investigation by a government agency or law enforcement with
12 substantiated findings of harm inflicted upon a child, elderly individual, or person with a
13 disability.

14 (3) the individual is or has been convicted of any of the following
15 criminal offenses:

16 (A) Any sexual offense, including sexual assault, aggravated
17 sexual assault, and prohibited sexual conduct;

18 (B) Aggravated assault; or

19 (C) Fraud, theft, forgery, or extortion.

20 “(e) Access to Personal Information.

21 (1) A supporter is only authorized to assist the adult with a disability
22 in accessing, collecting, or obtaining information that is relevant to a decision authorized under
23 the supported decision-making agreement.

1 (2) If a supporter assists an adult with a disability in accessing,
2 collecting or obtaining personal information, including protected health information under the
3 Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or
4 educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §
5 1232g), the supporter shall ensure the information is kept confidential and is not subject to
6 unauthorized access, use, or disclosure.

7 (3) The existence of a supported decision-making agreement does not
8 preclude an adult with a disability from seeking personal information without the assistance of a
9 supporter.

10 “(f) Authorizing and Witnessing of Supported Decision-Making Agreement.

11 (1) A supported decision-making agreement must be signed
12 voluntarily, without coercion or undue influence, by the adult with a disability and the supporter
13 in the presence of two subscribing witnesses or a notary public.

14 (2) If signed before two witnesses, the attesting witnesses must be at
15 least 18 years of age.

16 (3) Reasonable efforts should be made to explain the supported
17 decision-making agreement to the person the agreement supports.

18 “(g) Form of Supported Decision-Making Agreement.

19 “ A supported decision-making agreement is valid only if it is in
20 substantially the following form:

21 **SUPPORTED DECISION-MAKING AGREEMENT**

22 **Appointment of Supporter**

23 I, (name of supported person), make this agreement of my own free will.

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I agree and designate that:

Name:

Address:

Phone Number:

E-mail Address:

Is my supporter. My supporter may help me with making everyday life decisions relating to the following:

Y/N obtaining food, clothing, and shelter

Y/N taking care of my physical health

Y/N taking care of my mental/behavioral health

Y/N managing my financial affairs.

My supporter is not allowed to make decisions for me. To help me with decisions, my supporter may:

1. Help me access, collect, or obtain information that is relevant to a decision, including medical, psychological, financial, educational, or treatment records;
2. Help me understand my options so that I can make an informed decision; and
3. Help me communicate my decision to appropriate persons.

Y/N A release allowing my supporter to see protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

Y/N A release allowing my supporter to see educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) is attached.

1 Effective Date of Supported Decision-Making Agreement

2 This supported decision-making agreement is effective immediately and will continue
3 until (insert date) or until the agreement is terminated by my supporter or me or by operation of
4 law.

5 Signed this _____ day of _____, 20__

6 Consent of Supporter

7 I, (name of supporter), consent to act as a supporter under this agreement.

8 Signature of Supporter Printed Name of Supporter

9 Signature of Supported Person

10 I, (name of supported person), consent to have (name of supporter) act as my supporter
11 under this agreement.

12 My signature Printed Name of Supported Person

13 Signature of Two Witnesses

14 Signature of Witness Printed Name of Witness (1)

15 Signature of Witness Printed Name of Witness (2)

16 This document was acknowledged before me on this ____ day of (insert month and year)
17 by (name of person supported) and (name of supporter).

18 Signature of Notary Public and notary seal, if any.

19 Printed Name of Notary Public

20 My commission expires:

21 WARNING: PROTECTION FOR PERSON SUPPORTED

22 IF A PERSON WHO RECIVES A COPY OF THIS AGREEMENT OR IS AWARE OF
23 THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE ADULT

1 NAMED AS A SUPPORTED PERSON IS BEING ABUSED, NEGLECTED, OR EXPOITED
2 BY THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE,
3 NEGLECT OR EXPLOITATION TO THE CITYWIDE CALL CENTER 311,
4 METROPOLITAN POLICE DEPARTMENT AT 911, ADULT PROTECTIVE SERVICES AT
5 (202) 541-3950, THE DEPARTMENT ON DISABILITY SERVICES BY CALLING (202) 730-
6 1700, AND THE DUTY OFFICER AFTER-HOURS (202) 498-9077, IF THE PERSON
7 RECEIVES SERVICES FROM THE AGENCY.

8 (f) A new Section 115 is added to read as follows:

9 "Section 115. Duty of Certain Persons with Respect to Agreement Liability.

10 "(a) A person who receives the original or a copy of a valid supported
11 decision-making agreement shall rely on the agreement.

12 "(b) A person is not subject to criminal or civil liability and has not engaged in
13 professional misconduct for an act or omission if the act or omission is done in good faith and in
14 reliance on a supported decision-making agreement."

15 (g) A new Section 116 is added to read as follows:

16 "Section 116. Reporting of Suspected Abuse, Neglect or Exploitation.

17 If a District employee, a caregiver, or a service provider who receives a copy of a
18 supported decision-making agreement or is aware of the existence of a supported decision-
19 making agreement has cause to believe that the adult with a disability is being abused, neglected,
20 or exploited by the supporter, the person shall report the alleged abuse, neglect, or exploitation to
21 the Citywide Call Center at 311, Metropolitan Police Department at 911, Adult Protective
22 Services at (202) 541-3950, or Department on Disability Services at (202) 730-1700, if the
23 person receives services from the Department."

1 TITLE III. CONFORMING AMENDMENTS.

2 Sec. 301. Chapter 20 of Title 21 of the District of Columbia Official Code is amended as
3 follows:

4 (a) Section 21-2011(25A) is amended to read as follows:

5 “(25A) “Substituted judgment” means making a decision that conforms as closely
6 as possible with the expressed wishes of the person or with the decision that the person would
7 have made, based upon knowledge of the beliefs, values, and preferences of the person.”

8 (b) Section 21-2047.01(4) is amended by striking the phrase “or Chapter 13 of Title
9 7”.

10 (c) Section 21-2049(a)(3) is amended by striking the phrase “On petition of the ward
11 or any interested person” and inserting the phrase “On petition of the ward, the Department on
12 Disability Services if the ward is receiving services from such agency, or any interested person”
13 in its place.

14 Sec. 302. The Incompetent Defendants Criminal Commitment Act of 2004, effective
15 May 24, 2005 (D.C. Law 15-358; D.C. Official Code § 24-531.01 *et seq.*) is amended as follows:

16 (a) Section 101 (D.C. Official Code § 24-531.01) is amended as follows:

17 (1) Paragraph (6)(C) is amended to read as follows:

18 “(6)(C) Any physically secure or staff-secure intermediate care facility or
19 community residential facility providing supports and services to persons with intellectual
20 disabilities, within or without the District, not including a jail, prison, other place of confinement
21 for persons who are awaiting trial or who have been found guilty of a criminal offense, or a
22 hospital for persons with mental illness within the meaning of § 24-501.”.

23 (b) Section 107 (D.C. Official Code § 24-531.07) is amended as follows:

1 (1) Paragraph (a) is amended to read as follows:

2 “(a) Thirty days after the court has ordered extended treatment pursuant to
3 § 24-531.06(c)(4), the court shall hold a status hearing to determine whether civil commitment
4 proceedings have been initiated pursuant to D.C. Official Code § 21-541.”

5 TITLE IV. FISCAL IMPACT STATEMENT.

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

9 TITLE V. EFFECTIVE DATE.

10 This act shall take effect following approval by the Mayor (or in the event of veto by the
11 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
12 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
13 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and publication in the District of
14 Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: September 11, 2015

SUBJECT: Legal Sufficiency Review of Draft Bill Entitled the "Citizens with Intellectual Disabilities Civil Rights Restoration Act of 2015"
(AE-15-570)

This is to Certify that this Office has reviewed the above-referenced Draft Bill and found it to be legally unobjectionable. If you have any questions in this regard, please do not hesitate to call me at 724-5524.



Janet M. Robins