



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
**DEPARTMENT ON DISABILITY SERVICES**

**FREQUENTLY ASKED QUESTIONS**

**BILL 22-0154, CITIZENS WITH INTELLECTUAL DISABILITIES CIVIL RIGHTS RESTORATION ACT  
OF 2017**

***What is civil commitment?***

Civil commitment is the involuntary placement of a person with an intellectual disability in a facility by court order. According to the current law, a person with at least a moderate intellectual disability must be committed in order to receive residential services through Medicaid at an Intermediate Care Facility or Residential Habilitation facility. Once a person is civilly committed, a judge at the D.C. Superior Court must review and approve of all of their life decisions through an annual review hearing. There are currently nearly 740 adults with intellectual disabilities who have been civilly committed.

***What is supported decision-making?***

Supported decision-making is a mechanism whereby unpaid supporters may help a person with disability to gather, understand and consider relevant information about the decision in question, assist the person to weigh pros and cons, predict likely outcomes and consequences or evaluate the available options. The Federal Administration on Community Living recognizes Supported Decision-Making as an important element to maximize the independence and well-being of older adults and people with disabilities.

***Does Bill 22-0154 end all civil commitment of people with intellectual disabilities?***

No. The bill would end any new civil commitment of people with intellectual disabilities and provide choice for all people who are currently committed. Many people who are currently committed have been committed for many years and have developed a relationship with their court-appointed attorney. Rather than disrupt or abruptly end that relationship and the court oversight, the bill offers everyone who is currently civilly committed the opportunity to decide whether to voluntarily continue their commitment, or to have it terminated. The bill also provides authority for family members and friends who are closest to the person to help them make that decision, or, if the person lacks capacity, to make the decision based on what the person would want. This bill does not impact civil commitment for people who have been found incompetent in a criminal case. As noted above, DDS heard feedback from the community that people may need more time and support to make this decision than the initial version of the bill provides. Therefore, we are offering amendments to clarify and enhance these provisions. With the amendments proposed, a person will have an opportunity to determine whether or not to continue commitment at their next annual commitment review hearing instead of within 90 days as originally proposed. The amendments proposed also provide an extensive list of people who can help a committed person determine and indicate to the Court whether or not he or she would like to continue their own commitment. The Court will be required to terminate commitment if the person or their substitute decision maker does not consent to continued commitment.



***What is the impact of the bill on people who are currently committed?***

The bill has no impact on the services people currently receive from the Department on Disability Services (DDS), Developmental Disabilities Administration (DDA). Under the bill, with the amendments offered, at the person's next annual hearing, he or she will be offered the opportunity to voluntarily continue his or her commitment, or to have it terminate. If the person chooses to continue commitment, nothing will change. If the person chooses to end their commitment, only the court oversight and approval of the person's annual plan will cease. It is critical to understand that services and supports for the person will not change.

***How will people who need a lot of support be able to navigate intake and service planning if there are no new commitments?***

The vast majority of people served by DDA navigate the program without civil commitment. Commitment is not a prerequisite for services from the DDA or the District's Medicaid program. DDA serves over 2,250 people with a range of abilities, including many people with very significant support needs who have not been committed. In fact, almost two-thirds of the people the agency supports are not committed. Many people have family members who assist with decision-making, as needed. For people who need more formal supports, guardianship and other lesser restrictive alternatives are available. DDA petitions for guardianship, when it is the least restrictive option needed to ensure the person's health, wellbeing and safety.

***Why end the civil commitment of people with intellectual disabilities?***

Civil commitment is an outdated process and no longer reflects best practice in the field. Nowhere else in our country is civil commitment through the court the requirement to receive community-based residential services. This is an antiquated remnant of institutionalization. In the days of Forest Haven, children and adults were committed to the care of the District of Columbia and placed in this large institution, many miles away from their families and natural support systems. However, nearly two and a half decades after the last person left Forest Haven, commitment still exists even though the institution does not. This means that we are committing people with intellectual disabilities to community-based residential services and, as a result, taking away the rights of adults with intellectual disabilities to make all sorts of important decisions about their own lives, such as where to live, how to spend their days, and more. This goes against the best practice of supporting self-determination. Instead of supporting adults with intellectual disabilities to build their capacity and make as many decisions as they are able about their own lives, commitment supplants the person's decision-making authority.

***Is civil commitment a restriction placed on people with intellectual disabilities?***

Yes. Commitment creates a significant deprivation of liberty for people with intellectual disabilities, taking away decision-making authority regarding services from people with intellectual disabilities and their families and placing it in the hands of a court-appointed attorney. Commitment has become an added requirement to certain kinds of community-based



Medicaid services and involves an intrusive judicial process, whereby people have to go to court as part of their annual planning. Yet, program decisions are best made by people with disabilities, their families, clinicians and other professionals rather than an external judicial process. Additionally, by law in D.C., the overwhelming majority of services people with intellectual disabilities receive are funded through Medicaid and provided in community-based, integrated settings where people are offered supports in the least restrictive way possible. No other Medicaid beneficiary in the District must go before a Superior Court Judge to access a Medicaid service for which he or she is otherwise eligible. Medicaid also offers due process protections, including notice and the right to a fair hearing before services are reduced or terminated. Thus, an alternative to annual judicial review already exists – as it does for every Medicaid recipient in the District.

***How does this legislation relate to the Evans case?***

It is important to distinguish between commitment and the *Evans* class action. The *Evans* case creates responsibilities and judicial oversight that are completely separate from commitment. The District has made great strides in coming into compliance with the requirements of the *Evans* exit plan. DDS is pleased to report that the District has been found to be in compliance with 65 of 70 outcome criteria and has informed the Court of our intent to assert compliance with the remaining five criteria, following the current round of court monitoring, in March 2016.

***What safeguards or protections are in place for people who receive services from DDA?***

The DDA service system itself is funded almost exclusively by Medicaid, which provides substantive and procedural safeguards through the fair hearings process. To the extent that a person believes that he or she is not getting the full array of services to which he or she is entitled, the person (or his or her representative) may invoke Medicaid due process rights. Additionally, DDS has a variety of ways for a person to complain about services, including a customer relations line, an Internal Problem Resolution system, and a reconsideration process for Individual Support Plans (which govern DDA services.)

***What supports are in place for people who choose to end their commitment?***

First and foremost, people would be able to make their own decisions, with help as needed through supported decision-making. There are also an array of legal protections already in place for substitute decision-making, including statutory provisions for medical decision-making, Social Security representative payees, powers of attorney, and guardianship.

***Does this bill close access to the Mental Health and Habilitation Branch of the DC Superior Court?***

No. People who are currently civilly committed can voluntarily retain that status and court oversight. When thinking about the provisions of the legislation that would end all new civil commitments, it is important to understand that this is the same branch of the court that commits people with mental health conditions to St. Elizabeth's hospital or other mental health treatment when the person is a danger to themselves or others. No such institution exists any longer for



people with intellectual disabilities in the District. Instead, the court now serves as an additional requirement for people with intellectual disabilities to receive certain residential services under Medicaid for which they are already otherwise eligible. That is, court commitment is currently required for people with a moderate or greater level of intellectual disability to receive services in an Intermediate Care Facility (ICF) or to receive Residential Habilitation supports – both of which are Medicaid-funded services through the Medicaid State Plan (for ICFs) or the Medicaid waiver. The bill would end only the requirement for judicial oversight.

***Does this bill attempt wholesale repeal of the Constitutional Rights and Dignity Act?***

No, the Constitutional Rights and Dignity Act include important protections for people with intellectual disabilities that would remain in effect. The bill does not repeal any of the rights provisions – for example, access to visitors, mail, confidentiality of records, etc., all remain.

***Why create supported decision-making agreements?***

Formally recognizing supported decision-making creates an extra layer of support for all people with disabilities, ensuring that they can have the support they need from someone they know and trust, to assist with making decisions about their own lives. For people who are currently committed, this will be an important new support because under the structure of commitment, the person may or may not have been a part of making decisions about their services. Decision-making is both a right and a skill. People who have not have the opportunity to make important life decisions may need additional support in understanding how to evaluate options and understand consequences as they begin to self-direct their lives.