

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
DIRECTIVE 5-2018**

Procedures for implementing the Disability Services Reform Amendment Act of 2018

The purpose of this directive is to implement Title II of D.C. Law 22-93, the “Disability Services Reform Amendment Act of 2018,” effective May 5, 2018 (*see* 65 D.C. Reg. 0022823-002846 (Mar. 23, 2018) (Enrolled Original)), which comprehensively repeals and amends the “Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978” (D.C. Law 2-137; D.C. Code § 7-1301.01 *et seq.*), ending new admissions and commitments of persons with intellectual disability (with the exception of a person found incompetent in a criminal case), and further provides that, for current commitments, the Court will terminate commitment unless, among other things, there is informed consent for continued commitment. Pursuant to Title IV of the legislation, Title II will go into effect on August 3, 2018, which is 90 days after the effective day of the legislation as a whole.

The new legislation amends D.C. Code § 7-1304.11(a)), in pertinent part, (1) to require the Court to terminate the commitment of a person with an intellectual disability, other than a person found incompetent in a criminal case, at the annual review hearing unless there is a finding that the person or a person authorized thereunder “provides informed consent to continue the person’s voluntary commitment;” (2) to the extent the person lacks capacity to consent, to identify a hierarchy of nine people to consent on their behalf (*i.e.* court-appointed general or limited medical guardian, court-appointed conservator, spouse or domestic partner, adult child, parent, adult sibling, religious superior, close friend, or nearest-living adult relative) or the Court will appoint a guardian *ad litem* for this sole purpose; (3) to establish that the nine people identified in the “priority list” make the decision “based on the express 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”; (4) to provide standing and the ability to challenge in Court the decision of an individual with higher priority; and (5) to create a presumption based on the order of priority that can be rebutted by an individual lower on the list who 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” than a higher priority individual.

The Court’s usual and customary process for promulgation of a formal rulemaking to amend the rules governing the Mental Habilitation proceedings¹ to implement these new provisions cannot be accomplished prior to the 90-day effective date. However, current Super. Ct. Ment. Ret. R. 7(b), with respect to the periodic review of orders for commitment, provides that “[t]he Court may order the preparation and filing of other documentation deemed necessary and appropriate for rendering its decision in connection with the review hearing,” and current

¹ The Court renamed the Mental Health and Mental Retardation Branch of the Family Court as the Mental Health and Habilitation Branch by Administrative Order 11-01 dated January 5, 2011, in recognition that use of the term “mental retardation” should be eliminated. Similarly, throughout this Directive, the term “mental retardation” is replaced with the term “intellectual disability”.

Super. Ct. Ment. Ret. R. 7(e) should be read to reflect the addition in D.C. Code § 7-1304.11 (a) of a fifth finding by the Court required for continued commitment as described above.

Accordingly, as of May 30, 2018, it is directed that the following procedures are applicable to all annual review hearings in the Mental Habilitation Court for a person with an intellectual disability, other than a decision of the Court ordering commitment of a person found incompetent in a criminal case pursuant to D.C. Code § 7-1304.06a, occurring on or after August 3, 2018.

I. PRE-ANNUAL REVIEW HEARING FILINGS

DDS must annually convene an interdisciplinary team meeting with each Respondent to obtain and provide information to the Court for purposes of (1) assessing the Respondent's capacity to provide informed consent for voluntary commitment under D.C. Code § 7-1304.11(a)(1)(E); and, (2) to the extent Respondent lacks capacity to provide informed consent, identifying individuals under D.C. Code § 7-1304.11(a)(2) who are reasonably available, mentally capable, and willing to consent or refuse continued voluntary commitment on behalf of the Respondent based on Respondent's expressed wishes or, if Respondent's wishes are unknown and cannot be ascertained, on a good faith belief as to Respondent's best interests. Where possible, this interdisciplinary team meeting should be convened during the Respondent's annual Individual Support Plan (ISP) meeting.

At least sixty (60) days prior to the annual review hearing required by D.C. Code § 7-1304.11, Respondent's counsel must file and serve all parties with a Report to the Court on Informed Consent for Voluntary Commitment, which must conform substantially to the form report attached to this Order and report on the results of the interdisciplinary team meeting.

Based on the information included in the Respondent's Report to the Court on Informed Consent for Voluntary Commitment, the Clerk will send, by first-class mail, to each individual identified by the interdisciplinary team, a notice as described in Section II of this Directive.

If the Respondent does not have capacity to give informed consent to continue his or her commitment as determined by the interdisciplinary team and reflected in the Respondent's Report to the Court on Informed Consent for Voluntary Commitment, and no individual authorized to consent on his or her behalf has been identified in accordance with D.C. Code § 7-1304.11(a)(2), then the Court will appoint a guardian *ad litem* for that sole purpose not less than forty-five (45) days prior to the Respondent's annual review hearing.

At least thirty (30) days prior to the annual review hearing required by D.C. Code § 7-1304.11, all individuals identified in Question #3 of the Respondent's Report to the Court on Informed Consent for Voluntary Commitment who wish to be considered reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent must file and serve all parties with a Substitute Decision Maker's Report Regarding Continued Voluntary Commitment that must conform substantially to the form report attached to this Directive.

At least fifteen (15) days prior to the Respondent's annual review hearing, any individual with lower priority who has been provided notice as described below shall prepare and file with the Court a Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment stating the factual basis for his or her challenge to the stated decision of an individual with higher priority on whether the Respondent consents to or refuses voluntary commitment. The Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment must conform substantially to the form pleading attached to this Directive.

II. NOTICE REQUIREMENTS

No later than five (5) business days upon receipt of the Respondent's Report to the Court on Informed Consent for Voluntary Commitment, the Clerk will send, by first-class mail, to each individual identified in that Report, a notice that includes the following:

1. The date and time of the annual review hearing.
2. A statement indicating that at least thirty (30) days prior to the annual review hearing required by D.C. Code § 7-1304.11, all individuals identified in Question #3 of the Respondent's Report to the Court on Informed Consent for Voluntary Commitment must indicate to the Court whether he or she is reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent, as well as the decision he/she would make on behalf of the Respondent.
3. A statement indicating that no less than fifteen (15) days prior to the Respondent's annual review hearing, any individual with lower priority who has been provided notice as described in this Directive may prepare and file with the Court a Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment stating the factual basis for his or her challenge to the stated decision of an individual with higher priority on whether the Respondent consents to or refuses voluntary commitment.
4. A statement indicating that if any individual with lower priority does file a report challenging the stated decision of an individual with higher priority, the individual should be prepared to present his/her position at the date and time of the annual review hearing.
5. A copy of the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment and Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment form pleadings attached to this Directive.

III. EVIDENTIARY HEARINGS AND FINDINGS OF THE COURT

The Magistrate Judge presiding over the Mental Habilitation calendar will schedule and provide reasonable notice of any evidentiary hearings deemed necessary to resolve factual issues related to Respondent's capacity to give informed consent to continue commitment and, to the extent Respondent lacks capacity, any decision-making by an individual authorized to consent or refuse on Respondent's behalf. To the greatest extent possible, such hearings will be held prior

to the annual review hearing. However, if any individual with lower priority challenges the stated decision of an individual with higher priority on whether the Respondent consents to or refuses voluntary commitment, an evidentiary hearing will be held at the time scheduled for the annual review hearing.

To the extent the Magistrate Judge resolves factual issues related to Respondent's capacity to give informed consent to continue commitment and, to the extent Respondent lacks capacity, any decision-making by an individual authorized to consent or refuse on Respondent's behalf prior to the annual review hearing, such findings will be issued in a written order no less than ten (10) days prior to the annual review hearing.

For all annual review hearings occurring on or after August 3, 2018, Respondent's Counsel shall prepare the Findings of Fact, Conclusion of Law, and Order of the Court in a form substantially to the form attached to this Directive or to a form subsequently developed by the Court.

This Directive shall take effect on May 30, 2018.



Carol Ann Dalton
Presiding Judge, Family Court

Dated: May 30, 2018

Copies to:

Judicial Officers	Executive Officer
Clerk of the Court	Division Directors
Library	