

**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

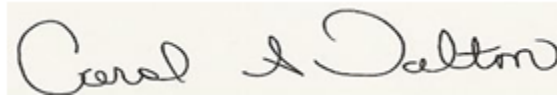
The Magistrate Judge presiding over the Mental Habilitation calendar will schedule and provide reasonable notice of any evidentiary hearings deemed necessary to resolve factual issues related to Respondent's capacity to give informed consent to continue commitment and, to the extent Respondent lacks 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.

A handwritten signature in cursive script, reading "Carol Ann Dalton", written in black ink on a light-colored background.

Carol Ann Dalton
Presiding Judge, Family Court

Dated: May 30, 2018

Copies to:

Judicial Officers	Executive Officer
Clerk of the Court	Division Directors
Library	

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
MENTAL HEALTH & HABILITATION BRANCH**

In the Matter of	:	Case No.:
	:	Magistrate Judge Diane S. Lepley
[PERSON'S NAME]	:	
	:	Annual Review Hearing:
<i>Respondent</i>	:	

**RESPONDENT'S REPORT TO THE COURT ON
INFORMED CONSENT FOR VOLUNTARY COMMITMENT**

On _____, 20____, Respondent's interdisciplinary team ("IDT") or circle of support met with 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. Official Code § 7-1304.11(a)(1)(E); and, (2) to the extent Respondent lacks capacity to provide informed consent, identifying individuals under D.C. Official Code § 7-1304.11(a)(2) (see Question 3 below) 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. The names of the persons present at the above-referenced IDT meeting and their relationship to the Respondent are listed on the sign-in sheet filed herein. Based on the IDT meeting and in the consideration of the views made known by persons in attendance and those persons whose views were otherwise communicated, the undersigned respectfully submits this Respondent's Report to the Court on Informed Consent for Voluntary Commitment. The below descriptions do not include privileged communications between the Respondent and his or her Counsel.

1. Does the IDT believe that Respondent possesses capacity to provide informed consent to voluntary commitment?

At the time of the meeting, or prior to submission of this Report, the IDT ☐ reached consensus ☐ did not reach consensus that Respondent ☐ has ☐ does not have capacity to provide informed consent for voluntary commitment in accordance with D.C. Official Code § 7-1304.11(a)(1)(E). Under D.C. Official Code § 7-1304.11(a)(8), a prior court decision to commit a person shall not be determinative of whether the person has capacity to give informed consent to continue his or her commitment. The IDT was tasked with answering the following three (3) questions to provide the Court with information relevant to whether Respondent has capacity to provide informed consent to continued commitment:

- Is Respondent able to understand the information relevant to the decision of whether to consent to continued commitment? *[Does Respondent understand the nature of the decision and the reason why the decision is needed? Efforts to explain the nature of the decision in language understandable and accessible to the person must be made. People who can only retain information for a short while **must not** be automatically assumed to lack the capacity to decide – it depends on what is necessary for the decision in question. Different methods may be needed to help Respondent retain or understand information (e.g. written information).]*

☐ Yes ☐ No ☐ Disagreement

Please explain:

- Is Respondent able to identify the potential consequences of consenting to or refusing continued commitment as part of the decision-making process? *[Sometimes people can understand information; however, they also should be able to understand the advantages and disadvantages of the decision to be made.]*

☐ Yes ☐ No ☐ Disagreement

Please explain:

- Is Respondent able to unambiguously communicate the decision whether to provide informed consent for continued commitment? *[All steps need to be taken to aid communication. Communication does not need to be verbal.]*

☐ Yes ☐ No ☐ Disagreement

Please explain:

Based on the above, does the IDT believe that Respondent possesses capacity to provide informed consent to voluntary commitment?

☐ YES ☐ NO ☐ DISAGREEMENT

2. Irrespective of whether the IDT believes that Respondent has capacity to give informed consent to continue his or her voluntary commitment, has the Respondent expressed any wishes on the issue of continued commitment?

☐ YES ☐ NO ☐ NOT APPLICABLE

Please explain:

3. To the extent the IDT agrees that Respondent lacks capacity to provide informed consent, which individual(s) has/have been identified to provide consent or refusal for continued voluntary commitment on behalf of the Respondent?

☐ APPLICABLE ☐ NOT APPLICABLE

In accordance with D.C. Official Code § 7-1304.11(a)(2), the following individual(s) has/have been identified who is/are reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent:

☐ One or more ☐ None

☐ Respondent's General Guardian, _____.

☐ Respondent's Limited Guardian, _____,

who has obtained specific authority from the Court to provide informed consent.

☐ Respondent's Conservator, _____,

who has obtained specific authority from the Court to provide informed consent.

☐ Respondent's spouse or domestic partner, _____.

☐ Respondent's adult child, _____.

☐ Respondent's parent, _____.

☐ Respondent's adult sibling, _____.

☐ Respondent's religious superior, _____.

☐ Respondent's close friend, _____.

☐ Respondent's nearest living, adult relative, _____.

The known address of each person identified above is provided in the Certificate of Service.

☐ Because no individual has been identified under D.C. Official Code § 7-1304.11(a)(2)(A)-(I) who is reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent, it is recommended that the Court appoint a guardian *ad litem* for that sole purpose.

4. To the extent one or more individuals has been identified as being reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent, has he or she made known the decision that he or she intends to make?

☐ YES ☐ NO ☐ NOT APPLICABLE

If yes, for each individual, please list the decision he or she has made known.

5. To the extent more than one individual has been identified as being reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent, and their respective views have been made known, has any individual with lower priority indicated that he or she intends to

challenge the decision of an individual with higher priority as set forth in D.C. Official Code § 7-1304.11(a)(5)-(6)?

☐ YES ☐ NO ☐ NOT APPLICABLE

If yes, please provide the name of the person(s) and the relationship to the respondent.

6. Based on the answers to the questions detailed in this Report, is there a possible need for the Court to convene an evidentiary hearing?

☐ YES ☐ NO ☐ DISAGREEMENT

Please explain:

DATED: _____

Respectfully submitted,

Name and D.C. Bar number
Address
Telephone
Email
Counsel for the Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Respondent's Report to the Court on Informed Consent for Voluntary Commitment was sent by e-service where appropriate and otherwise sent by first-class mail, postage pre-paid, on this ____ day of _____, 20__, to the following:

Respondent Name: _____

Respondent Address: _____

Advocate Name: _____

Advocate Address: _____

Name: _____
Assistant General Counsel
250 E Street SW, 6th Floor
Washington, D.C. 20024

Name: _____
DDS Court Liaison
250 E Street SW, 6th Floor
Washington, D.C. 20024

Family/Other (including individuals identified above in Question 3):

Name: _____

Address: _____

Name
Counsel for the Respondent

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
MENTAL HEALTH & HABILITATION BRANCH**

In the Matter of	:	Case No.:
	:	Magistrate Judge Diane S. Lepley
_____	:	
<i>Respondent</i>	:	Annual Review Hearing:
	:	

**SUBSTITUTE DECISION MAKER'S REPORT REGARDING
CONTINUED VOLUNTARY COMMITMENT**

1. I, _____, hereby inform the Court of my decision on behalf of the Respondent regarding continued voluntary commitment. I am the [check which applies]:

- ☐ Respondent's General Guardian.
- ☐ Respondent's Limited Guardian, with specific authority from the Court to consent to or refuse continued commitment (order is attached to this Report).
- ☐ Respondent's Conservator, with specific authority from the Court to consent to or refuse continued commitment (order is attached to this Report).
- ☐ Respondent's spouse or domestic partner.
- ☐ Respondent's adult child.
- ☐ Respondent's parent.
- ☐ Respondent's adult sibling.
- ☐ Respondent's religious superior.
- ☐ Respondent's close friend.
- ☐ Respondent's nearest living, adult relative.
- ☐ the Guardian *ad litem* appointed to consent to or refuse continued voluntary commitment on behalf of the Respondent.

I am reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent.

2. Based on my interactions with the Respondent, I considered whether the Respondent possesses the capacity to provide informed consent to voluntary commitment.

- Is Respondent able to understand the information relevant to the decision of whether to consent to continued commitment? *[Does Respondent understand the nature of the decision and the reason why the decision is needed? Efforts to explain the nature of the*

*decision in language understandable and accessible to the person must be made. People who can only retain information for a short while **must not** be automatically assumed to lack the capacity to decide – it depends on what is necessary for the decision in question. Different methods may be needed to help Respondent retain or understand information (e.g. written information).]*

☐ Yes ☐ No

Please explain:

- Is Respondent able to identify the potential consequences of consenting to or refusing continued commitment as part of the decision-making process? *[Sometimes people can understand information; however, they also should be able to understand the advantages and disadvantages of the decision to be made.]*

☐ Yes ☐ No

Please explain:

- Is Respondent able to unambiguously communicate the decision whether to provide informed consent for continued commitment? *[All steps need to be taken to aid communication. Communication does not need to be verbal.]*

☐ Yes ☐ No

Please explain:

Based on the above, it is my belief that the Respondent [] does [] does not possess the capacity to provide informed consent to voluntary commitment.

3. The Respondent [] has [] has not expressed any wishes on the issue of continued commitment. Please explain:

4. I have made the following efforts to determine whether the Respondent has any expressed wishes regarding continued commitment. Please explain:

5. To the extent the Respondent's expressed wishes are unknown and could not be ascertained, I have made the following efforts to determine what would be in his/her best interest. Please explain:

6. Based on all of these efforts, I provide the Court with the following position on behalf of the Respondent:

The Respondent

☐ consents to

☐ refuses

continued commitment and this decision is based on the Respondent's

☐ expressed wishes.

☐ best interests.

7. I ☐ am ☐ am not aware of any other individuals who may challenge this decision.

Please explain:

DATED: _____

Respectfully submitted,

Signature

Printed Name

Title

Address 1

Address 2

Phone Number

Email Address

INSTRUCTIONS FOR FILING

This pleading can be filed electronically through CaseFileXpress or in person at the Central Intake Center of the Family Court is located on the East Wing of the John Marshall level of the District of Columbia Courthouse, 500 Indiana Avenue N.W., Room JM-520, Washington, D.C. 20001. Hours are 8:30 a.m. to 5 p.m. Phone: 202-879-1212

It must be filed no less than thirty (30) days prior to the annual review hearing for the Respondent.

It must be mailed or e-served to the persons listed in the Certificate of Service on the next page.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Substitute Decision Maker's Report Regarding Continued Voluntary Commitment was sent by e-service where appropriate and otherwise sent by first-class mail, postage pre-paid, on this ____ day of _____, 20__, to the following:

Respondent Name: _____

Respondent Address: _____

Respondent's Counsel: _____

Respondent's Counsel's Address: _____

Advocate Name: _____

Advocate Address: _____

Name: _____
Assistant General Counsel
250 E Street SW, 6th Floor
Washington, D.C. 20024

Name: _____
DDS Court Liaison
250 E Street SW, 6th Floor
Washington, D.C. 20024

Family/Other:

Name: _____

Address: _____

Signature of Filer

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
MENTAL HEALTH & HABILITATION BRANCH**

In the Matter of	:	Case No.:
	:	Magistrate Judge Diane S. Lepley
_____	:	
<i>Respondent</i>	:	Annual Review Hearing:
	:	

**CHALLENGE TO THE
SUBSTITUTE DECISION MAKER'S REPORT REGARDING
CONTINUED VOLUNTARY COMMITMENT**

1. I, _____, hereby inform the Court that I challenge the stated decision of _____, an individual with higher priority on whether the Respondent consents to or refuses voluntary commitment. I am the [check which applies]:

- ☐ Respondent's General Guardian.
- ☐ Respondent's Limited Guardian, with specific authority from the Court to consent to or refuse continued commitment (order is attached to this Report).
- ☐ Respondent's Conservator, with specific authority from the Court to consent to or refuse continued commitment (order is attached to this Report).
- ☐ Respondent's spouse or domestic partner.
- ☐ Respondent's adult child.
- ☐ Respondent's parent.
- ☐ Respondent's adult sibling.
- ☐ Respondent's religious superior.
- ☐ Respondent's close friend.
- ☐ Respondent's nearest living, adult relative.
- ☐ the Guardian *ad litem* appointed to consent to or refuse continued voluntary commitment on behalf of the Respondent.

I am reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent.

2. Based on my interactions with the Respondent, I considered whether the Respondent possesses the capacity to provide informed consent to voluntary commitment.

- Is Respondent able to understand the information relevant to the decision of whether to consent to continued commitment? *[Does Respondent understand the nature of the decision and the reason why the decision is needed? Efforts to explain the nature of the decision in language understandable and accessible to the person must be made. People who can only retain information for a short while **must not** be automatically assumed to lack the capacity to decide – it depends on what is necessary for the decision in question. Different methods may be needed to help Respondent retain or understand information (e.g. written information).]*

☐ Yes ☐ No

Please explain:

- Is Respondent able to identify the potential consequences of consenting to or refusing continued commitment as part of the decision-making process? *[Sometimes people can understand information; however, they also should be able to understand the advantages and disadvantages of the decision to be made.]*

☐ Yes ☐ No

Please explain:

- Is Respondent able to unambiguously communicate the decision whether to provide informed consent for continued commitment? *[All steps need to be taken to aid communication. Communication does not need to be verbal.]*

☐ Yes ☐ No ☐ Disagreement

Please explain:

Based on the above, it is my belief that the Respondent [] does [] does not possess the capacity to provide informed consent to voluntary commitment.

3. The Respondent [] has [] has not expressed any wishes on the issue of continued commitment. Please explain:

4. I have made the following efforts to determine whether the Respondent has any expressed wishes regarding continued commitment. Please explain:

5. I have better knowledge of the wishes of the Respondent for the following reasons.

Please explain:

6. To the extent the Respondent's expressed wishes are unknown and could not be ascertained, I have made the following efforts to determine what would be in his/her best interest. Please explain:

7. I am better able to demonstrate a good faith belief as to the interests of the Respondent for the following reasons. Please explain:

8. Based on all of these efforts, I provide the Court with the following position on behalf of the Respondent:

The Respondent

☐ consents to

☐ refuses

continued commitment and this decision is based on the Respondent's

☐ expressed wishes.

[] best interests.

DATED: _____

Respectfully submitted,

Signature

Printed Name

Title

Address 1

Address 2

Phone Number

Email Address

INSTRUCTIONS FOR FILING

This pleading can be filed electronically through CaseFileXpress or in person at the Central Intake Center of the Family Court is located on the East Wing of the John Marshall level of the District of Columbia Courthouse, 500 Indiana Avenue N.W., Room JM-520, Washington, D.C. 20001. Hours are 8:30 a.m. to 5 p.m. Phone: 202-879-1212

It must be filed no less than fifteen (15) days prior to the annual review hearing for the Respondent.

It must be mailed or e-served to the persons listed in the Certificate of Service on the next page.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment was sent by e-service where appropriate and otherwise sent by first-class mail, postage pre-paid, on this _____ day of _____, 20__, to the following:

Respondent Name: _____

Respondent Address: _____

Respondent's Counsel: _____

Respondent's Counsel's Address: _____

Advocate Name: _____

Advocate Address: _____

Name: _____
Assistant General Counsel
250 E Street SW, 6th Floor
Washington, D.C. 20024

Name: _____
DDS Court Liaison
250 E Street SW, 6th Floor
Washington, D.C. 20024

Family/Other:

Name: _____

Address: _____

Signature of filer

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
MENTAL HEALTH & HABILITATION BRANCH**

In the Matter of	:	Case No.:
	:	Magistrate Judge Diane S. Lepley
[PERSON'S NAME]	:	ISP Meeting Date:
	:	Annual Review Hearing:
<i>Respondent</i>	:	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER OF THE COURT**

This matter came before the Court on _____ for Respondent's annual review of commitment. The assessments, evaluations, and the Individual Support Plan ("ISP"), the meeting for which was held on _____, were filed with the Court on _____. The names of the parties present at the hearing are listed on the sign-in sheet filed herein. Upon consideration of the documents filed herein, including the status reports submitted for this hearing by the Provider and Respondent's Counsel, the testimony presented, and the representations of counsel, the Court finds beyond a reasonable doubt that:

FINDINGS OF FACT

1. Respondent, _____, born on _____, is _____ years of age. Respondent's psychological report of _____, dated _____ indicates a diagnosis of _____ in the cognitive sphere and _____ in the adaptive sphere. Respondent's other diagnoses are found in the Provider's Status Report which is incorporated herein.
2. The Court finds beyond a reasonable doubt that the Respondent
[] is at least moderately intellectually disabled in both the cognitive and adaptive spheres, and requires habilitation.

[] was found incompetent and unlikely to regain competency in the foreseeable future in a criminal case after a hearing in accordance with *Jackson v. Indiana*, 406 U.S. 715 (1972). The Respondent is likely to cause injury to others as a result of his/her intellectual disability if allowed to regain his/her liberty. D.C. Official Code § 7-1304.06a (2013 Repl.).

3. The Court finds beyond a reasonable doubt that the Department on Disability Services is capable of providing the required habilitation and has certified that the residential provider and day program described in these Findings of Fact will implement Respondent's ISP. Placement with a residential provider is necessary for providing the habilitation.

4. Respondent resides at _____,
a _____ placement, operated by _____.
There are _____ other residents in this home.

[] Respondent resides in the District of Columbia.

[] Respondent resides in a residential placement outside of the District of Columbia but is considered a District of Columbia resident pursuant to D.C. Official Code § 7-1301.03(22).

5. Respondent attends the _____ during the day, located at _____, for _____ days per week, _____ hours per day. Respondent receives habilitation at this program as noted in the Provider's/Day Program's Status Report.

[] Respondent receives a stipend/pay in the amount of _____ per _____ for _____.

[] Respondent does not receive a stipend/pay.

6. In the residence, Respondent receives habilitation in the areas noted in the Provider's Status Report. During this review period, Respondent has demonstrated the most progress in:

_____.

7. Respondent participates in social and recreational activities in the community at least

_____ times a week. The activities include the following: _____

_____.

Respondent went on vacation and/or day trip to: _____

on the following dates: _____.

Respondent has contact with the following family members: _____

Respondent's health care decision maker is:

Name: _____

Relationship: _____

8. Respondent's financial accounts are as follows:

D.C. Personal Allowance: \$_____ as of _____.

Burial Fund: \$_____ as of _____.

Community Account:

Savings: \$_____ as of _____ held at _____.

Checking: \$_____ as of _____ held at _____.

Other Account:

_____: \$_____ as of _____ held at _____.

Respondent's monthly allowance is \$_____. Respondent receives the following benefits: _____.

9. Respondent receives medications as noted on the Provider's Status Report.

☐ The Respondent does not receive psychotropic or seizure medication.

☐ The Respondent receives ☐ psychotropic/ ☐ seizure medication. Provider is aware of Respondent's need to receive the required evaluations for such medications. Such evaluations have/have not been done.

Respondent's medical needs

☐ are being met.

☐ are not being met.

Respondent's physical and lab tests

☐ are current

☐ are not current.

The dates and results of Respondent's physical and lab tests are in the ISP and the Provider's Status Report field for today's hearing.

Respondent has the following emergency room visits and/or hospitalizations (date, hospital, purpose, and treatment): _____

During this review period, Respondent has suffered the following illness/injury/medical condition that required the attention of the Respondent's Primary Care Physician: _____

Respondent weighs _____ lbs. Based on the Respondent's nutritional information, the weight range is reported as DWR/HWR/IBW is _____ to _____ lbs.

10. Respondent is receiving ☐ some ☐ all ☐ none of the programs and services indicated as necessary by the ISP.

☐ The level of habilitation provided is not adequate in the following area(s):

11. Through receipt of the above-described programs and services, and the progress made, Respondent has benefited from the habilitation provided.

12. Respondent is receiving habilitation by the least restrictive means as defined in D.C. Official Code § 7-1301.03(16) and § 7-1305.03 (2013 Repl.) at this time.

13. The Respondent's Report to the Court on Informed Consent for Voluntary Commitment was filed by Counsel for the Respondent on _____, following an interdisciplinary team meeting convened by DDS on _____ . The interdisciplinary meeting ☐ was ☐ was not convened during the annual ISP meeting.

14. The Report indicates that the interdisciplinary team ☐ is in agreement ☐ is not in agreement on the question of whether the Respondent has capacity to consent or refuse to continue his or her commitment.

15. To the extent the Respondent lacks capacity, the Report also indicates that the following individual(s) is/are reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent based on either the Respondent's

expressed wishes or a good faith belief as to the best interest of the Respondent, if his or her expressed wishes are unknown and cannot be ascertained:

☐ Respondent's General Guardian,

_____.

☐ Respondent's Limited Guardian, _____,

who has obtained specific authority from the Court to provide informed consent.

☐ Respondent's Conservator, _____,

who has obtained specific authority from the Court to provide informed consent.

☐ Respondent's spouse or domestic partner, _____.

☐ Respondent's adult child, _____.

☐ Respondent's parent, _____.

☐ Respondent's adult sibling, _____.

☐ Respondent's religious superior, _____.

☐ Respondent's close friend, _____.

☐ Respondent's nearest living, adult relative, _____.

☐ Respondent's guardian *ad litem*, _____.

☐ More than one individual has been identified as being reasonably available, mentally capable, and willing to consent to or refuse continued voluntary commitment on behalf of the Respondent. The individual of lower priority ☐ does ☐ does not seek to rebut the presumption and challenge the decision of an individual with higher priority as set forth in in D.C. Official Code § 7-1304.11(a)(5)-(6).

16. The Report indicates that the individual identified to provide informed consent on behalf of the Respondent ☐ intends ☐ does not intend to consent to continued voluntary commitment.

17. A Substitute Decision Maker's Report Regarding Continued Voluntary Commitment was filed on _____ by _____ (name and relationship to the Respondent). The substitute decision maker [] does [] does not provide informed consent on behalf of the Respondent to continue his or her commitment. This decision was made based on [] the expressed wishes of the Respondent [] on a good faith belief as to the best interests of the Respondent because the expressed wishes of the Respondent are unknown and could not be ascertained.

18. [] A Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment was filed on _____ by _____ (name and relationship to the Respondent). The challenger indicates that s/he [] would [] would not provide informed consent on behalf of the Respondent to continue his or her commitment. This decision was made based on [] the expressed wishes of the Respondent [] on a good faith belief as to the best interests of the Respondent because the expressed wishes of the Respondent are unknown and could not be ascertained.

19. An evidentiary hearing [] was [] was not held to determine whether the Respondent has capacity to provide informed consent to continue his or her commitment. To the extent an evidentiary hearing was held, the Court's ruling on the issue of incapacity is contained in an Order dated _____.

20. An evidentiary hearing [] was [] was not held to determine who should consent to or refuse continued voluntary commitment on behalf of the Respondent pursuant to D.C. Official Code § 7-1304.11(a)(2). To the extent an evidentiary hearing was held, the Court's ruling on the

issue of who should consent to or refuse continued voluntary on behalf of the Respondent is contained in an Order dated _____.

21. Based on the Respondent's Report to the Court on Informed Consent for Voluntary Commitment, the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment, any Challenge to the Substitute Decision Maker's Report Regarding Continued Voluntary Commitment filed, any hearings held, and the record herein, the Court finds that

☐ the Respondent has capacity to provide informed consent to continue his or her commitment and ☐ does ☐ does not provided informed consent.

☐ the Respondent does not have capacity to provide informed consent to continue his or her commitment and _____, the _____ of the Respondent, ☐ does ☐ does not provide informed consent on behalf of the Respondent to continue his or her commitment. This decision was made based on

☐ the expressed wishes of the Respondent.

☐ on a good faith belief as to the best interests of the Respondent because the expressed wishes of the Respondent are unknown and could not be ascertained.

CONCLUSIONS OF LAW

Upon consideration of the foregoing findings of fact, the Court concludes as a matter of law that the requirements of D.C. Official Code § 7-1304.11 (2013 Repl.) for review and continuation of Respondent's voluntary commitment ☐ have ☐ have not been met.

ORDER

Upon consideration of the foregoing findings of fact and conclusions of law, it is, by the Court on this _____ day of _____, 20_____, hereby

[] **ORDERED** that Respondent, _____ shall continue to be voluntarily committed for the provision of care and habilitation consistent with Respondent's comprehensive evaluation and individual support plan, in accordance with all applicable law; and it is

[] **ORDERED** that the Respondent, _____, or an individual authorized to provide consent on his or her behalf, has not provided informed consent for his or her continued commitment, and the commitment is, therefore, **TERMINATED** and the case is **CLOSED**.

[] **FURTHER ORDERED** that this matter is scheduled for further proceedings and filings as follows:

- (a) The meeting for the next annual ISP shall be held on or before _____;
- (b) The approved ISP from the meeting above shall be filed with the Court within 30 days of the meeting;
- (c) There shall be an annual review hearing before this Court on _____ at _____; and
- (d) The Provider and Counsel shall file their status reports 10 days before the annual review hearing; and
- (e) Counsel shall file the Respondent's Report to the Court on Informed Consent for Voluntary Commitment no later than 60 days before the annual review hearing; and it is

[] **FURTHER ORDERED** that the Department on Disability Services shall notify all parties of the date and time set for the ISP and interdisciplinary team meeting; and it is

[] FURTHER ORDERED

IT IS SO ORDERED.

Magistrate Judge Diane S. Lepley

Revised: May 29, 2018

COPIES TO:

Respondent Name: _____

Respondent Address: _____

Attorney Name: _____

Attorney Address: _____

Residential Provider Name: _____

Business Address: _____

Advocate Name: _____

Advocate Address: _____

Name: _____

Assistant General Counsel
250 E Street SW, 6th Floor
Washington, D.C. 20024

Name: _____

DDS Court Liaison
250 E Street SW, 6th Floor
Washington, D.C. 20024

Family/Other:

Name: _____

Address: _____