



General Assembly

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Amendment

LCO No. 6221

Offered by:
REP. EBERLE, 15th Dist.

To: House Bill No. 6573

File No. 352

Cal. No. 263

(As Amended by House Amendment Schedule "A")

"AN ACT CONCERNING THE RIGHTS OF PERSONS UNDER SUPERVISION OF THE COMMISSIONER OF MENTAL RETARDATION."

1 Strike out everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 17a-210 of the general statutes is repealed and the
4 following is substituted in lieu thereof:

5 (a) There shall be a Department of Mental Retardation. The
6 Department of Mental Retardation, with the advice of a Council on
7 Mental Retardation, shall be responsible for the planning,
8 development and administration of complete, comprehensive and
9 integrated state-wide services for persons with mental retardation and
10 persons medically diagnosed as having Prader-Willi syndrome. The
11 Department of Mental Retardation shall be under the supervision of a
12 Commissioner of Mental Retardation, who shall be appointed by the

13 Governor in accordance with the provisions of sections 4-5 to 4-8,
14 inclusive. The Council on Mental Retardation may advise the
15 Governor on the appointment. The commissioner shall be a person
16 who has background, training, education or experience in
17 administering programs for the care, training, education, treatment
18 and custody of persons with mental retardation. The commissioner
19 shall be responsible, with the advice of the council, for: [planning] (1)
20 Planning and developing complete, comprehensive and integrated
21 state-wide services for persons with mental retardation; [for] (2) the
22 implementation and where appropriate the funding of such services;
23 and [for] (3) the coordination of the efforts of the Department of
24 Mental Retardation with those of other state departments and
25 agencies, municipal governments and private agencies concerned with
26 and providing services for persons with mental retardation. The
27 commissioner shall be responsible for the administration and
28 operation of the state training school, state mental retardation regions
29 and all state-operated community-based residential facilities
30 established for the diagnosis, care and training of persons with mental
31 retardation. The commissioner shall be responsible for establishing
32 standards, providing technical assistance and exercising the requisite
33 supervision of all state-supported residential, day and program
34 support services for persons with mental retardation and work activity
35 programs operated pursuant to section 17a-226. The commissioner
36 shall conduct or monitor investigations into allegations of abuse and
37 neglect and file reports as requested by state agencies having statutory
38 responsibility for the conduct and oversight of such investigations. The
39 commissioner shall stimulate research by public and private agencies,
40 institutions of higher learning and hospitals, in the interest of the
41 elimination and amelioration of retardation and care and training of
42 persons with mental retardation.

43 (b) The commissioner shall be responsible for the development of
44 criteria as to the eligibility of any person with mental retardation for
45 residential care in any public or state-supported private institution
46 and, after considering the recommendation of a properly designated

47 diagnostic agency, may assign such person to a public or state-
48 supported private institution. [He] The commissioner may transfer
49 such persons from one such institution to another when necessary and
50 desirable for their welfare, provided such person and such person's
51 parent, conservator, guardian or other legal representative [receives]
52 receive written notice of their right to object to such transfer at least ten
53 days prior to the proposed transfer of such person from any such
54 institution or facility. Such prior notice shall not be required when
55 transfers are [made between residential units within the training
56 school or a state mental retardation region or when] necessary to avoid
57 a serious and immediate threat to the life or physical or mental health
58 of such person or others residing in such institution or facility. The
59 notice required by this subsection shall notify the recipient of his or her
60 right to [request a hearing in accordance with subsection (c) of this
61 section] object to such transfer, except in the case of an emergency
62 transfer as provided in this subsection, and shall include the name,
63 address and telephone number of the Office of Protection and
64 Advocacy for Persons with Disabilities. In the event of an emergency
65 transfer, [such notice] the notice required by this subsection shall
66 notify the recipient of his or her right to request a hearing in
67 accordance with subsection (c) of this section and shall be given within
68 ten days following [said] the emergency transfer. In the event [that a
69 hearing is requested prior] of an objection to the proposed transfer, the
70 commissioner shall conduct a hearing in accordance with subsection
71 (c) of this section and the transfer shall be stayed pending final
72 disposition of the hearing.

73 (c) The parent, guardian, conservator or other legal representative of
74 any person with mental retardation who resides at any institution or
75 facility operated by the Department of Mental Retardation, or any
76 person with mental retardation himself or herself, who is eighteen
77 years of age or older and who resides at any such institution or facility,
78 may [make a request, in writing, to the Commissioner of Mental
79 Retardation for a hearing on] object to any transfer of such person from
80 one institution or facility to another for any reason other than a a

81 medical reason or an emergency, or may request such a transfer. In the
82 event of any such objection or request, the commissioner shall conduct
83 a hearing on such proposed transfer. In any such transfer hearing, the
84 proponent of a transfer shall have the burden of showing, by clear and
85 convincing evidence, that the proposed transfer is in the best interest
86 of the resident being considered for transfer and that the facility and
87 programs to which transfer is proposed (1) are safe and effectively
88 supervised and monitored, and (2) provide a greater opportunity for
89 personal development than the resident's present setting. Such hearing
90 shall be conducted in accordance with the provisions of [sections 4-
91 176e to 4-184, inclusive] chapter 54.

92 (d) The parent, guardian, conservator or other legal representative
93 of a person, or the person himself or herself, may request a hearing for
94 any final determination by the department which [(1)] denies such
95 person eligibility for programs and services of the department. [, (2)
96 approves a program for such person which includes the use of
97 behavior-modifying medications or aversive procedures, or (3)
98 determines that community placement is inappropriate for such
99 person placed under the direction of the commissioner.] A request for
100 a hearing shall be made in writing to the commissioner. Such hearing
101 shall be conducted in accordance with the provisions of [sections 4-
102 176e to 4-184, inclusive] chapter 54.

103 (e) The parent, guardian, conservator or other legal representative of
104 a person, or the person himself or herself, may object to (1) a proposed
105 approval by the department of a program for such person which
106 includes the use of behavior-modifying medications or aversive
107 procedures, or (2) a proposed determination of the department that
108 community placement is inappropriate for such person placed under
109 the direction of the commissioner. The department shall provide
110 written notice of any such proposed approval or determination to the
111 parent, guardian, conservator or other legal representative of such
112 person, or the person himself or herself, at least ten days prior to
113 making such approval or determination. In the event of an objection to
114 such proposed approval or determination, the commissioner shall

115 conduct a hearing in accordance with the provisions of chapter 54.

116 Sec. 2. Section 17a-238 of the general statutes is repealed and the
117 following is substituted in lieu thereof:

118 (a) No person placed or treated under the direction of the
119 Commissioner of Mental Retardation in any public or private facility
120 shall be deprived of any personal, property or civil rights, except in
121 accordance with due process of law.

122 (b) Each person placed or treated under the direction of the
123 Commissioner of Mental Retardation in any public or private facility
124 shall be protected from harm and receive humane and dignified
125 treatment which is adequate for [his] such person's needs and for [his]
126 the development [to his] of such person's full potential at all times,
127 with full respect for [his] such person's personal dignity and right to
128 privacy consistent with [his] such person's treatment plan as
129 determined by the commissioner. No treatment plan or course of
130 treatment for any person placed or treated under the direction of the
131 commissioner shall include the use of an aversive device which has not
132 been tested for safety and efficacy and approved by the federal Food
133 and Drug Administration except for any treatment plan or course of
134 treatment including the use of such devices which was initiated prior
135 to October 1, 1993. No treatment plan or course of treatment prescribed
136 for any person placed or treated under the direction of the
137 commissioner shall include the use of aversive procedures except in
138 accordance with procedures established by the Commissioner of
139 Mental Retardation. For purposes of this subsection, "aversive
140 procedure" means the contingent use of an event which may be
141 unpleasant, noxious or otherwise cause discomfort to alter the
142 occurrence of a specific behavior or to protect an individual from
143 injuring himself or herself or others and may include the use of
144 physical isolation and mechanical and physical restraint. Nothing in
145 this subsection shall prohibit persons who are not placed or treated
146 under the direction of the Commissioner of Mental Retardation from
147 independently pursuing and obtaining any treatment plan or course of

148 treatment as may otherwise be authorized by law. The commissioner
149 shall adopt regulations, in accordance with chapter 54, to carry out the
150 provisions of this subsection.

151 (c) The Commissioner of Mental Retardation shall adopt
152 regulations, in accordance with the provisions of [sections 4-166 to 4-
153 176, inclusive] chapter 54, with respect to each facility or institution
154 under [his] the jurisdiction of the commissioner, with regard to the
155 following: (1) Prohibiting the use of corporal punishment; (2) when
156 and by whom therapies may be used; (3) which therapies may be used;
157 and (4) when a person may be placed in restraint or seclusion or when
158 force may be used upon a person.

159 (d) A copy of any order prescribing the use of therapy, restraint or
160 seclusion in accordance with the regulations adopted [in] under
161 subsection (c) of this section shall be made a part of the person's
162 permanent clinical record together with the reasons for each such
163 order and made available in compliance with existing statutes relating
164 to the right to know.

165 (e) The Commissioner of Mental Retardation shall ensure that each
166 person placed or treated under [his] the commissioner's direction in
167 any public or private facility is afforded the following rights and
168 privileges: (1) The right to prompt, sufficient and appropriate medical
169 and dental treatment; (2) the right to communicate freely and privately
170 with any person, including, but not limited to, an attorney or other
171 legal representative of [his] the person's choosing; (3) the right to
172 reasonable access to a telephone, both to make and receive calls in
173 private, unless such access is used in violation of any federal or state
174 statute; (4) the right to send and receive unopened mail and to make
175 reasonable requests for assistance in the preparation of
176 correspondence; (5) the safety of each person's personal effects shall be
177 assured including the provision of reasonably accessible individual
178 storage space; (6) the right to be free from unnecessary or excessive
179 physical restraint; (7) the right to voice grievances without
180 interference; (8) the right to a nourishing and well-balanced diet; (9)

181 the right to be employed outside a facility and to receive assistance in
182 his or her efforts to secure suitable employment. The department shall
183 encourage the employment of such persons and shall promote the
184 training of such persons for gainful employment, and all benefits of
185 such employment shall accrue solely to the person employed; (10) the
186 right to have the complete record maintained by the Department of
187 Mental Retardation concerning such person released for review,
188 inspection and copying to such person's attorney or other legal
189 representative notwithstanding any provisions of subsection (g) of
190 section 4-193 or section 4-194; and (11) the right to receive or purchase
191 his or her own clothing and personal effects, including toilet articles,
192 and the right to wear such clothing and use such personal effects
193 except where determined to be dangerous to the health or safety of the
194 individual or others.

195 (f) The Commissioner of Mental Retardation shall require the
196 attending physician of any person placed or treated under [his] the
197 direction of the commissioner to obtain informed written consent from
198 the following persons prior to authorizing any surgical procedure or
199 any medical treatment, excluding routine medical treatment which is
200 necessary to maintain the general health of a resident or to prevent the
201 spread of any communicable disease: (1) The resident if [he] such
202 resident is eighteen years of age or over or is legally emancipated and
203 competent to give such consent; (2) the parent of a resident under
204 eighteen years of age who is not legally emancipated; or (3) the legal
205 guardian or conservator of a resident of any age who is adjudicated
206 unable to make informed decisions about matters relating to [his] such
207 resident's medical care. The person whose consent is required shall be
208 informed of the nature and consequences of the particular treatment or
209 surgical procedure, the reasonable risks, benefits and purpose of such
210 treatment or surgical procedure and any alternative treatment or
211 surgical procedures which are available. The consent of any resident or
212 of any parent, guardian or conservator of any resident may be
213 withdrawn at any time prior to the commencement of the treatment or
214 surgical procedure. The regional or training school director having

215 custody and control of a resident of any facility may authorize
216 necessary surgery for [any] such resident where, in the opinion of the
217 resident's attending physician, the surgery is of an emergency nature
218 and there is insufficient time to obtain the required written consent
219 provided for in this section. The attending physician shall prepare a
220 report describing the nature of the emergency which necessitated such
221 surgery and shall file a copy of such report in the patient's record.

222 (g) The commissioner's oversight and monitoring of the medical
223 care of persons placed or treated under the direction of the
224 commissioner does not include the authority to make treatment
225 decisions, except in limited circumstances in accordance with statutory
226 procedures. In the exercise of such oversight and monitoring
227 responsibilities, the commissioner shall not impede or seek to impede a
228 properly executed medical order to withhold cardiopulmonary
229 resuscitation. For purposes of this subsection, [a] "properly executed
230 medical order to withhold cardiopulmonary resuscitation" means (1) a
231 written order by the attending physician; (2) in consultation and with
232 the consent of the patient or a person authorized by law; (3) when the
233 attending physician is of the opinion that the patient is in a terminal
234 condition, as defined in [subsection] subdivision (3) of section 19a-570,
235 which condition will result in death within days or weeks; and (4)
236 when such physician has requested and obtained a second opinion
237 from a Connecticut licensed physician in the appropriate specialty that
238 confirms the patient's terminal condition; [. A "properly executed
239 medical order to withhold cardiopulmonary resuscitation" also] and
240 includes the entry of such an order when the attending physician is of
241 the opinion that the patient is in the final stage of a terminal condition
242 but cannot state that the patient may be expected to expire during the
243 next several days or weeks, or, in consultation with a physician
244 qualified to make a neurological diagnosis, deems the patient to be
245 permanently unconscious, provided the commissioner has reviewed
246 the decision with the department's director of community medical
247 services, the family and guardian of the patient and others who the
248 commissioner deems appropriate, and determines that the order is a

249 medically acceptable decision.

250 (h) Any person applying for services from the Commissioner of
251 Mental Retardation or any person placed by a probate court under the
252 direction of the Commissioner of Mental Retardation, and such
253 person's parents or guardian, shall be informed orally and in writing at
254 the time of application or placement of the rights guaranteed by this
255 section and the provisions of subdivision (5) of section 46a-11. A
256 summary of [these] such rights shall be posted conspicuously in the
257 public areas of every public or private facility providing services to
258 persons under the care of the Commissioner of Mental Retardation.

259 Sec. 3. Section 45a-677 of the general statutes is repealed and the
260 following is substituted in lieu thereof:

261 (a) The court may assign to a limited guardian of [the] a mentally
262 retarded person any portion of the duties and powers listed in
263 subsection (d) of this section for those particular areas in which the
264 respondent lacks the capacity to meet the essential requirements for
265 [his] such respondent's physical or mental health or safety.

266 (b) A limited guardian may also be assigned the duty to assist the
267 respondent in those particular areas in which the capacity of [such
268 person] the respondent to meet the essential requirements of [his] such
269 respondent's physical or mental health or safety, protect [his] such
270 respondent's rights, obtain necessary services, or to fulfill [his] such
271 respondent's civil duties is impaired, as well as in other ways not
272 specifically prohibited by sections 45a-668 to 45a-684, inclusive.

273 (c) A limited guardian of [the] a mentally retarded person shall have
274 only such of the duties and responsibilities and powers of a guardian
275 of [the] a mentally retarded person under subsection (d) of this section
276 as the court shall specify based upon its findings with regard to the
277 individual need of the respondent for supervision. The guardian shall
278 have the duty to report to the probate court which appointed such
279 limited guardian at least annually the condition of the respondent. The
280 preceding duties, responsibilities and powers shall be carried out

281 within the limitations of the resources available to the ward, either
282 through [his] the ward's own estate or by reason of private or public
283 assistance.

284 (d) The court may assign to a limited guardian the custody of the
285 ward for the purpose of exercising any, but not all, of the following
286 limited duties and powers, in order to assist the ward in achieving
287 self-reliance: (1) To assure and consent to a place of abode outside the
288 natural family home, (2) to consent to specifically designed
289 educational, vocational or behavioral programs, (3) to consent to the
290 release of clinical records and photographs, (4) to assure and consent
291 to routine, elective and emergency medical and dental care, and (5)
292 other specific limited powers to assure and consent to services
293 necessary to develop or regain to the maximum extent possible the
294 ward's capacity to meet essential requirements. All plenary guardians
295 and limited guardians appointed pursuant to sections 45a-668 to
296 45a-684, inclusive, shall also have a duty to assure the care and comfort
297 of the ward within the limitations of their appointment, and within the
298 limitations of the resources available to the ward either through [his]
299 the ward's own estate or by reason of private or public assistance.

300 (e) A plenary guardian or limited guardian of [the] a mentally
301 retarded person shall not have the power or authority: (1) To cause the
302 ward to be admitted to any institution for treatment of the mentally ill,
303 except in accordance with the provisions of sections 17a-75 to 17a-83,
304 inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive,
305 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to
306 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 420b;
307 (2) to cause the ward to be admitted to any training school or other
308 facility provided for the care and training of the mentally retarded if
309 there is a conflict concerning such admission between the guardian
310 and the mentally retarded person or next of kin, except in accordance
311 with the provisions of sections 17a-274 and 17a-275; (3) to consent on
312 behalf of the ward to a sterilization, except in accordance with the
313 provisions of sections 45a-690 to 45a-700, inclusive; (4) to consent on
314 behalf of the ward to psychosurgery, except in accordance with the

315 provisions of section 17a-543; (5) to consent on behalf of the ward to
316 the termination of [that person's] the ward's parental rights, except in
317 accordance with the provisions of sections 45a-706 to 45a-709,
318 inclusive, 45a-715 to 45a-718, inclusive, 45a-724 to 45a-737, inclusive,
319 and 45a-743 to 45a-757, inclusive; (6) to consent on behalf of the ward
320 to the performance of any experimental biomedical or behavioral
321 medical procedure or participation in any biomedical or behavioral
322 experiment, unless it is intended to preserve the life or prevent serious
323 impairment of the physical health of the ward or it is intended to assist
324 the ward to regain [his] the ward's abilities and has been approved for
325 [that person] the ward by the court; (7) to admit the ward to any
326 residential facility operated by an organization by whom such
327 guardian is employed, except in accordance with the provisions of
328 section 17a-274; (8) to prohibit the marriage or divorce of the ward;
329 and (9) to consent on behalf of the ward to an abortion or removal of a
330 body organ, except in accordance with applicable statutory procedures
331 when necessary to preserve the life or prevent serious impairment of
332 the physical or mental health of the [respondent] ward.

333 (f) A plenary guardian or limited guardian shall submit a report to
334 the court: (1) Annually; (2) when the court orders additional reports to
335 be filed; or (3) when there is a significant change in the capacity of the
336 ward to meet the essential requirements for [his] the ward's physical
337 health or safety; (4) when the plenary guardian or limited guardian
338 resigns or is removed; and (5) when the guardianship is terminated.

339 (g) Such reports shall be submitted on a form provided by the Office
340 of the Probate Court Administrator and shall contain the following
341 information: (1) Significant changes in the capacity of the ward to meet
342 the essential requirements for [his] the ward's physical health or safety;
343 (2) the services being provided to the ward and the relationship of
344 those services to the individual guardianship plan; (3) the significant
345 actions taken by the limited guardian of [the] a mentally retarded
346 person or plenary guardian of [the] a mentally retarded person during
347 the reporting period; (4) any significant problems relating to the
348 guardianship which have arisen during the reporting period; and (5)

349 whether such guardianship, in the opinion of the guardian, should
350 continue, be modified, or be terminated, and the reasons therefor.

351 (h) When any mentally retarded person for whom a guardian has
352 been appointed becomes a resident of any town in the state in a
353 probate district other than the one in which a guardian was appointed,
354 or becomes a resident of any town in the state to which the
355 guardianship file has been transferred under this section, such court in
356 that district may, upon motion of any person deemed by the court to
357 have sufficient interest in the welfare of the respondent, including, but
358 not limited to, the guardian, the Commissioner of Mental Retardation
359 or [his] the commissioner's designee, or a relative of the person under
360 guardianship, transfer the file to the probate district in which the
361 person under guardianship resides at the time of the application,
362 provided the transfer is in the best interest of the mentally retarded
363 person. A transfer of the file shall be accomplished by the probate
364 court in which the guardianship matter is on file by making copies of
365 all documents in the court and certifying each of them and then
366 causing them to be delivered to the court for the district in which the
367 person under guardianship resides. When the transfer is made, the
368 court of probate in which the person under guardianship resides at the
369 time of transfer shall thereupon assume jurisdiction over the
370 guardianship and all further accounts shall be filed with such court.

371 (i) A plenary guardian or limited guardian of a mentally retarded
372 person and, to the extent appropriate, such person and such person's
373 family, shall be the primary decision maker with respect to programs
374 needed by such person and policies and practices affecting the well-
375 being of such person within the authority granted by the court
376 pursuant to this section, provided any such decision does not conflict
377 with the requirements of section 17a-238, as amended by this act. In
378 making any such decision, the plenary guardian or limited guardian
379 shall consult with the ward and appropriate members of the ward's
380 family, where possible. A limited guardian shall be the primary
381 decision maker only with respect to such duties assigned to the limited
382 guardian by the court. The provisions of this subsection shall be

383 included in any court order appointing a plenary guardian or limited
384 guardian of a mentally retarded person."