



General Assembly

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Amendment

LCO No. 6179

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 Section 17a-210 of the general statutes is repealed and the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 and
20 developing complete, comprehensive and integrated state-wide
21 services for persons with mental retardation; for the implementation
22 and where appropriate the funding of such services; and for the
23 coordination of the efforts of the Department of Mental Retardation
24 with those of other state departments and agencies, municipal
25 governments and private agencies concerned with and providing
26 services for persons with mental retardation. The commissioner shall
27 be responsible for the administration and operation of the state
28 training school, state mental retardation regions and all state-operated
29 community-based residential facilities established for the diagnosis,
30 care and training of persons with mental retardation. The
31 commissioner shall be responsible for establishing standards,
32 providing technical assistance and exercising the requisite supervision
33 of all state-supported residential, day and program support services
34 for persons with mental retardation and work activity programs
35 operated pursuant to section 17a-226. The commissioner shall conduct
36 or monitor investigations into allegations of abuse and neglect and file
37 reports as requested by state agencies having statutory responsibility
38 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 written notice of their right to object to such transfer at least ten days
53 prior to the proposed transfer of such person from any such institution
54 or facility. Such prior notice shall not be required when transfers are
55 [made between residential units within the training school or a state
56 mental retardation region or when] necessary to avoid a serious and
57 immediate threat to the life or physical or mental health of such person
58 or others residing in such institution or facility. The notice required by
59 this subsection shall notify the recipient of his or her right to [request a
60 hearing in accordance with subsection (c) of this section] object to such
61 transfer, except in the case of an emergency transfer as provided in this
62 subsection, and shall include the name, address and telephone number
63 of the Office of Protection and Advocacy for Persons with Disabilities.
64 In the event of an emergency transfer, such notice shall be given within
65 ten days following said transfer. In the event [that a hearing is
66 requested prior] of an objection to the proposed transfer, the
67 Commissioner of Mental Retardation shall conduct a hearing in
68 accordance with subsection (c) of this section and the transfer shall be
69 stayed pending final disposition of the hearing.

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

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

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

100 (e) The parent, guardian, conservator or other legal representative of
101 a person, or the person himself, may object to (1) a proposed approval
102 by the department of a program for such person which includes the
103 use of behavior-modifying medications or aversive procedures, or (2) a
104 proposed determination of the department that community placement
105 is inappropriate for such person placed under the direction of the
106 commissioner. The department shall provide written notice of any
107 such proposed approval or determination to the parent, guardian,
108 conservator or other legal representative of such person, or the person
109 himself or herself, at least ten days prior to making such approval or
110 determination. In the event of an objection to such proposed approval
111 or determination, the Commissioner of Mental Retardation shall
112 conduct a hearing in accordance with the provisions of chapter 54.

113 Sec. 2. Section 17a-238 of the general statutes is repealed and the

114 following is substituted in lieu thereof:

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

119 (b) Each person placed or treated under the direction of the
120 Commissioner of Mental Retardation in any public or private facility
121 shall be protected from harm and receive humane and dignified
122 treatment which is adequate for [his] such person's needs and for [his]
123 the development [to his] of such person's full potential at all times,
124 with full respect for [his] such person's personal dignity and right to
125 privacy consistent with [his] such person's treatment plan as
126 determined by the commissioner. No treatment plan or course of
127 treatment for any person placed or treated under the direction of the
128 commissioner shall include the use of an aversive device which has not
129 been tested for safety and efficacy and approved by the federal Food
130 and Drug Administration except for any treatment plan or course of
131 treatment including the use of such devices which was initiated prior
132 to October 1, 1993. No treatment plan or course of treatment prescribed
133 for any person placed or treated under the direction of the
134 commissioner shall include the use of aversive procedures except in
135 accordance with procedures established by the Commissioner of
136 Mental Retardation. For purposes of this subsection, "aversive
137 procedure" means the contingent use of an event which may be
138 unpleasant, noxious or otherwise cause discomfort to alter the
139 occurrence of a specific behavior or to protect an individual from
140 injuring himself or herself or others and may include the use of
141 physical isolation and mechanical and physical restraint. Nothing in
142 this subsection shall prohibit persons who are not placed or treated
143 under the direction of the Commissioner of Mental Retardation from
144 independently pursuing and obtaining any treatment plan or course of
145 treatment as may otherwise be authorized by law. The commissioner
146 shall adopt regulations, in accordance with chapter 54, to carry out the
147 provisions of this subsection.

148 (c) The Commissioner of Mental Retardation shall adopt
149 regulations, in accordance with the provisions of [sections 4-166 to 4-
150 176, inclusive] chapter 54, with respect to each facility or institution
151 under [his] the jurisdiction of the commissioner, with regard to the
152 following: (1) Prohibiting the use of corporal punishment; (2) when
153 and by whom therapies may be used; (3) which therapies may be used;
154 and (4) when a person may be placed in restraint or seclusion or when
155 force may be used upon a person.

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

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

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

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

216 provided for in this section. The attending physician shall prepare a
217 report describing the nature of the emergency which necessitated such
218 surgery and shall file a copy of such report in the patient's record.

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

247 (h) Any person applying for services from the Commissioner of
248 Mental Retardation or any person placed by a probate court under the
249 direction of the Commissioner of Mental Retardation, and such

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

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

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

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

270 (c) A limited guardian of [the] a mentally retarded person shall have
271 only such of the duties and responsibilities and powers of a guardian
272 of [the] a mentally retarded person under subsection (d) of this section
273 as the court shall specify based upon its findings with regard to the
274 individual need of the respondent for supervision. The guardian shall
275 have the duty to report to the probate court which appointed such
276 limited guardian at least annually the condition of the respondent. The
277 preceding duties, responsibilities and powers shall be carried out
278 within the limitations of the resources available to the ward, either
279 through [his] the ward's own estate or by reason of private or public
280 assistance.

281 (d) The court may assign to a limited guardian the custody of the

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

297 (e) A plenary guardian or limited guardian of [the] a mentally
298 retarded person shall not have the power or authority: (1) To cause the
299 ward to be admitted to any institution for treatment of the mentally ill,
300 except in accordance with the provisions of sections 17a-75 to 17a-83,
301 inclusive, 17a-456 to 17a-484, inclusive, 17a-495 to 17a-528, inclusive,
302 17a-540 to 17a-550, inclusive, 17a-560 to 17a-576, inclusive, 17a-615 to
303 17a-618, inclusive, and 17a-621 to 17a-664, inclusive, and chapter 420b;
304 (2) to cause the ward to be admitted to any training school or other
305 facility provided for the care and training of the mentally retarded if
306 there is a conflict concerning such admission between the guardian
307 and the mentally retarded person or next of kin, except in accordance
308 with the provisions of sections 17a-274 and 17a-275; (3) to consent on
309 behalf of the ward to a sterilization, except in accordance with the
310 provisions of sections 45a-690 to 45a-700, inclusive; (4) to consent on
311 behalf of the ward to psychosurgery, except in accordance with the
312 provisions of section 17a-543; (5) to consent on behalf of the ward to
313 the termination of [that person's] the ward's parental rights, except in
314 accordance with the provisions of sections 45a-706 to 45a-709,
315 inclusive, 45a-715 to 45a-718, inclusive, 45a-724 to 45a-737, inclusive,

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

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

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

348 (h) When any mentally retarded person for whom a guardian has

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

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