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# Developmental Disabilities Reform Act of 2008

## *Draft 1*

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Overview and Section-By-Section Summary

December 18, 2008

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**Developmental Disabilities Reform Act of 2008**  
*Draft 1, December 2008*

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## Background

D.C. Law 2-137, the *Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978*,<sup>1</sup> provides the statutory authority for the District of Columbia's services and supports for residents with intellectual disabilities. As noted in the law's original committee report, the legislation was meant to revise the District's commitment statute, to provide an orderly legal mechanism for carrying out the *Pratt* order to close the city's public institution for people with disabilities (Forest Haven), to assure that commitments to any facility are consistent with the requirement that the placement be the least restrictive, and to establish a consumer bill of rights.<sup>2</sup>

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<sup>1</sup> Effective March 3, 1979; D.C. Official Code § 7-1301.01 *et seq.*

<sup>2</sup> Committee Report on Bill #2-108, "Mentally Retarded Citizens Constitutional Rights and Dignity

In 1978, D.C. Law 2-137 was on the forefront of a growing civil rights movement for people with disabilities. The law provided a framework for the District to become the second state-level jurisdiction to close its public institution for people with developmental disabilities, and helped the city create a new network of group-home based services in the community.

While D.C. Law 2-137 helped the District make great progress, 30 years later the law no longer reflects best practices and modern federal funding streams for community services:

- ♦ National and international knowledge of the capabilities and rights of people with intellectual and developmental disabilities has expanded significantly since 1978.
- ♦ Best practices in human rights and requirements under federal Medicaid funding are at odds with

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Act of 1978,” Polly Shackleton, Chairperson, Committee on Human Resources and Aging, July 20, 1978.

the current law's model of committing the majority of people to residential services through the District's Superior Court.

- ♦ Due to changes in the detection and prevalence of many disabilities, some people who 30 years ago might have been diagnosed with an intellectual disability today are recognized as having other developmental disabilities that are not covered under the current law.
- ♦ New service models under Medicaid now include options for people to live independently (as opposed to living in group homes) and to direct their own services.
- ♦ State and local governments now give greater recognition to the importance of families in the lives of people with developmental disabilities.
- ♦ Best practices in quality standards have created a new baseline for safeguards, outcome measurement, monitoring and reporting.

For these reasons, the Director of the Department on Disability Services, the Chair of the D.C. Council, the Chair of the Council's Committee on Human Services, and community advocates joined together over a year ago and identified a clear need to modernize the District's law. As a result, in the spring of 2007, the Department on Disability Services' Management Advisory Committee (DDS MAC), Legislative Committee initiated an inclusive drafting process for new legislation.<sup>3</sup>

## **Community Ideas for New Laws, New Choices**

To involve the community in designing and developing the new legislation, the DDS MAC Legislative Committee carried out a number of activities over the last year.

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<sup>3</sup> See Appendix A for a list of members.

**Timeline**

May, 2007	Community meeting gathers input on legislative values and principles.
July, 2007	D.C. Council introduces Proposed Resolution 17-428, outlining values and principles for the new legislation.
Fall, 2007	Focus groups gather ideas on key issues for the new legislation.
October, 2007	D.C. Council holds hearing on P.R. 17-428.
December, 2007	D.C. Council approves P.R. 17-428 / R. 17-457.
January, 2008	Fenty e-Transition “One Year Later” meeting.
Fall, 2007	State statute research.
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Spring, 2008	
Summer, 2008	Expert Review Panel convened.
December, 2008	Draft legislation provided for community review, comment, and revision.

In May of 2007, the DDS MAC Legislative Committee held a Community Town Hall meeting with approximately eight-five (85) participants to gather input on the values and principles to guide the new legislation. Based on that input, the D.C. Council introduced the *Sense of the Council Regarding Rights and Services for Residents with Intellectual and Developmental Disabilities and their Families Resolution of 2007*. The Committee on Human Services held a public hearing on the proposed resolution on October 30, 2007, and with the Committee's recommendation, the full Council approved Resolution 17-457 on December 11, 2007.

To gather additional ideas for the new legislation, in the fall of 2007 the DDS MAC Legislative Committee held a series of eight (8) focus groups with approximately one-hundred and seventy (170) participants, including youth and adults with developmental disabilities, their families, service providers, advocates, and direct support professionals. The committee also met with stakeholder groups including the Family Empowerment Center advisory group and the Developmental Disabilities Brown Bag Series at the

Mental Health and Mental Retardation Branch of the Superior Court. Finally, committee gathered additional community input at a one-year follow up meeting of the Fenty e-Transition, Developmental Disability Services Work Group, held in January of 2008.<sup>4</sup>

## Best Practices and Expert Review Panel

To root the new legislation in modern best practices, a drafting subcommittee of the DDS MAC Legislative Committee also undertook a variety of activities, including:

- ♦ Convening an Expert Review Panel of national experts on laws, rights and services for persons with intellectual and developmental disabilities;<sup>5</sup>
- ♦ Compiling, from all 50 states, laws related to services and supports for people with intellectual and developmental disabilities;

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<sup>4</sup> See Appendix B for information on how to access the reports from these meetings and to review and comment on the new draft legislation.

<sup>5</sup> See Appendix C for a list of members.

- ♦ Researching key topics in 18 states that have been recognized as providing quality, inclusive services for people with intellectual and developmental disabilities.<sup>6</sup>
- ♦ Requesting a 50-state review of commitment, by students at the American University, Washington College of Law; and
- ♦ Reviewing key disability rights and services documents including:

*Americans with Disabilities Act of 1990 and Olmstead v. L.C.*

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<sup>6</sup> States are: AZ, AL, CA, CO, CT, HI, ID, MA, MD, MI, MN, NH, NM, NY, NV, VA, VT, and WA. Sixteen states were identified as the top performing states using Medicaid to serve people with intellectual and developmental disabilities in United Cerebral Palsy's report, *The Case for Inclusion 2007: An analysis of Medicaid for Americans with intellectual and developmental disabilities*. Maryland and Virginia were added for a regional perspective.

*CMS Quality Framework*, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services

*Developmental Disabilities Assistance and Bill of Rights Act of 2000*

*Final Report and Recommendations*, Fenty e-Transition, Human Services Transition Team

The District of Columbia *Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008*

*The Montreal Declaration on Intellectual Disabilities*

*Rehabilitation Act of 1973*, as amended  
*Rights & Responsibilities* brief, Council on Quality Leadership

*United Nations Convention on the Rights of Persons with Disabilities*

## **Draft Legislation and Community Next Steps**

As a result of this work, the drafting subcommittee of the DDS MAC Legislative Committee is pleased to release with this report draft legislation that is

based on the community's ideas and an understanding of national and international best practices.<sup>7</sup> Extensive work has occurred to date. However, the release of the draft is the beginning of the next phase of preparing the bill for introduction at the DC Council – not the end.

While the drafting committee has worked to turn the community's ideas into legislative language, the process of researching the draft raised new considerations that were unknown a year ago, and not all ideas have consensus. A number of key concepts in particular were addressed during the 2007 meetings and focus groups, but need continued community discussion now that the ideas have been put into draft legislation:

- Who should be able to get supports and services under the new law?
- What kinds of supports and services should be available?

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<sup>7</sup> See Appendix D for an outline of the draft legislation; a section-by-section summary is provided beginning on page 10 of this report.

- If supports and services change or expand, how soon should this happen and what processes for transition need to be in place?
- How should the law describe people's rights and capabilities?
- How should people be found eligible for supports and services?
- What happens if someone is found ineligible?
- How will the law safeguard people's rights and well-being?
- How will people be able to resolve problems?
- What roles should various parts of District government – including DDA, other agencies, and the Superior Court – play under the new law?
- What sorts of quality standards should exist?

A thorough review by the community of these and other ideas is needed and welcomed. It will be critically important for people with disabilities, their families, advocates, support staff, and service providers to go over the draft and work together to make changes and prepare the legislation for introduction.

To accomplish this, the DDS MAC Legislative Committee will hold a second Community Town Hall meeting in January of 2009 for people to learn more about the draft. After the Town Hall, the Committee will host a series of meetings – open to all – for people to discuss, review, and make changes to each section of the draft bill. Copies of the draft legislation and source documents will be made available in a variety of formats, will be posted to the internet, and provided to anyone interested by email or mail. Comments will be welcomed in any form, including at meetings, by phone and email.

The DDS MAC Legislative Committee thanks everyone who has participated in the drafting process so far, and looks forward to working with the community to review and improve the draft bill over the coming months.

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# Developmental Disabilities Reform Act of 2008

## *Draft 1, December 2008*

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### Overview

The *Developmental Disabilities Reform Act* (DDRA) modernizes the District's 1978 law governing supports and services for residents with intellectual and developmental disabilities. The new draft bill creates a flexible legal framework for the next 30 years that:

- Recognizes the rights and abilities of people with developmental disabilities;
- Is rooted in local, national and international best practices;
- Establishes strong quality standards and safeguards;
- Aligns District law with federal law, helping the city to maximize federal funding;
- Helps families to support their members with developmental disabilities;
- Adopts a lifespan approach;
- Promotes interagency coordination; and

- ♦ Puts people with disabilities and community stakeholders in charge of helping to shape the future of the District’s service system.

## Comprehensive Services to Address Current Needs

The DDRA allows the DC Department on Disability Services, Developmental Disabilities Administration (DDA) to provide a more comprehensive set of services than has been available in the past through a strong emphasis on *community living*, family *supports*, and *services across the lifespan*.

The DDRA also allows DDA for the first time to serve people with the full range of developmental disabilities, as opposed to only serving people with a diagnosis of intellectual disability. Eligibility will expand over a 2-year period after the law takes effect:

Time after law takes effect	Eligibility criteria
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***0 to 12 months*** Must have an intellectual disability.

***12 to 24 months*** Must have an intellectual disability or a developmental disability as identified in regulation.

***24 months*** Must have a developmental disability.

### **Timely Intake and Person-Centered Planning**

The DDRA creates maximum timeframes for intake, and sets up a person-centered planning process that puts residents with disabilities in charge of identifying their needs and selecting the DDA services that will best meet their needs. People will choose their DDA support coordinator and provider(s), and decide who they want to help them design and monitor their service plan.

## Rights and Protections

The DDRA affirms that people with developmental disabilities have the same rights as all other people, and identifies the specific rights of people who receive DDA services. It creates a flexible system for safeguarding those rights that includes:

- Supports, consistent with reasonable accommodations under the federal *Americans with Disabilities Act of 1990*, for people to exercise their right to choice and control;
- Information, training, and support for people to learn how to exercise their rights;
- Multiple options for resolving grievances, informally and formally;
- Access to the Superior Court including court-appointed advocates and attorneys; and
- The right to initiate action in court to compel rights, and the right to a civil remedy.

## Quality Standards

The DDRA sets up quality standards that include standards for services, staffing (including criminal background checks and a registry of substantiated

abuse and neglect), records, and prohibitions on inhumane and inappropriate procedures.

### **Interagency Coordination**

The DDRA makes DDA the lead agency for coordinating supports and services for persons with developmental disabilities and their families. DDA will be responsible for working with other agencies to develop the plan for how agencies will work together.

### **Community Involvement**

People with developmental disabilities, their families and support networks will help design the new service system and will have an ongoing role working with DDA to guide family supports through a new Family Support Council. This will help the District comply with community involvement requirements in federal law.

### **Accountability**

The Mayor will be required to provide an annual report card on the District's progress in implementing the DDRA. All committees created by the new law must operate openly, and all reports and

policy documents must be developed in partnership with people with disabilities and made widely available.

## Orderly Transition

The DDRA provides for an orderly transition from the systems under the District's former developmental disability service law to the systems under the new law:

- Service enhancements will roll out over 2 years and will be guided by a community task force to help DDA identify priorities and timelines.
- All people who were previously committed to a DDA facility will retain their rights and services, including the right to a court-appointed attorney.
- During the 2-year roll out period, the Superior Court will be able to expand its advocacy program and develop new processes, with guidance from a community work group.
- Regular reporting to the Mayor, Council and public will help identify and fix any areas of concern that arise during the transition.

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**Developmental Disabilities Reform Act of 2008**  
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**Side-by-Side Comparison with D.C. Law 2-137<sup>8</sup>**

<b>Issue</b>	<b>D.C. Law 2-137</b>	<b>Developmental Disabilities Reform Act</b>
<b>Ages served</b>	Generally, adults.	All ages.
<b>Eligible diagnosis</b>	Intellectual disability.	Developmental disability.
<b>Intake process</b>	Admission or commitment through the Superior Court; no time limit on process.	Eligibility determined by DDA within 40 days.
<b>Short-term services</b>	Prior to commitment, DDA can provide services	Prior to eligibility determination, DDA can provide services if the

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<sup>8</sup> The *Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978*, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*).

	to a person who has been found incompetent in a criminal case.	person is homeless, at risk of abuse and neglect, or has been found incompetent in a criminal case.
<b>Service planning</b>	Individual habilitation plan created by an interdisciplinary team.	Individual support plan created by the person, with the DDA support coordinator and anyone else the person wants.
<b>Supports &amp; services</b>	Residential facility-based habilitation.	Flexible, person-centered home and community-based services.
<b>Family supports</b>	Respite.	Comprehensive array of services, guided by a Family Support Council.
<b>Rights</b>	Detailed information on	A focus on people's right to

	the rights of people who live in facilities.	choice and control in their own lives. DDS authorized to enforce rights.
<b>Grievances</b>	<ul style="list-style-type: none"> <li>• No DDA grievance system.</li> <li>• People who are committed can ask for a Superior Court hearing. People who are admitted have no grievance option.</li> <li>• Access to Medicaid Fair Hearing.</li> <li>• Civil remedy.</li> </ul>	<ul style="list-style-type: none"> <li>• Internal DDA grievance system.</li> <li>• All people eligible for DDA services can access the Superior Court.</li> <li>• Access to Medicaid Fair Hearing.</li> <li>• Civil remedy.</li> </ul>
<b>Federal law &amp; funding</b>	Inconsistent with federal disability rights law; fails to maximize Medicaid	Consistent with federal disability rights law; maximizes Medicaid dollars.

	dollars.	
<b>Advocacy supports</b>	People who are committed can get a court-appointed volunteer advocate.	All people eligible for DDA services can get a court-appointed paid advocate.
<b>Quality standards</b>	None.	<ul style="list-style-type: none"> <li>♦ Interagency standards led by DDA.</li> <li>♦ Mandatory criminal background checks.</li> <li>♦ Abuse and neglect registry.</li> </ul>
<b>Civil commitment</b>	People found incompetent in a criminal case can be committed to a DDA facility.	People found incompetent in a criminal case can be committed to the care of DDA.
<b>Community role</b>	No defined role.	<ul style="list-style-type: none"> <li>♦ Active involvement in development of new service</li> </ul>

		<p>system and family supports.</p> <ul style="list-style-type: none"> <li>♦ Regulations (with community comment) required for all of Title I.</li> </ul>
<b>Accountability</b>	No reporting requirements.	Annual reports on implementation of law.

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**Section-by-Section Analysis**

**TITLE I. DEVELOPMENTAL DISABILITIES RIGHTS AND SERVICES.**

Title I provides a new legislative framework for the District to provide services and supports for residents with developmental disabilities and their families.

Title I replaces D.C. Law 2-137 in its entirety. As previously discussed, Title I seeks to put community ideas gathered in meetings and focus groups into legislative language, and is also based on research on a variety of local, national and international best practices. For each section of Title I, this document summarizes any related community ideas (as drawn from the May 15, 2007 Town Hall and the focus groups held during the fall of 2007), identifies source documents, and discusses related sections of D.C. Law 2-137.

## Sec. 102. Findings and purpose.

Section 102 is modeled after Resolution 17-457, the *Sense of the Council Regarding Rights and Services for Residents with Intellectual and Developmental Disabilities and their Families Resolution of 2007*.

The section:

- ♦ Affirms the civil and legal rights of residents with developmental disabilities including their role as advocates, their ability to determine their own needs, and their capacity to make decisions about their own lives;
- ♦ Recognizes the benefits to the District of including and integrating residents with developmental disabilities into the community;
- ♦ Acknowledges the role of families as a primary source of support;
- ♦ Calls for the District to implement a model system of effective, quality supports for residents with developmental disabilities and their families based on core values and principles;

- ♦ Describes the need to remove the process of commitment to services through the Superior Court, due to inconsistency with federal law and a modern understanding of the rights of people with disabilities; and
- ♦ States the need for an orderly transition from the old law to the new law.

### Sec. 103. Definitions.

Section 103 defines terms that are used throughout Title I. See Appendix D for a cross-walk of definitions between D.C. Law 2-137 and Title I of the proposed bill.

Most of the definitions come from existing District law, including the following:

1. From Section 5 of the *Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008*, effective October 22, 2008 (D.C. Law 17-249): “advanced practice registered nurse,” “behavior support plan,” “best interests,” “Human Rights Advisory Committee,” “informed consent,” “psychotropic medication,” and “substituted judgment.”

2. From Section 103 of the *Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978*, effective November 8, 1978 (D.C. Law 2-137; D.C. Official Code § 7-1301.03): “cause injury to others as a result of the person’s intellectual disability,” “civil commitment” (renamed from the original “commitment”), “crime of violence,” “DSM-IV,” “DSM-IV ‘V’ Codes,” “ICD-9-CM,” “mental illness,” “person found incompetent in a criminal case,” “resident of the District of Columbia,” “respondent,” and “sex offenses.”

3. From Section 202 of the *Criminal Background Checks for the Protection of Children Act of 2004*, effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.02): “criminal background check,” “employee,” “job applicant,” “unsupervised,” “volunteer,” and “volunteer applicant” (with minor technical, non-substantive changes).

4. From Section 102 of the *Department on Disability Services Establishment Act of 2006*,

effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.02): “home and community-based services waiver,” “Medical Assistance Program,” and “Medicaid Program” (updated to reflect the recent transfer of the Medicaid program to the new Department of Health Care Finance).

5. From Section 202 of the *Mental Health Consumers' Rights Protection Act of 2001*, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.02): “minor,” “provider” (with minor modifications), “restraint,” and “seclusion.”

6. From the *Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998*, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551): “Nurse Aid Abuse Registry.”

In addition, the following new definitions of note are included in this section:

“Developmental disability” is the definition used in Section 102 of the *Developmental Disabilities Assistance and Bill of Rights Act of 2000*, approved October 30, 2000 (114 Stat. 1683; 42 U.S.C. § 15002).

“Capacity” is based on the definition of “incapacity” used in the *Health Care Decisions Act of 1988*, effective December 1, 1988 (D.C. Law 7-189; D.C. Official Code § 21-2201 *et seq.*).

“Family” is based on the definition used by Connecticut’s Department of Developmental Services.<sup>9</sup> “Family support services” is based on the definition used by Colorado.<sup>10</sup>

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<sup>9</sup> *Department of Developmental Services Manual*, section I.C., “Individual Supports Definitions,” January 11, 2002, [http://www.ct.gov/dds/lib/dds/dds\\_manual/ic2/forms\\_attachments/individual\\_supports\\_definitions.pdf](http://www.ct.gov/dds/lib/dds/dds_manual/ic2/forms_attachments/individual_supports_definitions.pdf).

<sup>10</sup> Col. Rev. Stat. § 27-10.5-104. *Authorized services and supports - conditions of funding - purchase of services and supports - boards of county commissioners - appropriation.*

“Grievance” is based on the definition used in the *Mental Health Consumers' Rights Protection Act of 2001*, but was modified to encompass grievances filed on a person’s behalf and to include examples that are relevant to persons with developmental disabilities.

“Individual support plan” or “ISP” was developed based on the U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services *HCBS Quality Framework*,<sup>11</sup> as well as definitions used by Connecticut<sup>12</sup> and Washington.<sup>13</sup> As defined, the ISP identifies and authorizes supports and services to meet a person’s needs, based on the person’s preferences.

“Intellectual disability” replaces “mental retardation,” using the same definition for “mental retardation” from D.C. Law 2-137.

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<sup>11</sup> Available at <http://www.cms.hhs.gov/HCBS/downloads/qualityframework.pdf>.

<sup>12</sup> *Supra* note 8.

<sup>13</sup> Washington Administrative Code 388-825-020.

“Most integrated setting” is the definition used in implementing regulations for the *Americans with Disabilities Act of 1990*, issued by the U.S. Department of Justice on January 26, 1992 at 28 CFR Part 35 App. A.

“Parent” is based on the definition used in the *Individuals with Disabilities Education Improvement Act of 2004* (Public Law 108-446; 20 U.S.C. 1401). However, because Title I addresses services for adults as well as children, the definition was modified to exclude guardians and surrogate parents (as used under sections 615(b)(2) and 639(a)(5) of *IDEA 2004*).

“Person” is defined as an individual who has requested an eligibility determination or is receiving supports and services under Title I. The definition clarifies that “person” includes other terms used in the D.C. Code for such individuals, such as “client.”

“Respite services” is based on the definition used in D.C. Law 2-137, but has been expanded to include supports and services provided for the temporary relief of the person.

“Support coordination” is based on the CMS *HCBS Quality Framework*, and also draws from definitions used by Colorado.<sup>14</sup>

“Supports and services” is defined broadly, to include all services provided, funded, regulated or coordinated by DDA.

## **Sec. 104. Rights.**

Section 104 establishes the rights of people with developmental disabilities who have been found eligible for supports and services under Title I, and requires DDS to identify rights violations and take enforcement action. This section also defines responsibilities of DDA and providers to support choices and inform people of their rights. Finally, this section identifies procedures which are prohibited or may only be used under limited circumstances due to the procedure’s violation of personal rights, risk to the person, and/or history of misuse.

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<sup>14</sup> Colo. Rev. Stat. § 27-10.5-102(29).

### Community Ideas on Rights:

- ☑ Respect should be a requirement
- ☑ Use of respectful language
- ☑ Focus the system on personal choice. People should be presumed competent to choose.
- ☑ Self-determination
- ☑ Basic civil rights – we have laws, let's enforce them!
- ☑ Respect for personal space
- ☑ People need to know their rights
- ☑ Advocacy support needs to be there
- ☑ People need to not feel vulnerable when they complain
- ☑ Training for case managers and provider staff on people's rights, including respect
- ☑ People should live where they want to live and have a job they choose / prefer.
- ☑ Services must be timely

In drafting this section, careful attention was paid to preserving key rights under D.C. Law 2-137.<sup>15</sup> In general, Section 104 affirms universal rights and

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<sup>15</sup> See Appendix F for a summary of rights provisions under D.C. Law 2-137.

identifies specific rights for people eligible for DDA services. Changes from D.C. Law 2-137 were needed for several reasons:

- ♦ Federal and local laws enacted after 1978 – including the *Americans with Disabilities Act of 1990* and the *Developmental Disabilities Assistance and Bill of Rights Act 2000* – have strengthened the legal rights of people with disabilities.
- ♦ D.C. Law 2-137 lists specific rights for people in group homes, but the range of places where people live has grown significantly over the last 30 years. As a result the new law requires DDA to clarify people’s rights in specific settings in policy or regulation, but does not list these rights in the law.
- ♦ Rights under D.C. Law 2-137 that relate to the commitment and admission process are not relevant under the new system and were omitted.
- ♦ Best practices for prohibited and restricted procedures have changed.

In addition to community input and federal disability rights law, a number of documents helped form a

framework for this section. These include the District's *Sense of the Council Regarding Rights and Services for Residents with Intellectual and Developmental Disabilities and Their Families Resolution of 2007*, California's *Lanterman Act*, the District's *Mental Health Consumers' Rights Protection Act of 2001*, the *Montreal Declaration on Intellectual Disabilities*, the *United Nations Convention on the Rights of Persons with Disabilities*, the Centers for Medicare and Medicaid Services, 1915(c) waiver application and application guidance, the *CMS HCBS Quality Framework*, and the Council on Quality Leadership's *Rights & Responsibilities* brief.

Key provisions of this section include:

- ◆ People with developmental disabilities are presumed to have legal capacity and to have all the civil and legal rights guaranteed other persons by the Constitution and laws of the U.S. and District of Columbia.<sup>16</sup>

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<sup>16</sup> Some state laws reaffirm people's universal rights as U.S. residents and citizens (i.e., to vote, to be from employment discrimination, etc.). However, because federal laws and local laws are clear in guaranteeing equal rights to persons with disabilities, this section does not include a statement of universal rights.

- ◆ People who have been found eligible have the right to receive supports and services in the least restrictive, most integrated setting; to liberty, dignity, respect, privacy and freedom from harm; to receive services promptly; and to exercise choice and control.
  
- ◆ All public and private providers must respect people's choices, provide people with the information and supports they need to make choices and exercise control, communicate with people in an effective way, ensure that people can voice grievances without fear of retribution, and seek to resolve grievances in a timely manner.
  
- ◆ The parent or guardian of a minor exercises the minor's rights.
  
- ◆ All staffs of public and private agencies that serve persons with developmental disabilities must have annual and initial trainings on the rights of people with developmental disabilities.

- ♦ All public and private agencies must provide people with information on their rights under law and available supports and services.
- ♦ The District shall not move a person from a less restrictive to a more restrictive setting without the person's consent and without providing advance notice and the opportunity for a hearing before the Superior Court. The District must prove by clear and convincing evidence that such a move is needed and is in the person's best interests.
- ♦ Regulations issued for this section must include standards for restricted procedures and must prohibit harmful procedures such as corporal punishment. Prohibited procedures are the same procedures identified by the Council on Quality Leadership.
- ♦ DDS is required to identify and take enforcement action on rights violations.

**Sec. 105. Comprehensive Developmental Disabilities Services Task Force.**

### Community Ideas on System Change:

- ☑ Law should help everybody with a physical or mental disability – it should be broad – look at the ADA.
- ☑ The law currently serves adults but in the future should also serve kids.
- ☑ DDA should also serve parents with developmental disabilities and their kids, individuals with co-occurring...mental illness, and individuals who have an I.Q. above 70.
- ☑ It's scary [to think of DDA taking on more]. But the answer has to be “yes” because people need the services.
- ☑ DDS needs to be very flexible to fill gaps. DDS should fill gaps in autism, traumatic brain injury.
- ☑ DDA should continue to serve people with a primary diagnosis of intellectual disability.
- ☑ Should DDA serve people with all developmental disabilities [small question mark]. Should DDA serve people with all disabilities [large question mark].
- ☑ DDA should definitely expand to serve children and their families. Need services for people who have autism.

This section creates a one-time Task Force to guide the expansion of supports and services under this act. The section is based primarily on the District's Comprehensive Housing Strategy Task Force,<sup>17</sup> and to a lesser degree on the District's Interagency Council on Homelessness.<sup>18</sup>

Task Force membership is designed to assure that residents with developmental disabilities and their families play a central role. This is consistent with community feedback and with similar requirements in the federal *Developmental Disabilities Assistance and Bill of Rights Act of 2000* and the *Rehabilitation Act of 1973*<sup>19</sup> that are meant to foster active participation of people with disabilities in policies that affect their lives and futures.

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<sup>17</sup> The *Comprehensive Housing Strategy Act of 2003*, effective March 10, 2004 (D.C. Law 15-73; D.C. Official Code § 6-1051 *et seq.*).

<sup>18</sup> Sections 4 to 6 of the *Homeless Services Reform Act of 2005*, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-752.01 to § 4-752.03).

<sup>19</sup> P.L. 93-112, as amended. 29 U.S.C. 701 *et seq.*

- ♦ The Task Force has 15 voting community members, as well as non-voting agency directors. 50% of community members are persons with developmental disabilities, 30% are family members, and 20% are other community representatives.
- ♦ The Task Force has 3 co-chairs: the Director of DDS, a person with a developmental disability, and a family member.
- ♦ Task Force members are appointed by the Mayor with a 30-day review period by the DC Council.
- ♦ DDS provides staff assistance and support to the Task Force.
- ♦ The Task Force must enact rules of operation or bylaws, and may form committees, conduct focus groups, and take other steps to obtain widespread community input.
- ♦ All documents produced by the Task Force are public. All meetings are open to the public. A

meeting transcript must be produced for all full meetings of the Task Force, but is not required for meetings of committees of the Task Force.

## **Sec. 106. Comprehensive Developmental Disabilities Services Plan.**

Within 9 months after Title I takes effect, the District must complete a comprehensive planning process, led by the Task Force, that identifies current and future unmet community living needs of residents with intellectual and developmental disabilities and their families.

The structure of this section is based on the District's Comprehensive Housing Strategy Task Force,<sup>20</sup> Comprehensive AIDS Response Plan,<sup>21</sup> and Health Care System Development Commission.<sup>22</sup> Waiting list reporting requirements are based on Missouri law<sup>23</sup> and on the U.S. Supreme Court's *Olmstead v. L.C.* decision (N. 98-536; 1999). The *Olmstead* decision indicates that a state can

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<sup>20</sup> D.C. Official Code § 6-1051 *et seq.*

<sup>21</sup> D.C. Official Code § 7-1602.

<sup>22</sup> D.C. Official Code § 7-2904.

<sup>23</sup> § 633.032.1, RSMo. *Mental health department to develop a plan for the needs of persons on waitlist for services – report required, made to whom, when.*

demonstrate its compliance with the integration requirements of the *Americans with Disabilities Act of 1990* in part by ensuring waiting lists “move() at a reasonable pace.”

- ◆ In developing the Plan, the Task Force must consider: the findings and purpose established in section 102; the priority needs of persons with developmental disabilities and their families who have previously been unserved; and the need to strengthen services for persons who were previously served.
- ◆ The Plan will be based on comprehensive needs assessment data describing District residents with developmental disabilities and their families and projecting their needs over the next 20 years.
- ◆ The Plan will include recommendations for how the District can expand services along the following timetable after the effective date of the act:

**0 to 12**      Meet the needs of residents with

*months* intellectual disabilities and their families.

*12 to 24 months* Implement targeted service expansions to additional groups of residents with developmental disabilities and their families.

*24 months* Expand services to all residents with developmental disabilities and their families.

- ◆ The Plan will include action steps for how the District can assure needed reforms and service expansions are carried out in a manner that is equitable, cost effective, promotes best practices, fosters interagency collaboration, and maximizes federal funds. Each action step will identify responsible agencies and the commitments made by each agency.
- ◆ The Plan will identify strategies for managing waiting lists to assure people begin to receive services at a reasonable pace based on a fair, equitable, consistent and transparent method of

adjusting support according to the needs of the person and their family.

- ◆ The Task Force will issue a draft Plan by 6 months after the effective date of the act, and a final Plan by 9 months after the effective date of the act.
- ◆ The Task Force will disseminate the draft and final Plan widely and will sponsor forums and other activities to obtain widespread comment.
- ◆ The Director of DDS must implement regulations and take any other actions needed to implement the Plan.
- ◆ By no later than 5 years after the Task Force completes the initial Plan, the Mayor must update the Plan. The Mayor can have DDS update the plan, or can appoint another Task Force. This time frame is designed to allow the Plan to be staggered with the submission schedule for the District's State Rehabilitation Plan, required under the federal *Rehabilitation Act of 1973*.

## Sec. 107. Eligibility.

Section 107 establishes eligibility criteria for DDA services. Eligibility is determined by DDA using a person-centered screening process with clear timeframes. Eligibility expands over a 2 year period after Title I takes effect. At the end of 2 years, all children and adults who meet the definition of developmental disability under the federal *Developmental Disabilities Assistance and Bill of Rights Act of 2000* are eligible for DDA services. DDA can provide services and supports while an eligibility determination is pending if the applicant is homeless, at imminent risk of homelessness, or in imminent danger of abuse or neglect.

New Hampshire served as the primary model for this section; Washington, Oregon, Minnesota, Vermont, and Maryland were also reviewed. Some states use county government to determine service levels or eligibility, which made them inappropriate as models.

- ♦ A request for an eligibility determination is made by the person, who may be accompanied and supported by anyone he or she chooses. A parent or guardian makes the request on behalf of a minor (under the age of 18).
- ♦ A request for an eligibility determination is not a health-care decision or a decision that requires an adult to be represented by a guardian or another person.
- ♦ After the effective date of this act, DC residents are eligible as follows:

<i>0 to 12 months</i>	Must have an intellectual disability.
<i>12 to 24 months</i>	Must have an intellectual disability or must have a developmental disability as identified in regulation.
<i>24 months</i>	Must have a developmental disability. Children and youth under age 22 who have a disability, but for whom the scope or likely length of the disability is unclear, are also

eligible.

**Community Ideas on  
Eligibility & Initial Screening:**

- Change intake – everything about it, A to Z.
- Need to accept personal medical forms.
- Assessments need to be positive and not just focused on deficits.
- People should have the right to refuse services / supports.
- Quality assessments should happen in the most natural environment, be functional, person-centered, done by people familiar with the individual whenever possible, based on standards and have built-in quality control.
- There should be a profile of the person's disability that is individualized and person-centered.

- ♦ Within 30 days after a request for eligibility determination, DDA must complete a comprehensive screening of the person which looks at the person's disability, support needs, and decision-making capacity.

- ♦ To complete the screening, DDA must accept information from outside sources and, if authorized by the person, must gather information on behalf of the person (rather than placing the burden on the person to gather the information)
- ♦ Within 10 business days of completing the comprehensive screening, DDA must determine eligibility.
- ♦ DDA must provide notice of the eligibility determination along with information on the person's rights, grievance procedures, and telephone numbers for the protection and advocacy agency, any external advocacy agency, and sources for counsel and advocates. If the person is eligible, DDA must also provide information on services and supports, orientation sessions, service planning, and internal grievance procedures.

- ♦ If DDA finds that a person is ineligible, DDA must refer and connect the person to other District government services.
- ♦ Ineligibility can be appealed to the DDA Deputy Director and the DDS Director. A person can request a new eligibility determination if new information about the person's residency or disability becomes available.
- ♦ Assessments for eligibility determination are paid by the District, if the person does not have public or private health insurance.
- ♦ DDA may provide services before making a final eligibility determination if the person is homeless or at risk of homelessness, if there is imminent risk of abuse or neglect, or if the Superior Court orders services for a person who has been found incompetent in a criminal case.
- ♦ Regulations for this section must provide guidance on information that DDA will accept if written documentation of the age of onset of a person's disability is unavailable.

## **Sec. 108. Notification of the Court; appointment of advocates.**

People who have been found eligible for DDA services will be made known to the Superior Court, unless they opt out. People who are known to the Court will be assigned advocates (unless they opt out) and, under later sections, will be able to access lawyers and bring grievances before the Court.

Advocates' duties are similar to those under Section 413 of D.C. Law 2-137 (D.C. Official Code § 7-1304.13), except that advocates have an expanded role in representing people's choices and interests, and advocates are paid at a rate established by the Superior Court.

## Community Ideas on Court Role:

- ☑ The court shouldn't be able to force people to take medication or have things in their goal plan.
- ☑ The court may have a role for some people.
- ☑ Are courts knowledgeable about disability, DDA's capacity, etc.?
- ☑ Court involvement – trade off with rights.
- ☑ The court is superseding personal choice.
- ☑ Court not considering the individual.
- ☑ If we remove the court, need to put other safeguards in place (e.g., person-centered planning etc.) and need to have a transition plan.
- ☑ If DDA implements a good grievance system, this may allow for a different role for the court.
- ☑ If we remove commitment, is no one due an attorney? How do we guarantee due process and remedies?
- ☑ What about people with no family who are committed?
- ☑ How to preserve access to adequate legal representation, if we remove the court?
- ☑ Need to emphasize access to non-legal advocacy.
- ☑ Increase guardianship opportunities, as opposed to court commitment.

## Community Ideas on Court Role (cont.)

- ☑ Courts need to help families with systems problems i.e. transportation.
- ☑ Going to court should be individual-based.
- ☑ Definitely: nix the annual hearing process. Need to examine the usefulness of commitment.

- ◆ Within 10 business days of finding a person eligible, DDA must notify the Court, unless the person opts out.
- ◆ Upon notification, the Court assigns an advocate to a person, unless the person rejects the services of an advocate.
- ◆ At any time, a person who opts out of Court notification or having an advocate can choose to be made known to the Court and to receive the services of an advocate.
- ◆ A person can ask for a different advocate at any time.

- ♦ An advocate informs the person of his or her rights, works to ensure that the person is afforded all rights under law, gets to know the person, consults with others who know the person well, advocates based on the person's expressed preferences whenever possible, encourages self-reliance, encourages the person to exercise his or her rights, monitors and reports to the Court on the person's ISP and related court orders, and raises concerns about the person's well-being to the appropriate professionals.
  
- ♦ An advocate can be authorized by the Court to act as a substituted decision-maker under the *Health-Care Decisions Act of 1988*, if a person is unable to make a health-care decision on his or her own behalf.<sup>24</sup>
  
- ♦ Unless the person objects, an advocate receives notice and has the right to participate in all meetings and Court hearings related to the person, to access the person's records, and to

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<sup>24</sup> D.C. Official Code § 21-2201 *et seq.* Substituted consent provisions are at § 21-2210.

access all personnel and providers that serve the person.

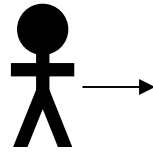
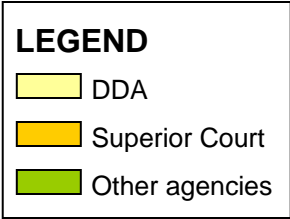
- ◆ An advocate completes a pre-employment screening and criminal background check.
- ◆ An advocate must limit his or her caseload to a size that permits fulfillment of all duties, and allows for a minimum of one visit per month with the person.
- ◆ Advocates are provided directly by the Court or through a contract.
- ◆ Advocates are paid hourly at rates established by the Court, and have supervision and facilities needed to carry out their duties.
- ◆ All communication between an advocate and a person is privileged as if between attorney and client.<sup>25</sup>

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<sup>25</sup> Title III includes a conforming amendment which removes a conflicting requirement under current District law which makes the “mental retardation

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advocate” a mandated reporter in cases of suspected abuse or neglect.



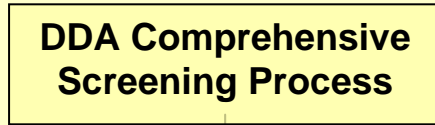
Eligibility, Superior Court notification, and services pending eligibility.

**Temporary DDA Services**

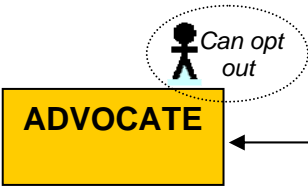
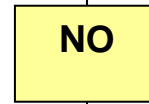
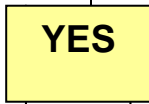
In the up to 40 days before it determines eligibility, DDA can provide services if:

- ♦ The person is homeless or at risk of homelessness.
- ♦ The person is at risk of abuse or neglect.
- ♦ The Court orders services for a person found incompetent in a criminal case.

Up to 30 days

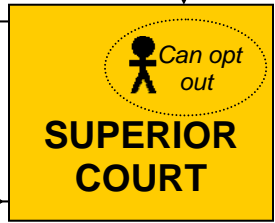


Up to 10 days



DDA NOTIFIES COURT Up to 10 days

Up to 10 days



DDA SERVICE PLANNING Up to 60 days



**DDA provides:**

**INFORMATION**

- ♦ On how to appeal a denial.
- ♦ On how to contact the protection and advocacy agency and other legal/advocacy resources.

**REFERRAL**

- ♦ To other DC agencies.



A person who opts out of Court notification or having a Court-appointed advocate can opt in later.

## Sec. 109. Support and service planning.

### Community Ideas on the ISP:

- ☑ Individual plan needs to reflect what you want and should be changed if it's inaccurate.
- ☑ The profile should be a living document that changes as the person's needs, abilities and interests change.
- ☑ People should choose their own staff to work with them.
- ☑ People should have a right to choose their medical doctors and clinical specialists.
- ☑ People should have the right to refuse services / supports.

This section establishes a person-centered planning process for all supports and services. An Individual Support Plan (ISP) must be established within 30 days of an eligibility determination. All services are voluntary, and a person is understood to be capable of choosing and planning his or her supports and services. DDA and any agency listed in the ISP are responsible for implementing the ISP. DDA will

keep waiting lists for services that are requested but not yet available.

The service planning process used by New Hampshire served as the main model for this section (Washington, Minnesota, Vermont, Maryland, and Rhode Island were also reviewed). Service planning provisions of the District's *Mental Health Consumers' Rights Protection Act of 2001* (§ 7-1231.05) were also incorporated in several places. This section replaces the service planning provisions of Section 504 of D.C. Law 2-137 (D.C. Official Code § 7-1305.04).

- ♦ All supports and services are voluntary. A person must receive all information, opportunities and supports needed to freely make and express choices and exercise control. These supports are intended to serve as reasonable accommodations under the *Americans with Disabilities Act of 1990*. A request for supports and services is not a health-care decision or a decision that requires an adult person to be represented by a guardian.

- ♦ A parent or guardian of a minor (under age 18) makes choices on behalf of the minor.
- ♦ The initial ISP is based on the comprehensive screening used to determine eligibility.
- ♦ The ISP includes a variety of information about the person, the person's opportunity to learn of and exercise his or her rights, resources, decision-making capacity, desired outcomes, the services and supports to be provided, monitoring, and recommendations for supports and services that meet the standard of most integrated setting.
- ♦ DDA and any agencies listed in the ISP are responsible for implementing the ISP.<sup>26</sup>
- ♦ DDA will keep waiting lists of all eligible persons who have not yet received a requested service. DDA must ensure that wait lists move at

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<sup>26</sup> This provision parallels a similar requirement in Sec. 205 of the *Mental Health Consumers' Rights Protection Act of 2001*, (D.C. Official Code § 7-1231.05. *Service planning*).

a reasonable pace and that persons and their families are kept up-to-date on when they will begin to receive services.

- ♦ Regulations for ISPs must be in line with national best practices including standards set by the Council on Quality and Leadership.
- ♦ Nothing in this section requires an adult to execute a durable power of attorney for health care or to have a guardian.

### **Sec. 110. Support coordination.**

People choose a support coordinator to help design their ISP, and can select a new support coordinator at any time. The support coordinator helps a person make and express choices about supports and services, reviews and monitors the ISP with the person on a regular and annual basis, and helps the person to address any issue in community living that may arise. This section is based on the same models used for Section 109.

- ♦ People choose a support coordinator to help design their ISP, and can select a new service coordinator at any time. DDA must implement a request for a new coordinator within 21 calendar days.

- ♦ A person can invite one or more other individual(s) to help design his or her ISP, but there is no requirement for an “interdisciplinary team.” This provision directly responds to requests by people receiving DDA services to be able to invite who they want to their ISP

### Community Ideas on Support Coordination:

- ☑ [ISP] Meetings need to be directed by the person. People need to be able to set ground rules for their meetings.
- ☑ People should be able to choose their own case managers. Case managers should be accountable to the people they serve.
- ☑ Call them “support coordinators.”
- ☑ Educate individuals on how to choose and change case managers.
- ☑ The people who attend [an ISP meeting] should be who you want.
- ☑ People should be trained on how to plan for their meetings and lead their meetings.
- ☑ I do not like to answer questions in front of a bunch of people [at my ISP meeting]. They make me talk about things I don’t like.

meetings – and to not have people at their meetings who they don't want.

- ◆ The support coordinator helps a person understand his or her rights; communicate his or her needs, preferences and goals; select supports, services, and providers; design and monitor the ISP; and promptly address any issues in community living that may arise.
- ◆ The support coordinator must notify the DC Office of the Attorney General if he or she believes that a guardian is failing to use, as much as possible, a standard of substituted judgment or involve the person in decisions, or if the support coordinator believes that a court-appointed advocate is failing to perform his or her duties.
- ◆ The support coordinator must develop and implement the initial ISP within 60 calendar days after a person has been found eligible.
- ◆ The support coordinator reviews the ISP with the person at least quarterly, conducts a

thorough review of the ISP with the person annually, and reviews the ISP whenever the person or a member of the person's support or service network asks for a review.

- ◆ The support coordinator must provide copies to the person and the person's support network within 3 business days after developing or changing the ISP.
- ◆ Nothing in this section requires an adult to execute a durable power of attorney for health care or have a guardian.
- ◆ Rules for this section must include timeframes for ISP development and implementation.

## **Sec. 111. Supports and services.**

DDA must provide a comprehensive system of supports and services for all persons who have been found eligible.

State statutes with sections on community services were examined (24 total); of those, 9 states were

most applicable (AL, CT, FL, HI, ID, IN, MA, MT, and TX).<sup>27</sup> This section replaces the provisions of Section 501 of D.C. Law 2-137 (D.C. Official Code § 7-1305.01) that require each person to be provided a habilitation program.

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<sup>27</sup> A number of states delegate authority for their developmental disability services to the county or regional level, giving their laws a very different structure from the District's.

## Community Ideas on Supports & Services:

- ☑ More services for independent living, jobs, things people want.
- ☑ More options. Law should include opportunity for a full range of community activities.
- ☑ Need to reverse the institutional / group home bias.
- ☑ There needs to be an improvement in responsiveness and different services need to be offered.
- ☑ People to let you know what services and events are available.
- ☑ Treating important health and dental issues as urgent.
- ☑ Provide more information in high school geared toward transition.
- ☑ Orientation and educational options.
- ☑ DDA should be able to generate creative, new models – piloting programs, modeling best practices.

- ♦ DDA develops, administers, coordinates, monitors and evaluates the system.
- ♦ The system must make maximum use of federal funds.
- ♦ For persons over the age of 18, the system will include support coordination, information and referral, transition planning, community living (residential supports), employment services, supports to facilitate access to community recreation and social opportunities, professional services (e.g., medical, psychological, vocation, social, educational, and rehabilitative services), community outreach and education, and any other assistance that DDA believes is needed to provided a comprehensive, coordinated system.
- ♦ DDA must provide regular orientation sessions and trainings on supports and services, service planning, rights and grievances.
- ♦ Subject to the availability of funds, DDA will develop and administer pilot programs and research initiatives.

- ♦ Supports and services will not replace or reduce other public benefits to people and their families, or be considered as resources or income in any eligibility determination or sliding fee scale.<sup>28</sup>

## Sec. 112. Family support services.

DDA must provide a comprehensive system of supports and services for families of all persons who have been found eligible. A family can get family support services if it has one or more members who are eligible for DDA services – including children, youth and adults.

Twenty-four states (24) have family support sections in their developmental disability service laws.<sup>29</sup> All state family support laws were reviewed; Arizona,

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<sup>28</sup> Idaho Code Ann. § 39-5103. *Standards for the provision of financial assistance.*

<sup>29</sup> AK, AL, AZ, CO, CT, FL, HI, IA, ID, IL, MD, ME, MI, MN, MO, NH, NJ, NV, NY, PA, SC, TN, UT, VT.

Colorado, Connecticut, and Idaho served as models. The only comparable section in D.C. Law 2-137 is Section 314 (D.C. Official Code § 7-1303.14), covering respite services.

### Community Ideas on Family Supports:

- Families must be supported.
- Families need:
  - Respite;
  - Family training;
  - In-home supports;
  - Family support fund.
- Family involvement.
- Need to educate families on services, supports and laws.
- Advocacy training needed for families.
- Lifespan supports for families.
- Advocacy / supports for families after the individual leaves school.
- Parents have no knowledge of what DDS offers.

- ♦ DDA will develop, administer, coordinate, monitor and evaluate the family support services system.

- ◆ Family support services must make maximum use of federal funds.
- ◆ The family support service system includes: support coordination; information and referral; transition planning; respite services; family training and counseling; temporary supports and services; one-time cash assistance; home modifications; funding for items or equipment, in-home supports; and any other assistance that DDA believes is needed to provide a comprehensive, coordinated family support system.
- ◆ DDA must provide regular orientations and trainings for families of eligible children, youth and adults on supports and services, service planning, rights, and grievances.
- ◆ Family support services will not replace or reduce other public benefits to families, or be considered as resources or income in any eligibility determination or sliding fee scale.

## Sec. 113. Family Support Council.

This section creates a Family Support Council to guide the development of the comprehensive system of family supports created under Section 112, and to act as an ongoing advisory and oversight entity for DDA's family support system.

Seven states (CO, CT, IA, NH, NJ, NY, and TN) have legislatively-created Family Support Councils. The composition, mission and duties of the District's Family Support Council are modeled primarily after Connecticut's. The structure and procedural elements are based on the same elements used for the Comprehensive Developmental Disabilities Task Force and the District's Comprehensive Housing Strategy Task Force.<sup>30</sup>

This section responds to repeated feedback that families want to have a seat at the table and an ongoing voice in guiding and shaping DDA services and supports.

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<sup>30</sup> *Supra* note 16.

- ♦ The Family Support Council helps DDA and other agencies to act in concert, to establish a comprehensive and coordinated system of family supports, to use local and other resources efficiently and effectively, and identify and address family support needs.
- ♦ The Family Support Council has up to 35 members, with a minimum of 20 family members and/or persons with developmental disabilities. The Family Support Council also includes the directors of key government and community-based agencies that serve children, youth and adults with developmental disabilities.
- ♦ The Family Support Council is co-chaired by the Deputy Director of DDA and a family member selected by the community membership.
- ♦ Family Support Council members are appointed by the Mayor with a 45-day review period by the DC Council.
- ♦ DDA provides staff assistance and support to the Family Support Council.

- ◆ The Family Support Council must enact rules of operation or bylaws, and may form committees, conduct focus groups, and take other steps to obtain widespread community input.
- ◆ All documents produced by the Family Support Council are public. All meetings are open to the public. A meeting transcript must be produced for all full meetings of the Council, but is not required for meetings of committees of the Council.
- ◆ The Family Support Council will develop a vision and guidelines for family support services; review and make recommendations on how programs, policies and funding can conform with those guidelines; monitor the implementation of the guidelines and recommendations; annually report to the Mayor and Council about the status of family support services; advocate for family support services; and share information with the general public.

- ♦ DDA must consider the Family Support Council's recommendations and must report back to the Family Support Council on a regular basis.

## **Sec. 114. Informed consent; health-care decisions.**

This section recognizes the capacity and abilities of people with developmental disabilities to make decisions about their own lives. It also incorporates, with minor changes, the informed consent and substituted decision-making provisions of the *Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008*. Language from that law was changed slightly to clarify that guardians are not required, and to clarify that the *Health-Care Decisions Act of 1988* applies to health-care decisions, but not to all decisions about supports and services.

- ♦ Every adult is presumed capable of making decisions about his or her life. An adult's way of communicating is not grounds for deciding that

he or she is incapable of providing informed consent and making health-care decisions.

- ♦ An eligible adult, or the parent or guardian of a minor, must receive all information, opportunity and supports needed to freely make and express choices and exercise control. These supports are intended to serve as reasonable accommodations under the *Americans with Disabilities Act of 1990*.
- ♦ An eligible adult must have the opportunity to execute a durable power of attorney for health care and to identify one or more individuals who can provide substituted consent under the *Health-Care Decisions Act of 1988*, if the person becomes incapacitated.
- ♦ A request for eligibility determination or to receive supports and services is not a health-care decision or a decision that requires an adult person to be represented by a guardian.
- ♦ No person shall be given supports and services without informed consent by the person or, in

the case of a minor, by the minor's parent or guardian.

- ◆ If a provider or DDA believes that a person lacks the capacity to provide informed consent for a health-care decision, the provider or DDA will seek a determination of capacity under the *Health-Care Decisions Act of 1988*.
- ◆ If the person is found to be incapable of making a health-care decision, substituted consent will be provided pursuant to the *Health-Care Decisions Act of 1988* or, if no one is available under that law, DDA will file for a guardian. DDA will file for the form of guardianship that is least restrictive to the person.
- ◆ If the health-care decision pertains to psychotropic medications, the person is unable to provide consent, and there is no substituted decision-maker, the provider or DDA may seek a decision from the independent panel authorized in section 115.

## Sec. 115. Independent panel for administration of psychotropic medications.

This section incorporates provisions of the *Health-Care Decisions for Persons with Developmental Disabilities Act of 2008* related to an independent panel which provides substituted consent for persons who are unable to provide consent, have no substituted decision-maker, and have a proposal to administer a psychotropic medication.<sup>31</sup>

- ♦ DDA must create an independent panel to review proposals for administering psychotropic medication to persons who are unable to provide consent and who lack a family member, guardian, or other individual to provide substituted consent on their behalf.
- ♦ The independent panel has 3 members: a board-certified psychiatrist or advanced practice registered nurse; a licensed profession (e.g., a psychologist or other relevant professional); and a person who receives services, a Court-appointed advocate, or a community member.

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<sup>31</sup> Section 5(d).

- ♦ DDS must issue rules laying out the procedures for the independent panel.
- ♦ At a minimum, the panel must meet within one week after receiving a request for a decision, and must issue a decision within one week after meeting. The panel must also provide notice to the person, including notice of the person's right to be present at any meeting and to have a representative present.
- ♦ A person can appeal a decision of the independent panel to the DDA Human Rights Advisory Committee.
- ♦ The panel may grant, refuse or withdraw consent for the psychotropic medication. The panel must seek to conform as closely as possible to a standard of substituted judgment (i.e., making the decision as person would make it, if he or she could).
- ♦ Consent provided by the panel can last for no longer than 9 months.

- ♦ If the panel provides consent, DDA must offer the person the opportunity to execute a durable power of attorney and must continue to look for anyone who can provide substituted consent for the person under the *Health-Care Decisions Act of 1988*.
- ♦ If the panel provides consent for 3 or more months in a row, and if it appears the person is unlikely to achieve capacity in the next 6 months, DDA must file for a guardian. DDA will file for the form of guardianship that is least restrictive to the person.
- ♦ Refusal to consent to psychotropic medication is not evidence of incapacity.
- ♦ Refusal to consent on the basis of a valid religious objection cannot be overridden without a court order.

## Sec. 116. Grievances.

This section summarizes the processes for grievance resolution (detailed in Sections 117, 118 and 119) and establishes common elements. The system is intended to be flexible and to provide multiple ways of resolving problems, ranging from informal to formal, both inside DDS and external to the agency. Additionally, people can go directly to any part of the grievance system, and do not have to exhaust less formal or internal options before proceeding directly to more formal venues.

These ideas respond directly to community feedback that people want to be able to “work things out” as quickly as possible, but also want to be able to go to court or be able to access a more formal grievance process when needed. National experts also recommended providing more, rather than fewer, options so that people can find the right venue for their problem.

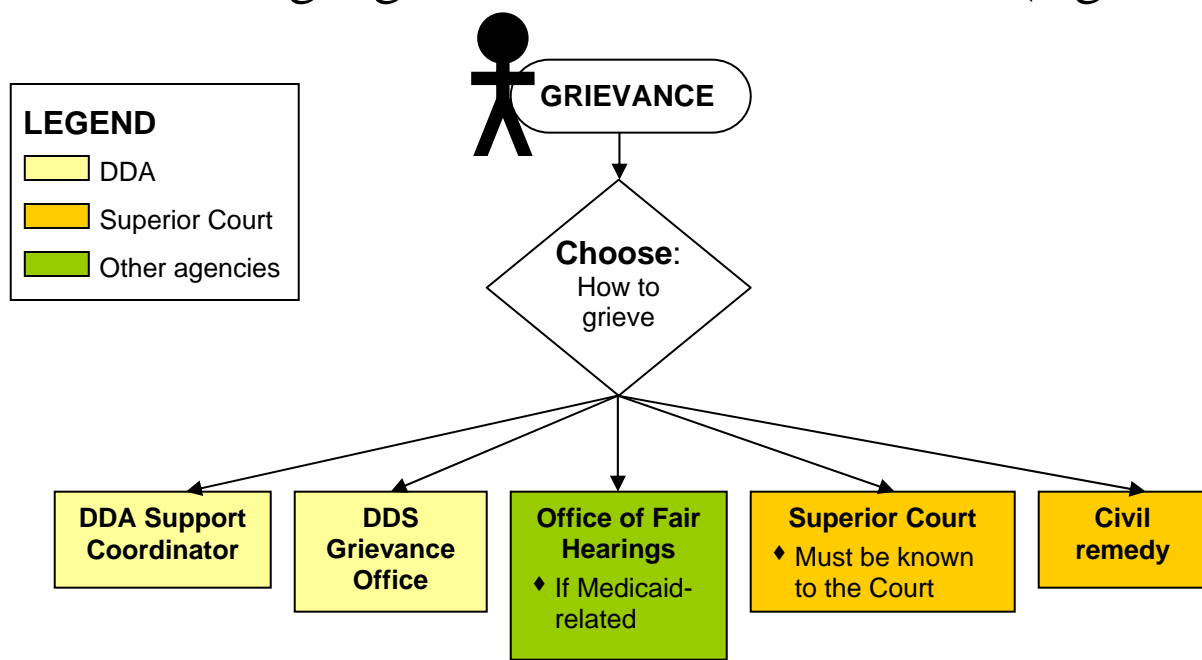
## Community Ideas on Grievances:

- ☑ DDA needs to have procedures to hear and document complaints.
- ☑ DDA process should be comprehensive, appropriate, and facilitate communication through the system, courts and community.
- ☑ A grievance system must be independent, legitimate, quality, include education for people to know how to use the grievance system and when to call in the court, [and you] don't have to have an attorney.
- ☑ There should be a phone number – with a live person – to phone in complaints, along with some assurance of timely response.
- ☑ Advocates / staff should be available to help ensure follow up on complaints.
- ☑ People should be told how long it will take to get a response.
- ☑ There should be a higher level of appeal.
- ☑ There should be a standard for a quicker-than-usual response for health/safety complaints.
- ☑ Include people who communicate nonverbally.
- ☑ Need to ensure access to attorneys
- ☑ Need a grievance system – Yes!
- ☑ Need a clearer process for grievances that is culturally sensitive.

Relevant state statutes include Vermont's, Colorado's and Louisiana's, which detail procedures and principles essential to creating a problem resolution system. The D.C. *Mental Health Consumers' Rights Protection Act* and implementing rules, the 2001 Evans plan and subsequent draft legislation were also considered.

- ♦ A person can file a grievance with his or her support coordinator, file a grievance with DDS, or request a hearing with the Office of Administrative Hearings (for Medicaid services) or the Superior Court (for all services).
- ♦ A grievance is a statement of dissatisfaction about any aspect of the person's rights, protections, supports or services including an allegation that the person's rights or protections have been violated, an allegation that the person is not receiving his or her choice of home and community-based services, or an allegation that the District has denied, suspended, reduced or terminated the person's services and supports.

- ♦ A person is not required to use the internal grievance system offered by DDS and can use any other means of resolving a grievance, without having to go through DDS.
- ♦ A person cannot use multiple methods of resolving a grievance at the same time (e.g., a



person cannot both pursue a grievance internally with DDS and, at the same time, file a petition with the Superior Court).

- ♦ A person or an interested individual (including family members, advocates, attorneys, and service providers) can file a grievance on behalf of the person.

- ♦ The parent or guardian of a minor (under age 18) is responsible for filing grievances on behalf of the minor.
- ♦ No individual, agency or provider may retaliate against a person who files a grievance or requests a hearing.

### **Sec. 117. Internal grievance system; appeals of ineligibility.**

This section requires the District to create an internal grievance system, within DDS, to resolve grievances brought against DDA. The internal system is coordinated by an office within DDS that is authorized to resolve grievances on behalf of the agency.

- ♦ A person can file a grievance orally, in writing, or electronically and must have access to help in filing a grievance.
- ♦ A person has a right to be represented throughout the grievance process.

- ◆ The grievance process must have definite time frames (to be established by DDS through regulation) and a process for expedited review for grievances alleging abuse or neglect.
- ◆ If a grievance opposes a reduction or termination of supports or services, that reduction or termination cannot take place while the grievance is pending.
- ◆ Retaliation by DDA or providers against a person who files a grievance is prohibited.
- ◆ On receiving a grievance, the DDS grievance office will provide notice to the relevant parties (as defined in regulation) and will first attempt to solve the grievance informally, within 5 business days. A person can choose to opt out of this informal process.
- ◆ If an informal resolution fails or if a person opts out of the informal process, the DDS grievance office will then attempt to resolve the grievance using alternative dispute resolution techniques.

The office will hold a meeting within 5 business days which is attended by relevant parties, including personnel with the authority to bind DDA. If the parties are able to come to an agreement, the office will draft the agreement.

- ◆ The DDS grievance office is required to report any individual, agency or provider that retaliates against someone who files a grievance to the D.C. Inspector General.
- ◆ If DDA has reasonable belief that a person is at imminent risk of harm, DDA must immediately take all steps to protect the person from harm.
- ◆ If DDS or DDA fails to complete any of the steps in the grievance process within the time frames specified in the law or in the implementing regulations, the step is considered to have occurred and the person can proceed without having to wait for the step.
- ◆ A denial or termination of eligibility is handled separately through an appeal to the Deputy Director of DDA. A decision by the Deputy

Director of DDA can be appealed to the Director of DDS. A decision by the DDS Director can be appealed to the Superior Court (it is a final decision for the purposes of the Administrative Procedures Act and is not a contested case).

- ◆ Nothing in this section affects the mediation and hearing requirements for vocational rehabilitation services under the *Rehabilitation Act of 1973*, or the fair hearing requirements under Medicaid.

## **Sec. 118. Legal services and access to the Court.**

This section establishes a process for people who are known to the Superior Court (under Section 108) to resolve grievances through the Court, with representation by Court-appointed attorneys. A person can file a grievance with the Court at any time. A person does not have to exhaust any other administrative options before filing with the Court.

- ◆ A person who is known to the Court, the parent of a minor person, a guardian, advocate, or other

interested person can file a grievance on behalf of the person with the Court.

- ◆ Within 5 business days of receiving a grievance, the Court will appoint an attorney to represent the person.
- ◆ The Court can also appoint an attorney to represent a person who is known to the Court if there is a reasonable belief that the person is at imminent risk of harm without the Court's intervention, or that DDS has failed to act to keep the person safe.
- ◆ Court-appointed attorneys are provided by the Court and paid at a rate set by the Court.
- ◆ If, while helping a person resolve a grievance, an attorney discovers other areas of concern that require legal representation, the attorney will notify the Court. An attorney will not, however, represent the person on these other areas of concern without prior approval by the court.

- ♦ The Court must consider the preference of a person, or the parent or guardian of a minor, when appointing an attorney.
- ♦ A court-appointed attorney may seek to resolve a person's grievance informally or may request a hearing before the Court. The Court shall schedule a hearing promptly. The attorney will work with the person's Court-appointed advocate, if the person has an advocate.
- ♦ A court-appointed attorney will represent the person until the Court determines that the person's grievance has been resolved.
- ♦ Court hearings will be as informal as possible and will be closed to the public unless the person or the person's representative requests that the hearing be open to the public.

**Sec. 119. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.**

This section reiterates Section 513 of D.C. Law 2-137 (D.C. Official Code § 7-1305.13), which allows anyone to initiate an action in the Superior Court to compel the rights of persons with developmental disabilities. This section removes an exception under D.C. Law 2-137 for situations in which unless the District is unable to pay for recommended services because available appropriations are insufficient.

- ♦ A person has the right to a civil remedy of not less than \$25 per day, paid by the District for each day on which the person is not provided with adequate supports and services under the person's ISP.
- ♦ Civil remedies apply only to supports and services that significantly affect the quality of the person's life.
- ♦ Sovereign immunity shall not bar action under this section.
- ♦ Reasonable attorneys' fees and court costs are available for action under this section.

## Sec. 120. Records.

This section seeks to keep people's records confidential while providing access for professionals who are working with the person. Records may also be released at the person's authorization, for insurance claims, pursuant to court order, pursuant to a guardianship filing, to a court-appointed advocate, and as part of scientific research and management audits.

Individuals to whom information has been disclosed are prohibited from re-releasing the information. Persons receiving services can access their records at any time and can request an amendment to their record if they question the accuracy or completeness of the record. The section requires DDS to issue regulations which comply with this section and with all applicable local and federal laws.<sup>32</sup> This will allow DDS to address overlap between various laws and agencies.

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<sup>32</sup> Including the federal *Health Insurance Portability and Accountability Act of 1996*, effective August 21, 1996 (P.L. 104-191; 42 U.S.C. 1301 *et seq.*) and the District's *Mental Health Information Act*.

This section replaces provisions in Section 512 of D.C. Law 2-137 (D.C. Official Code § 7-1305.12). The process for a person to request an amendment to his or her record is modeled after § 7-1205.05, and provisions for disclosure for research or management audits were taken from § 7-1203.05. The requirement for records to include information about a person's funds, if controlled by an agency (not the person) came from community input. Arizona<sup>33</sup> and Colorado<sup>34</sup> also had several relevant provisions which were incorporated.

- ♦ DDA must maintain complete records for each person.
- ♦ A person can access his or her own records at any time.

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<sup>33</sup> Ariz. Rev. Stat. § 36-568.01. *Confidentiality of records.*

<sup>34</sup> Colo. Rev. Stat. § 27-10.5-120. *Records and confidentiality of information pertaining to eligible persons or their families.*

- ♦ All records are privileged and confidential and may be disclosed only to professionals working with the person, to others authorized by the person, to the extent needed to file an insurance claim, pursuant to court order or to an external monitoring entity designated by DDA, to the Court to establish guardianship, or for research or monitoring.
- ♦ Anyone with access to a person's records is prohibited from further disclosing or releasing the information, except in the proper performance of his or her duties.
- ♦ A person can request an amendment to his or her record and will receive a response from DDA about the amendment request within 15 days.
- ♦ Nothing in this section prohibits DDA from producing and sharing aggregate data that do not directly or indirectly identify a person.

## **Sec. 121. Quality standards and monitoring.**

This section creates and describes minimum standards for a quality management and improvement system which meets all requirements for federal Medicaid funds under the home and community-based waiver program. The system will be led by DDS with extensive interagency participation.

Models included the CMS Waiver Application 3.4, Appendix H, as well as the 2001 Evans Plan and subsequent draft legislation. Because the waiver's Quality Management Strategy sets the highest bar for quality (i.e. not solely a focus on monitoring results, but also a focus on person-centered services, outcomes and consumer satisfaction), it served as the primary guide for requirements under this section.

- ♦ DDA is the lead agency responsible for developing and implementing a comprehensive quality management and improvement system.
- ♦ As the lead agency, DDA provides prompt written notice of incidents and patterns of concern to providers, persons who receive

services, and where appropriate to family members.

- ◆ DDA is responsible for ensuring that providers take prompt corrective action to address incidents and patterns of concern and to protect people from harm.
- ◆ The District must create a protocol, led by DDA, to share information among District government agencies that could affect people's safety and well-being. The protocol provides for interagency coordination, clear timelines for notice and corrective action plans, prompt investigation of abuse, neglect, exploitation and death, and implementation of all relevant federal and District laws, regulations and policies.
- ◆ DDA includes people who receive services and their families in ongoing systemic quality management and improvement activities.
- ◆ Rules for this section will include standards that define incidents, patterns of concern, and deficiencies that require corrective action.

## **Sec. 122. Checks of criminal background, abuse and neglect registries, and traffic record.**

This section requires that all public and private agency employees and all volunteers who have unsupervised, direct contact with persons with developmental disabilities must:

- ♦ Complete a FBI criminal background check;
- ♦ Complete a check against a registry of people terminated by DDA or a provider due to substantiated abuse or neglect (as created in section 123);
- ♦ Complete a check against the Nurse Aide Abuse Registry and any other registries of abuse and neglect maintained by the District;
- ♦ Sign a statement regarding whether the person has ever been convicted of, pled “no contest” to, is on probation for, or pled not guilty by reason of insanity to a list of felony offenses;
- ♦ Sign a statement regarding whether the person has ever been terminated or separated from employment as a result of substantiated abuse or neglect; and

- ♦ Complete a traffic record check, if the employee or volunteer will be driving people with developmental disabilities in the course of his or her duties.

D.C. Law 2-137 has no similar provisions. However, the District has several criminal background check laws which may apply in certain circumstances to DDA services. These include the *Criminal Background Checks for Protection of Children Act of 2004* (D.C. Official Code § 4-1501.01 *et seq.*) and Subchapter II (Unlicensed Personnel Criminal Background Check) of Chapter 5 of Title 44 (D.C. Official Code § 44-551 *et seq.*), pertaining to Community Residence Facilities, hospice and home care. Both laws served as models for this section. Where these laws overlap, the more stringent standard was applied.

As a result, the FBI background check, used for children's services in the District, was selected because it is the most complete criminal history record available covering the District, states and territories. Background checks are available from paid services, but are less thorough. The FBI check

also costs less than most paid services (\$18 per person for a volunteer or \$22 per person for a paid employee). Access to FBI criminal history checks must be conducted in accordance with the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544, 86 Stat 1115. This law and its requirements were reviewed and discussed with FBI staff. *The FBI must review and sign off on any District legislation related to the FBI background check prior to second reading. Once the FBI has approved the legislation, it cannot change.*

Additionally, Pennsylvania school district requirements for background checks served as a partial model.<sup>35</sup>

- ♦ This section supersedes all other District laws, except those for foster parents (who are subject to a separate background check law). As a result, employees and volunteers who would otherwise be subject to the requirements of D.C. Official Code § 4-1501.01 *et seq.* and D.C. Official Code § 44-551 *et seq.* will instead be subject to this law.

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<sup>35</sup> 24 Pa. Cons. Stat. § 1-111, as amended.

- ♦ Job or volunteer applicants can be offered a position contingent on completion of a criminal background check, but until that time must work under the direct supervision of an employee who has completed a background check, and cannot have direct contact with persons with developmental disabilities.
- ♦ A job applicant can submit a copy of an FBI criminal background check that is no more than 30 days old. Otherwise, the job applicant must complete a new background check.
- ♦ Current employees and volunteers must submit to periodic background checks. The frequency of this will be defined in regulation.
- ♦ In accordance with federal law, only the Metropolitan Police Department (MPD) can submit the fingerprints for a criminal history check and receive the results back from the FBI. MPD provides the results to the person, who submits a copy to the employer.

- ♦ The same offenses which disqualify a person from employment under D.C. Official Code § 44-551 *et seq.* are disqualifying under this section (e.g., felony convictions in the last 7 years).
- ♦ DDS may issue regulations creating additional disqualifying offenses. These regulations must take into account the relevance of the offense, the time since the offense, any information provided by the person, and the policy that it is generally beneficial for ex-offenders to work.
- ♦ People have the opportunity to correct their FBI criminal history record if it contains errors.
- ♦ If a person has been denied employment or terminated based on a criminal background check, he or she can appeal to the Commission on Human Rights. This is the same appeals process used under §4-1501.01.
- ♦ A volunteer can use the same criminal background check for up to 2 years, if the volunteer also signs a statement that he or she

has not committed any disqualifying offenses during that time.

- ◆ DDA and providers must maintain lists of positions that are subject to the criminal background check requirements.
- ◆ All criminal background records are confidential except for the purposes in this section.
- ◆ Any applicant, employee or volunteer who provides false information is subject to criminal prosecution.
- ◆ Any individual who discloses confidential information related to the criminal background check is guilty of a criminal offense and if convicted can be fined up to \$1,000, imprisoned for not more than 180 days, or both.

**Sec. 123. Registry of former employees terminated because of substantiated acts of abuse or neglect and convictions.**

This section creates a registry of former employees who have been terminated by DDA or a provider due to substantiated acts of abuse or neglect, or convictions.

Connecticut served as the primary model for the abuse and neglect registry, with Delaware serving as a secondary source.<sup>36</sup> Federal requirements associated with the Nurse Aide Abuse Registry were also reviewed.<sup>37</sup>

- ♦ DDA maintains the registry.
- ♦ DDA responds to inquiries from providers and the DDA office of personnel regarding whether an individual is on the registry.
- ♦ Former employees may be placed on the registry due to acts of abuse or neglect that have been

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<sup>36</sup> Conn. Gen. Stat. § 71a-247a *et seq.* and Del. Code Ann. tit. 11 § 8564.

<sup>37</sup> Sec. 4211 of the *Omnibus Budget Reconciliation Act of 1987*, approved December 22, 1987 (101 Stat. 1330-182; 42 U.S.C.S. § 1396r).

substantiated by DDS or the Department of Human Services, Adult Protective Services.

- ◆ The registry may also include persons who have been convicted or have pled “no contest” to abuse and neglect. An employer will be able to check the registry first for these kinds of convictions, before proceeding to a full FBI criminal background check.
- ◆ The registry will include names, social security numbers or alien identification numbers, the date of termination, the type of abuse or neglect, the type of any criminal charge or plea, and information on requests for checks.
- ◆ Because the registry includes social security numbers, the registry itself will not be published on the internet or otherwise made available to the general public. Instead, DDA will respond to specific requests by employers.
- ◆ DDA can provide registry information to protective services agencies, providers, and

private persons who are seeking to hire a self-employed health caregiver.

- ♦ DDA must hold a hearing and issue a decision, before placing a person's name on the registry due to substantiated abuse or neglect (but not if there has been a conviction or "no contest" plea).
- ♦ DDA must remove a person's name if arbitration or a legal proceeding finds that the person was unfairly terminated, or if a criminal conviction was overturned.
- ♦ Employers who report substantiated abuse or neglect in good faith, or who testify under oath in any proceeding arising from a report, are not liable in any civil action for damages. This immunity does not apply to gross neglect or willful or wanton misconduct.

**Sec. 124. Services for persons found incompetent in a criminal case.**

This section authorizes the civil commitment of persons found incompetent in a criminal case under the *Incompetent Defendants Criminal Commitment Act of 2004*, effective May 24, 2005 (D.C. Law 15-358; D.C. Official Code § 24-531.01 *et seq.*) to the care of DDA. This section incorporates and consolidates relevant sections of Subchapters III and IV of D.C. Law 2-137, relating to commitment proceedings and hearing and review procedures.

The section seeks to maintain the same level of procedural rights and requirements for services and supports as provided under D.C. Law 2-137. It does not seek to eliminate or create new procedures or rights. It does, however, remove the distinction between facility and community placement by committing the person to “the care of the DDA,” rather than to a particular facility.

**Cross-walk of Section 124 with civil commitment provisions under D.C. Law 2-137.**

<b>Title I</b>	<b>D.C. Law</b>	<b>Topic</b>
<b>Subsection</b>	<b>2-137</b>	
	<b>Section</b>	

**Cross-walk of Section 124 with civil commitment provisions under D.C. Law 2-137.**

<b>Title I Subsection</b>	<b>D.C. Law 2-137 Section</b>	<b>Topic</b>
(a)	§ 7-1303.04	Authorization of civil commitment.
(a)	§ 7-1303.12a	District has 30 days to petition for civil commitment.
(b)	§ 7-1303.12a	Court-ordered temporary placement with the DDA, while a filing or civil commitment proceeding is pending.
(c)	§ 7-1304.01	Filing of petition to initiate civil commitment.
(d)	§ 7-1303.04	Hearings conducted promptly after a petition is filed.
(e)	§ 7-1304.02	Appointment and pay of counsel to represent respondents.
(f)	§ 7-	Filing of report and ISP.

**Cross-walk of Section 124 with civil commitment provisions under D.C. Law 2-137.**

<b>Title I Subsection</b>	<b>D.C. Law 2-137 Section</b>	<b>Topic</b>
	1304.06a	
(f)	§ 7-1304.03	Court-ordered report and ISP; contents of report.
(g)	§ 7-1304.03	Copy of report provided to respondent and representatives.
(h)	§ 7-1304.04	Court-ordered comprehensive screening, if the original screening fails to comply with professional standards.
(i)	§ 7-1304.06	Hearings conducted informally; presence of respondent.
(j)	§ 7-1304.06a	Right of the person to demand a jury trial.
(k)	§ 7-1304.06a	Right of the person to be present, testify, be represented by counsel, call

**Cross-walk of Section 124 with civil commitment provisions under D.C. Law 2-137.**

<b>Title I Subsection</b>	<b>D.C. Law 2-137 Section</b>	<b>Topic</b>
		witnesses, present evidence, and cross-examine opposing witnesses.
(l)	§ 7-1304.06a	Court or jury findings.
(m)	§ 7-1304.07	Standard of proof for civil commitment.
(n)	§ 7-1304.08	Hearings closed to the public; request for open hearing.
(o)	§ 7-1304.10	Appeals.
(p)	§ 7-1304.13(b)	Appointment of advocate.
(q)	§ 7-1304.11	Annual Court review of civil commitment.
(q)	§ 7-1303.10	Discharge proceedings.

**Cross-walk of Section 124 with civil commitment provisions under D.C. Law 2-137.**

<b>Title I Subsection</b>	<b>D.C. Law 2-137 Section</b>	<b>Topic</b>
(r)	§ 7- 1304.11	Services after discharge.
(s)	§ 7- 1304.12	Payment of costs for civil commitment proceedings.
(t)	§ 7- 1305.01	Rights of persons who have been civilly committed.
(u)	§ 7- 1303.04	Certification of services and supports in the ISP.
(v)	§ 7- 1305.15	Joint services by the DDA and the Department of Mental Health for persons who have a dual diagnosis.

## **Sec. 125. Legislative review and reporting.**

By January 1 of each year, the Mayor is required to publish a variety of reports on the implementation of Title I during the previous fiscal year. This requirement responds to repeated community requests for more information about the operations and outcomes of DDA programs. Under this section, the Mayor must publish:

- ♦ A demographic profile of people served by DDA;
- ♦ A description of the activities carried out under each section of Title I;
- ♦ A report card on the Comprehensive Developmental Disabilities Services Plan;
- ♦ Statistics on people and families receiving each kind of support or service provided by DDA;
- ♦ A plan for how DDA will comply with the informed consent requirements of Title I, and statistics on related activities;

- ◆ Statistics on grievances;
- ◆ A report on DDA's quality management improvement system;
- ◆ A report on all waiting lists;
- ◆ A discussion of supports and services that are needed but not currently provided;
- ◆ Recommendations for any needed changes to Title I; and
- ◆ Recommendations for any needed changes to the current or next fiscal years' budgets.

Through October 2010, DDA must also produce quarterly reports on all substituted consent activities. This requirement comes from the *Health-Care Decisions for Persons with Developmental Disabilities Act of 2008*, with minor changes to reflect the data that are available to DDA as opposed to the Superior Court.

**Sec. 126. Plans and reports written in plain language; made available to the public.**

All plans and reports required under Title I must:

- ♦ Be written in plain language;
- ♦ Be provided to the DC Council, the protection and advocacy agency, and any external agency designated by DDA; and
- ♦ Be on the DDS web site within 1 business day, and be available to the public on request.

## **Sec. 127. Rulemaking.**

The Director of DDS will issue rules for Title I by no later than 6 months after Title I takes effective. Rules on grievances and quality standards must be issued within 3 months.

## **Sec. 128. Repeal of Mentally Retarded Citizens Constitutional Rights and Dignity Act.**

*The Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978* is repealed.

## **Sec. 129. Transition from admission and commitment processes and procedures.**

This section seeks to provide an orderly transition from the procedures for admission and commitment under D.C. Law 2-137 to the new law's procedures for eligibility determination and court notification.

It provides an 18-month transition period, during which people who were previously committed to DDA services by the Superior Court will continue to have the services of a lawyer. Additionally, all

people who were previously committed will keep the rights provided to them under D.C. Law 2-137.

- ◆ After Title I takes effect, no new people will be admitted or committed under the processes in D.C. Law 2-137.
- ◆ After Title I takes effect, everyone who was previously admitted or committed under D.C. Law 2-137 will have that admission or commitment voided, and will instead be found eligible for DDA services.
- ◆ No person who was previously committed under D.C. Law 2-137 will be denied services or supports suited to the person's needs. This provision is consistent with Section 501 of D.C. Law 2-137 (D.C. Official Code § 7-1305.01).
- ◆ All people who were committed or admitted under D.C. Law 2-137 will be made known to the Superior Court and provided with advocates in accordance with the new procedures established under section 108 of Title I.

- ♦ For up to 18 months after Title I takes affect, all people who were previously committed under D.C. Law 2-137 will be entitled to attorneys under the Superior Court’s existing “Rules for Mental Retardation Proceedings.”
- ♦ Within 3 months after Title I takes effect, the Court will publish a plan to develop the new system of court-appointed advocates, attorneys and hearings. The Court will establish a work group to guide the development of the plan. The Court will publish a status report on the plan at 3-intervals, up to 18 months.
- ♦ Nothing in this section affects the civil commitment of a person who has been found incompetent in a criminal case.

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**Developmental Disabilities Reform Act of 2008**  
***Draft 1, December 2008***

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**Section-by-Section Analysis**

**TITLE II. AMENDMENTS TO THE DEPARTMENT ON  
DISABILITY SERVICES ESTABLISHMENT ACT.**

This section makes changes to the law that created DDS<sup>38</sup> that are needed to facilitate the provisions of Title I.

- ♦ To clarify the organizational structure and roles with regard to Title I, DDS will have at least two administrations: the Rehabilitation Services Administration and the Developmental Disabilities Administration.
  
- ♦ The DDS Director is authorized to issue regulations to implement Title I.

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<sup>38</sup> *Department on Disability Services Establishment Act of 2006*, effective March 14, 2007 (D.C. Law 16-264; D.C. Official Code § 7-761.01 *et seq.*).

- ♦ DDS will identify and enforce violations of the rights and grievances sections of Title I.
- ♦ The DDS Director is authorized to make grants and provide one-time cash assistance to implement services under Title I (notably, family support services).
- ♦ DDA is identified as the point of entry and lead agency for supports and services for persons with developmental disabilities and their families, and is charged with developing and implementing interagency agreements to achieve this goal. *This provision responds to repeated community comments that more coordination between agencies is urgently needed.*

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Developmental Disabilities Reform Act of 2008  
*Draft 1, December 2008*

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Section-by-Section Analysis

TITLE III. CONFORMING AMENDMENTS.

Title III makes changes to other District laws that are required to implement the provisions of Title I and Title II. *Additional conforming amendments will be required.*

- ♦ *The People First Respectful Language Modernization Act of 2006*<sup>39</sup> is amended to end the use of the term “mental retardation” in District law and official publications, and to clarify that where the District formerly used the term “mental retardation” it shall now use “intellectual disability.” This is consistent with pending changes to the American Psychological Association’s *Diagnostic and Statistical Manual*

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<sup>39</sup> Effective September 29, 2006 (D.C. Law 16-169; D.C. Official Code § 2-631 *et seq.*).

as recommended by the American Association on Intellectual and Developmental Disabilities.

- ♦ The *Adult Protective Services Act of 1984*<sup>40</sup> is amended to remove the requirement for court-appointed “mental retardation advocates” to act as mandated reporters in cases of suspected abuse and neglect. This requirement conflicted with provisions in D.C. Law 2-137, which have been continued in Title I, that make all communication between an advocate and a person confidential and privileged as if between attorney and client.
- ♦ The District’s guardianship law (Chapter 20 of Title 21) is amended to remove a reference to D.C. Law 2-137 and to remove a provision allowing a guardian to serve as a petitioner for commitment.

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<sup>40</sup> Effective December 7, 1984 (D.C. Law 5-156; D.C. Official Code § 7-1901 *et seq.*).

- ♦ The *Incompetent Defendants Criminal Commitment Act of 2004*<sup>41</sup> is amended to expand the definition of “inpatient treatment facility” to incorporate language from D.C. Law 2-137 defining a facility for civil commitment purposes as a physically- or staff-secure intermediate care facility or community residential facility, and to use “intellectual disability” as opposed to “mental retardation.” The law is also amended to update references to “MRDDA” and “habilitation,” and to update a citation to D.C. Law 2-137.
  
- ♦ Section 3(b) of the *State Education Office Establishment Act of 2000*<sup>42</sup> is amended to require the Office of the State Superintendent of Education to promote coordination between public schools / public charter schools and agencies that serve children and youth with disabilities.

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<sup>41</sup> Effective May 24, 2005 (D.C. Law 15-358; D.C. Official Code § 24-531.01 *et seq.*).

<sup>42</sup> Effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602).

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**Appendix A:**  
**Department on Disability Services, Management**  
**Advisory Committee (DDS MAC),**  
**Legislative Committee**

Ms. Mary Lou Meccariello (CHAIR)\*  
Executive Director, The Arc of the District of  
Columbia

Mr. Mark D. Back, Esq.\*  
Acting General Counsel, DC Department on  
Disability Services

Ms. Sandy Bernstein, Esq.\*  
Legal Director, University Legal Services

Ms. Mary Brown  
Executive Director, DC Developmental Disabilities  
Council

Ms. Tina Campanella\*

Executive Director, Quality Trust for Individuals  
with Disabilities, Inc.

Ms. Colette Chichester  
Policy Analyst, Council of the District of Columbia,  
Committee of the Whole

Mr. Martin Hamlette  
(former) Policy Advisor on Health & Human  
Services, Office of Policy & Legislative Affairs

Mr. James (Jimi) Lethbridge  
Director of Monitoring and Outreach, Quality Trust  
for Individuals with Disabilities, Inc.

Mr. Adam Maier  
Committee Director, Council of the District of  
Columbia, Committee on Human Services

Mr. Thomas L. Mangrum  
Co-President, Project ACTION!

Ms. T.J. Sutcliffe\*  
Director of Advocacy and Public Policy, The Arc of  
the District of Columbia

Mr. Ram Uppuluri  
Committee Counsel, Council of the District of  
Columbia, Committee on Human Services

Mr. Robert Williams\*  
Special Assistant to the Director, DC Department on  
Disability Services

\*Drafting Subcommittee member.

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### Appendix B: Getting Involved

#### Get Documents

Copies of the new draft legislation, supporting documents (including Resolution 17-457, reports on the May 5<sup>th</sup> Community Town Hall, the focus groups, and the Fenty e-Transition One Year Later meeting), and other resources can be accessed in several ways:

1. Visit the DDRA blog at <http://dc-ddleg.blogspot.com>.
2. Contact the Department on Disability Services, Management Advisory Council (DDS MAC) Legislative Committee c/o T.J. Sutcliffe, Director of Advocacy and Public Policy at The Arc of the District of Columbia at [tjsutcliffe@arcadc.net](mailto:tjsutcliffe@arcadc.net) or (202) 636-2963.

#### Get Involved

***Join the Meetings!*** The DDS MAC Legislative Committee will hold a Community Town Hall meeting for people to learn about the new draft legislation on Saturday, January 10, 2009. After that meeting, the DDS MAC Legislative Committee will host a series of meetings – open to all – for people to review the draft bill section-by-section and help make changes to the draft. More details on these meetings will be available shortly.

***Submit Comment!*** If you can't make it to a meeting, you can submit comment to the DDRA blog at <http://dc-ddleg.blogspot.com> or by contacting T.J. Sutcliffe at [tjsutcliffe@arcdc.net](mailto:tjsutcliffe@arcdc.net) or (202) 636-2963.

***Invite a Speaker!*** If your organization would like a speaker to come and talk with you about the DDRA, let us know. The DDS MAC Legislative Committee will make every effort to honor requests for speakers and to work with you so that your group can get involved.

## Join the DDRA Distribution List

Everyone who is interested is encouraged to join the ***DDRA distribution list*** to get up-to-date information on meetings and new developments. You can sign up to get information by email, mail or fax by contacting T.J. Sutcliffe at [tjsutcliffe@arcdc.net](mailto:tjsutcliffe@arcdc.net) or (202) 636-2963.

You can also get updates by visiting the DDRA blog at <http://dc-ddleg.blogspot.com>.

# Developmental Disabilities Reform Act of 2008

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## Appendix C: Expert Review Panel

Robert L. Burgdorf, Jr., Esq.  
Professor of Law, University of the District of  
Columbia, David A. Clarke School of Law

Tony Records  
President, Tony Records and Associates, Inc.

Michael Smull  
Support Development Associates

Nancy Thaler  
Executive Director, National Association of State  
Directors of Developmental Disability Services

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**Appendix D: Legislation Outline**

**TITLE I. DEVELOPMENTAL DISABILITIES  
RIGHTS AND SERVICES.**

Sec. 101. Short title.

Sec. 102. Findings and purpose.

Sec. 103. Definitions.

Sec. 104. Rights.

Sec. 105. Comprehensive Developmental  
Disabilities Services Task Force.

Sec. 106. Comprehensive Developmental  
Disabilities Services Plan.

Sec. 107. Eligibility.

Sec. 108. Notification of the Court; appointment of  
advocates.

Sec. 109. Support and service planning.

Sec. 110. Support coordination.

Sec. 111. Supports and services.

Sec. 112. Family support services.

Sec. 113. Family Support Council.

Sec. 114. Informed consent; health-care decisions.

Sec. 115. Independent panel for administration of psychotropic medications.

Sec. 116. Grievances.

Sec. 117. Internal grievance system; appeals of ineligibility.

Sec. 118. Legal services and access to the Court.

Sec. 119. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.

Sec. 120. Records.

Sec. 121. Quality standards and monitoring.

Sec. 122. Checks of criminal background, abuse and neglect registries, and traffic record.

Sec. 123. Registry of former employees terminated because of substantiated acts of abuse or neglect and convictions.

Sec. 124. Services for persons found incompetent in a criminal case.

Sec. 125. Legislative review and reporting.

Sec. 126. Plans and reports written in plain language; made available to the public.

Sec. 127. Rulemaking.

Sec. 128. Repeal of Mentally Retarded Citizens Constitutional Rights and Dignity Act.

Sec. 129. Transition from admission and commitment processes and procedures.

**TITLE II. AMENDMENTS TO THE  
DEPARTMENT ON DISABILITY SERVICES  
ESTABLISHMENT ACT.**

Sec. 201. Short title.

Sec. 202. The Department on Disability Services  
Establishment Act of 2006

**TITLE III: CONFORMING AMENDMENTS**

Sec. 301. Section 2 of the People First Respectful  
Language Modernization Act

Sec. 302. Section 4(a)(1) of the Adult Protective  
Services Act of 1984

Sec. 303. Chapter 20 of Title 21

Sec. 304. The Incompetent Defendants Criminal  
Commitment Act of 2004

Sec. 305. Section 3(b) of the State Education Office  
Establishment Act of 2000

**TITLE IV: FISCAL IMPACT STATEMENT**

**TITLE V: EFFECTIVE DATE**

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Appendix E: Definitions Cross-Walk

Appendix D provides a cross-walk of all terms that are defined in either D.C. Law 2-137, D.C. Law 16-264, or the *Developmental Disabilities Reform Act of 2008* (DDRA). All terms that appear in either D.C. Law 2-137, D.C. Law 16-264, or the DDRA are shown; where terms are comparable, they appear in the same row. Terms are alphabetized starting with D.C. Law 2-137, followed by D.C. Law 16-264, and (for new terms) finally by the DDRA. The columns in this table provide the following information:

*D.C. Law 2-137* -- Defined term in the *Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978* (D.C. Law 2-137; D.C. Official Code § 7-1301.03).

*D.C. Law 16-264* -- Defined term in the *Department on Disability Services Establishment*

*Act of 2006* (D.C. Law 16-264; D.C. Official Code § 7-761.02).

*DDRA* -- Defined term in the Developmental Disabilities Reform Act of 2008 (DDRA).

*DDRA section(s)* -- Which sections of the DDRA use the term?

*Modeled after* -- What model(s) served as the basis for the DDRA definition?

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Modeled after
Administrative Procedure Act		Administrative Procedure Act	§§ 116, 117	
Advanced practice registered nurse			§ 115	§ 7-1301.03 <sup>i</sup>
Admission		Admission	§ 124	§ 7-1301.03

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model after
		(§124 only)		
Behavioral plan		Behavior support plan	§§ 109, 115	§ 7- 1303.03 <sup>i</sup>
Best interests		Best interests	§§ 104, 108, 115	§ 7- 1301.03 <sup>i</sup>
Cause injury to others as a result of the individual's mental retardation		Cause injury to others as a result of the person's intellectu al disability	§ 124	§ 7- 1301.03
		Capacity		<i>Multiple sources. ii</i>
		CFSA	§ 113	
Chief Program Director				

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model defined after
		Civil commitment	§ 124	§ 7- 1301.03
Commitment		Commitment (§124 only)	§ 124	§ 7- 1301.03
Community-based services	§ 7- 761.02			
Competent				
Comprehensive evaluation		Comprehensive screening	§§ 107, 109, 117, 124	
Council			<i>Multiple sections.</i>	Not defined per § 1- 301.47
Court		Court	<i>Multiple sections.</i>	§ 7- 1301.03
Crime of violence		Crime of violence	§ 103	§ 7- 1301.03
		Criminal	§ 122	§ 4-

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model d after
		backgrou nd check		1501.02 iii
Customer				
	Consume r			
		DCPS	§ 113	
Departme nt on Disability Services or DDS	Departme nt or DDS	DDS	<i>Multiple sections.</i>	§ 7- 1301.03
		Develop mental Disabiliti es Administ ration	<i>Multiple sections.</i>	
		Develop mental disability	<i>Multiple sections.</i>	42 U.S.C. § 15002 <sup>iv</sup>
Departme nt of Human	DHS	DHS	§ 113, 121	§ 7- 1301.03

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model defined after
Services				
Director [of a facility]	Director [of DDS]			
District			<i>Multiple sections.</i>	Not defined per § 1- 301.47
		DOH	§§ 113, 121	
DSM-IV		DSM-IV	§ 103	§ 7- 1301.03
DSM-IV 'V' Codes		DSM-IV 'V' Codes	§ 103	§ 7- 1301.03
		DYRS	§ 113	
Education				
		Employee	§ 116, 122, 123	§ 4- 1501.02 <sup>i</sup> i
Facility		Facility (§ 124 only)	§ 124	§ 7- 1301.03

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model led after
		Family	<i>Multiple sections.</i>	Connecticut <sup>v</sup>
		Family support services	§§ 112, 113	Col. Rev. Stat. §27- 10.5- 104 <sup>vi</sup>
		FBI	§ 122	§ 4- 1501.02 <sup>i</sup> i
		Grievanc e	§§ 104, 107, 110, 111, 112, 116, 117, 118, 125	§ 7- 1231.02 vii
Habilitatio n	Habilitati on			
	Home and communi ty-based services			

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model after
	waiver			
Human Rights Advisory Committee or HRAC		Human Rights Advisory Committee or HRAC	§§ 115, 125	§ 7- 1301.03 <sup>i</sup>
ICD-9- CM		ICD-9- CM	§ 103	§ 7- 1301.03 <sup>i</sup>
Individual found incompetent in a criminal case		Person found incompetent in a criminal case	§ 124	§ 7- 1301.03 <sup>i</sup>
		Individual support plan or ISP	§§ 107, 109, 110, 116, 119, 120, 121, 124	<i>Multiple sources. viii</i>
Informed consent		Informed consent	§ 114	§ 7- 1301.03 <sup>i</sup>
		Job	§ 122	§ 4-

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model defined after
		applicant		1501.02 <sup>i</sup> i
Least restrictive alternative				
Mayor				Not defined per § 1- 301.47
	Medical Assistance Administration or MAA	DHCF	§§ 113, 116	
	Medical Assistance Program and Medicaid Program	Medical Assistance Program and Medicaid Program		§ 7- 761.02
Mental		Mental	§§ 107,	§ 7-

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model d after
illness		illness	124	1301.03
Mental retardation advocate		Advocate	§§ 104, 107, 108, 109, 110, 114, 115, 116, 118, 120, 124, 129	§ 7- 1303.03
Mental retardation or persons with mental retardation	Mental retardatio n or persons with mental retardatio n	Intellectu al disability or persons with intellectu al disability	§§ 103, 106, 107, 124, 129	§ 7- 1303.03
		Minor	<i>Multiple sections.</i>	§ 7- 1231.02 <sup>v</sup> i
Most integrated setting		Most integrated setting	§§ 104, 109, 111	28 CFR Part 35 App. A <sup>ix</sup>

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model d after
		MPD	§ 122	§ 4- 1501.02 <sup>i</sup> i
MRDDA	MRDDA	DDA	<i>Multiple sections.</i>	
Normaliza tion principle				
		Nurse Aide Abuse Registry	§ 122	§ 44- 551 <sup>x</sup>
		ODR	§ 116	
		OHR	§ 116	
		Office on Aging	§ 121	
		Parent		20 U.S.C. 1401 <sup>xi</sup>
		Person	<i>Multiple sections.</i>	
		Protectio n and	§§ 104, 107, 110,	29 U.S.C. §

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Modelled after
		advocacy agency	113, 126, 129	794e <sup>xii</sup>
		Provider	<i>Multiple sections.</i>	§ 7-1231.02 <sup>v</sup> <sub>i</sub>
Psychotropic medication		Psychotropic medication	§§ 104, 109, 114, 115, 125	§ 7-1303.03 <sup>i</sup>
Qualified mental retardation professional				
	RSA			
Resident of the District of Columbia	Resident of the District of Columbia	Resident of the District of Columbia	Eligibility.	§ 7-1301.03 § 7-761.02
Respite care		Respite services	§§ 112, 129	§ 7-1301.03
Responde		Responde	§ 124	§ 7-

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model d after
nt		nt		1301.03
		Restraint	Rights.	§ 7- 1231.02 <sup>v</sup> i
Screening				
		Seclusion	Rights.	§ 7- 1231.02 <sup>v</sup> i
		Support coordinat ion	§§ 110, 111, 112	<i>Multiple sources.</i> xiii
		Supports and services.	<i>Multiple sections.</i>	
Sex offenses		Sex offenses	§ 103	§ 7- 1301.03
Substitute d judgment		Substitute d judgment	§ 110, 115	§ 7- 1301.03 <sup>i</sup>
Time out				
Transfer proceedin gs	§ 7- 1301.03	Transfer proceedin gs	§ 103	§ 7- 1301.03

D.C. Law 2-137	D.C. Law 16-264	DDRA	DDRA section(s)	Model after
		Unsuperv ised	§ 122	§ 4- 1501.02 <sup>i</sup> i
		Volunteer	§ 122	§ 4- 1501.02 <sup>i</sup> i
		Volunteer applicant	§ 122	§ 4- 1501.02 <sup>i</sup> i

<sup>i</sup> As amended by the *Health-Care Decisions for Persons with Developmental Disabilities Act of 2008*, effective October 22, 2008 (D.C. Law 17-249).

<sup>ii</sup> U.N. Convention on the Rights of Persons with Disabilities and recommendations from Rud Turnbull, Beech Center on Families and Disability, the University of Kansas.

<sup>iii</sup> From Section 202 of the *Criminal Background checks for the Protection of Children Act of 2004*,

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effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 4-1501.02).

<sup>iv</sup> From Section 102 of the *Developmental Disabilities Assistance and Bill of Rights Act of 2000*, approved October 30, 2000 (114 Stat. 1683; 42 U.S.C. § 15002).

<sup>v</sup> *Department of Developmental Services Manual*, section I.C., “Individual Supports Definitions,” January 11, 2002.

<sup>vi</sup> Col. Rev. Stat. § 27-10.5-104. *Authorized services and supports – conditions of funding – purchase of services and supports – board of county commissioners – appropriation.*

<sup>vii</sup> From Section 202 of the *Mental Health Consumers’ Rights Protection Act of 2001*, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.02).

<sup>viii</sup> U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, *HCBS Quality Framework*; Connecticut *Department of Developmental Services Manual*, section I.C., “Individual Supports Definitions,” January 11, 2002; and Washington Administrative Code 388-825-020.

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<sup>ix</sup> Implementing regulations for the *Americans with Disabilities Act of 1990*, issued by the U.S. Department of Justice on January 26, 1992.

<sup>x</sup> From the *Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998*, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551).

<sup>xi</sup> From Section 602 of the *Individuals with Disabilities Education Improvement Act of 2004*, approved December 3, 2004 (P.L. 108-446; 20 U.S.C. 1401)

<sup>xii</sup> From the *Developmental Disabilities Assistance and Bill of Rights Act of 2000*, approved October 30, 2000 (114 Stat. 1712; 42 U.S.C. § 15041 et seq.), and section 509 of the *Rehabilitation Act of 1973*, approved October 29, 1992 (106 Stat. 4430; 29 U.S.C. § 794e).

<sup>xiii</sup> U.S. Department of Health and Human Services, Center for Medicare and Medicaid Services, *HCBS Quality Framework* and Colo. Rev. Stat. § 27-10.5-102(29).

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**Appendix F: Rights Under D.C. Law 2-137<sup>xiv</sup>**

**Section 501:** Prohibits denial of services on the basis of “age, degree of retardation, or handicapping condition.” Requires that services “maximize the person’s human abilities, enhance the person’s ability to cope with the person’s environment, and create a reasonable opportunity for progress toward the goal of independent living.”

**Section 502:** Requires least restrictive and most normal living conditions.

**Section 503:** Requires least restrictive conditions.

**Section 505:** Identifies rights that are largely specific to an institutional setting (e.g., right to receive visitors, get mail etc.). Also includes the right to prompt and adequate medical attention and the right to be free from unnecessary or excessive medication.

**Section 506:** Prohibits psychosurgery, convulsive therapy, experimental treatment or behavioral

modifications involving aversive stimuli or deprivation of rights.

**Section 508:** Prohibits sterilization at the authorization of the Director of a facility or any employee of a facility.

**Section 509:** Requires informed consent for experimental research and a determination by DDA that the research complies with relevant national research principles and standards.

**Section 510:** Prohibits mistreatment, neglect, abuse, the routine use of restraint, and seclusion. Describes circumstances under which restraint and time-out procedures can be used.

**Section 511:** Prohibits compelled labor; requires payment consistent with federal regulation; permits requiring people to perform “habilitative tasks” and tasks of a personal housekeeping nature.

**Section 513:** A determination of incompetency to refuse commitment is not relevant to other competency determinations.

**Section 514:** No person shall be denied rights or employment because he or she receives services; persons admitted or committed retain all rights including rights of habeas corpus.

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<sup>xiv</sup> *The Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978*, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1301.01 *et seq.*)