

Introduced: 5/2/77
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

CS HOUSE BILL NO. 519

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to persons with developmental
handicaps."

7

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

* Section 1. INTENT. This Act is intended to assure the provision of
quality services to those children and adults, numbering in the thousands
in the state, who have developmental handicaps by reason of mental or
physical disabilities, including persons qualifying for special education
services under AS 14.30.180 - 14.30.350, other persons with the same or
similar handicaps, and persons handicapped by mental retardation, cerebral
palsy, epilepsy, autism or by other developmental disabilities defined in
this Act. The primary objective of the Act is to bring together and make
optimal use of all available resources -- federal, state, local, and pri-
vate -- so that persons with developmental handicaps may be served in the
most effective and efficient way. A second, but not secondary, goal of the
Act is to assure the dignity of persons with developmental handicaps, by
reaffirming, and providing for the protection and advocacy of, their
rights, which are the same rights as other people of the state of the same
age and include the right to live as complete and normal lives as possible
and develop their ability and potential to the fullest extent possible.

25

* Sec. 2. AS 47 is amended by adding a new chapter to read:

26

CHAPTER 80. DEVELOPMENTAL HANDICAPS.

27

ARTICLE 1. RIGHTS.

28

Sec. 47.80.010. RIGHTS OF PERSONS WITH DEVELOPMENTAL HANDICAPS.

29

(a) Persons with developmental handicaps have the same legal rights

1 and responsibilities guaranteed all other persons by the Constitution
2 of the United States and federal laws and by the constitution and laws
3 of the state. No otherwise qualified person by reason of having a
4 developmental handicap may be excluded from participation in, be
5 denied the benefits of, or be subjected to discrimination under, any
6 program or activity which receives public funds. It is the intent of
7 of the legislature that persons with developmental handicaps have
8 rights including but not limited to:

9 (1) a right to education, training, habilitation, and guid-
10 ance which will enable development of individual ability and potential
11 to the fullest possible extent, no matter how severe the handicap, and
12 a right to receive services in the setting that is least restrictive
13 of personal liberty;

14 (2) a right to appropriate health care, including promotive
15 and preventive care, medical and surgical treatment, and rehabilita-
16 tive services in the setting that is least restrictive of personal
17 liberty;

18 (3) a right to economic security and to a decent standard
19 of living, including a right to productive work or other meaningful
20 occupation;

21 (4) a right not to be placed in a residential facility if
22 such a placement is not necessary, with the primary consideration
23 being given to living with their families, foster families, or indepen-
24 dently, and to participate in all aspects of community life, including
25 appropriate leisure time activities; if care in a residential facility
26 becomes necessary, a right to be in surroundings and under circumstances
27 as close to normal living as possible;

28 (5) a right to qualified guardians when this is required to
29 protect personal well-being and interest; a right to a guardian who is

1 not rendering direct services to the person with a developmental
2 handicap;

3 (6) a right to protection from exploitation, abuse, and
4 degrading treatment; if a person with a developmental handicap is
5 accused, a right to fair trial with full recognition being given to
6 his degree of competence.

7 (b) Some persons with developmental handicaps may be unable, due
8 to the severity of their handicap, to exercise for themselves all of
9 their rights in a meaningful way; for others modification of some or
10 all of their rights under (a) is appropriate. The procedure used for
11 modification or denial of rights must contain proper legal safeguards
12 against every form of abuse, must be based on an evaluation of the
13 social capability of the person by qualified experts, and must be
14 subject to periodic reviews and to the right of appeal to higher
15 authorities.

16 Sec. 47.80.020. PROTECTION AND ADVOCACY OF RIGHTS. The department
17 is responsible for having in effect a system to protect and advocate
18 rights of persons with developmental handicaps. The system

19 (1) has the authority to pursue legal, administrative, and
20 other appropriate remedies to assure the protection of the rights of
21 persons with developmental handicaps, and

22 (2) must be independent of any state agency which provides
23 treatment, services or habilitation of persons with developmental
24 handicaps.

25 ARTICLE 2. PLANNING COUNCIL.

26 Sec. 47.80.030. ALASKA PLANNING COUNCIL FOR PERSONS WITH DEVELOP-
27 MENTAL HANDICAPS. There is established the Alaska Planning Council
28 for Persons with Developmental Handicaps. For budgetary purposes, the
29 council is located within the Department of Health and Social Services

1 but is the interdepartmental planning and coordinating agency of the
2 Department of Health and Social Services, the Department of Education,
3 and the Department of Community and Regional Affairs for programs
4 affecting persons with developmental handicaps. In addition, the
5 council is the state planning council required by the Developmental
6 Disabilities Services and Facilities Construction Act (P.L. 91-517, as
7 amended).

8 Sec. 47.80.040. COMPOSITION. (a) The council consists of 23
9 members appointed by the governor.

10 (b) Seven members must be appointed to represent the principal
11 state agencies concerned with the following federal and state programs:
12 education of the handicapped, vocational rehabilitation, public assist-
13 ance, social services, maternal and child health and crippled children's
14 services, health planning, mental health and developmental disabilities.

15 (c) Eight members must be appointed who are persons with develop-
16 mental disabilities, or parents or guardians of such persons, and who
17 are not officers or directors of an entity, or employees of a state
18 agency, which receives funds for, or provides services to, develop-
19 mentally disabled persons.

20 (d) Eight members must be appointed from the public at large and
21 from groups concerned with or dealing with developmental handicaps.

22 (e) Membership of the council must at all times comply with the
23 requirements of P.L. 91-517, as amended.

24 (f) In the appointment of all members other than state agency
25 members, due regard must be given to geographically balanced representa-
26 tion of areas of the state, particularly representation of urban and
27 rural areas, and to representation of minorities.

28 Sec. 47.80.050. TERM OF OFFICE. (a) Council members' terms are
29 three years. Of the 23 initial appointees, seven must be appointed

1 for one-year terms, eight for two-year terms, and eight for three-year
2 terms.

3 (b) A vacancy occurring in the membership of the council must be
4 filled by appointment of the governor for the unexpired portion of the
5 vacated term.

6 (c) Council members serve at the pleasure of the governor, not-
7 withstanding their terms of office.

8 (d) It is the legislative intent that the governor replace any
9 member who, by poor attendance or lack of contribution to the council's
10 work, demonstrates ineffectiveness as a council member.

11 Sec. 47.80.060. COMPENSATION, PER DIEM, AND EXPENSES. Members
12 of the council receive no salary but are entitled to per diem and
13 reimbursement for travel and other expenses as authorized by law for
14 boards.

15 Sec. 47.80.070. OFFICERS AND STAFF. (a) The council, by a
16 majority of its membership, shall elect a chairman and vice chairman
17 and other officers it considers necessary from among its membership,
18 to serve on a yearly basis.

19 (b) The department shall provide for assignment to the council
20 of personnel adequate to ensure that the council has the capacity to
21 fulfill its responsibilities. The personnel is directly responsible
22 to the council for performance of its duties.

23 Sec. 47.80.080. BYLAWS. The council, on approval of a majority
24 of its membership, shall adopt and amend bylaws governing its composi-
25 tion, proceedings and other activities consistent with secs. 30 - 90
26 of this chapter and including, but not limited to, provisions concerning
27 a quorum to transact council business and other aspects of procedure,
28 frequency and location of meetings, and establishment, functions and
29 membership of council committees.

1 Sec. 47.80.090. RESPONSIBILITIES. The council shall

2 (1) serve as a forum by which issues and benefits regarding
3 current and potential services to persons with developmental handicaps
4 may be discussed by consumer, public, private, professional, and lay
5 interests;

6 (2) advocate the needs of persons with developmental
7 handicaps before the executive and legislative branches of the state
8 government and before the public;

9 (3) advise the executive and legislative branches of the
10 state government and the private sector on programs and policies
11 pertaining to current and potential services to persons with develop-
12 mental handicaps and their families, including but not limited to the
13 type, range and availability of services administered by state and
14 local governmental agencies and private organizations;

15 (4) submit periodic reports to the commissioner of health
16 and social services on the effects of current federal and state programs
17 regarding services to persons with developmental handicaps;

18 (5) in consultation with the departments specified in sec.
19 100 of this chapter, develop, prepare, adopt, and periodically review
20 and revise as necessary an annual state plan prescribing a program
21 which meets the needs of persons with developmental disabilities as
22 required under P.L. 91-517, as amended, and submit the plan and all
23 revisions of the plan to the federal government; the state plan shall

24 (A) establish goals and priorities of the state in
25 meeting the needs of developmentally disabled persons, including
26 the establishment of priorities for the distribution of public
27 funds for comprehensive services to persons with developmental
28 disabilities and other matters considered necessary to achieve
29 normalization of their lives;

1 (B) provide for coordinated delivery and establishment
2 of comprehensive services, facilities, and programs for persons
3 with developmental disabilities;

4 (C) include long-range and short-range projections
5 relating to service needs;

6 (D) otherwise satisfy specific content requirements
7 for the plan as required under P.L. 91-517, as amended;

8 (6) review and comment to commissioners of state departments
9 on all state plans and proposed regulations relating to programs for
10 persons with developmental handicaps before their being adopted; for
11 this purpose, the appropriate departments shall submit the plans and
12 proposed regulations to the council;

13 (7) state the priorities and specifications for the use of
14 funds received by the state under P.L. 91-517, as amended;

15 (8) submit annually to the commissioner of health and
16 social services, the commissioner of education, and the commissioner
17 of community and regional affairs a proposed interdepartmental program
18 budget for services to persons with developmental handicaps which
19 includes, insofar as possible, projected expenditures for programs
20 implemented by state agencies, local governmental agencies, and private
21 organizations; the interdepartmental program budget is an informational
22 supplement to the regular annual budgetary submissions of the departments
23 to the office of the governor;

24 (9) prepare and submit program performance reports to the
25 commissioner, the governor, and the federal government, as required by
26 P.L. 91-517, as amended, regarding the uses of funds received under
27 P.L. 91-517, and submit other reports as the Secretary of Health,
28 Education and Welfare may reasonably request; and

29 (10) monitor and evaluate budgets or other implementation

1 plans and programs for persons with developmental handicaps to assure
2 non-duplication of services and encourage efficient and coordinated
3 use of federal, state and private resources in the provision of
4 services.

5 ARTICLE 3. PROGRAMS AND PLANS.

6 Sec. 47.80.100. PROGRAMS FOR PERSONS WITH DEVELOPMENTAL HANDICAPS.

7 (a) The Department of Health and Social Services, the Department of
8 Education, and other departments of the state as appropriate, shall,
9 in coordination, plan, develop, and implement a comprehensive system
10 of services and facilities for persons with developmental handicaps,
11 which is consistent with the state plan adopted under sec. 90(5) of
12 this chapter and is dispersed geographically within the state. The
13 program must include but need not be limited to:

- 14 (1) diagnosis;
- 15 (2) evaluation;
- 16 (3) treatment;
- 17 (4) personal care;
- 18 (5) day care;
- 19 (6) residential care;
- 20 (7) respite care;
- 21 (8) specialized foster care;
- 22 (9) in-home support services;
- 23 (10) domiciliary care;
- 24 (11) special living arrangements;
- 25 (12) training;
- 26 (13) education;
- 27 (14) sheltered employment;
- 28 (15) recreation;
- 29 (16) counseling of persons with developmental handicaps and

1 their families;

2 (17) protective and other social and socio-legal services;

3 (18) information and referral services;

4 (19) follow-along services;

5 (20) transportation services necessary to assure delivery
6 of service;

7 (21) services offered by the division of corrections.

8 (b) The services designated in (a) of this section are specialized
9 services or special adaptations of services available to the general
10 population and must be directed toward the social, personal, physical,
11 or economic habilitation or rehabilitation of persons with developmental
12 handicaps.

13 (c) Within the limits of appropriations and other available
14 funds, the appropriate department may itself provide the services and
15 establish, operate, and maintain the facilities required under (a) and
16 (b) of this section, or it may provide the services or facilities
17 entirely or in part through contractual arrangements with public or
18 private agencies.

19 Sec. 47.80.110. PROGRAM PRINCIPLES. The system of services and
20 facilities required under sec. 100 of this chapter must accord with
21 the following principles:

22 (1) treatment, services, and habilitation must be designed
23 to maximize individual developmental potential, in accordance with the
24 premises that persons with developmental handicaps are capable of
25 growth and that normal risk is necessary for growth, and must be
26 provided in the least restrictive setting, enabling a person to live
27 as normally as possible within the limitations of the handicap; the
28 establishment of alternatives to institutionalization, the elimination
29 of inappropriate placement in residential facilities, and the improve-

1 ment of the quality of care and the state of surroundings of persons
2 who are appropriately placed in residential facilities are fundamental;

3 (2) programs must meet standards which are designed to
4 assure the most favorable possible outcome for the persons served, and
5 which

6 (A) in the case of residential programs assure that
7 care is appropriate to the needs of the persons being served by
8 the programs, assure that the persons admitted to residential
9 facilities are persons whose needs can be met through services
10 provided by the facilities, and assure that the facilities provide
11 for the humane care of the residents, meet state sanitation and
12 life-safety codes, and protect the individual rights of the
13 persons receiving services; and

14 (B) in the case of non-residential programs assure
15 that care meets the needs of the persons served by the programs;

16 (3) the intent of all programs is to develop a self-reliant
17 individual maintaining himself or herself within the society;

18 (4) the appropriate department is responsible for securing
19 program funding through all available sources;

20 (5) the system of services and facilities required under
21 sec. 100(a) and (b) of this chapter shall be provided for persons of
22 all ages;

23 (6) the first effort of the departments in implementing the
24 system shall be to provide access to the full use of all facilities
25 and services available to the general population;

26 (7) a normal range of options must be available among an
27 array of services and must include the right to enter and leave the
28 system;

29 (8) services must be delivered in a timely fashion when

1 need is established;

2 (9) the rights of persons with developmental handicaps set
3 out in sec. 10 of this chapter must continuously be observed;

4 (10) program evaluation must be integral to all service
5 systems and must reflect the involvement of consumers, advocates, pro-
6 fessionals, and the general public;

7 (11) prevention must be an integral part of the service
8 system;

9 (12) an effective means of educating the public and generat-
10 ing public awareness and support must be implemented.

11 Sec. 47.80.120. HABILITATION PLANS. A state agency or contractor
12 who is directly responsible for providing services to persons with
13 developmental handicaps shall develop an individual habilitation plan
14 for each person whose program of services utilizes state funds. The
15 plan must be completed in writing and furnished to the department
16 within 30 days of admission of a client to the program of services.
17 The plan, its renewals, and any changes of it, must have the written
18 concurrence of the client, or his parent or guardian when appropriate,
19 and the agency or contractor responsible for providing services. The
20 development and content of a plan must conform to requirements estab-
21 lished by the department by regulation. Insofar as practicable, the
22 requirements must conform to those established for individual habilita-
23 tion plans under P.L. 91-517, as amended. Each plan must be time-
24 limited, evaluated, and renewed at least annually.

25 Sec. 47.80.130. OTHER DEPARTMENTAL POWERS AND DUTIES. (a) The
26 department shall

27 (1) develop budgets and receive and distribute appropriations
28 and funds under this section;

29 (2) adopt within 180 days after the effective date of this

1 Act regulations regarding standards of services and facilities for
2 persons with developmental handicaps and the quality of services and
3 the process by which services are to be delivered;

4 (3) adopt any other regulations necessary to implement this
5 chapter;

6 (4) provide technical assistance to public and private
7 agencies in planning, developing, and implementing programs to serve
8 persons with developmental handicaps.

9 (b) For purposes of P.L. 91-517, as amended, the department is
10 designated the sole administering agency; it shall make applications
11 for, receive, and expend grants under P.L. 91-517 and otherwise
12 exercise the powers and perform the duties and functions necessary to
13 comply with P.L. 91-517.

14 (c) The Department of Education may make applications for,
15 receive, and expend grants under P.L. 91-230 (The Education for the
16 Handicapped Act), as amended, and otherwise exercise the powers and
17 perform the functions necessary to comply with that Act.

18 Sec. 47.80.140. LICENSING AND CERTIFICATES OF NEED. (a) No
19 person may establish or operate a residential facility without first
20 obtaining a license to do so. The department by regulation shall
21 provide for licensing of residential facilities which are not within
22 the licensing provisions of AS 18.20.010 - 18.20.130, AS 47.35.010 -
23 47.35.080 or other law requiring state licensing of such facilities.
24 Regulations of the department must include but need not be limited to
25 (1) standards of operation promoting and protecting public health,
26 safety, and welfare, and (2) procedures governing applications for and
27 issuance of licenses and duration, renewal, and revocation of licenses
28 for cause. The department may at reasonable times inspect and examine
29 residential facilities, licensed under this subsection, for conformity

1 with licensing requirements.

2 (b) A certificate of need is required as a prerequisite for
3 licensing a residential facility established after the effective date
4 of this Act and not otherwise provided for in AS 18.07.031 - 18.07.111.
5 A certificate shall be issued and regulated in the same manner as
6 provided in AS 18.07.031 - 18.07.111 for certificates of need for
7 health care facilities.

8 ARTICLE 4. GENERAL PROVISIONS.

9 Sec. 47.80.900. DEFINITIONS. In this chapter

10 (1) "council" means the Alaska Planning Council for Persons
11 with Developmental Handicaps, created by sec. 30 of this chapter;

12 (2) "department" means the Department of Health and Social
13 Services;

14 (3) "facilities for persons with developmental handicaps"
15 means publicly or privately operated facilities, or specified portions
16 of facilities, designed primarily for the delivery of services to
17 those persons; the term includes but is not limited to residential
18 facilities;

19 (4) "least restrictive setting" means a residential or
20 other setting for meeting the needs of a handicapped person which
21 requires the least amount of restriction of personal liberty by
22 enabling the person to function in as normal an environment as possible,
23 and to live as normally as possible, within the limitations of the
24 handicap;

25 (5) "person with a developmental disability" means a person
26 having a disability which

27 (A) is attributable to:

28 (i) mental retardation, cerebral palsy, epilepsy,
29 or autism;

1 (ii) any other condition found to be closely
2 related to mental retardation because the condition results
3 in impairment of general intellectual functioning or adaptive
4 behavior similar to impairment resulting from mental retarda-
5 tion; or

6 (iii) dyslexia resulting from a disability
7 described in (i) or (ii) of this subparagraph; and

8 (B) constitutes a substantial handicap to the person's
9 ability to function normally in society;

10 (6) "person with a developmental handicap" means a person
11 with a developmental disability or a person who is hard of hearing,
12 deaf, speech impaired, visually handicapped, seriously emotionally
13 disturbed, orthopedically or otherwise health impaired, or who has a
14 specific learning disability; the term includes but is not limited to
15 "exceptional children" as defined in AS 14.30.350(1) and AS 47.20.-
16 050(1);

17 (7) "residential facility" means a publicly or privately
18 operated facility which provides 24-hour care for four or more persons
19 with developmental handicaps, excluding family, foster family, or
20 adoptive homes;

21 (8) "substantial handicap" means a disability which prevents,
22 or substantially impedes the person's participating in and benefiting
23 from the social, economic, educational, recreational, or other opportu-
24 nities generally available to peers in the community who are not
25 similarly handicapped.

26 * Sec. 3. AS 47.30.340(10) is amended to read:

27 (10) "mentally ill individual" means an individual having
28 a psychosis or senile changes which substantially impair his mental
29 health to the degree that he is a danger to himself or others; [OR A

1 MENTALLY DEFICIENT AND SEVERELY MENTALLY RETARDED PERSON WHOM THE
2 COMMISSIONER OF HEALTH AND SOCIAL SERVICES OR HIS DESIGNEE ADMITS FOR
3 TREATMENT SUBJECT, HOWEVER, TO ALL THE OTHER ADMISSION AND DISCHARGE
4 PROCEDURES PROVIDED FOR IN SECS. 10 - 340 OF THIS CHAPTER;] the defini-
5 tion does not include an individual suffering from acute alcoholism or
6 drug addiction;

7 * Sec. 4. AS 18.05.031 is repealed.

8 * Sec. 5. TRANSITION. The Alaska Planning Council for Persons With
9 Developmental Handicaps established under this Act succeeds to all contracts,
10 rights, liabilities and obligations of the Alaska Developmental Disabilities
11 Planning Council appointed under law repealed by this Act which are in
12 effect on the effective date of this Act. Records, equipment and other
13 property of the former council shall be transferred upon this Act's taking
14 effect. The amount of any appropriation to the former council which is
15 encumbered but not expended on the effective date of this Act shall not
16 lapse but shall be transferred to the Alaska Planning Council for Persons
17 with Developmental Handicaps concurrently with the effective date of this
18 Act.