

CHAPTER 168

Senate Bill 44

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; ESTABLISHING THE STATE DEPARTMENT OF MENTAL RETARDATION; PROVIDING FOR APPOINTMENT OF AN ARIZONA BOARD OF MENTAL RETARDATION; PRESCRIBING POWERS AND DUTIES OF BOARD AND DEPARTMENT; TRANSFERRING JURISDICTION, PERSONNEL, FUNDS, RECORDS AND PROPERTY OF ARIZONA CHILDREN'S COLONY TO STATE DEPARTMENT OF MENTAL RETARDATION; TRANSFERRING DUTIES AND POWERS RELATED TO THE DIVISION OF MENTAL RETARDATION OF THE STATE DEPARTMENT OF HEALTH TO THE STATE DEPARTMENT OF MENTAL RETARDATION; REPEALING TITLE 8, CHAPTER 4, ARIZONA REVISED STATUTES, AND AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 5.1, ARTICLE 1.

**Be it enacted by the Legislature of the State of Arizona:**

Section 1. LEGISLATIVE INTENT

It is the intent of the legislature that:

1. Planning and implementation of mental retardation programs and services of the state shall be integrated and coordinated by a state department of mental retardation.

2. When and if the legislature creates an authority responsible for the coordination of all administrative programs and services in human resource agencies, the department of mental retardation shall be an administrative department of the coordinating authority.

Sec. 2. REPEAL

Title 8, chapter 4, Arizona Revised Statutes, is repealed.

Sec. 3. Title 36, Arizona Revised Statutes, is amended by adding chapter 5.1, article 1, sections 36-551 to 36-571, inclusive, to read:

CHAPTER 5.1

STATE DEPARTMENT OF MENTAL RETARDATION

ARTICLE 1. ADMINISTRATION AND REGULATION

36-551. DEFINITIONS

In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona board of mental retardation.
2. "Center" means any state operated facility which provides residential care and training, day care, sheltered workshop, preschool programs, diagnosis and evaluation, or a combination thereof, for mentally retarded persons.
3. "Child" or "person" are used interchangeably to mean a mentally retarded person of any age.
4. "Department" means the state department of mental retardation.
5. "Director" means the director of the state department of mental retardation.
6. "Indigent" means a mentally retarded person whose estate, parent, or guardian is unable to bear the full cost of maintaining or providing services for such person at a mental retardation center.

**36-552. STATE DEPARTMENT OF MENTAL RETARDATION**

A. There shall be a state department of mental retardation. The operation and control of the department shall be vested in the board.

B. The department shall consist of the director and the divisions of the department.

C. The department shall be administered by a director, appointed as prescribed in section 36-555.

D. The department shall function as the mental retardation authority for the state of Arizona, provided that nothing in this chapter shall be deemed to conflict with or alter the provisions in chapter 10 of title 36, or to include any of the functions or responsibilities now granted the commissioner of public health and the advisory survey and construction council under chapter 10 of title 36, except that the department of health shall contract with the department for the inventory survey and development of the annual state plan for the construction of facilities for the mentally retarded.

E. No provisions of this chapter shall be construed to give the department control of lawful activities of other governmental agencies or of activities of the universities or colleges of this state in the field of mental retardation, unless by specific contract or agreement therefor.

**36-553. ARIZONA BOARD OF MENTAL RETARDATION**

A. The board shall consist of seven members who have demonstrated a conscientious interest in community problems related to mental retardation. Each member shall be appointed by the governor, with the advice and consent of the senate. At least one member shall be the parent or guardian of a mentally retarded person. There shall be no more than two members appointed from one county. There shall be no more than four members from the same political party. Of the members first appointed, terms shall be staggered so that not more than one term expires on February 1 each year. Thereafter, all members shall serve for a term of seven years. No member shall serve more than one complete seven-year term. An appointment to fill a vacancy other than for expiration of term shall be for the unexpired portion of the term. The board shall elect a chairman, a vice chairman, and a secretary annually, and shall meet at least monthly. A record of all proceedings shall be maintained.

B. Notwithstanding the provisions of subsection A, the membership of the initial board shall consist of the present members of the Arizona children's colony board who shall be appointed to the Arizona board of mental retardation on the effective date of this chapter to serve for the duration of the term each is serving. In addi-

tion, a sixth member shall serve for a term ending February 1, 1976, and a seventh member for a term ending one year thereafter.

C. Each board member shall receive twenty dollars for each day spent in attending meetings of the board and shall be reimbursed for travel and subsistence expenses incurred in the performance of his duties as provided for other state officers.

D. If any board member fails to attend, without cause, three consecutive regular monthly board meetings his office may be deemed vacated and the governor may appoint a successor.

### 36-554. POWERS AND DUTIES OF BOARD

A. The board shall:

1. Be responsible for planning and developing statewide programs and service to the mentally retarded which may include:

(a) Programs and services offered in cooperation with private and public resources that can best meet the needs of the mentally retarded and which are located in the community and in proximity to the persons being served.

(b) Residential and day care programs and services located in centers which offer a more complete spectrum of services to the mentally retarded.

2. Establish standards, provide technical assistance, and exercise the requisite supervision of all state operated mental retardation centers, regional offices, diagnostic facilities, day care centers, rehabilitation centers, sheltered workshops, boarding homes and other state operated facilities for the mentally retarded.

3. Coordinate the planning and implementation of mental retardation programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for and control, and operate programs that pertain to mental retardation programs but which fall within the primary jurisdiction of such other state agencies.

4. Submit to the governor, not later than October 1 of each year, a comprehensive report which shall include the activities of the board and department for the preceding fiscal year and shall contain:

(a) An account of the work done.

(b) Recommendations for improvement.

(c) Financial statements which shall clearly reflect the origin, receipt, and disbursement of all funds which may have come into possession of the department, through appropriation or otherwise.

(d) The general condition of affairs of each center and of the statewide community programs and services. The annual report shall be published for the information of the public, and a copy mailed to each member or member-elect of the legislature.

5. Make such supplemental reports as the governor or the legislature may request.

6. Do all other things reasonably necessary and proper to carry out its duties and the provisions of this chapter.

B. The board may:

1. After consultation with the superintendent of a center, establish nonresidential outpatient programs at a center for diagnosis, care, treatment, and training of mentally retarded persons residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for the mentally retarded.

3. Contract for purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of mental retardation and improved methods of care and training for the mentally retarded.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. By affirmative vote of a majority of its full membership, make and amend rules and regulations from time to time as deemed necessary for the proper administration of the centers, for voluntary admission for residential and outpatient treatment of mentally retarded persons to the centers and to carry out the purposes of this chapter.

36-555. DIRECTOR OF DEPARTMENT; APPOINTMENT; QUALIFICATIONS; BOND

A. There shall be a director of the state department of mental retardation. The director shall be appointed by the board with the approval of the governor and shall serve at the pleasure of the board and the governor.

B. The director shall have a graduate degree in one of the behavioral sciences or administration. In addition he shall be a person with a minimum of five years' experience as an administrator or supervisor of programs in the area of exceptionality, with a particular emphasis on mental retardation that would qualify him to administer the care, training, education, treatment, and custody of mentally retarded persons.

C. The director shall give a surety bond to the state, approved by the governor, in an amount not less than ten thousand dollars.

D. Compensation of the director shall be set by the board, subject to legislative appropriation.

#### 36-556. POWERS AND DUTIES OF DIRECTOR

A. The director shall:

1. Assume full authority and responsibility for the administration of the department in accordance with the policies and directives of the board, and for carrying out the rules and regulations of the board.

2. Be the executive officer of the department and perform all duties necessary to carry out the functions and responsibilities of the department.

3. Subject to rules and regulations of the state personnel commission, appoint or remove the superintendents of the centers, with the approval of the board.

4. Enforce rules and regulations of the state personnel commission providing for the employment of all officers and employees of the state department of mental retardation.

5. Act as an ex officio member of all advisory committees of the department which may be established by law or by the director.

6. Prescribe the organization and divisions of the department.

7. Establish basic and general operating policies of the department.

8. In cooperation with the Arizona health planning authority, prepare an annual state plan for mental retardation health services. Such plan shall interpret needs, problems and programs and inform the governor, the legislature and the public of such needs, problems and programs.

9. Supervise the activities, budgets and expenditures of the department.

10. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of records maintained by the department and mental retardation centers.

11. Perform other duties prescribed by law.

B. The director may appoint special professional or other advisory committees to advise the director on particular matters requiring their assistance. Each member of such a committee shall be reimbursed for subsistence and travel incurred in attending meetings in the amount prescribed by law for public officers.

**36-557. PURCHASE OF COMMUNITY MENTAL RETARDATION SERVICES; APPLICATION; CONTRACTS; LIMITATION**

A. The department may use state and federal funds appropriated or otherwise available to it for this purpose to assist in the establishment and maintenance of local mental retardation services by public or private nonprofit agencies. Such funds may be expended in professional fees for service or in contracts for advancement or reimbursement or in other appropriate manner, and may be used for any purpose necessary to the provision of local mental retardation services. They may not be used for departmental salaries, care of retardates by the department, or any other purpose within the department itself, but they may be used for consultation to the department in the interest of local programs.

B. A local public or private nonprofit agency providing or intending to provide community mental retardation services and desiring to contract with the department for the furnishing of such services shall submit a program plan and budget to the department on the forms and in the manner required by the department. If the program meets departmental standards and is consistent with the state plan of the department, the department may contract with such agency for such services as are required and upon such terms and conditions as the department shall require. Such contracts shall provide that the provider of services shall be subject to a continuing program evaluation by the department through progress reports, expenditure reports, program audits or other appropriate evaluation techniques to assure that the provider of service is in continued compliance with the terms of the contract and the department's community mental retardation service standards and requirements.

C. Contracts between the department and a school district or districts shall be subject to approval by the department of public instruction.

D. The provisions of this article shall not be construed to place upon the department or the state any liability for the well being and care of retarded persons in local programs, or responsibility for funding such programs beyond the limits of legislative appropriation therefor.

### 36-558. ESTABLISHMENT AND MAINTENANCE OF CENTERS

A. In addition to the centers at Randolph and Tucson, the board may establish and maintain mental retardation centers at other locations throughout the state, subject to the availability of funds for such purpose and the approval of the legislature.

B. The board shall be responsible for the planning and operation of each center, and shall coordinate services and permit cooperation and transfer of residents between the various centers.

C. Each center may provide the following services in addition to other services prescribed by the board:

1. Consultation and guidance for retardates and their families.
2. Residential care for mentally retarded of all levels of retardation.
3. Diagnostic and evaluative services when such services are nonexistent in the area served by the center.
4. Preschool programs for young retardates living at the center or at home.
5. Day care services for school age retardates not eligible for public schools who are living at the center or at home.
6. Day care services for adult retardates living at the center or at home.
7. Overnight and temporary residential privileges for retardates not admitted for regular residential care at the center.
8. Postschool vocational training and vocational rehabilitation services for retardates living at the center or at home. Such services may include:
  - (a) Vocational trainee programs in service occupations on the grounds of the center.
  - (b) Extended vocational training programs for retardates.
  - (c) Sheltered workshop programs for those retardates requiring continued supervised and sheltered occupational opportunity.



9. Consultation services to community operated programs for mentally retarded.

10. Training and practicum programs in conjunction with other state agencies and universities and colleges for teachers, psychologists, social workers, medical personnel and others interested in the field of retardation.

11. Research laboratory in the fields of behavioral services and abstract research.

12. Recreation and leisure time facility for retardates residing in the community who need services of a specialized recreation program.

D. Nonresidential services of a center shall not supplant existing community services provided through other local, city, or state resources.

E. Centers shall stimulate, cooperate with and promote the development of community programs through existing resources, and provide consultation wherever needed.

36-559. ELIGIBILITY FOR RESIDENTIAL CARE AT A CENTER

A mentally retarded person may be eligible for admission for residential care at a center if such person:

- 1. Is a bona fide resident of the state of Arizona.
- 2. Is free from any communicable disease.
- 3. Is mentally retarded to such an extent that he will benefit from the care, treatment, and services available at the center.

36-560. PETITION FOR ADMISSION TO A CENTER FOR RESIDENTIAL CARE

A. Any mentally retarded person, who is eligible for residential care at a center, or the parent, guardian, or legal custodian of the mentally retarded person acting on behalf of such person, may file a petition for admission for residential care with the director. A copy of the petition shall be filed by the applicant with the clerk of the board of supervisors of the county of residence of the mentally retarded person. The petition shall be acknowledged and shall include:

- 1. The name, age, sex, and place of residence of the mentally retarded person.
- 2. The name, place of residence, and relationship, if any, of the parents, guardian, and legal custodian of the person.

3. A statement of the mental and physical condition of the mentally retarded person, and of his history and development.

4. The place where and length of time the mentally retarded person has resided in the state of Arizona.

5. A statement of the gross income, as defined in section 36-562, of the mentally retarded person, of his estate, of his parents, and guardian, if any, for the preceding four quarters.

B. The petition shall be accompanied by such medical and psychological data with respect to the mentally retarded persons as the board shall prescribe.

C. If the mentally retarded person, or his parent, guardian, or guardian of his estate has insufficient means to pay the cost of residential care as set forth in section 36-562, the petition shall be submitted first to the board of supervisors of the county in which the mentally retarded person resides, and shall not be accepted by the superintendent until the petition is approved by such board of supervisors.

#### 36-561. ADMISSION TO A CENTER

A. The director shall review petitions for admission to the center, and may examine or cause to be examined the mentally retarded person, and may accept any petition for residential care provided he is satisfied that the retarded person is eligible for admission in all respects, and can benefit from the care and services available, and provided the necessary accommodations at the center are available.

B. The director shall notify the person making the petition for admission to a center in writing of his decision to accept or reject the petition, and of the amount which the mentally retarded person, or his estate, parent, or guardian liable for his support, shall pay to the board quarterly and in advance, for the cost of care. The amount payable by the mentally retarded person, his estate, parent, or guardian, for residential care shall be fixed by the director in accordance with the fees prescribed in section 36-562. That portion of the actual cost of care and maintenance at a center over and above the amount ordered paid by the mentally retarded person, his estate, parent, or guardian shall be paid by the county in which the mentally retarded person resides, and the director shall notify the county board of supervisors of the date of admission of the mentally retarded person, and of the amount ordered paid by the person, his estate, parent, or guardian.

#### 36-562. SCHEDULE OF FINANCIAL CONTRIBUTION; REVIEW OF PAYMENT ORDER

A. Money for the support of a mentally retarded person shall be paid to the department, and by it deposited with the state treasurer, and shall continue to be paid unless and until the person is discharged from the center as provided in section 36-566. Credit shall be given for any periods of temporary absence, such as for home visits, vacations, or other purposes.

B. The financial contribution by the parent, spouse, guardian, or guardian of the estate shall terminate after sixteen years of actual care of the child for which payment has been satisfactorily made, which period of time shall include the time for which such payments were made for such child prior to the effective date of this subsection.

C. The amount of annual liability of a mentally retarded person, his estate, parent, or guardian of the estate for residential care shall be based on the percentage of gross income of the mentally retarded person, his estate, parent or guardian, as defined by section 43-112(a), except that part of the gross income of a self-employed person which results from the operation of his business shall be adjusted as prescribed by the terms of section 43-112(f), as follows:

<u>GROSS INCOME</u>	<u>PER CENT</u>
0- 4,999	0.0
5,000- 5,999	3.5
6,000- 6,999	4.0
7,000- 7,999	4.25
8,000- 8,999	5.0
9,000- 9,999	5.75
10,000-10,999	6.25
11,000-11,999	6.75
12,000-12,999	7.0
13,000-13,999	7.25
14,000-14,999	7.50
15,000-15,999	7.75
16,000-16,999	8.0
17,000-17,999	8.25
18,000-18,999	8.50
19,000-19,999	8.75
20,000-20,999	9.0
21,000-21,999	9.25
22,000-or more	9.50

But not to exceed \$2,100.00 annually.

The schedule as prescribed by this subsection shall apply to each mentally retarded person, but in no event shall the total obligation of the person, his estate, parent, or guardian exceed one hundred seventy-five dollars per month.

D. The director shall review his order for payment for residential care at least annually, or at any time upon request for review by the county board of supervisors or by the parent, guardian, or other person making such payments. The provisions of section 36-561, subsection B shall apply to any order or change in order for payment.

E. The mentally retarded person, his estate, parent, or guardian shall furnish current financial information to the director and to the appropriate county board of supervisors at the times and on the forms and in the manner prescribed by the board, provided that such information shall be held by the director and the county board of supervisors to be strictly confidential and it shall not be divulged except in the instance where it is necessary in connection with legal action.

F. Any person or county liable for support of a child or person under this section may appeal to the board from any order of the director for payment of support as provided in section 36-563. If the order of support was made by a court, a petition may be filed with such court requesting that the amount of liability for such support be reduced. The court may after a hearing on such petition, determine whether or not such liability shall be reduced because of such hardship.

#### 36-563. APPEAL; HEARING BY BOARD

A. Any person or county affected by an order of a director for payment of costs of care, or an order accepting or rejecting a petition for admission for residential care at a center, may appeal from such order to the board by filing written notice of appeal with the board requesting same. The board shall hear such appeal within thirty days after its receipt.

B. Hearings on such appeals shall be open to the public unless the appellant requests a confidential hearing, and shall be informal, with technical rules of evidence not applying to the proceedings.

C. Within thirty days after the conclusion of the hearing, the board shall make and fully report in its permanent records, findings of fact, conclusions of law when the construction of a rule, regulation or statute is in question, reasons for the action taken, and its order based thereon, which shall be subject to the right of further appeal as provided in title 12, chapter 7, article 6, and shall send a copy of such findings, conclusions and order by certified mail to the appellant and to the director.

#### 36-564. TRANSFER OF MENTALLY RETARDED PERSON FROM OTHER INSTITUTIONS; PAYMENT FOR COST OF RESIDENTIAL CARE

The superintendent of a state institution who has in such institution a child whom the superintendent believes to be mentally retarded and in need of care and treatment at a center, may petition the court which originally ordered the child to such institution, or the court where such institution is located, for admission of the child to a center by filing with the court a petition containing the information required by section 36-560. Upon a finding by the court that the child is mentally retarded and will benefit from the care and treatment available at a center, the court may order the child transferred to a center as soon as quarters are available and shall make such order for maintenance as is provided in section 36-562.

#### 36-565. PERMIT TO VISIT

The superintendent may permit a person admitted to a center to leave such center for the purpose of visiting a private home or vocational placement, and may revoke or extend the period of the visit or placement or change the conditions upon which it is granted. The superintendent may, prior to the granting of a permit to visit, cause an investigation to be made of the home in which the person is to visit, and such other conditions and circumstances as may affect his welfare and behavior. The superintendent may provide such supervision of a person leaving a center for the purpose of a visit as he deems advisable. A person receiving a permit to visit shall not be deemed discharged from a center.

#### 36-566. DISCHARGE FROM A CENTER

A. The board upon recommendation of the director may discharge a person admitted to the center by order of a court or otherwise when it determines discharge to be in the best interests of the person, or that such person is no longer benefitting from the care and treatment available at the center. A copy of such order of discharge shall be filed with the clerk of the court which ordered admission, if any, and a copy shall be sent to the last known address of the person who filed the petition for admission of the mentally retarded person to the center.

B. In addition to any other basis for discharge, a person admitted for residential care as a voluntary admission, shall be discharged by the board within five days after receipt by the board of a written request for discharge signed by the person, his parent, guardian, or legal custodian of the mentally retarded person.

#### 36-567. RETURN TO CENTER

An official of a center or an officer authorized to serve criminal process shall, upon the written request of the superintendent return to a center or hold in custody a person who has escaped or who has been temporarily released from a center under a permit to visit.

**36-568. EXCLUSION OF COUNTY CHARGES FOR COLONY COSTS FROM BUDGET AND TAX LIMITATIONS**

Amounts required to be paid by a county to the Arizona children's colony by sections 36-561, 36-562, 36-563 or 36-570 for dependent or indigent children or persons shall be excluded from the budget adopted for the previous fiscal year and from the estimate budget and the adopted budget for the current fiscal year for the purpose of computing the limitations under sections 42-302, 42-303 and 42-304, on the amounts proposed for expenditure or to be raised by direct taxation in the estimate budget of such county for each fiscal year.

**36-569. PROHIBITIONS; VIOLATIONS; PENALTIES**

A. The following acts are prohibited:

1. Knowingly, unlawfully or improperly causing a person to be adjudged mentally retarded.
2. Procuring the escape of a person from a center or knowingly concealing an escaped person.
3. Improper or abusive treatment of a mentally retarded person at a center.

B. A person who violates any provision of this section is guilty of a misdemeanor, punishable by a fine of not less than two hundred dollars, by imprisonment for not less than six months, or both.

**36-570. ELIGIBILITY AND ADMISSION FOR DAY CARE AND OTHER NONRESIDENTIAL SERVICES PROVIDED BY MENTAL RETARDATION CENTERS**

A. A mentally retarded person may be eligible for day care and other nonresidential services at a center if such person is a bona fide resident of the state in which the center is located, is free from any communicable disease, and will benefit from the care and services available at the center.

B. Application for day care or other nonresidential services provided at a center shall be made by the mentally retarded person, or his parent, guardian or legal custodian, directly to the superintendent of the center in accordance with the rules and regulations of the board.

C. Charges for nonresidential care services shall be determined by the board after giving careful consideration to standard fees charged for diagnosis and evaluation, preschool, day care and sheltered workshop services. Money paid by a parent, guardian or estate

for nonresidential services at a center shall be paid to the board and by it deposited with the state treasurer. Mentally retarded persons deemed eligible for nonresidential care services who are found to be indigent shall receive services at a rate to be determined by the board, based on ability to pay. That portion of the full cost of services over and above the amount that the parent, guardian or estate shall pay shall be paid to the board by the county.

**36-571. MENTAL RETARDATION FUNDS; DISBURSEMENT; FEDERAL MONIES**

A. The mental retardation fund shall consist of appropriations and other monies for use of the state department of mental retardation. The state treasurer shall receive and disburse monies in the fund upon claims signed by the director or other person in the department designated by the director. Salaries and expenses of the department shall be paid from the fund.

B. The state treasurer shall maintain in separate accounts monies for the department or a center which are received by gift, grant, bequest or devise, and such monies shall be disbursed for the purposes of and in conformity with the terms of the grant, gift, bequest or devise. Any unexpended balance of such monies shall not revert to the general fund at the end of the fiscal year.

C. Monies for mental retardation purposes received from the federal government or an agency thereof shall be kept in a separate account in the mental retardation fund. Any unexpended and unencumbered balance of federal funds remaining in the mental retardation fund at the end of a fiscal year shall not revert to the general fund.

**Sec. 4. TRANSFER OF POWERS AND DUTIES, FUNDS, PERSONNEL, RECORDS AND PROPERTY**

On the effective date of this act, there shall be transferred to the state department of mental retardation for use in administering this act:

1. All records, furnishings, equipment and other property, personnel, and all unexpended and unencumbered funds standing to the credit of the children's colony board.

2. All records, furnishings, equipment, and other property, and all unexpended and unencumbered funds standing to the credit of the state department of health for use by its division of mental retardation and those personnel whom the commissioner of finance determines are used or are to be used by the state department of health for its division of mental retardation.

**Sec. 5. EFFECTIVE DATE**

The provisions of this act shall become effective July 1, 1970.

Approved by the Governor — May 18, 1970

Filed in the Office of the Secretary of State — May 18, 1970

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