

# **Handbook of Rights for Minors In Mental Health Facilities**

Disability Rights New Mexico

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## **Minor's Rights Handbook**

The laws of the State of New Mexico guarantee certain legal rights to persons under the age of 18 who are receiving residential mental health treatment.

This handbook is designed to answer questions you may have about your legal rights as a person receiving residential mental health care, and to help you exercise those rights if you choose to do so.

If you have questions that are not addressed by this handbook, you may call an advocate from the Disability Rights New Mexico at 1-800-432-4682, or, in Las Vegas, at 425-5265 (Local Albuquerque Number (505) 256-3100).

***What Are Some of the Rights People***

***Have in Mental Health Facilities?***

The laws of New Mexico guarantee certain legal rights to residents of mental health facilities, such as:

The right to send and receive sealed and uncensored mail and to have access to postage stamps and writing material.

The right to practice or abstain from practicing religion.

The right to an appetizing, nourishing and well balanced diet.

The right to see visitors of one's own choice each day, during reasonable visiting hours.

The right to prompt and adequate medical attention.

The right to be free from unnecessary or excessive medication.

The right to be involved in the preparation of a treatment plan that is developed to meet your particular needs.

The right to make and receive confidential telephone calls.

The right to a humane psychological and physical environment, including one that is clean, safe, and comfortable.

The right to daily exercise and outdoor exercise.

Being a patient in a residential or mental health facility can sometimes be both frightening and confusing. Remember, just because a person is in residential care does not mean he will automatically lose his legal rights. Here are some questions often asked by kids who are in residential mental health facilities.

***Can my friends visit?***

Yes. You have a right to see visitors of your choosing, during regular visiting hours, on a daily basis. Visitors can be restricted for "good cause" by your doctor. For example, if a visitor upset you or others on the unit, that particular visitor could be denied. Also, if a visitor brought alcohol or drugs or other contraband on the unit that particular visitor could be denied. Remember - any denial of a legal right must be done on an individual basis. The residential mental health facility can't deny all visitors because of one problem visitor.

***Will my friends find out I am in a residential mental health facility?***

Only if you or someone not responsible for your care and treatment should tell them. The fact that you are in a mental health facility is confidential and information about your treatment must be protected by the facility.

***Can the facility staff read my mail...or keep my mail from me?***

No. You have a right to send and receive sealed and uncensored mail. In fact, the residential mental health facility must make letter writing materials available to you. This includes stamps, paper, envelopes, etc. Your right to send and receive confidential mail can only be denied if good cause exists, such as writing threatening letters, etc. In some instances, staff may require you to open mail in front of them, but they can't read or censor your mail.

***Can I use the telephone and make private phone calls?***

Yes. You have a right to make calls during reasonable times. Understand, however, that the length of your calls could be limited if others are unable make or receive phone calls because it is always in use. Also, the right to use the phone could be denied if "good cause" exists. An example of "good cause" might be illegal activity that was conducted by phone, i.e., threats, and so forth.

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***Can my parents prevent me from having any of my legal rights?***

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No. The only one who can deny you a right is your clinician...and only for "good cause".

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***Can Any of These Rights be Taken***

***Away?***

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Yes. Some of these rights can be denied by your clinician for "good cause," but rights cannot be denied as a form of punishment or because the facility doesn't have enough staff.

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***What Does "Good Cause" Mean?***

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This term is not defined in the law. Consider "good cause" to be a situation where your clinician has determined that the right must be denied because if it were not it would interfere with your treatment in some way. If a right is denied, the authorized professional must clearly document the reason and how long it will be denied. The right must be restored when the reason for denial no longer exists.

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Rights cannot be denied as a part of a behavior modification program, and they cannot be "earned". Rights are protected by law.

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If a right is taken away, it must be done on an individual basis. There cannot be a policy that denies rights to all patients (i.e., a "Level Policy").

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**What is the Difference Between a Legal Right and a Privilege?**

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While rights cannot be taken away except for good cause, and cannot be held out to be earned, privileges can be taken away, and can be earned as part of a behavior modification "level" program. An example might be a pass to leave grounds.

**Can a Privilege Be Taken Away if I Decide to Exercise my Legal Rights?**

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No. You can't lose a privilege in retaliation for demanding your rights.

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**What is a Behavior Modification Program?**

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Many mental health facilities use programs designed to change negative behavior. These programs may be called "behavior modification" programs, "token" programs, and so forth. Generally, they are programs which require a person to behave in a positive manner before they earn certain privileges. Note the use of the word "privileges". Legal rights cannot be part of a behavior modification program, because legal rights are guaranteed to you by the laws of New Mexico. They can only be denied, as discussed, for "good cause". Privileges, however, are special activities that you may have to earn, such as going on an outing, or staying up later than others. If you are participating in a behavior modification program, you cannot lose the rights of seeing visitors, using the telephone, corresponding with people by mail, or others outlined in this handbook.

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**Do I have the right to refuse medication?**

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It depends upon your age. If you are younger than 14, medication may be given only with consent of your parent, guardian, or legal custodian. If you are older than 14, you may refuse or consent to medication.

**What is a Treatment Guardian?**

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A Treatment Guardian is a person who has been appointed by the court to make treatment decisions for a patient. For example, if it was thought that you were not able to make treatment decisions on your own, including medication decisions, a treatment guardian could be appointed by the Court to make this decision for you. A court hearing would be required for this appointment to be made.

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**What Can a Person Do if He Thinks His Rights Have Been Denied Improperly?**

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If a person thinks he has been treated unfairly or has been improperly denied any of the rights in this handbook, he should call Disability Rights New Mexico and ask to speak with an advocate from the Mental Health Project. The number is 1-800-432-4682, or, in Las Vegas, NM 425-5265.

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**What is the Difference Between a Voluntary and an Involuntary Patient?**

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· A voluntary patient is a person who has consented to admission to a mental health facility and continues to be willing to stay in the facility.

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· An involuntary patient is a patient who has been committed by the court and is not willing or is unable to accept treatment voluntarily.

**How do I Admit Myself to a Mental Health Facility?**

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The law allows any person fourteen years of age or older to request admission to a mental health facility for up to 60 days, if the

minor and his parent/guardian complete a document indicating that the admission is voluntary. A child younger than 14 can be admitted with the informed consent of a parent, guardian or legal custodian.

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**If I am Admitted, Will a Lawyer Contact Me?**

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Yes. If you are 14 or over, within seven days following admission a lawyer is required to meet with you to explain that you have a right to an attorney, that you have a right to end your voluntary admission, what may happen if you ask to end your voluntary admission, and other rights that you have. If you are younger than 14, a guardian ad litem will meet with you and your parent, guardian, or legal custodian and clinician to determine if they understand and agree to your admission, if the admission is in your best interests, and if the placement is appropriate for you.

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**How Long Can I Stay in the Facility as a Voluntary Patient?**

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Your admission must be reviewed every 60 days. If it is decided that you need to continue to stay beyond 60 days, a lawyer will be contacted and will meet with you to make sure you understand your rights. The lawyer will also make sure you know how to ask to be released if you want to do so.

**What if I Change my Mind and Want to be Discharged From the Facility?**

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If you are over 14 years old and admitted yourself voluntarily and decide you want to be released, you must notify the director, your doctor, or a staff member, and they must arrange for your discharge by contacting your parent/guardian to take custody of you. It is a good idea to make your request in writing and keep a copy for yourself, though it is not necessary.

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**Does the Facility Have to Release Me if I Request it?**

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Not necessarily. If it is determined that, because of a mental disorder, you need and probably will benefit from continued treatment, and that the facility is able to meet your treatment needs in a way that gives you as much freedom as possible, you could be held in the facility against your will.

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**What Happens if They Don't Let Me Go?**

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If your request for release is refused, the facility must file a petition of commitment to be allowed to hold you against your will.

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**What if my Family Refuses to Take Custody of Me?**

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If that happens the residential mental health facility will notify the Children, Youth and Families Department, which will make other living and custodial arrangements for you.

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**Can I Go to Court to Try to Get Released?**

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Yes. You have a right to a hearing within seven days of your request to be released.

**How Could I Be Admitted Against My Will?**

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The law allows anybody to request that a Children's Court attorney file a petition with the court to have you committed if it is believed that you have a mental disorder which causes you to need mental health treatment.

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**What Happens When the Court Receives the Petition?**

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The Court must appoint a lawyer for you unless you have an attorney who has already been appointed or retained. The attorney must represent you at all stages of the commitment.

**Does There Have to be a Hearing?**

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Yes. However, if the lawyer talks with you and determines you understand your rights and do not wish to be present at the hearing, the lawyer will notify the court and your presence at the hearing can be waived.

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The hearing must be held within seven days of your request to leave.

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If you were brought in during an emergency because you tried to hurt yourself or someone else, the hearing would have to be held within 7 days.

**If I Don't Attend the Hearing, Does That Mean I want to Stay in the Residential Mental Health Facility?**

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No, nor does it necessarily mean you want to be released. Again, if your lawyer talked with you and determines you understand your rights and don't want to attend the hearing, you don't have to be present.

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**What Rights Do I Have at the Commitment Hearing?**

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The right to be represented by an attorney, to present evidence, to cross examine witnesses, to have a record of the proceedings, and to appeal.

**How Does the Court Decide if I Needed to be Committed?**

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If the court is shown by "clear and convincing evidence" that you have a mental disorder, would benefit from treatment, and the commitment would meet your needs in the least restrictive setting, an order for commitment could be issued.

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### **How Long Could the Commitment Last?**

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You have a right to a review of your commitment at the end of the 60 days. If the commitment period is renewed, it can't be longer than 6 months.

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### **Seclusion, Restraint, and Time Out**

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Sometimes, because of behavior that is not considered acceptable, a patient may be placed in seclusion, generally considered to be involuntary isolation in a locked room. If that happens, staff must check on the person at 15 minute intervals and make a notation in the patient's record that they have done so.

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If a patient is a danger to others on the unit and there is no other "less restrictive" way to handle the problematic behavior, the individual could be placed in restraint.

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Restraint generally consists of using leather straps to confine an individual to his bed in a way which is designed to prevent him from hurting himself or other people. It is used only when other less restrictive measures have been considered or tried without success. If a person is put in restraint or seclusion, he must be observed frequently (every 15 minutes) and offered the opportunity to use the restroom. Neither seclusion nor restraint may be used because the facility does not have enough staff, for punishment, or when a less restrictive way to handle the problem exists. In all instances, the person must be taken out of restraints when the problem has been resolved and the behavior is no longer a danger to the person or to the other people.

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Sometimes, staff may believe that a person should be placed in "time out" for a brief period. This is not considered to be seclusion, and is similar to a person being restricted to his room at home. The door would not be locked and the person would be allowed to join the group again after a short period of time.

Remember, the use of seclusion and/or restraint must end when the reasons for use no longer exist. This means that a person cannot automatically be secluded or restrained for, say, 6 hours when 2 hours would have been all that was needed. Seclusion and/or restraint must end when the behavior has been brought under control.

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Keep in mind that seclusion and restraint are involuntary procedures. They should not be used with voluntary individuals.

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However, if the staff decides to use seclusion or restraint on a voluntary individual, the individual must be placed on an involuntary hold, and a petition for civil commitment filed the next business day.

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It is hoped that this handbook has been helpful to you in understanding some of the rights you have as a patient.

If you have any questions, you may call Disability Rights New Mexico at our toll free number 1-800-432-4682, or, in Las Vegas, NM 425-5265.

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To contact our office by mail:

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