

## RESTRAINT AND SECLUSION OF MINORS

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**Senate Bill 231 as passed by the Senate**  
**Senate Bill 1344 as passed by the Senate**  
**Sponsor: Sen. Bev Hammerstrom**  
**Senate Committee: Health Policy**  
**House Committee: Health Policy**

**Complete to 11-18-04**

## A SUMMARY OF SENATE BILLS 231 AND 1344 AS PASSED BY THE SENATE

Senate Bill 231 (S-1) would amend the Mental Health Code (MCL 330.1742) to prohibit a minor placed in a child caring institution from being placed or kept in seclusion, except as provided in the Child Care Licensing Act or rules promulgated under the act.

Senate Bill 1344 (S-2) would amend the Child Care Licensing Act (MCL 722.102b et al.) to do the following with regard to child caring institutions:

- Prohibit the use of mechanical and chemical restraint.
- Allow the use of personal restraint and seclusion to ensure the safety of a minor or others in an emergency situation.
- Require staff to undergo continuing education and training in the use of personal restraint and seclusion, and in the identification of alternate methods for preventing and defusing an emergency safety situation.
- Establish procedures for the use of personal restraint and seclusion, including debriefings of all situations in which personal restraint or seclusion was employed.
- Require an evaluation of a minor by institution staff after the implementation of personal restraint or seclusion.
- Require a face-to-face assessment of a minor by a licensed practitioner if the use of personal restraint or seclusion exceeded specified time limits.
- Establish documentation and record-keeping requirements.
- Require the reporting of instances of death, serious injury, or attempted suicide to the Family Independence Agency (FIA) and the state-designated protection and advocacy system.

Senate Bill 1344 is tie-barred to Senate Bill 231. The bills are described below in further detail.

## **Senate Bill 231**

Under the Mental Health Code, seclusion may be used only in a hospital, center, or licensed child caring institution. ("Center" means a facility operated by the Department of Community Health (DCH) to admit individuals with developmental disabilities and provide habilitation and treatment services.) Under the bill, a minor placed in a child caring institution could not be placed or kept in seclusion except as provided in the Child Care Licensing Act or rules promulgated under it.

(Under the Child Care Licensing Act, "child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the institution for that purpose, and which operates throughout the year. An educational program may be provided, but may not be the facility's primary purpose. The term includes a maternity home for the care of unmarried mothers who are minors and an agency group home, which is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for between four and 13 children. The term also includes institutions for mentally retarded or emotionally disturbed minor children. It does not include a hospital, nursing home, home for the aged, boarding school, hospital or facility operated by the state and licensed under the Mental Health Code, or an adult foster care family home or an adult foster care small group home in which a child has been placed.)

## **Senate Bill 1344**

### Prohibited Restraint

The bill would prohibit the use of mechanical and chemical restraint in a child caring institution that contracted with and received payment from a community mental health services program or prepaid inpatient health plan for the care, treatment, maintenance, and supervision of a minor in a child caring institution.

The bill would define "mechanical restraint" as a device attached or adjacent to a minor's body that he or she cannot easily remove and that restricts freedom of movement or normal access to his or her body. The term would not include the use of a protective or adaptive device or a device primarily intended to provide anatomical support.

"Protective device" would mean an individually fabricated mechanical device or physical barrier, whose use is incorporated in the individualized written plan of service and is intended to prevent the minor from causing serious self-injury associated with documented, frequent, and unavoidable hazardous events. "Adaptive device" would mean a mechanical device incorporated in the individual plan of services that is intended to provide anatomical support or to assist the minor with adaptive skills (i.e., skills in communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work).

The term "mechanical restraint" also would exclude the use of a mechanical device to ensure security precautions appropriate to the condition and circumstances of a minor placed in the child caring institution as a result of an order of the family division of circuit court (family court) under Section 2(a) of the juvenile code. (Under that section, the court has exclusive original jurisdiction in proceedings concerning a juvenile under age 17 who is found within the county if any of the following apply:

-- The juvenile has violated any municipal ordinance or state or federal law.

-- The juvenile has deserted his or her home without sufficient cause, and the court finds that the juvenile has been placed or refused alternative placement, or the juvenile and his or her parent, guardian, or custodian have exhausted or refused family counseling.

-- The juvenile is repeatedly disobedient to the reasonable and lawful commands of his or her parents, guardian, or custodian, and the court finds that court-accessed services are necessary.

-- The juvenile is repeatedly truant from, or repeatedly violates rules and regulations of, school or another learning program, and the court finds that the juvenile, his or her parent, guardian, or custodian, and school officials or learning program personnel have met on the juvenile's educational problems and educational counseling and alternative agency help have been sought.)

"Chemical restraint" would mean a drug that is administered to manage a minor's behavior in a way that reduces the safety risk to the minor or others, has the temporary effect of restricting the minor's freedom of movement, and is not a standard treatment for the minor's medical or psychiatric condition.

#### Required Education and Training

Within 180 days after the bill's effective date, a child caring institution would have to require its staff to have ongoing education, training, and demonstrated knowledge of all of the following:

-- Techniques to identify minors' behaviors, events, and environmental factors that could trigger emergency safety situations.

-- The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minors who were in or being placed in personal restraint or seclusion.

-- The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.

A child caring institution's staff would have to be trained in the use of personal restraint or seclusion, be knowledgeable of the risks inherent in the implementation of personal restraint and seclusion, and demonstrate competency regarding personal restraint or seclusion before participating in implementation. Staff would have to demonstrate their competencies in these areas on a semiannual basis. The FIA would have to review and determine the acceptability of the child caring institution's staff education, training, knowledge, and competency requirements and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion.

("Licensed practitioner" would mean an individual who has been trained in the use of personal restraint and seclusion, who is knowledgeable of the inherent risks in implementation, and who is a licensed physician, a certified nurse practitioner, a licensed physician's assistant, a registered nurse, a limited licensed psychologist, or a limited licensed counselor. Until July 1, 2005, the term would include a certified social worker registered under the Public Health Code. After that date, the term would include a master's level social worker licensed under the code.)

"Emergency safety situation" would mean the onset of an unanticipated, severely aggressive, or destructive behavior that places the minor or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention. "Emergency safety intervention" would mean the use of personal restraint or seclusion as an immediate response to an emergency safety situation.

#### Limits on Restraint and Seclusion

Personal restraint or seclusion could not be imposed as a means of coercion, discipline, convenience, or retaliation by a child caring institution's staff. An order for personal restraint or seclusion could not be written as a standing order or on an as-needed basis.

Personal restraint or seclusion could not result in harm or injury to the minor and could be used only to ensure the minor's safety or the safety of others during an emergency safety situation. Personal restraint or seclusion could be used only until the emergency safety situation had ceased and the safety of the minor and of others could be ensured, even if the order for personal restraint or seclusion had not expired. Personal restraint and seclusion of a minor could not be used simultaneously.

Personal restraint or seclusion would have to be performed in a manner that was safe, appropriate, and proportionate to the severity of the minor's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse.

#### Notification of Restraint and Seclusion Policy

At the time a minor was admitted to a child caring institution, it would have to do all of the following:

-- Inform the minor and his or her parents or legal guardian of the provider's policy regarding the use of personal restraint or seclusion during an emergency safety situation that could occur while the minor was under the care of the child caring institution.

-- Communicate the provider's personal restraint and seclusion policy in language that the minor or his or her parent or legal guardian could understand, including American Sign Language, if appropriate, and procure an interpreter or translator, if necessary.

-- Obtain a written acknowledgment from the minor's parent or legal guardian that he or she had been informed of the provider's policy, and file it in the minor's records.

-- Give a copy of the policy to the parent or legal guardian.

The child caring institution would not be required to inform, communicate, and obtain the written acknowledgement from a minor's parent or legal guardian if the minor were within the care and supervision of the child caring institution as a result of an order of commitment of the family court to a state institution, state agency, or otherwise, and had been adjudicated to be a dependent, neglected, or delinquent under the juvenile code, if the minor's individual case treatment plan indicated that such notice would not be in the minor's best interest.

### Order and Procedures

An order for personal restraint or seclusion could be written only by a licensed practitioner. A licensed practitioner would have to order the least restrictive emergency safety intervention measure that was most likely to be effective in resolving the emergency safety situation based on consultation with staff. Consideration of less restrictive emergency intervention safety measures would have to be documented in the minor's record.

If the order for personal restraint or seclusion were verbal, it would have to be received by a child caring institution staff member who was a licensed practitioner, a social services supervisor described in R 400.4118 of the Michigan Administrative Code, a supervisor of direct care workers as described in R 400.4120 of the Michigan Administrative Code, or a licensed practical nurse. (The administrative rules set forth requirements for the education and experience of these supervisors.)

A verbal order would have to be received while child caring institution staff were initiating personal restraint or seclusion or immediately after the emergency safety situation began. The licensed practitioner would have to be available to staff for consultation, at least by telephone, throughout the personal restraint or seclusion period. The practitioner would have to verify the verbal order in signed, written form in the minor's record.

An order for personal restraint or seclusion would be limited to the duration of the emergency safety situation. It could not exceed four hours for a minor who was 18 or older, two hours for a minor nine to 17 years old, or one hour for a minor under age nine.

If more than two orders for personal restraint or seclusion were ordered for a minor within a 24-hour period, the director of the child caring institution or his or her designated management staff would have to be notified to determine whether additional measures should be taken to facilitate discontinuation of personal restraint or seclusion.

If personal restraint continued for less than 15 minutes or seclusion continued for less than 30 minutes from the onset of the emergency safety intervention, the child caring institution staff qualified to receive a verbal order, in consultation with the licensed practitioner, would have to evaluate the minor's physical and psychological well-being immediately after the minor was removed from seclusion or personal restraint.

A face-to-face assessment would have to be conducted if the personal restraint continued for at least 15 minutes or if seclusion continued for at least 30 minutes from the onset of the emergency safety intervention. The assessment would have to be conducted by an individual who had been trained in the use of personal restraint and seclusion, and who was licensed as a physician, a certified nurse practitioner, a physician's assistant, or a registered nurse. The assessment would have to be conducted within one hour of the onset of the intervention and immediately after the minor was removed from personal restraint or seclusion. The assessment would have to include, at a minimum, the minor's physical and psychological status and behavior, the appropriateness of the intervention measures, and any complications resulting from the intervention.

A minor would have to be released from personal restraint or seclusion whenever the circumstances that justified its use no longer existed. Each instance of personal restraint or seclusion would require full justification for its use, and the results of the evaluation immediately following the use of personal restraint or seclusion would have to be placed in the minor's record.

Each order for personal restraint or seclusion would have to include the name of the licensed practitioner ordering the restraint or seclusion; the date and time the order was obtained; and the personal restraint or seclusion ordered, including the length of time for which the practitioner ordered its use.

The child caring institution staff would have to document the use of the personal restraint or seclusion in the minor's record. The documentation would have to be completed by the end of the shift in which the restraint or seclusion occurred. If the restraint or seclusion did not end during the shift in which it began, documentation would have to be completed during the shift in which it ended. Documentation would have to include all of the following:

-- Each order for personal restraint or seclusion.

- The time the personal restraint or seclusion actually began and ended.
- The time and results of the one-hour assessment.
- The emergency safety situation that required the resident to be restrained or secluded.
- The name of the staff involved.

The child caring institution staff trained in the use of personal restraint would have to continually assess and monitor the minor's physical and psychological well-being and the safe use of personal restraint throughout its implementation.

The institution staff trained in the use of seclusion would have to be physically present in or immediately outside the seclusion room, continually assessing, monitoring, and evaluating the minor's physical and psychological well-being. Video monitoring could not be exclusively used to meet this requirement. The staff would have to ensure that documentation of staff monitoring and observation was entered into the minor's record.

If the emergency safety intervention continued beyond the time limit of the order, staff authorized to receive verbal orders for personal restraint or seclusion immediately would have to contact the licensed practitioner to receive further instructions.

As soon as possible after the initiation of personal restraint or seclusion, the staff would have to notify the minor's parent or legal guardian, and the appropriate state or local government agency that had responsibility for the minor if he or she were under the supervision of the child caring institution as a result of an order of commitment by the family court to a state institution or otherwise. The notification, including the date and time of the notification, the name of the staff person who provided it, and the name of the person to whom the notification was reported, would have to be documented in the minor's record.

The child caring institution would not have to notify the parent or legal guardian if the minor were within the care and supervision of the institution as a result of an order of commitment of the family court to a state institution, state agency, or otherwise, and had been adjudged to be dependent, neglected, or delinquent under the juvenile code, if the minor's individual case treatment plan indicated that such notice would not be in the minor's best interest.

### Debriefing

Within 24 hours after the use of personal restraint or seclusion, staff involved in the emergency safety intervention and the minor would have to have a face-to-face debriefing session that included all staff involved in the personal restraint or seclusion, unless the presence of a particular staff member could jeopardize the minor's well-being. Other staff members and the minor's parent or legal guardian could participate in the debriefing if the child caring institution considered it appropriate.

The institution would have to conduct a debriefing in a language the minor understood. The debriefing would have to give both the minor and the staff the opportunity to discuss the circumstances resulting in the use of personal restraint or seclusion and strategies the staff, the minor, or others could use to prevent the future use of personal restraint or seclusion.

Within 24 hours after the use of personal restraint or seclusion, all child caring institution staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, would have to conduct a debriefing session that included, at a minimum, all of the following:

- Discussion of the emergency safety situation that required personal restraint or seclusion, including a discussion of precipitating factors that led up to the situation.
- Alternative techniques that might have prevented the use of personal restraint or seclusion.
- The procedures, if any, for staff to implement to prevent a recurrence of the use of personal restraint or seclusion.
- The outcome of the emergency safety intervention, including any injury that might have resulted from the use of personal restraint or seclusion.

The staff would have to document in the minor's record that both debriefing sessions took place, and include the names of staff present and staff excused, and changes to the minor's treatment plan that resulted from the debriefings.

#### Reporting Serious Occurrences

Each child caring institution subject to the bill would have to report each serious occurrence to the FIA, which would have to make the reports available to the designated state protection and advocacy system upon request. (Under the Mental Health Code, the governor is required to designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities and mental illness. The designated agency has the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and the mentally ill and to investigate allegations of abuse and neglect. The designated agency is independent of any state agency that provides treatment or services other than advocacy services to persons with developmental disabilities and the mentally ill. Michigan Protection and Advocacy Services is the state-designated agency.)

Serious occurrences to be reported would include a minor's death, serious injury, or suicide attempt. Staff would have to report any serious occurrence involving a minor by the close of the next business day after the occurrence. ("Serious injury" would mean any significant impairment of the minor's physical condition as determined by qualified medical personnel that resulted from an emergency safety intervention, including burns,



lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.)

The report would have to include the name of the minor, a description of the occurrence, and the child caring institution's name, street address, and telephone number. The institution would have to notify the minor's parent or legal guardian, and, if the minor were under the institution's supervision as a result of a family court order of commitment, the appropriate state or local government agency that had responsibility for the minor, as soon as possible, and not later than 24 hours after the occurrence. Staff would have to document on the minor's record that the serious occurrence was reported to both the FIA and the state-designated protection and advocacy system. The name of the person to whom notification of the incident was reported also would have to be documented. A copy of the report would have to be maintained in the minor's record, as well as the child caring institution's incident and accident report logs.

#### Record-Keeping; Reporting

Each child caring institution would have to maintain a record of the incidences in which personal restraint or seclusion was used for all minors. The record would have to include all of the following information:

- Whether personal restraint or seclusion was used.
- The setting, unit, or location in which personal restraint or seclusion was used.
- Staff who initiated the process.
- The duration of each use of personal restraint or seclusion.
- The date, time, and day of the week restraint or seclusion was initiated.
- Whether the minor or staff sustained injuries.
- The minor's age and gender.

Each child caring institution annually would have to submit to the FIA a report containing the aggregate data from the record of incidences for each 12-month period as directed by the FIA. The FIA would have to prepare the reporting forms, aggregate the data collected from each child caring institution, and report the data annually to each child caring institution and the state-designated protection and advocacy system.

**FISCAL IMPACT:**

Senate Bill 1344 would result in an indeterminate increase in administrative costs on the Family Independence Agency related to the following provisions in the bill: a) the requirement for FIA to review staff education, training, knowledge, and competency requirements and the training and knowledge required of a licensed practitioner in the use of personal restraint and seclusion; and b) the requirement that the FIA collect, aggregate, and annually report on serious occurrences involving minors in the care of child caring institutions.

Senate Bill 231 would have no fiscal impact on the State or on local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.