

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1344

A bill to amend 1973 PA 116, entitled

"An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,"

(MCL 722.111 to 722.128) by adding sections 2b, 2c, 2d, and 2e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2b. (1) As used in this section and sections 2c, 2d,
2 and 2e, unless the context requires otherwise:

3 (a) "Adaptive device" means a mechanical device incorporated
4 in the individual plan of services that is intended to provide
5 anatomical support or to assist the minor child with adaptive
6 skills.

7 (b) "Chemical restraint" means a drug that meets all of the
8 following criteria:

9 (i) Is administered to manage a minor child's behavior in a

1 way that reduces the safety risk to the minor child or others.

2 (ii) Has the temporary effect of restricting the minor
3 child's freedom of movement.

4 (iii) Is not a standard treatment for the minor child's
5 medical or psychiatric condition.

6 (c) "Emergency safety intervention" means use of personal
7 restraint or seclusion as an immediate response to an emergency
8 safety situation.

9 (d) "Emergency safety situation" means the onset of an
10 unanticipated, severely aggressive, or destructive behavior that
11 places the minor child or others at serious threat of violence or
12 injury if no intervention occurs and that calls for an emergency
13 safety intervention.

14 (e) "Individual plan of services" means that term as defined
15 in section 100b of the mental health code, 1974 PA 258, MCL
16 330.1100b.

17 (f) "Licensed practitioner" means an individual who has been
18 trained in the use of personal restraint and seclusion, who is
19 knowledgeable of the risks inherent in the implementation of
20 personal restraint and seclusion, and who is 1 of the following:

21 (i) A physician licensed under article 15 of the public
22 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

23 (ii) An individual who has been issued a specialty
24 certification as a nurse practitioner under article 15 of the
25 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

26 (iii) A physician's assistant licensed under article 15 of
27 the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

1 (iv) A registered nurse licensed under article 15 of the
2 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

3 (v) A psychologist and a limited licensed psychologist
4 licensed under article 15 of the public health code, 1978 PA 368,
5 MCL 333.16101 to 333.18838.

6 (vi) A counselor and a limited licensed counselor licensed
7 under article 15 of the public health code, 1978 PA 368, MCL
8 333.16101 to 333.18838.

9 (vii) Until July 1, 2005, a certified social worker
10 registered under article 15 of the public health code, 1978 PA
11 368, MCL 333.16101 to 333.18838. Beginning July 1, 2005, a
12 licensed master's social worker licensed under article 15 of the
13 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

14 (g) "Mechanical restraint" means a device attached or
15 adjacent to the minor child's body that he or she cannot easily
16 remove and that restricts freedom of movement or normal access to
17 his or her body. Mechanical restraint does not include the use
18 of a protective or adaptive device or a device primarily intended
19 to provide anatomical support. Mechanical restraint does not
20 include use of a mechanical device to ensure security precautions
21 appropriate to the condition and circumstances of a minor child
22 placed in the child caring institution as a result of an order of
23 the family division of circuit court under section 2(a) of
24 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
25 712A.2.

26 (h) "Personal restraint" means the application of physical
27 force without the use of a device, for the purpose of restraining

1 the free movement of a minor child's body. Personal restraint
2 does not include:

3 (i) The use of a protective or adaptive device.

4 (ii) Briefly holding a minor child without undue force in
5 order to calm or comfort him or her.

6 (iii) Holding a minor child's hand, wrist, shoulder, or arm
7 to safely escort him or her from 1 area to another.

8 (iv) The use of a protective or adaptive device or a device
9 primarily intended to provide anatomical support.

10 (i) "Protective device" means an individually fabricated
11 mechanical device or physical barrier, the use of which is
12 incorporated in the individualized written plan of service. The
13 use of a protective device is intended to prevent the minor child
14 from causing serious self-injury associated with documented,
15 frequent, and unavoidable hazardous events.

16 (j) "Seclusion" means the involuntary placement of a minor
17 child in a room alone, where the minor child is prevented from
18 exiting by any means, including the physical presence of a staff
19 person if the sole purpose of that staff person's presence is to
20 prevent the minor child from exiting the room. Seclusion does
21 not include the use of a sleeping room during regular sleeping
22 hours to ensure security precautions appropriate to the condition
23 and circumstances of a minor child placed in the child caring
24 institution as a result of an order of the family division of
25 circuit court under section 2(a) and (b) of chapter XIIIA of the
26 probate code of 1939, 1939 PA 288, MCL 712A.2, if the minor
27 child's individual case treatment plan indicates that the

1 security precautions would be in the minor child's best
2 interest.

3 (k) "Serious injury" means any significant impairment of the
4 physical condition of the minor child as determined by qualified
5 medical personnel that results from an emergency safety
6 intervention. This includes, but is not limited to, burns,
7 lacerations, bone fractures, substantial hematoma, and injuries
8 to internal organs, whether self-inflicted or inflicted by
9 someone else.

10 (2) The provisions of this section and sections 2c, 2d, and
11 2e only apply to a child caring institution that contracts with
12 or receives payment from a community mental health services
13 program or prepaid inpatient health plan for the care, treatment,
14 maintenance, and supervision of a minor child in that child
15 caring institution.

16 Sec. 2c. (1) If a child caring institution contracts with
17 and receives payment from a community mental health services
18 program or prepaid inpatient health plan for the care, treatment,
19 maintenance, and supervision of a minor child in a child caring
20 institution, the child caring institution may place a minor child
21 in personal restraint or seclusion only as provided in this
22 section and sections 2d and 2e but shall not use mechanical
23 restraint or chemical restraint.

24 (2) Not later than 180 days after the effective date of the
25 amendatory act that added this section, a child caring
26 institution shall require its staff to have ongoing education,
27 training, and demonstrated knowledge of all of the following:

1 (a) Techniques to identify minor children's behaviors,
2 events, and environmental factors that may trigger emergency
3 safety situations.

4 (b) The use of nonphysical intervention skills, such as
5 de-escalation, mediation conflict resolution, active listening,
6 and verbal and observational methods to prevent emergency safety
7 situations.

8 (c) The safe use of personal restraint or seclusion,
9 including the ability to recognize and respond to signs of
10 physical distress in minor children who are in personal restraint
11 or seclusion or who are being placed in personal restraint or
12 seclusion.

13 (3) A child caring institution's staff shall be trained in
14 the use of personal restraint and seclusion, shall be
15 knowledgeable of the risks inherent in the implementation of
16 personal restraint and seclusion, and shall demonstrate
17 competency regarding personal restraint or seclusion before
18 participating in the implementation of personal restraint or
19 seclusion. A child caring institution's staff shall demonstrate
20 their competencies in these areas on a semiannual basis. The
21 state agency licensing child caring institutions shall review and
22 determine the acceptability of the child caring institutions'
23 staff education, training, knowledge, and competency requirements
24 required by this subsection and the training and knowledge
25 required of a licensed practitioner in the use of personal
26 restraint and seclusion.

27 Sec. 2d. (1) Personal restraint or seclusion shall not be

1 imposed as a means of coercion, discipline, convenience, or
2 retaliation by a child caring institution's staff.

3 (2) An order for personal restraint or seclusion shall not be
4 written as a standing order or on an as-needed basis.

5 (3) Personal restraint or seclusion must not result in harm
6 or injury to the minor child and shall be used only to ensure the
7 minor child's safety or the safety of others during an emergency
8 safety situation. Personal restraint or seclusion shall only be
9 used until the emergency safety situation has ceased and the
10 minor child's safety and the safety of others can be ensured even
11 if the order for personal restraint or seclusion has not
12 expired. Personal restraint and seclusion of a minor child shall
13 not be used simultaneously.

14 (4) Personal restraint or seclusion shall be performed in a
15 manner that is safe, appropriate, and proportionate to the
16 severity of the minor child's behavior, chronological and
17 developmental age, size, gender, physical condition, medical
18 condition, psychiatric condition, and personal history, including
19 any history of physical or sexual abuse.

20 (5) Except as provided in subsection (6), at the time a minor
21 child is admitted to a child caring institution, the child caring
22 institution shall do all of the following:

23 (a) Inform the minor child and his or her parent or legal
24 guardian of the provider's policy regarding the use of personal
25 restraint or seclusion during an emergency safety situation that
26 may occur while the minor child is under the care of the child
27 caring institution.

1 (b) Communicate the provider's personal restraint and
2 seclusion policy in a language that the minor child or his or her
3 parent or legal guardian will understand, including American sign
4 language, if appropriate. The provider shall procure an
5 interpreter or translator, if necessary to fulfill the
6 requirement of this subdivision.

7 (c) Obtain a written acknowledgment from the minor child's
8 parent or legal guardian that he or she has been informed of the
9 provider's policy on the use of personal restraint and seclusion
10 during an emergency safety situation. The child caring
11 institution's staff shall file the acknowledgment in the minor
12 child's records.

13 (d) Provide a copy of the policy to the minor child's parent
14 or legal guardian.

15 (6) The child caring institution is not required to inform,
16 communicate, and obtain the written acknowledgment from a minor
17 child's parent or legal guardian as specified in subsection (5)
18 if the minor child is within the care and supervision of the
19 child caring institution as a result of an order of commitment of
20 the family division of circuit court to a state institution,
21 state agency, or otherwise, and has been adjudicated to be a
22 dependent, neglected, or delinquent under chapter XIIIA of the
23 probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the
24 minor child's individual case treatment plan indicates that
25 notice would not be in the minor child's best interest.

26 (7) An order for personal restraint or seclusion shall only
27 be written by a licensed practitioner.

1 (8) A licensed practitioner shall order the least restrictive
2 emergency safety intervention measure that is most likely to be
3 effective in resolving the emergency safety situation based on
4 consultation with staff. Consideration of less restrictive
5 emergency safety intervention measures shall be documented in the
6 minor child's record.

7 (9) If the order for personal restraint or seclusion is
8 verbal, it must be received by a child caring institution staff
9 member who is 1 of the following:

10 (a) A licensed practitioner.

11 (b) A social services supervisor as described in R 400.4118
12 of the Michigan administrative code.

13 (c) A supervisor of direct care workers as described in
14 R 400.4120 of the Michigan administrative code.

15 (d) A practical nurse licensed under article 15 of the public
16 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

17 (10) A verbal order must be received while personal restraint
18 or seclusion is being initiated by child caring institution staff
19 or immediately after the emergency safety situation begins. The
20 licensed practitioner shall be available to staff for
21 consultation, at least by telephone, throughout the period of
22 personal restraint or seclusion. The licensed practitioner shall
23 verify the verbal order in signed written form in the minor
24 child's record.

25 (11) An order for personal restraint or seclusion shall meet
26 both of the following criteria:

27 (a) Be limited to no longer than the duration of the

1 emergency safety situation.

2 (b) Not exceed 4 hours for a minor child 18 years of age or
3 older; 2 hours for a minor child 9 to 17 years of age; or 1 hour
4 for a minor child under 9 years of age.

5 (12) If more than 2 orders for personal restraint or
6 seclusion are ordered for a minor child within a 24-hour period,
7 the director of the child caring institution or his or her
8 designated management staff shall be notified to determine
9 whether additional measures should be taken to facilitate
10 discontinuation of personal restraint or seclusion.

11 (13) If personal restraint continues for less than 15 minutes
12 or seclusion continues for less than 30 minutes from the onset of
13 the emergency safety intervention, the child caring institution
14 staff qualified to receive a verbal order for personal restraint
15 or seclusion, in consultation with the licensed practitioner,
16 shall evaluate the minor child's psychological well-being
17 immediately after the minor child is removed from seclusion or
18 personal restraint. Staff shall also evaluate the minor child's
19 physical well-being or determine if an evaluation is needed by a
20 licensed practitioner authorized to conduct a face-to-face
21 assessment under subsection (14).

22 (14) A face-to-face assessment shall be conducted if the
23 personal restraint continues for 15 minutes or more from the
24 onset of the emergency safety intervention or if seclusion
25 continues for 30 minutes or more from the onset of the emergency
26 safety intervention. This face-to-face assessment shall be
27 conducted by a licensed practitioner who is 1 of the following:

1 (a) A physician licensed under article 15 of the public
2 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

3 (b) An individual who has been issued a speciality
4 certification as a nurse practitioner under article 15 of the
5 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

6 (c) A physician's assistant licensed under article 15 of the
7 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

8 (d) A registered nurse licensed under article 15 of the
9 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

10 (15) The face-to-face assessment shall be conducted within 1
11 hour of the onset of the emergency safety intervention and
12 immediately after the minor child is removed from personal
13 restraint or seclusion. The face-to-face assessment of the
14 physical and psychological well-being of the minor child shall
15 include, but is not limited to, all of the following:

16 (a) The minor child's physical and psychological status.

17 (b) The minor child's behavior.

18 (c) The appropriateness of the intervention measures.

19 (d) Any complications resulting from the intervention.

20 Sec. 2e. (1) A minor child shall be released from personal
21 restraint or seclusion whenever the circumstance that justified
22 the use of personal restraint or seclusion no longer exists.

23 (2) Each instance of personal restraint or seclusion requires
24 full justification for its use, and the results of the evaluation
25 immediately following the use of personal restraint or seclusion
26 shall be placed in the minor child's record.

27 (3) Each order for personal restraint or seclusion shall

1 include all of the following:

2 (a) The name of the licensed practitioner ordering personal
3 restraint or seclusion.

4 (b) The date and time the order was obtained.

5 (c) The personal restraint or seclusion ordered, including
6 the length of time for which the licensed practitioner ordered
7 its use.

8 (4) The child caring institution staff shall document the use
9 of the personal restraint or seclusion in the minor child's
10 record. That documentation shall be completed by the end of the
11 shift in which the personal restraint or seclusion occurred. If
12 the personal restraint or seclusion does not end during the shift
13 in which it began, documentation shall be completed during the
14 shift in which the personal restraint or seclusion ends.

15 Documentation shall include all of the following:

16 (a) Each order for personal restraint or seclusion.

17 (b) The time the personal restraint or seclusion actually
18 began and ended.

19 (c) The time and results of the 1-hour assessment.

20 (d) The emergency safety situation that required the resident
21 to be personally restrained or secluded.

22 (e) The name of the staff involved in the personal restraint
23 or seclusion.

24 (5) The child caring institution staff trained in the use of
25 personal restraint shall continually assess and monitor the
26 physical and psychological well-being of the minor child and the
27 safe use of personal restraint throughout the duration of its

1 implementation.

2 (6) The child caring institution staff trained in the use of
3 seclusion shall be physically present in or immediately outside
4 the seclusion room, continually assessing, monitoring, and
5 evaluating the physical and psychological well-being of the
6 minor. Video monitoring shall not be exclusively used to meet
7 this requirement.

8 (7) The child caring institution staff shall ensure that
9 documentation of staff monitoring and observation is entered into
10 the minor child's record.

11 (8) If the emergency safety intervention continues beyond the
12 time limit of the order for use of personal restraint or
13 seclusion, child caring institution staff authorized to receive
14 verbal orders for personal restraint or seclusion shall
15 immediately contact the licensed practitioner to receive further
16 instructions.

17 (9) The child caring institution staff shall notify the minor
18 child's parent or legal guardian and the appropriate state or
19 local government agency that has responsibility for the minor
20 child if the minor child is under the supervision of the child
21 caring institution as a result of an order of commitment by the
22 family division of circuit court to a state institution or
23 otherwise as soon as possible after the initiation of personal
24 restraint or seclusion. This notification shall be documented in
25 the minor child's record, including the date and time of the
26 notification, the name of the staff person providing the
27 notification, and the name of the person to whom notification of

1 the incident was reported. The child caring institution is not
2 required to notify the parent or legal guardian as provided in
3 this subsection if the minor child is within the care and
4 supervision of the child caring institution as a result of an
5 order of commitment of the family division of circuit court to a
6 state institution, state agency, or otherwise, and has been
7 adjudged to be dependent, neglected, or delinquent under chapter
8 XIIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to
9 712A.32, if the minor child's individual case treatment plan
10 indicates that the notice would not be in the minor child's best
11 interest.

12 (10) Within 24 hours after the use of personal restraint or
13 seclusion, child caring institution staff involved in the
14 emergency safety intervention and the minor child shall have a
15 face-to-face debriefing session. The debriefing shall include
16 all staff involved in the seclusion or personal restraint except
17 if the presence of a particular staff person may jeopardize the
18 well-being of the minor child. Other staff members and the minor
19 child's parent or legal guardian may participate in the
20 debriefing if it is considered appropriate by the child caring
21 institution.

22 (11) The child caring institution shall conduct a debriefing
23 in a language that is understood by the minor child. The
24 debriefing shall provide both the minor child and the staff
25 opportunity to discuss the circumstances resulting in the use of
26 personal restraint or seclusion and strategies to be used by
27 staff, the minor child, or others that could prevent the future

1 use of personal restraint or seclusion.

2 (12) Within 24 hours after the use of personal restraint or
3 seclusion, all child caring institution staff involved in the
4 emergency safety intervention, and appropriate supervisory and
5 administrative staff, shall conduct a debriefing session that
6 includes, at a minimum, all of the following:

7 (a) Discussion of the emergency safety situation that
8 required personal restraint or seclusion, including a discussion
9 of precipitating factors that led up to the situation.

10 (b) Alternative techniques that might have prevented the use
11 of personal restraint or seclusion.

12 (c) The procedures, if any, that child caring institution
13 staff are to implement to prevent a recurrence of the use of
14 personal restraint or seclusion.

15 (d) The outcome of the emergency safety intervention,
16 including any injury that may have resulted from the use of
17 personal restraint or seclusion.

18 (13) The child caring institution staff shall document in the
19 minor child's record that both debriefing sessions took place and
20 shall include the names of staff who were present for the
21 debriefings, names of staff that were excused from the
22 debriefings, and changes to the minor child's treatment plan that
23 result from the debriefings.

24 (14) Each child caring institution subject to this section
25 and sections 2c and 2d shall report each serious occurrence to
26 the state agency licensing the child caring institution. The
27 state agency licensing the child caring institution shall make

1 the reports available to the designated state protection and
2 advocacy system upon request of the designated state protection
3 and advocacy system. Serious occurrences to be reported include
4 a minor child's death, a serious injury to a minor child, and a
5 minor child's suicide attempt. Staff shall report any serious
6 occurrence involving a minor child by no later than close of
7 business of the next business day after a serious occurrence.
8 The report shall include the name of the minor child involved in
9 the serious occurrence, a description of the occurrence, and the
10 name, street address, and telephone number of the child caring
11 institution. The child caring institution shall notify the minor
12 child's parent or legal guardian and the appropriate state or
13 local government agency that has responsibility for the minor
14 child if the minor child is under the supervision of the child
15 caring institution as a result of an order of commitment by the
16 family division of circuit court to a state institution or
17 otherwise as soon as possible and not later than 24 hours after
18 the serious occurrence. Staff shall document in the minor
19 child's record that the serious occurrence was reported to both
20 the state agency licensing the child caring institution and the
21 state-designated protection and advocacy system, including the
22 name of the person to whom notification of the incident was
23 reported. A copy of the report shall be maintained in the minor
24 child's record, as well as in the incident and accident report
25 logs kept by the child caring institution.

26 (15) Each child caring institution subject to this section
27 and sections 2c and 2d shall maintain a record of the incidences

1 in which personal restraint or seclusion was used for all minor
2 children. The record shall include all of the following
3 information:

4 (a) Whether personal restraint or seclusion was used.

5 (b) The setting, unit, or location in which personal
6 restraint or seclusion was used.

7 (c) Staff who initiated the process.

8 (d) The duration of each use of personal restraint or
9 seclusion.

10 (e) The date, time, and day of the week restraint or
11 seclusion was initiated.

12 (f) Whether injuries were sustained by the minor child or
13 staff.

14 (g) The age and gender of the minor child.

15 (16) Each child caring institution subject to this section
16 and sections 2c and 2d shall submit a report annually to the
17 state agency that licenses the child caring institution
18 containing the aggregate data from the record of incidences for
19 each 12-month period as directed by the state licensing agency.
20 The state licensing agency shall prepare reporting forms to be
21 used by the child caring institution, shall aggregate the data
22 collected from each child caring institution, and shall annually
23 report the data to each child caring institution and the
24 state-designated protection and advocacy system.

25 Enacting section 1. This amendatory act does not take
26 effect unless Senate Bill No. 231 of the 92nd Legislature is
27 enacted into law.