

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 with adaptive skills.

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

8 (i) Is administered to manage a minor's behavior in a way
9 that reduces the safety risk to the minor or others.

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

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

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

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

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

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

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

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

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

27 (iv) A registered nurse licensed under article 15 of the

1 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

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

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

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

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

24 (h) "Personal restraint" means the application of physical
25 force without the use of a device, for the purpose of restraining
26 the free movement of a minor's body. Personal restraint does not
27 include:

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

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

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

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

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

(j) "Seclusion" means the involuntary placement of a minor in a room alone, where the minor is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of that staff person's presence is to prevent the minor from exiting the room. Seclusion does not include the <<use of a sleeping room during regular sleeping hours>> 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 under section 2(a) <<and (b)>> of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2<<, if the minor's individual case treatment plan indicates that such security precautions would be in the minor's best interest>>.

(k) "Serious injury" means any significant impairment of the physical condition of the minor as determined by qualified medical personnel that results from an emergency safety intervention. This includes, but is not limited to, burns,

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

4 (2) The provisions of this section and sections 2c, 2d, and
5 2e do not apply to a child caring institution that does not
6 contract with or receive payment from a community mental health
7 authority, organization, or services program for the care,
8 treatment, maintenance, and supervision of a minor in that child
9 caring institution.

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

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

22 (a) Techniques to identify minors' behaviors, events, and
23 environmental factors that may trigger emergency safety
24 situations.

25 (b) The use of nonphysical intervention skills, such as
26 de-escalation, mediation conflict resolution, active listening,
27 and verbal and observational methods to prevent emergency safety

1 situations.

2 (c) The safe use of personal restraint or seclusion,
3 including the ability to recognize and respond to signs of
4 physical distress in minors who are in personal restraint or
5 seclusion or who are being placed in personal restraint or
6 seclusion.

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

21 Sec. 2d. (1) Personal restraint or seclusion shall not be
22 imposed as a means of coercion, discipline, convenience, or
23 retaliation by a child caring institution's staff.

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

26 (3) Personal restraint or seclusion must not result in harm
27 or injury to the minor and shall be used only to ensure the

1 minor's safety or the safety of others during an emergency safety
2 situation. Personal restraint or seclusion shall only be used
3 until the emergency safety situation has ceased and the minor's
4 safety and the safety of others can be ensured even if the order
5 for personal restraint or seclusion has not expired. Personal
6 restraint and seclusion of a minor shall not be used
7 simultaneously.

8 (4) Personal restraint or seclusion shall be performed in a
9 manner that is safe, appropriate, and proportionate to the
10 severity of the minor's behavior, chronological and developmental
11 age, size, gender, physical condition, medical condition,
12 psychiatric condition, and personal history, including any
13 history of physical or sexual abuse.

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

17 (a) Inform the minor and the minor's parent or legal guardian
18 of the provider's policy regarding the use of personal restraint
19 or seclusion during an emergency safety situation that may occur
20 while the minor is under the care of the child caring
21 institution.

22 (b) Communicate the provider's personal restraint and
23 seclusion policy in a language that the minor or his or her
24 parent or legal guardian will understand, including American sign
25 language, if appropriate. The provider shall procure an
26 interpreter or translator, if necessary to fulfill the
27 requirement of this subdivision.

1 (c) Obtain a written acknowledgment from the minor's parent
2 or legal guardian that he or she has been informed of the
3 provider's policy on the use of personal restraint and seclusion
4 during an emergency safety situation. The child caring
5 institution's staff shall file the acknowledgment in the minor's
6 records.

7 (d) Provide a copy of the policy to the minor's parent or
8 legal guardian.

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

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

22 (8) A licensed practitioner shall order the least restrictive
23 emergency safety intervention measure that is most likely to be
24 effective in resolving the emergency safety situation based on
25 consultation with staff. Consideration of less restrictive
26 emergency safety intervention measures shall be documented in the
27 minor's record.

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

4 (a) A licensed practitioner.

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

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

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

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

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

21 (a) Be limited to no longer than the duration of the
22 emergency safety situation.

23 (b) Not exceed 4 hours for a minor 18 years of age or older;
24 2 hours for a minor 9 to 17 years of age; or 1 hour for a minor
25 under 9 years of age.

26 (12) If more than 2 orders for personal restraint or
27 seclusion are ordered for a minor within a 24-hour period, the

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1 director of the child caring institution or his or her designated
2 management staff shall be notified to determine whether
3 additional measures should be taken to facilitate discontinuation
4 of personal restraint or seclusion.

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

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

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

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

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

27 (d) A registered nurse licensed under article 15 of the

1 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

2 (15) The face-to-face assessment shall be conducted within 1
3 hour of the onset of the emergency safety intervention and
4 immediately after the minor is removed from personal restraint or
5 seclusion. The face-to-face assessment of the physical and
6 psychological well-being of the minor shall include, but is not
7 limited to, all of the following:

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

9 (b) The minor's behavior.

10 (c) The appropriateness of the intervention measures.

11 (d) Any complications resulting from the intervention.

12 Sec. 2e. (1) A minor shall be released from personal
13 restraint or seclusion whenever the circumstance that justified
14 the use of personal restraint or seclusion no longer exists.

15 (2) Each instance of personal restraint or seclusion requires
16 full justification for its use, and the results of the evaluation
17 immediately following the use of personal restraint or seclusion
18 shall be placed in the minor's record.

19 (3) Each order for personal restraint or seclusion shall
20 include all of the following:

21 (a) The name of the licensed practitioner ordering personal
22 restraint or seclusion.

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

24 (c) The personal restraint or seclusion ordered, including
25 the length of time for which the licensed practitioner ordered
26 its use.

27 (4) The child caring institution staff shall document the use

1 of the personal restraint or seclusion in the minor's record.
2 That documentation shall be completed by the end of the shift in
3 which the personal restraint or seclusion occurred. If the
4 personal restraint or seclusion does not end during the shift in
5 which it began, documentation shall be completed during the shift
6 in which the personal restraint or seclusion ends. Documentation
7 shall include all of the following:

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

9 (b) The time the personal restraint or seclusion actually
10 began and ended.

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

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

14 (e) The name of the staff involved in the personal restraint
15 or seclusion.

16 (5) The child caring institution staff trained in the use of
17 personal restraint shall continually assess and monitor the
18 physical and psychological well-being of the minor and the safe
19 use of personal restraint throughout the duration of its
20 implementation.

21 (6) The child caring institution staff trained in the use of
22 seclusion shall be physically present in or immediately outside
23 the seclusion room, continually assessing, monitoring, and
24 evaluating the physical and psychological well-being of the
25 minor. Video monitoring shall not be exclusively used to meet
26 this requirement.

27 (7) The child caring institution staff shall ensure that

1 documentation of staff monitoring and observation is entered into
2 the minor's record.

3 (8) If the emergency safety intervention continues beyond the
4 time limit of the order for use of personal restraint or
5 seclusion, child caring institution staff authorized to receive
6 verbal orders for personal restraint or seclusion shall
7 immediately contact the licensed practitioner to receive further
8 instructions.

9 (9) The child caring institution staff shall notify the
10 minor's parent or legal guardian and the appropriate state or
11 local government agency that has responsibility for the minor if
12 the minor is under the supervision of the child caring
13 institution as a result of an order of commitment by the family
14 division of circuit court to a state institution or otherwise as
15 soon as possible after the initiation of personal restraint or
16 seclusion. This notification shall be documented in the minor's
17 record, including the date and time of the notification, the name
18 of the staff person providing the notification, and the name of
19 the person to whom notification of the incident was reported.
20 The child caring institution is not required to notify the parent
21 or legal guardian as provided in this subsection if the minor is
22 within the care and supervision of the child caring institution
23 as a result of an order of commitment of the family division of
24 circuit court to a state institution, state agency, or otherwise,
25 and has been adjudged to be dependent, neglected, or delinquent
26 under chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
27 712A.1 to 712A.32, if the minor's individual case treatment plan

1 indicates that such notice would not be in the minor's best
2 interest.

3 (10) Within 24 hours after the use of personal restraint or
4 seclusion, child caring institution staff involved in the
5 emergency safety intervention and the minor shall have a
6 face-to-face debriefing session. The debriefing shall include
7 all staff involved in the seclusion or personal restraint except
8 if the presence of a particular staff person may jeopardize the
9 well-being of the minor. Other staff members and the minor's
10 parent or legal guardian may participate in the debriefing if it
11 is considered appropriate by the child caring institution.

12 (11) The child caring institution shall conduct a debriefing
13 in a language that is understood by the minor. The debriefing
14 shall provide both the minor and the staff opportunity to discuss
15 the circumstances resulting in the use of personal restraint or
16 seclusion and strategies to be used by staff, the minor, or
17 others that could prevent the future use of personal restraint or
18 seclusion.

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

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

27 (b) Alternative techniques that might have prevented the use

1 of personal restraint or seclusion.

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

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

8 (13) The child caring institution staff shall document in the
9 minor's record that both debriefing sessions took place and shall
10 include the names of staff who were present for the debriefings,
11 names of staff that were excused from the debriefings, and
12 changes to the minor's treatment plan that result from the
13 debriefings.

14 (14) Each child caring institution subject to this section
15 and sections 2c and 2d shall report each serious occurrence to
16 the state agency licensing the child caring institution. The
17 state agency licensing the child caring institution shall make
18 the reports available to the designated state protection and
19 advocacy system upon request of the designated state protection
20 and advocacy system. Serious occurrences to be reported include
21 a minor's death, a serious injury to a minor, and a minor's
22 suicide attempt. Staff shall report any serious occurrence
23 involving a minor by no later than close of business of the next
24 business day after a serious occurrence. The report shall
25 include the name of the minor involved in the serious occurrence,
26 a description of the occurrence, and the name, street address,
27 and telephone number of the child caring institution. The child

1 caring institution shall notify the minor's parent or legal
2 guardian and the appropriate state or local government agency
3 that has responsibility for the minor if the minor is under the
4 supervision of the child caring institution as a result of an
5 order of commitment by the family division of circuit court to a
6 state institution or otherwise as soon as possible and not later
7 than 24 hours after the serious occurrence. Staff shall document
8 in the minor's record that the serious occurrence was reported to
9 both the state agency licensing the child caring institution and
10 the state-designated protection and advocacy system, including
11 the name of the person to whom notification of the incident was
12 reported. A copy of the report shall be maintained in the
13 minor's record, as well as in the incident and accident report
14 logs kept by the child caring institution.

15 (15) Each child caring institution subject to this section
16 and sections 2c and 2d shall maintain a record of the incidences
17 in which personal restraint or seclusion was used for all
18 minors. The record shall include all of the following
19 information:

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

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

23 (c) Staff who initiated the process.

24 (d) The duration of each use of personal restraint or
25 seclusion.

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

1 (f) Whether injuries were sustained by the minor or staff.

2 (g) The age and gender of the minor.

3 (16) Each child caring institution subject to this section
4 and sections 2c and 2d shall submit a report annually to the
5 state agency that licenses the child caring institution
6 containing the aggregate data from the record of incidences for
7 each 12-month period as directed by the state licensing agency.
8 The state licensing agency shall prepare reporting forms to be
9 used by the child caring institution, shall aggregate the data
10 collected from each child caring institution, and shall annually
11 report the data to each child caring institution and the
12 state-designated protection and advocacy system.

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