

# SENATE BILL No. 1344

August 4, 2004, Introduced by Senator HAMMERSTROM and referred to the Committee on Health Policy.

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. As used in this section and sections 2c, 2d, and  
2 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) "Licensed practitioner" means 1 of the following  
14 individuals:

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

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

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

22       (iv) A registered or practical nurse licensed under article  
23 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
24 333.18838.

25       (v) A limited licensed psychologist licensed under article 15  
26 of the public health code, 1978 PA 368, MCL 333.16101 to  
27 333.18838.

1       (vi) A limited licensed counselor licensed under article 15  
2 of the public health code, 1978 PA 368, MCL 333.16101 to  
3 333.18838.

4       (vii) Until July 1, 2005, a certified social worker  
5 registered under article 15 of the public health code, 1978 PA  
6 368, MCL 333.16101 to 333.18838. Beginning July 1, 2005, a  
7 certified or master's level social worker registered or licensed  
8 under article 15 of the public health code, 1978 PA 368, MCL  
9 333.16101 to 333.18838.

10       (f) "Mechanical restraint" means a device attached or  
11 adjacent to the minor's body that he or she cannot easily remove  
12 and that restricts freedom of movement or normal access to his or  
13 her body.

14       (g) "Personal restraint" means the application of physical  
15 force without the use of a device, for the purpose of restraining  
16 the free movement of a minor's body. Personal restraint does not  
17 include:

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

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

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

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

25       (h) "Protective device" means an individually fabricated  
26 mechanical device or physical barrier, the use of which is  
27 incorporated in the individualized written plan of service. The

1 use of a protective device is intended to prevent the minor from  
2 causing serious self-injury associated with documented, frequent,  
3 and unavoidable hazardous events.

4 (i) "Seclusion" means the involuntary placement of a minor in  
5 a room alone, where the minor is prevented from exiting by any  
6 means, including the physical presence of a staff person if the  
7 sole purpose of that staff person's presence is to prevent the  
8 minor from exiting the room.

9 (j) "Serious injury" means any significant impairment of the  
10 physical condition of the minor as determined by qualified  
11 medical personnel that results from an emergency safety  
12 intervention. This includes, but is not limited to, burns,  
13 lacerations, bone fractures, substantial hematoma, and injuries  
14 to internal organs, whether self-inflicted or inflicted by  
15 someone else.

16 Sec. 2c. (1) Mechanical restraint and chemical restraint  
17 are prohibited in child caring institutions.

18 (2) If a child caring institution contracts with and receives  
19 payment from a community mental health authority, organization,  
20 or services program for the care, treatment, maintenance, and  
21 supervision of a minor in a child caring institution, the child  
22 caring institution may place a minor in personal restraint or  
23 seclusion only as provided in this section.

24 (3) A child caring institution shall require its staff to  
25 have ongoing education, training, and demonstrated knowledge of  
26 all of the following:

27 (a) Techniques to identify minors' behaviors, events, and

1 environmental factors that may trigger emergency safety  
2 situations.

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

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

12 (4) A child caring institution's staff shall be trained  
13 regarding, and shall demonstrate competency regarding, personal  
14 restraint or seclusion before participating in the implementation  
15 of personal restraint or seclusion. A child caring institution's  
16 staff shall demonstrate their competencies in these areas on a  
17 semiannual basis.

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

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

23 (3) Personal restraint or seclusion must not result in harm  
24 or injury to the minor and shall be used only to ensure the  
25 minor's safety or the safety of others during an emergency safety  
26 situation. Personal restraint or seclusion shall only be used  
27 until the emergency safety situation has ceased and the minor's

1 safety and the safety of others can be ensured even if the order  
2 for personal restraint or seclusion has not expired. Personal  
3 restraint and seclusion of a minor shall not be used  
4 simultaneously.

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

11 (5) At the time a minor is admitted to a child caring  
12 institution, the child caring institution shall do all of the  
13 following:

14 (a) Inform the minor and the minor's parent or legal guardian  
15 of the provider's policy regarding the use of personal restraint  
16 or seclusion during an emergency safety situation that may occur  
17 while the minor is in the program.

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

24 (c) Obtain a written acknowledgment from the minor's parent  
25 or legal guardian that he or she has been informed of the  
26 provider's policy on the use of personal restraint and seclusion  
27 during an emergency safety situation. The child caring

1 institution's staff shall file the acknowledgment in the minor's  
2 records.

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

5 (6) An order for personal restraint or seclusion shall only  
6 be written by a licensed practitioner who has been trained in the  
7 use of personal restraint and seclusion and who is knowledgeable  
8 of the risks inherent in the implementation of personal restraint  
9 and seclusion.

10 (7) A licensed practitioner shall order the least restrictive  
11 emergency safety intervention measure that is most likely to be  
12 effective in resolving the emergency safety situation based on  
13 consultation with staff. Consideration of less restrictive  
14 emergency safety intervention measures shall be documented in the  
15 minor's record.

16 (8) If the order for personal restraint or seclusion is  
17 verbal, it must be received by a child caring institution staff  
18 member who is licensed or registered as 1 of the following:

19 (a) A licensed practitioner.

20 (b) Until July 1, 2005, a certified social worker registered  
21 under article 15 of the public health code, 1978 PA 368, MCL  
22 333.16101 to 333.18838. Beginning July 1, 2005, a certified or  
23 master's level social worker registered or licensed under article  
24 15 of the public health code, 1978 PA 368, MCL 333.16101 to  
25 333.18838.

26 (c) A social services supervisor as described in R 400.4118  
27 of the Michigan administrative code.

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

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

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

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

(b) Not exceed 4 hours for a minor 18 to 21 years of age; 2 hours for a minor 9 to 18 years of age; or 1 hour for a minor under 9 years of age.

(11) If more than 4 orders for personal restraint or seclusion are ordered for a minor within a 24-hour period, the director of the child caring institution or his or her designated management staff shall be notified to determine whether additional measures should be taken to facilitate discontinuation of personal restraint or seclusion.

(12) If personal restraint continues for less than 15 minutes or seclusion continues for less than 30 minutes from the onset of the emergency safety intervention, the child caring institution staff qualified to receive a verbal order for personal restraint



1 or seclusion, in consultation with the licensed practitioner,  
2 shall evaluate the minor's physical and psychological well-being  
3 immediately after the minor is removed from seclusion or personal  
4 restraint.

5 (13) A face-to-face assessment shall be conducted if the  
6 personal restraint continues for 15 minutes or more from the  
7 onset of the emergency safety intervention or if seclusion  
8 continues for 30 minutes or more from the onset of the emergency  
9 safety intervention. This face-to-face assessment shall be  
10 conducted by an individual who has been trained in the use of  
11 personal restraint and seclusion, who is knowledgeable of the  
12 risks inherent in the implementation of personal restraint and  
13 seclusion, and who is licensed as 1 of the following:

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

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

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

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

23 (14) The face-to-face assessment shall be conducted within 1  
24 hour of the onset of the emergency safety intervention and  
25 immediately after the minor is removed from personal restraint or  
26 seclusion. The face-to-face assessment of the physical and  
27 psychological well-being of the minor shall include, but is not

1 limited to, all of the following:

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

3 (b) The minor's behavior.

4 (c) The appropriateness of the intervention measures.

5 (d) Any complications resulting from the intervention.

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

9 (2) Each instance of personal restraint or seclusion requires  
10 full justification for its use, and the results of each periodic  
11 examination shall be placed in the minor's record.

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

14 (a) The name of the licensed practitioner ordering personal  
15 restraint or seclusion.

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

17 (c) The personal restraint or seclusion ordered, including  
18 the length of time for which the licensed practitioner ordered  
19 its use.

20 (4) The child caring institution staff shall document the use  
21 of the personal restraint or seclusion in the minor's record.  
22 That documentation shall be completed by the end of the shift in  
23 which the personal restraint or seclusion occurred. If the  
24 personal restraint or seclusion does not end during the shift in  
25 which it began, documentation shall be completed during the shift  
26 in which the personal restraint or seclusion ends. Documentation  
27 shall include all of the following:

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

2 (b) The time the personal restraint or seclusion actually  
3 began and ended.

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

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

7 (e) The name of the staff involved in the personal restraint  
8 or seclusion.

9 (5) The child caring institution staff trained in the use of  
10 personal restraint shall continually assess and monitor the  
11 physical and psychological well-being of the minor and the safe  
12 use of personal restraint throughout the duration of its  
13 implementation.

14 (6) The child caring institution staff trained in the use of  
15 seclusion shall be physically present in or immediately outside  
16 the seclusion room, continually assessing, monitoring, and  
17 evaluating the physical and psychological well-being of the  
18 minor. Video monitoring does not meet this requirement.

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

22 (8) If the emergency safety intervention continues beyond the  
23 time limit of the order for use of personal restraint or  
24 seclusion, child caring institution staff authorized to receive  
25 verbal orders for personal restraint or seclusion shall  
26 immediately contact the licensed practitioner to receive further  
27 instructions.

1           (9) The child caring institution staff shall notify the  
2 minor's parent or legal guardian as soon as possible after the  
3 initiation of personal restraint or seclusion. This notification  
4 shall be documented in the minor's record, including the date and  
5 time of the notification and the name of the staff person  
6 providing the notification.

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

16           (11) The child caring institution shall conduct a debriefing  
17 in a language that is understood by the minor's parent or legal  
18 guardian. The debriefing shall provide both the minor and the  
19 staff opportunity to discuss the circumstances resulting in the  
20 use of personal restraint or seclusion and strategies to be used  
21 by staff, the minor, or others that could prevent the future use  
22 of personal restraint or seclusion.

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

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

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

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

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

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

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

1 business day after a serious occurrence. The report shall  
2 include the name of the minor involved in the serious occurrence,  
3 a description of the occurrence, and the name, street address,  
4 and telephone number of the child caring institution. The child  
5 caring institution shall notify the minor's parent or legal  
6 guardian as soon as possible and not later than 24 hours after  
7 the serious occurrence. Staff shall document in the minor's  
8 record that the serious occurrence was reported to both the state  
9 agency licensing the child caring institution and the  
10 state-designated protection and advocacy system, including the  
11 name of the person to whom the incident was reported. A copy of  
12 the report shall be maintained in the minor's record, as well as  
13 in the incident and accident report logs kept by the child caring  
14 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.