

# HOUSE BILL No. 6491

September 23, 2008, Introduced by Reps. Spade and Polidori and referred to the Committee on Families and Children's Services.

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,"

by amending sections 2c, 2d, and 2e (MCL 722.112c, 722.112d, and 722.112e), as added by 2004 PA 531.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2c. (1) If a child caring institution contracts with and  
2 receives payment from a community mental health services program or  
3 prepaid inpatient health plan for the care, treatment, maintenance,  
4 and supervision of a minor child in a child caring institution, the  
5 child caring institution may place a minor child in personal  
6 restraint or seclusion only as provided in this section and

1 sections 2d and 2e but shall not use mechanical restraint **EXCEPT TO**  
2 **TRANSPORT TO OR FROM COURT OR HOSPITALIZATION** or chemical  
3 restraint.

4 ~~(2) Not later than 180 days after the effective date of the~~  
5 ~~amendatory act that added this section, a~~ **A** child caring  
6 institution shall require its staff to have ongoing education,  
7 training, and demonstrated knowledge of all of the following:

8 (a) Techniques to identify minor children's behaviors, events,  
9 and environmental factors that may trigger emergency safety  
10 situations.

11 (b) The use of nonphysical intervention skills, such as de-  
12 escalation, mediation conflict resolution, active listening, and  
13 verbal and observational methods to prevent emergency safety  
14 situations.

15 (c) The safe use of personal restraint or seclusion, including  
16 the ability to recognize and respond to signs of physical distress  
17 in minor children who are in personal restraint or seclusion or who  
18 are being placed in personal restraint or seclusion.

19 (3) A child caring institution's staff shall be trained in the  
20 use of personal restraint and seclusion, shall be knowledgeable of  
21 the risks inherent in the implementation of personal restraint and  
22 seclusion, and shall demonstrate competency regarding personal  
23 restraint or seclusion before participating in the implementation  
24 of personal restraint or seclusion. A child caring institution's  
25 staff shall demonstrate their competencies in these areas on a  
26 semiannual basis. The state agency licensing child caring  
27 institutions shall review and determine the acceptability of the

1 child caring institutions' staff education, training, knowledge,  
2 and competency requirements required by this subsection and the  
3 training and knowledge required of a licensed practitioner in the  
4 use of personal restraint and seclusion.

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

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

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

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

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

1           (a) Inform the minor child and his or her parent or legal  
2 guardian of the provider's policy regarding the use of personal  
3 restraint or seclusion during an emergency safety situation that  
4 may occur while the minor child is under the care of the child  
5 caring institution.

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

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

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

20           (6) The child caring institution is not required to inform,  
21 communicate, and obtain the written acknowledgment from a minor  
22 child's parent or legal guardian as specified in subsection (5) if  
23 the minor child is within the care and supervision of the child  
24 caring institution as a result of an order of commitment of the  
25 family division of circuit court to a state institution, state  
26 agency, or otherwise, and has been adjudicated to be a dependent,  
27 neglected, or delinquent under chapter XIIIA of the probate code of

1 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's  
2 individual case treatment plan indicates that notice would not be  
3 in the minor child's best interest.

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

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

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

15 (a) A licensed practitioner.

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

18 (c) A supervisor of direct care workers as described in R  
19 400.4120 of the Michigan administrative code.

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

22 (10) A verbal order must be received while personal restraint  
23 or seclusion is being initiated by child caring institution staff  
24 or immediately after the emergency safety situation begins. The  
25 licensed practitioner shall be available to staff for consultation,  
26 at least by telephone, throughout the period of personal restraint  
27 or seclusion. The licensed practitioner shall verify the verbal

1 order in signed written form in the minor child's record.

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

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

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

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

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

26 (14) A face-to-face assessment shall be conducted if the  
27 personal restraint continues for 15 minutes or more from the onset

1 of the emergency safety intervention or if seclusion continues for  
2 30 minutes or more from the onset of the emergency safety  
3 intervention. This face-to-face assessment shall be conducted by a  
4 licensed practitioner who is 1 of the following:

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

7 (b) An individual who has been issued a ~~speciality~~ **SPECIALTY**  
8 certification as a nurse practitioner under article 15 of the  
9 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

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

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

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

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

21 (b) The minor child's behavior.

22 (c) The appropriateness of the intervention measures.

23 (d) Any complications resulting from the intervention.

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

27 (2) Each instance of personal restraint or seclusion requires

1 full justification for its use, and the results of the evaluation  
2 immediately following the use of personal restraint or seclusion  
3 shall be placed in the minor child's record.

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

6 (a) The name of the licensed practitioner ordering personal  
7 restraint or seclusion.

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

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

11 (4) The child caring institution staff shall document the use  
12 of the personal restraint or seclusion in the minor child's record.  
13 That documentation shall be completed by the end of the shift in  
14 which the personal restraint or seclusion occurred. If the personal  
15 restraint or seclusion does not end during the shift in which it  
16 began, documentation shall be completed during the shift in which  
17 the personal restraint or seclusion ends. Documentation shall  
18 include all of the following:

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

20 (b) The time the personal restraint or seclusion actually  
21 began and ended.

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

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

25 (e) The name of the staff involved in the personal restraint  
26 or seclusion.

27 (5) The child caring institution staff trained in the use of



1 personal restraint shall continually assess and monitor the  
2 physical and psychological well-being of the minor child and the  
3 safe use of personal restraint throughout the duration of its  
4 implementation.

5 (6) The child caring institution staff trained in the use of  
6 seclusion shall be physically present ~~in or immediately~~ **AND IN THE**  
7 **IMMEDIATE VICINITY**, outside the seclusion room, continually  
8 assessing, monitoring, and evaluating the physical and  
9 psychological well-being of the minor. Video monitoring shall not  
10 be exclusively used to meet this requirement.

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

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

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

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

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

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

1 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 required  
8 personal restraint or seclusion, including a discussion of  
9 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 debriefings,  
22 and changes to the minor child's treatment plan that result from  
23 the debriefings.

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

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

25 (15) Each child caring institution subject to this section and  
26 sections 2c and 2d shall maintain a record of the incidences in  
27 which personal restraint or seclusion was used for all minor

1 children. The record shall include all of the following  
2 information:

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

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

6 (c) Staff who initiated the process.

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

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

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

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

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