

HOUSE BILL NO. 4147

February 06, 2019, Introduced by Reps. Kennedy, Garza, Brenda Carter, Brixie, Gay-Dagnogo, Hertel, Coleman, Peterson, Cynthia Johnson, Chirkun, Yancey, Koleszar, Hood and Anthony and referred to the Committee on Families, Children, and Seniors.

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 2f, 2g, 2h, 2i, 2j, 2k, 2l, and 2m.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2f. As used in this section and sections 2g to 2m:

2 (a) "Chemical restraint" means the administration of
3 medication for the purpose of restraint.

4 (b) "Corporal punishment" means the deliberate infliction of
5 physical pain by hitting, paddling, spanking, slapping, or any
6 other physical force used as a means of discipline.

7 (c) "De-escalation techniques" means evidence- and research-
8 based strategically employed verbal or nonverbal interventions used
9 to reduce the intensity of threatening behavior before, during, and
10 after a crisis situation occurs.

11 (d) "Documentation" means documentation developed by the
12 department that is uniform across the state.

13 (e) "Emergency physical restraint" means a last resort
14 emergency safety intervention involving physical restraint that is
15 necessitated by an ongoing emergency situation and that provides an
16 opportunity for the child to regain self-control while maintaining
17 the safety of the child and others. Emergency physical restraint
18 does not include physical restraint that is used for the
19 convenience of the child care center's, group child care home's, or
20 family child care home's staff, as a substitute for an educational
21 program, as a form of discipline or punishment, as a substitute for
22 less restrictive alternatives, as a substitute for adequate
23 staffing, or as a substitute for staff training in positive
24 behavioral intervention and support. Emergency physical restraint
25 does not include a practice prohibited under section 2h. Emergency
26 physical restraint does not include physical restraint when
27 contraindicated based on a child's disability, health care needs,
28 or medical or psychiatric condition, as documented in a record or
29 records made available to the child care center, group child care

1 home, or family child care home.

2 (f) "Emergency seclusion" means a last resort emergency safety
3 intervention involving seclusion that is necessitated by an ongoing
4 emergency situation and that provides an opportunity for the child
5 to regain self-control while maintaining the safety of the child
6 and others. To qualify as emergency seclusion, there must be
7 continuous observation by the child care center, group child care
8 home, or family child care home staff of the child in seclusion,
9 and the room or area used for confinement must comply with state
10 and local fire and building codes; must not be locked; must not
11 prevent the child from exiting the area if staff become
12 incapacitated or leave that area; and must provide for adequate
13 space, lighting, ventilation, viewing, and the safety and dignity
14 of the child and others, in accordance with department guidelines.
15 Emergency seclusion does not include the confinement of children
16 who are severely self-injurious or suicidal; seclusion that is used
17 for the convenience of staff, as a substitute for an educational
18 program, as a form of discipline or punishment, as a substitute for
19 less restrictive alternatives, as a substitute for adequate
20 staffing, or as a substitute for staff training in positive
21 behavioral intervention and support; or a practice prohibited under
22 section 2h. Emergency seclusion does not include seclusion when
23 contraindicated based on a child's disability, health care needs,
24 or medical or psychiatric condition, as documented in a record or
25 records made available to the child care center, group child care
26 home, or family child care home.

27 (g) "Emergency situation" means a situation in which a child's
28 behavior poses imminent risk to the safety of the individual child
29 or to the safety of others. An emergency situation requires an

1 immediate intervention.

2 (h) "Functional behavioral assessment" means an evidence- and
3 research-based systematic process for identifying the events that
4 trigger and maintain problem behavior in an educational setting. A
5 functional behavioral assessment shall describe specific
6 problematic behaviors, report the frequency of the behaviors,
7 assess environmental and other setting conditions where problematic
8 behaviors occur, and identify the factors that are maintaining the
9 behaviors over time.

10 (i) "Key identified personnel" means those individuals who
11 have received the mandatory training described in section 2m(b) (i)
12 to (xvi) .

13 (j) "Mechanical restraint" means the use of any device,
14 article, garment, or material attached to or adjacent to a child's
15 body to perform restraint.

16 (k) "Physical restraint" means restraint involving direct
17 physical contact.

18 (l) "Positive behavioral intervention and support" means a
19 framework to assist staff in adopting and organizing evidence-based
20 behavioral interventions into an integrated continuum of
21 intensifying supports based on child need that unites examination
22 of the function of the problem behavior and the teaching of
23 alternative skill repertoires to enhance academic and social
24 behavior outcomes for all children.

25 (m) "Positive behavioral intervention and support plan" means
26 a child-specific support plan composed of individualized,
27 functional behavioral assessment-based intervention strategies,
28 including, as appropriate to the child, guidance or instruction for
29 the child to use new skills as a replacement for problem behaviors,

1 some rearrangement of the antecedent environment so that problems
2 can be prevented and desirable behaviors can be encouraged, and
3 procedures for monitoring, evaluating, and modifying the plan as
4 necessary.

5 (n) "Prone restraint" means the restraint of an individual
6 facedown.

7 (o) "Regularly and continuously work under contract" means any
8 of the following:

9 (i) To work at a child care center, group child care home, or
10 family child care home on a more than intermittent or sporadic
11 basis as an owner or employee of an entity that has a contract with
12 the child care center, group child care home, or family child care
13 home to provide food, custodial, transportation, counseling, or
14 administrative services, or to provide instructional services to
15 children or related and auxiliary services.

16 (ii) To work at a child care center, group child care home, or
17 family child care home on a more than intermittent or sporadic
18 basis as an individual under a contract with a child care center,
19 group child care home, or family child care home to provide food,
20 custodial, transportation, counseling, or administrative services,
21 or to provide instructional services to children or related and
22 auxiliary services.

23 (p) "Restraint" means an action that prevents or significantly
24 restricts a child's movement. Restraint does not include the brief
25 holding of a child in order to calm or comfort, the minimum contact
26 necessary to physically escort a child from 1 area to another, the
27 minimum contact necessary to assist a child in completing a task or
28 response if the child does not resist or resistance is minimal in
29 intensity or duration, or the holding of a child for a brief time

1 in order to prevent an impulsive behavior that threatens the
2 child's immediate safety, such as running in front of a car.
3 Restraint does not include the administration of medication
4 prescribed by and administered in accordance with the directions of
5 a physician, an adaptive or protective device recommended by a
6 physician or therapist when it is used as recommended, or safety
7 equipment used by the general child population as intended, such as
8 a seat belt or safety harness on school transportation. Restraint
9 does not include necessary actions taken to break up a fight, to
10 stop a physical assault, as defined in section 1310 of the revised
11 school code, 1976 PA 451, MCL 380.1310, or to take a weapon from a
12 child. Restraint does not include actions that are an integral part
13 of a sporting event, such as a referee pulling football players off
14 of a pile or a similar action.

15 (q) "Restraint that negatively impacts breathing" means any
16 restraint that inhibits breathing, including floor restraints,
17 facedown position, or any position in which an individual is bent
18 over in such a way that it is difficult to breathe. This includes a
19 seated or kneeling position in which an individual being restrained
20 is bent over at the waist and restraint that involves sitting or
21 lying across an individual's back or stomach.

22 (r) "Seclusion" means the confinement of a child in a room or
23 other space from which the child is physically prevented from
24 leaving. Seclusion does not include the general confinement of
25 children if that confinement is an integral part of an emergency
26 lockdown drill or of another emergency security procedure that is
27 necessary to protect the safety of children.

28 (s) "Staff" or "staff member" includes all individuals
29 employed in a child care center, group child care home, or family

1 child care home or assigned to regularly and continuously work
2 under contract or under agreement in a child care center, group
3 child care home, or family child care home or child care center,
4 group child care home, or family child care home personnel
5 providing service at a child care center, group child care home, or
6 family child care home.

7 Sec. 2g. Not later than December 1, 2019, the department shall
8 develop a state policy regarding the use of seclusion and restraint
9 in child care centers, group child care homes, and family child
10 care homes that includes all of the elements under sections 2g to
11 2m, along with guidelines as the department considers appropriate.
12 Not later than June 1, 2020, a child care center, group child care
13 home, and family child care home shall adopt and implement a policy
14 regarding the use of seclusion and restraint that is consistent
15 with the state policy under this section. A person that fails to
16 comply with this section or that fails to comply with any of the
17 requirements of the state policy developed under this section is
18 considered to have failed to comply with and to have violated this
19 act.

20 Sec. 2h. The state policy developed under section 2g shall
21 include a clear statement that all of the following practices are
22 prohibited for staff in the child care centers, group child care
23 homes, or family child care homes of this state under all
24 circumstances, including emergency situations:

- 25 (a) Corporal punishment.
- 26 (b) The deprivation of basic needs.
- 27 (c) Child abuse.
- 28 (d) Seclusion, other than emergency seclusion.
- 29 (e) The intentional application of any noxious substance or

1 stimulus that results in physical pain or extreme discomfort. A
2 noxious substance or stimulus is prohibited whether it is generally
3 acknowledged or is specific to the child.

4 (f) Mechanical restraint.

5 (g) Chemical restraint.

6 (h) Any restraint that negatively impacts breathing.

7 (i) Prone restraint.

8 (j) Physical restraint, other than emergency physical
9 restraint.

10 (k) Any other type of restraint.

11 Sec. 2i. The state policy developed under section 2g shall
12 include at least all of the following provisions concerning use of
13 emergency seclusion and emergency physical restraint:

14 (a) Emergency seclusion and emergency physical restraint may
15 be used only under emergency situations and only if essential to
16 providing for the safety of the child or safety of another.

17 (b) Emergency seclusion and emergency physical restraint may
18 not be used in place of appropriate less restrictive interventions.

19 (c) Emergency seclusion and emergency physical restraint shall
20 be performed in a manner that, based on research and evidence, is
21 safe, appropriate, and proportionate to and sensitive to the
22 child's severity of behavior, chronological and developmental age,
23 physical size, gender, physical condition, medical condition,
24 psychiatric condition, and personal history, including any history
25 of physical or sexual abuse or other trauma.

26 (d) A requirement that staff shall seek help from key
27 identified personnel from within the child care center, group child
28 care home, or family child care home either immediately at the
29 onset of an emergency situation or, if it is reasonable under the

1 particular circumstances for staff to believe that diverting their
2 attention to calling for help would increase the risk to the safety
3 of the child or to the safety of others, as soon as possible once
4 the circumstances no longer support that belief.

5 (e) A requirement that the child care center, group child care
6 home, or family child care home must ensure that substitute staff
7 are informed of and understand the procedures regarding use of
8 emergency seclusion and emergency physical restraint. This
9 requirement may be satisfied using online training and an online
10 acknowledgment of understanding developed or approved by the
11 department and completed by the substitute staff member.

12 (f) A requirement that emergency seclusion shall not be used
13 longer than necessary, based on research and evidence, to allow a
14 child to regain control of his or her behavior to the point that
15 the emergency situation necessitating the use of emergency
16 seclusion has ended and generally no longer than 10 minutes for a
17 child who is younger than a school-age child, 15 minutes for an
18 elementary school child, or 20 minutes for a middle school or high
19 school child. If an emergency seclusion lasts longer than 10
20 minutes for a child who is younger than a school-age child, 15
21 minutes for an elementary school child, or 20 minutes for a middle
22 school or high school child, the state policy shall require both of
23 the following:

24 (i) Additional support, which may include a change of staff, or
25 introducing a nurse, specialist, or additional key identified
26 personnel.

27 (ii) Documentation to explain the use of emergency seclusion
28 beyond the time limit allowed in the state policy.

29 (g) A requirement that emergency physical restraint shall not

1 be used longer than necessary, based on research and evidence, to
2 allow a child to regain control of his or her behavior to the point
3 that the emergency situation necessitating the use of emergency
4 physical restraint has ended and generally no longer than 10
5 minutes. If an emergency physical restraint lasts longer than 10
6 minutes, the state policy shall require both of the following:

7 (i) Additional support, that may include a change of staff, or
8 introducing a nurse, specialist, or additional key identified
9 personnel.

10 (ii) Documentation to explain the use of emergency physical
11 restraint beyond the time limit allowed in the state policy.

12 (h) While using emergency seclusion or emergency physical
13 restraint, staff must do all of the following:

14 (i) Involve key identified personnel to protect the care,
15 welfare, dignity, and safety of the child.

16 (ii) Continually observe the child in emergency seclusion or
17 emergency physical restraint for indications of physical distress
18 and seek medical assistance if there is a concern.

19 (iii) Document observations.

20 (iv) Ensure to the extent practicable, in light of the ongoing
21 emergency situation, that the emergency physical restraint does not
22 interfere with the child's ability to communicate using the child's
23 primary mode of communication.

24 (v) Ensure that at all times during the use of emergency
25 seclusion or emergency physical restraint there is staff present
26 who can communicate with the child using the child's primary mode
27 of communication.

28 Sec. 2j. The state policy developed under section 2g shall
29 include at least all of the following provisions concerning

1 documentation and reporting of seclusion and restraint:

2 (a) Each use of seclusion or restraint and the reason for each
3 use shall be documented in writing and reported immediately in
4 writing or orally to the child care center, group child care home,
5 or family child care home and the child's parent or guardian. Each
6 use of seclusion or restraint shall be documented in a written
7 report, including multiple uses within a given day. This written
8 report must be provided to the child's parent or guardian within 1
9 weekday of the use of seclusion or restraint.

10 (b) After any use of seclusion or restraint, staff must make
11 reasonable efforts to debrief and consult with the parent or
12 guardian, or with the parent or guardian and the child, as
13 appropriate, regarding determining future actions. The debriefing
14 and consultation shall be done in accordance with department
15 guidelines and documented on forms developed by the department.

16 (c) If a child exhibits a pattern of behavior that poses a
17 substantial risk of creating an emergency situation in the future
18 that could result in the use of emergency seclusion or emergency
19 physical restraint, staff are encouraged to do all of the
20 following:

21 (i) Conduct a functional behavioral assessment.

22 (ii) Develop or revise a positive behavioral intervention and
23 support plan to facilitate eliminating the use of seclusion and
24 restraint.

25 (iii) Develop an assessment and planning process conducted by a
26 team knowledgeable about the child, including at least the parent
27 or guardian; the child, if appropriate; the individuals responsible
28 for implementation of the positive behavioral intervention and
29 support plan; and individuals knowledgeable in positive behavioral

1 intervention and support.

2 Sec. 2k. The state policy developed under section 2g shall
3 include at least all of the following provisions concerning
4 development and implementation of an emergency intervention plan:

5 (a) If a child exhibits a pattern of behavior that poses a
6 substantial risk of creating an emergency situation in the future
7 that could result in the use of emergency seclusion or emergency
8 physical restraint, staff should develop a written emergency
9 intervention plan to protect the health, safety, and dignity of the
10 child. The emergency intervention plan must be developed in
11 partnership with the parent or guardian by a team that includes a
12 staff member, an individual knowledgeable about the legally
13 permissible use of emergency seclusion and emergency physical
14 restraint, and an individual knowledgeable about the use of
15 positive behavioral intervention and support to eliminate the use
16 of seclusion and restraint. The emergency intervention plan must be
17 developed and implemented by taking all of the following documented
18 steps:

19 (i) Describe in detail the procedures to be followed in an
20 emergency situation.

21 (ii) Describe in detail the legal limit on the use of emergency
22 seclusion and emergency physical restraint, including examples of
23 legally permissible and prohibited use.

24 (iii) Make inquiry to the child's medical personnel, with
25 parental consent, regarding any known medical or health
26 contraindications for the use of emergency seclusion or emergency
27 physical restraint.

28 (iv) Conduct a peer review by knowledgeable staff.

29 (v) Provide the parent or guardian with all of the following,

1 in writing and orally:

2 (A) A detailed explanation of the positive behavioral
3 intervention and support strategies that will be utilized to reduce
4 the risk of the child's behavior creating an emergency situation.

5 (B) An explanation of what constitutes an emergency situation,
6 including examples of situations that are considered emergency
7 situations and examples of situations that are not considered
8 emergency situations.

9 (C) A detailed explanation of the procedures to be followed in
10 an emergency situation under the emergency intervention plan,
11 including the potential use of emergency seclusion and emergency
12 physical restraint.

13 (D) A detailed explanation of the legal limit on the use of
14 emergency seclusion and emergency physical restraint, including
15 examples of legally permissible and prohibited use.

16 (E) A description of possible discomforts or risks associated
17 with the use of emergency seclusion and emergency physical
18 restraint.

19 (F) Answers to the parent's questions.

20 (b) A child who is the subject of an emergency intervention
21 plan should be told or shown the circumstances under which
22 emergency seclusion or emergency physical restraint could be used.

23 (c) Emergency seclusion or emergency physical restraint must
24 only be used in response to an ongoing emergency situation and not
25 as a planned response for the convenience of staff, as discipline
26 or punishment, or as a substitute for an appropriate educational
27 program. The development of an emergency intervention plan shall be
28 solely for the purpose of protecting the health, safety, and
29 dignity of the child and does not expand the legally permissible

1 use of emergency seclusion or emergency physical restraint.

2 Sec. 2l. The state policy developed under section 2g shall
3 include at least all of the following provisions concerning data
4 collection:

5 (a) A child care center, group child care home, or family
6 child care home, in accordance with department guidelines, shall
7 collect and report data on and related to the use of restraint and
8 seclusion in the child care center, group child care home, or
9 family child care home. In collecting and reporting this data, a
10 child care center, group child care home, or family child care home
11 shall use existing data collection and reporting systems whenever
12 possible. Incidents of use of restraint or seclusion shall, at a
13 minimum, be reported by race, age, grade, gender, disability
14 status, medical condition, identity of the staff member initiating
15 the use of the seclusion or restraint, and identity of the child
16 care center, group child care home, or family child care home where
17 the use of seclusion or restraint occurred.

18 (b) All of the following must occur with respect to the data
19 collected under subdivision (a):

20 (i) The data must be analyzed by the child care center, group
21 child care home, or family child care home in which the child is
22 provided care to determine the efficacy of the system of behavioral
23 support.

24 (ii) The data must be analyzed by the child care center, group
25 child care home, or family child care home for the purposes of
26 continuous improvement of training and technical assistance toward
27 the elimination of seclusion and restraint.

28 (iii) The data must be analyzed by the child care center, group
29 child care home, or family child care home on a schedule determined

1 by the department.

2 (iv) The data must be reported electronically by the child care
3 center, group child care home, or family child care home to the
4 department in accordance with department guidelines.

5 (c) The department shall make available redacted, aggregate
6 data on the reported use of seclusion and restraint, compiled by
7 the child care center, group child care home, or family child care
8 home on a quarterly basis.

9 Sec. 2m. The state policy developed under section 2g shall
10 include at least all of the following training provisions
11 concerning seclusion and restraint, that may include online
12 training developed or approved by the department:

13 (a) In accordance with department guidelines, a child care
14 center, group child care home, or family child care home shall
15 implement a comprehensive training framework that includes
16 awareness training for all staff who have regular contact with
17 children and comprehensive training for key identified personnel as
18 described in subdivision (b).

19 (b) A child care center, group child care home, or family
20 child care home shall identify sufficient key personnel to ensure
21 that trained personnel are generally available for an emergency
22 situation. Before using emergency seclusion or emergency physical
23 restraint with children, key identified personnel who may be
24 required to respond to an emergency situation must be trained in
25 all of subparagraphs (i) to (xvi) as follows and should be trained in
26 all of subparagraphs (xvii) to (xx) as follows:

27 (i) Proactive practices and strategies that ensure the dignity
28 of children.

29 (ii) De-escalation techniques.

1 (iii) Techniques to identify child behavior that may trigger an
2 emergency situation.

3 (iv) Related safety considerations, including information
4 regarding the increased risk of injury to a child or staff when
5 seclusion or restraint is used.

6 (v) Instruction in the use of emergency seclusion and
7 emergency physical restraint.

8 (vi) Identification of events and environmental factors that
9 may trigger an emergency situation.

10 (vii) Instruction on the state policy on the use of seclusion
11 and restraint.

12 (viii) Description and identification of dangerous behaviors.

13 (ix) Methods for evaluating the risk of harm to determine
14 whether the use of emergency seclusion or emergency physical
15 restraint is warranted.

16 (x) Types of seclusion.

17 (xi) Types of restraint.

18 (xii) The risk of using seclusion or restraint in consideration
19 of a child's known and unknown physical or mental health condition
20 or psychological limitation.

21 (xiii) The effects of seclusion and restraint on all children.

22 (xiv) How to monitor for and identify the physical signs of
23 distress and the implications for children generally and for
24 children with particular physical or mental health conditions or
25 psychological limitations.

26 (xv) How to obtain appropriate medical assistance.

27 (xvi) Cardiopulmonary resuscitation and first aid.

28 (xvii) Conflict resolution.

1 **(xviii) Mediation.**

2 **(xix) Social skills training.**

3 **(xx) Positive behavioral intervention and support strategies.**

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.