

A BILL TO BE ENTITLED

AN ACT

relating to the use of restraints in state schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 592, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.101. DEFINITION. In this subchapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a restraint is not administered to a resident of a state school unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates;

(3) a restraint is not administered to a resident of a state school as punishment; and

(4) a restraint is not administered as part of a behavior plan to change behavior but only to provide immediate

1 protection from imminent harm.

2 (b) The executive commissioner shall adopt rules to
3 prohibit the use of prone and supine holds on a resident of a state
4 school except as transitional holds.

5 Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) A
6 person may not order or administer a mechanical or physical
7 restraint for a resident of a state school on a pro re nata basis.

8 (b) A person may not order or administer an injection of a
9 psychoactive medication to a resident of a state school on a pro re
10 nata basis.

11 (c) An injection of a psychoactive medication may be
12 administered only under a court order or an order issued by a
13 physician pursuant to a psychiatric emergency.

14 Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not
15 use a straitjacket to restrain a resident of a state school.

16 Sec. 592.105. DUTY TO REPORT. A state school shall report
17 to the executive commissioner each incident in which a restraint is
18 administered to a resident of a state school. The report must
19 contain information and be in the form required by rules of the
20 executive commissioner.

21 Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a
22 conflict between this subchapter and Chapter 322, this subchapter
23 controls.

24 SECTION 2. Subchapter B, Chapter 161, Human Resources Code,
25 is amended by adding Section 161.0315 to read as follows:

26 Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS.

27 (a) The commissioner shall submit annually to the Senate Committee

1 on Health and Human Services a report that summarizes the use of
2 restraints by each state school.

3 (b) The report must contain a self-evaluation performed by
4 each state school related to the use of restraints and must include
5 an analysis of the data that identifies any trends or patterns in
6 the use of restraints.

7 SECTION 3. Subchapter C, Chapter 161, Human Resources Code,
8 is amended by adding Section 161.058 to read as follows:

9 Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION.

10 (a) The department shall implement a training and certification
11 program for staff members of a state school who may administer
12 restraints in the performance of official duties.

13 (b) The department shall ensure that training related to
14 reducing the use of restraints:

15 (1) is competency based; and

16 (2) provides for routine quality assurance reviews.

17 (c) The training and certification program implemented
18 under this section must include instruction concerning:

19 (1) the needs of residents of state schools;

20 (2) typical behaviors of residents of state schools;

21 (3) relationship building between staff members and
22 residents;

23 (4) alternatives to the use of restraints;

24 (5) methods for managing a situation to eliminate the
25 need for restraints;

26 (6) avoiding power struggles between a staff member
27 and a resident;

1 (7) the potential for causing negative physiological
2 and psychological consequences by the use of restraints;

3 (8) monitoring physical signs of distress and
4 obtaining medical assistance;

5 (9) legal issues involved in the use of restraints;

6 (10) position asphyxia;

7 (11) escape and evasion techniques;

8 (12) proper time limits on the duration of application
9 of restraints;

10 (13) procedures to address problematic restraints;

11 (14) documentation of each use of restraints;

12 (15) administration of restraints on children;

13 (16) debriefings of staff members who administer
14 restraints; and

15 (17) investigation of injuries and complaints
16 relating to the use of restraints.

17 SECTION 4. Subchapter D, Chapter 161, Human Resources Code,
18 is amended by adding Sections 161.090, 161.091, 161.092, and
19 161.093 to read as follows:

20 Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT ADMISSION.

21 (a) The department shall develop a format for collecting
22 information at the time a person is admitted to a state school.

23 The department shall collect the information from the person or the
24 person's legally authorized representative.

25 (b) The format must provide for the collection of
26 information relating to:

27 (1) the person's treatment history; and

1 (2) any advance directives issued for the person that
2 provide information regarding restraint history and restraint
3 preferences of the person.

4 Sec. 161.091. RESTRAINT REDUCTION PLAN. (a) The
5 department shall establish a restraint reduction plan that ensures
6 that the department's policies and procedures incorporate a vision,
7 values, and a philosophy that the use of restraints should be
8 reduced.

9 (b) The department shall, with stakeholder input, develop a
10 performance improvement plan and make further recommendations for
11 implementation of the restraint reduction plan.

12 (c) The department shall develop debriefing procedures for
13 staff and residents of a state school to be performed after each use
14 of a restraint. The department shall use the information obtained
15 in a debriefing to determine which restraint practices are workable
16 and which practices should be avoided. In making a determination,
17 the department shall consider the potential traumatic effect a
18 restraint has on a staff member, a resident, or a witness and
19 determine what course of action may have mitigated any traumatic
20 effect.

21 (d) The department shall collect data from each state school
22 that relates to the use of restraints by facility, by shift, and by
23 staff member to identify trends and patterns in the use of
24 restraints by a state school and to set goals to implement the
25 restraint reduction plan at a state school.

26 (e) A state school:

27 (1) shall incorporate the restraint reduction plan and

1 emphasize the importance of the plan in the hiring, orientation,
2 training, continuing education, and performance evaluation of
3 staff members of the state school;

4 (2) shall train and educate staff members about:

5 (A) the use of nonphysical intervention options
6 to avoid the use of restraints; and

7 (B) the rights of residents regarding the use of
8 restraints; and

9 (3) may seek and implement innovative clinical
10 approaches to employ at the admission of a person and during the
11 treatment of a person that further the philosophy of the restraint
12 reduction plan.

13 Sec. 161.092. POSITIVE BEHAVIOR SUPPORT PLAN. The
14 department shall develop a positive behavior support plan for
15 residents of a state school. The plan must describe a protocol for
16 reducing the frequency and duration of behaviors that require
17 restraints for immediate protection from imminent harm by
18 substituting positive behaviors.

19 Sec. 161.093. DISEASE MANAGEMENT PROGRAM. (a) The
20 department shall develop a disease management program for residents
21 of a state school who have a dual diagnosis of mental retardation
22 and mental illness.

23 (b) The program established under this section must employ
24 disease management practices to ensure that persons with a dual
25 diagnosis of mental retardation and mental illness receive
26 treatment services for the mental illness that are appropriate to a
27 diagnosis of that illness and are consistent with clinical

1 approaches to the treatment of that illness by other agencies and
2 private providers of treatment services.

3 SECTION 5. Not later than January 1, 2010, the executive
4 commissioner of the Health and Human Services Commission shall:

5 (1) adopt rules required under Sections 592.102 and
6 592.105, Health and Safety Code, as added by this Act;

7 (2) by rule define the term "restraint" in a manner
8 consistent with the definition of that term provided by 42 U.S.C.
9 Section 290ii(d)(1); and

10 (3) adopt rules necessary to regulate the use of
11 protective and supportive devices, including those used in medical
12 and dental procedures.

13 SECTION 6. Not later than January 1, 2010, the commissioner
14 of the Department of Aging and Disability Services shall:

15 (1) implement a restraint training and certification
16 program required by Section 161.058, Human Resources Code, as added
17 by this Act;

18 (2) develop the format for collecting information at
19 the admission of a person to a state school required by Section
20 161.090, Human Resources Code, as added by this Act;

21 (3) develop the restraint reduction plan required
22 under Section 161.091, Human Resources Code, as added by this Act;

23 (4) develop the positive behavior support plan
24 required by Section 161.092, Human Resources Code, as added by this
25 Act; and

26 (5) develop the disease management program required by
27 Section 161.093, Human Resources Code, as added by this Act.

1 SECTION 7. Not later than September 1, 2010, the
2 commissioner of the Department of Aging and Disability Services
3 shall submit to the Senate Committee on Health and Human Services
4 the first annual report on the use of restraints required by Section
5 161.0315, Human Resources Code, as added by this Act.

6 SECTION 8. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2009.