

1-1 By: Zaffirini, Van de Putte S.B. No. 751  
1-2 (In the Senate - Filed February 10, 2009; March 4, 2009,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; April 15, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;  
1-6 April 15, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 751 By: Zaffirini

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the use of restraints in state schools.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Chapter 592, Health and Safety Code, is amended  
1-13 by adding Subchapter E to read as follows:

1-14 SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

1-15 Sec. 592.101. DEFINITION. In this subchapter, "executive  
1-16 commissioner" means the executive commissioner of the Health and  
1-17 Human Services Commission.

1-18 Sec. 592.102. USE OF RESTRAINTS. (a) The executive  
1-19 commissioner shall adopt rules to ensure that:

1-20 (1) a restraint is not administered to a resident of a  
1-21 state school unless the restraint is:

1-22 (A) necessary to prevent imminent physical  
1-23 injury to the resident or another; and

1-24 (B) the least restrictive restraint effective to  
1-25 prevent imminent physical injury;

1-26 (2) the administration of a restraint to a resident of  
1-27 a state school ends immediately once the imminent risk of physical  
1-28 injury abates;

1-29 (3) a restraint is not administered to a resident of a  
1-30 state school as punishment; and

1-31 (4) a restraint is not administered as part of a  
1-32 behavior plan to change behavior but only to provide immediate  
1-33 protection from imminent harm.

1-34 (b) The executive commissioner shall adopt rules to  
1-35 prohibit the use of prone and supine holds on a resident of a state  
1-36 school except as transitional holds.

1-37 Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) A  
1-38 person may not order or administer a mechanical or physical  
1-39 restraint for a resident of a state school on a pro re nata basis.

1-40 (b) A person may not order or administer an injection of a  
1-41 psychoactive medication to a resident of a state school on a pro re  
1-42 nata basis.

1-43 (c) An injection of a psychoactive medication may be  
1-44 administered only under a court order or an order issued by a  
1-45 physician pursuant to a psychiatric emergency.

1-46 Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not  
1-47 use a straitjacket to restrain a resident of a state school.

1-48 Sec. 592.105. DUTY TO REPORT. A state school shall report  
1-49 to the executive commissioner each incident in which a restraint is  
1-50 administered to a resident of a state school. The report must  
1-51 contain information and be in the form required by rules of the  
1-52 executive commissioner.

1-53 Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a  
1-54 conflict between this subchapter and Chapter 322, this subchapter  
1-55 controls.

1-56 SECTION 2. Subchapter B, Chapter 161, Human Resources Code,  
1-57 is amended by adding Section 161.0315 to read as follows:

1-58 Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS.

1-59 (a) The commissioner shall submit annually to the Senate Committee  
1-60 on Health and Human Services a report that summarizes the use of  
1-61 restraints by each state school.

1-62 (b) The report must contain a self-evaluation performed by  
1-63 each state school related to the use of restraints and must include

2-1 an analysis of the data that identifies any trends or patterns in  
2-2 the use of restraints.

2-3 SECTION 3. Subchapter C, Chapter 161, Human Resources Code,  
2-4 is amended by adding Section 161.058 to read as follows:

2-5 Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION.

2-6 (a) The department shall implement a training and certification  
2-7 program for staff members of a state school who may administer  
2-8 restraints in the performance of official duties.

2-9 (b) The department shall ensure that training related to  
2-10 reducing the use of restraints:

2-11 (1) is competency based; and  
2-12 (2) provides for routine quality assurance reviews.

2-13 (c) The training and certification program implemented  
2-14 under this section must include instruction concerning:

2-15 (1) the needs of residents of state schools;  
2-16 (2) typical behaviors of residents of state schools;  
2-17 (3) relationship building between staff members and  
2-18 residents;

2-19 (4) alternatives to the use of restraints;  
2-20 (5) methods for managing a situation to eliminate the  
2-21 need for restraints;

2-22 (6) avoiding power struggles between a staff member  
2-23 and a resident;

2-24 (7) the potential for causing negative physiological  
2-25 and psychological consequences by the use of restraints;

2-26 (8) monitoring physical signs of distress and  
2-27 obtaining medical assistance;

2-28 (9) legal issues involved in the use of restraints;

2-29 (10) position asphyxia;

2-30 (11) escape and evasion techniques;

2-31 (12) proper time limits on the duration of application  
2-32 of restraints;

2-33 (13) procedures to address problematic restraints;

2-34 (14) documentation of each use of restraints;

2-35 (15) administration of restraints on children;

2-36 (16) debriefings of staff members who administer  
2-37 restraints; and

2-38 (17) investigation of injuries and complaints  
2-39 relating to the use of restraints.

2-40 SECTION 4. Subchapter D, Chapter 161, Human Resources Code,  
2-41 is amended by adding Sections 161.090, 161.091, 161.092, and  
2-42 161.093 to read as follows:

2-43 Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT ADMISSION.

2-44 (a) The department shall develop a format for collecting  
2-45 information at the time a person is admitted to a state school.

2-46 The department shall collect the information from the person or the  
2-47 person's legally authorized representative.

2-48 (b) The format must provide for the collection of  
2-49 information relating to:

2-50 (1) the person's treatment history; and

2-51 (2) any advance directives issued for the person that  
2-52 provide information regarding restraint history and restraint  
2-53 preferences of the person.

2-54 Sec. 161.091. RESTRAINT REDUCTION PLAN. (a) The  
2-55 department shall establish a restraint reduction plan that ensures  
2-56 that the department's policies and procedures incorporate a vision,  
2-57 values, and a philosophy that the use of restraints should be  
2-58 reduced.

2-59 (b) The department shall, with stakeholder input, develop a  
2-60 performance improvement plan and make further recommendations for  
2-61 implementation of the restraint reduction plan.

2-62 (c) The department shall develop debriefing procedures for  
2-63 staff and residents of a state school to be performed after each use  
2-64 of a restraint. The department shall use the information obtained  
2-65 in a debriefing to determine which restraint practices are workable  
2-66 and which practices should be avoided. In making a determination,  
2-67 the department shall consider the potential traumatic effect a  
2-68 restraint has on a staff member, a resident, or a witness and  
2-69 determine what course of action may have mitigated any traumatic

3-1 effect.

3-2 (d) The department shall collect data from each state school  
 3-3 that relates to the use of restraints by facility, by shift, and by  
 3-4 staff member to identify trends and patterns in the use of  
 3-5 restraints by a state school and to set goals to implement the  
 3-6 restraint reduction plan at a state school.

3-7 (e) A state school:

3-8 (1) shall incorporate the restraint reduction plan and  
 3-9 emphasize the importance of the plan in the hiring, orientation,  
 3-10 training, continuing education, and performance evaluation of  
 3-11 staff members of the state school;

3-12 (2) shall train and educate staff members about:

3-13 (A) the use of nonphysical intervention options  
 3-14 to avoid the use of restraints; and

3-15 (B) the rights of residents regarding the use of  
 3-16 restraints; and

3-17 (3) may seek and implement innovative clinical  
 3-18 approaches to employ at the admission of a person and during the  
 3-19 treatment of a person that further the philosophy of the restraint  
 3-20 reduction plan.

3-21 Sec. 161.092. POSITIVE BEHAVIOR SUPPORT PLAN. The  
 3-22 department shall develop a positive behavior support plan for  
 3-23 residents of a state school. The plan must describe a protocol for  
 3-24 reducing the frequency and duration of behaviors that require  
 3-25 restraints for immediate protection from imminent harm by  
 3-26 substituting positive behaviors.

3-27 Sec. 161.093. DISEASE MANAGEMENT PROGRAM. (a) The  
 3-28 department shall develop a disease management program for residents  
 3-29 of a state school who have a dual diagnosis of mental retardation  
 3-30 and mental illness.

3-31 (b) The program established under this section must employ  
 3-32 disease management practices to ensure that persons with a dual  
 3-33 diagnosis of mental retardation and mental illness receive  
 3-34 treatment services for the mental illness that are appropriate to a  
 3-35 diagnosis of that illness and are consistent with clinical  
 3-36 approaches to the treatment of that illness by other agencies and  
 3-37 private providers of treatment services.

3-38 SECTION 5. Not later than January 1, 2010, the executive  
 3-39 commissioner of the Health and Human Services Commission shall:

3-40 (1) adopt rules required under Sections 592.102 and  
 3-41 592.105, Health and Safety Code, as added by this Act;

3-42 (2) by rule define the term "restraint" in a manner  
 3-43 consistent with the definition of that term provided by 42 U.S.C.  
 3-44 Section 290ii(d)(1); and

3-45 (3) adopt rules necessary to regulate the use of  
 3-46 protective and supportive devices, including those used in medical  
 3-47 and dental procedures.

3-48 SECTION 6. Not later than January 1, 2010, the commissioner  
 3-49 of the Department of Aging and Disability Services shall:

3-50 (1) develop the restraint training and certification  
 3-51 program required by Section 161.058, Human Resources Code, as added  
 3-52 by this Act;

3-53 (2) develop the format for collecting information at  
 3-54 the admission of a person to a state school required by Section  
 3-55 161.090, Human Resources Code, as added by this Act;

3-56 (3) implement the restraint reduction plan required  
 3-57 under Section 161.091, Human Resources Code, as added by this Act;

3-58 (4) develop the positive behavior support plan  
 3-59 required by Section 161.092, Human Resources Code, as added by this  
 3-60 Act; and

3-61 (5) develop the disease management program required by  
 3-62 Section 161.093, Human Resources Code, as added by this Act.

3-63 SECTION 7. Not later than September 1, 2010, the  
 3-64 commissioner of the Department of Aging and Disability Services  
 3-65 shall submit to the Senate Committee on Health and Human Services  
 3-66 the first annual report on the use of restraints required by Section  
 3-67 161.0315, Human Resources Code, as added by this Act.

3-68 SECTION 8. This Act takes effect immediately if it receives  
 3-69 a vote of two-thirds of all the members elected to each house, as

4-1 provided by Section 39, Article III, Texas Constitution. If this  
4-2 Act does not receive the vote necessary for immediate effect, this  
4-3 Act takes effect September 1, 2009.

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