



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 231 (as introduced 2-27-03)
Senate Bill 1344 (as introduced 8-4-04)
Sponsor: Senator Bev Hammerstrom
Committee: Health Policy

Date Completed: 9-28-04

CONTENT

Senate Bill 231 would amend the Mental Health Code to specify the conditions under which seclusion could be used in a hospital, center, or licensed child caring institution.

Senate Bill 1344 would amend the child care licensing Act to do the following with regard to child caring institutions:

- **Prohibit the use of mechanical and chemical restraint.**
- **Allow the use of personal restraint and seclusion, under certain circumstances.**
- **Require staff to undergo continuing education and training in the use of personal restraint and seclusion, and the identification of alternate methods for diffusing an emergency safety situation.**
- **Establish procedures for the use of personal restraint and seclusion, including debriefings of all situations in which personal restraint or seclusion was employed.**
- **Establish documentation and record-keeping requirements.**
- **Require the reporting of instances of death, serious injury, or attempted suicide.**

Senate Bill 1344 is tie-barred to Senate Bill 231. The bills are described below in further detail.

Senate Bill 231

Under the Mental Health Code, seclusion may be used only in a hospital, center, or

licensed child caring institution. ("Center" means a facility operated by the Department of Community Health (DCH) to admit individuals with developmental disabilities and provide habilitation and treatment services). The bill specifies that seclusion could be used only if the hospital, center, or child caring institution either had received accreditation from a national accrediting organization that reviewed agency policy, procedure, and use of seclusion as part of the accreditation process and that was recognized by the DCH, or had been certified as a large intermediate care facility for a person with mental illness by the Health Care Financing Authority (now called the Centers for Medicare and Medicaid Services) of the Federal government.

The bill also would allow a resident to be placed in seclusion under a physician's standing order. Currently, a resident may be placed in seclusion under a physician's order made after personal examination of the resident to determine if the ordered seclusion poses an undue health risk to the resident. Ordered seclusion may continue only for the period of time specified in the order or eight hours, whichever is less. Under the bill, a standing order would have to include the frequency as well as the period of time.

Senate Bill 1344

Prohibited Restraint

The bill would prohibit the use of mechanical and chemical restraint in child caring institutions. The bill would define

“mechanical restraint” as a device attached or adjacent to a minor’s body that he or she cannot easily remove and that restricts freedom of movement or normal access to his or her body. “Chemical restraint” would mean a drug that is administered to manage a minor’s behavior in a way that reduces the safety risk to the minor or others, has the temporary effect of restricting the minor’s freedom of movement, and is not a standard treatment for the minor’s medical or psychiatric condition.

(Under the Act, “child caring institution” means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the institution for that purpose, and operates throughout the year. An educational program may be provided, but may not be the facility’s primary purpose. The term includes a maternity home for the care of unmarried mothers who are minors and an agency group home, which is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for between four and 13 children. The term also includes institutions for mentally retarded or emotionally disturbed minor children. It does not include a hospital, nursing home, home for the aged, boarding school, hospital or facility operated by the State and licensed under the Mental Health Code, or an adult foster care family home or an adult foster care small group home in which a child has been placed.)

Permitted Restraint & Seclusion

If a child caring institution contracted with and received payment from a community mental health authority, organization, or services program for the care, treatment, maintenance, and supervision of a minor in a child caring institution, the institution could place a minor in personal restraint or seclusion as provided under the bill.

Under the bill, “seclusion” would mean the involuntary placement of a minor in a room alone, where the minor is prevented from exiting by any means, including the physical presence of a staff person if the sole purpose of the staff person’s presence is to prevent the minor from exiting the room.

The bill would define “personal restraint” as the application of physical force without the use of a device, for the purpose of restraining the free movement of a minor’s body. The term would not include the use of a protective or adaptive device; briefly holding a minor recipient without undue force in order to calm or comfort him or her; holding a minor’s hand, wrist, shoulder, or arm to escort him or her safely from one area to another; or the use of a protective or adaptive device or a device primarily intended to provide anatomical support.

“Protective device” would mean an individually fabricated mechanical device or physical barrier, whose use is incorporated in the individualized written plan of service and is intended to prevent the minor from causing serious self-injury associated with documented, frequent, and unavoidable hazardous events.

“Adaptive device” would mean a mechanical device incorporated in the individual plan of services that is intended to provide anatomical support or to assist the minor with adaptive skills (i.e., skills in communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work).

Required Education & Training

The bill would require a child caring institution to require its staff to undergo ongoing education, training, and demonstrated knowledge of all of the following:

- Techniques to identify minors’ behaviors, events, and environmental factors that could trigger emergency safety situations.
- The safe use of personal restraint or seclusion, including the ability to recognize and respond to signs of physical distress in minors who were in or were being placed in personal restraint or seclusion.
- The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods to prevent emergency safety situations.

A child caring institution’s staff would have to be trained and demonstrate competency

regarding personal restraint or seclusion before participating in the implementation of personal restraint or seclusion. Staff would have to demonstrate their competencies in these areas on a semiannual basis.

"Emergency safety situation" would mean the onset of an unanticipated, severely aggressive, or destructive behavior that places the minor or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention. "Emergency safety intervention" would mean the use of personal restraint or seclusion as an immediate response to an emergency safety situation.

Limits on Restraint & Seclusion

Personal restraint or seclusion could not be imposed as a means of coercion, discipline, convenience, or retaliation by a child caring institution's staff. An order for personal restraint or seclusion could not be written as a standing order or on an as-needed basis.

Personal restraint or seclusion could not result in harm or injury to the minor and could be used only to ensure the minor's safety or the safety of others during an emergency safety situation. Personal restraint or seclusion could be used only until the emergency safety situation had ceased and the safety of the minor and of others could be ensured, even if the order for personal restraint or seclusion had not expired. Personal restraint and seclusion of a minor could not be used simultaneously.

Personal restraint or seclusion would have to be performed in a manner that was safe, appropriate, and proportionate to the severity of the minor's behavior, chronological and developmental age, size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse.

Notification of Restraint & Seclusion Policy

At the time a minor was admitted to a child caring institution, the institution would have to do all of the following:

- Inform the minor and his or her parents or legal guardian of the provider's policy regarding the use of personal restraint or

seclusion during an emergency safety situation that could occur while the minor was in the program.

- Communicate the provider's personal restraint and seclusion policy in language that the minor or his or her parent or legal guardian could understand, including American Sign Language, if appropriate; and procure an interpreter or translator, if necessary.
- Obtain a written acknowledgment from the minor's parent or legal guardian that he or she had been informed of the provider's policy, and file it in the minor's records.
- Provide a copy of the policy to the parent or legal guardian.

Order & Procedures

An order for personal restraint or seclusion could be written only by a licensed practitioner who had been trained in the use of personal restraint and seclusion and who was knowledgeable of the inherent risks of implementation.

("Licensed practitioner" would mean a licensed physician, a certified nurse practitioner, a licensed physician's assistant, a registered nurse, a limited licensed psychologist, or a limited licensed counselor. Until July 1, 2005, the term would include a certified social worker registered under the Public Health Code. After that date, the term would include a certified or master's level social worker registered or licensed under the Code.)

A licensed practitioner would have to order the least restrictive emergency safety intervention measure that was most likely to be effective in resolving the emergency safety situation based on consultation with staff. Consideration of less restrictive emergency intervention safety measures would have to be documented in the minor's record.

If the order for personal restraints or seclusion were verbal, it would have to be received by a child caring institution staff member who was licensed or registered as a licensed practitioner, a social services supervisor described in R 400.4118 of the Michigan Administrative Code, or a supervisor of direct care workers as described in R 400.4120 of the Michigan Administrative Code. (The administrative

rules set forth requirements for the education and experience of these supervisors.)

A verbal order would have to be received while personal restraint or seclusion was being initiated by child caring institution staff or immediately after the emergency safety situation began. The licensed practitioner would have to be available to staff for consultation, at least by telephone, throughout the personal restraint or seclusion period. He or she would have to verify the verbal order in signed, written form in the minor's record.

An order for personal restraint or seclusion would be limited to the duration of the emergency safety situation. It could not exceed four hours for a minor between the ages of 18 and 21, two hours for a minor nine to 18 year old, or one hour for a minor under age nine.

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

If personal restraint continued for less than 15 minutes or seclusion continued for less than 30 minutes from the onset of the emergency safety situation, the child caring institution staff qualified to receive a verbal order, in consultation with the licensed practitioner, would have to evaluate the minor's physical and psychological well-being immediately after the minor was removed from seclusion or personal restraint.

A face-to-face assessment would have to be conducted if the personal restraint continued for at least 15 minutes or if seclusion continued for at least 30 minutes from the onset of the emergency safety intervention. The assessment would have to be conducted by an individual who had been trained in the use of personal restraint and seclusion, and who was licensed as a physician, a certified nurse practitioner, a physician's assistant, or a registered nurse. The assessment would have to be conducted within one hour of the onset of the emergency safety intervention

and immediately after the minor was removed from personal restraint or seclusion. The assessment would have to include, at a minimum, the minor's physical and psychological status and behavior, the appropriateness of the intervention measures, and any complications resulting from the intervention.

A minor would have to be released from personal restraint or seclusion whenever the circumstances that justified its use no longer existed. Each instance of personal restraint or seclusion would require full justification for its use, and the results of each periodic examination would have to be placed in the minor's record.

Each order for personal restraint or seclusion would have to include the name of the licensed practitioner ordering the restraint or seclusion; the date and time the order was obtained; and the personal restraint or seclusion ordered, including the length of time for which the licensed practitioner ordered its use.

The child caring institution staff would have to document the use of the personal restraint or seclusion in the minor's record. The documentation would have to be completed by the end of the shift in which the restraint or seclusion occurred. If the restraint or seclusion did not end during the shift in which it began, documentation would have to be completed during the shift in which it ended. Documentation would have to include all of the following:

- Each order for personal restraint or seclusion.
- The time the personal restraint or seclusion actually began and ended.
- The time and results of the one-hour assessment.
- The emergency safety situation that required the resident to be restrained or secluded.
- The name of the staff involved.

The child caring institution staff trained in the use of personal restraint continually would have to assess and monitor the minor's physical and psychological well-being and the safe use of personal restraint throughout its implementation.

The child caring institution staff trained in the use of seclusion physically would have to

be present in or immediately outside the seclusion room, continually assessing, monitoring, and evaluating the minor's physical and psychological well-being. Video monitoring would not meet this requirement. The staff would have to ensure that documentation of staff monitoring and observation was entered into the minor's record.

If the emergency safety intervention continued beyond the time limit of the order, staff authorized to receive verbal orders for personal restraint or seclusion immediately would have to contact the licensed practitioner to receive further instructions.

The staff would have to notify the minor's parent or legal guardian as soon as possible after the initiation of personal restraint or seclusion. The notification, including the date and time of the notification and the name of the staff person who provided it, would have to be documented in the minor's record.

Debriefing

Within 24 hours after the use of personal restraint or seclusion, staff involved in the emergency safety intervention and the minor would have to have a face-to-face debriefing session that included all staff involved in the personal restraint or seclusion, unless the presence of a particular staff member could jeopardize the minor's well-being. Other staff members could participate in the debriefing if the child caring institution considered it appropriate.

The institution would have to conduct a debriefing in a language the minor's parent or legal guardian understood. The debriefing would have to provide both the minor and the staff the opportunity to discuss the circumstances resulting in the use of personal restraint or seclusion and strategies the staff, the minor, or others could use that could prevent the future use of personal restraint or seclusion.

Within 24 hours after the use of personal restraint or seclusion, all child caring institution staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, would have to conduct a debriefing session that included, at a minimum, all of the following:

- Discussion of the emergency safety situation that required personal restraint or seclusion, including a discussion of precipitating factors that led up to the situation.
- Alternative techniques that might have prevented the use of personal restraint or seclusion.
- The procedures, if any, for staff to implement to prevent a recurrence of the use of personal restraint or seclusion.
- The outcome of the emergency safety intervention, including any injury that might have resulted from the use of personal restraint or seclusion.

The staff would have to document in the minor's record that both debriefing sessions took place, and include the names of staff who were present and staff who were excused, and changes to the minor's treatment plan that resulted from the debriefings.

Reporting Serious Occurrences

Each child caring institution subject to the bill would have to report each serious occurrence to the Family Independence Agency (FIA), which would have to make the reports available to the designated State protection and advocacy system upon request. (Under the Mental Health Code, the Governor is required to designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities and mental illness. The designated agency has the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and the mentally ill and to investigate allegations of abuse and neglect. The designated agency is independent of any State agency that provides treatment or services other than advocacy services to persons with developmental disabilities and the mentally ill.)

Serious occurrences to be reported would include a minor's death, serious injury, or suicide attempt. Staff would have to report any serious occurrence involving a minor by the close of the next business day after the occurrence. The report would have to include the name of the minor, a description of the occurrence, and the child caring institution's name, street address, and

telephone number. The child caring institution would have to notify the minor's parent or legal guardian as soon as possible, and not later than 24 hours after the occurrence. Staff would have to document on the minor's record that the serious occurrence was reported to both the FIA and the State-designated protection and advocacy system. The name of the person to whom the incident was reported also would have to be documented. A copy of the report would have to be maintained in the minor's record, as well as the child caring institution's incident and accident report logs.

Record-Keeping; Reporting

Each child caring institution would have to maintain a record of the incidences in which personal restraint or seclusion was used for all minors. The record would have to include all of the following information:

- Whether personal restraint or seclusion was used.
- The setting, unit, or location in which personal restraint or seclusion was used.
- Staff who initiated the process.
- The duration of each use of personal restraint or seclusion.
- The date, time, and day of the week restraint or seclusion was initiated.
- Whether the minor or staff sustained injuries.
- The minor's age and gender.

Each child caring institution annually would have to submit a report to the FIA containing the aggregate data from the record of incidences for each 12-month period as directed by the FIA. The FIA would have to prepare the reporting forms, aggregate the data collected from each child caring institution, and report the data annually to each child caring institution and the State-designated protection and advocacy system.

MCL 330.1742 (S.B. 231)
Proposed MCL 722.102b – 722.102e
(S.B. 1344)

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 231

The bill would have no fiscal impact on State or local government.

Senate Bill 1344

The bill would have an indeterminate impact on the Family Independence Agency. The requirements for reporting, developing and preparing report forms, data collection, and report preparation would result in some administrative costs; the amount cannot be determined at this time.

Fiscal Analyst: Steve Angelotti
Constance Cole

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.