

HOUSE BILL 248

O4, E3
SB 1005/07 – EHE

8lr1987
CF SB 240

By: **Delegates Branch, Eckardt, Haynes, James, Jones, and Nathan-Pulliam**
Introduced and read first time: January 23, 2008
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Residential Child Care Programs – Behavior Management Intervention**

3 FOR the purpose of prohibiting the use of certain behavior management interventions
4 on children in certain residential child care programs; providing a certain
5 exception under certain circumstances; requiring the staff of a certain
6 residential child care program to determine if a certain behavior management
7 intervention may be used on a child; requiring the staff to consider certain
8 factors before deciding to include a certain behavior management intervention
9 in a child's individual service plan; requiring a staff that needs to use a certain
10 behavior management intervention on a child whose individual service plan
11 does not include that intervention to consider including its use in the child's
12 plan; requiring the staff to document, in certain detail, an incident in which the
13 staff uses physical restraint as a behavior management intervention; requiring
14 the program to notify the parents or legal guardian of a child, within a certain
15 period of time, when physical restraint is used on the child; requiring the
16 Department of Juvenile Services, the Department of Human Resources, the
17 Department of Health and Mental Hygiene, and the Governor's Office for
18 Children jointly to adopt regulations to implement this Act; requiring these
19 departments and the Office to seek input from certain groups in writing the
20 regulations; requiring these departments and the Office jointly to develop
21 standards for physical restraint training, develop an application and approval
22 process for individuals who want to provide certain training, and establish a list
23 of approved trainers to provide certain training; requiring a residential child
24 care program to develop certain policies and procedures concerning its behavior
25 management interventions; providing for the application of this Act; defining
26 certain terms; and generally relating to behavior management interventions in
27 residential child care programs.

28 BY repealing and reenacting, without amendments,
29 Article – Health – General
30 Section 19–301(a) and (p)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2005 Replacement Volume and 2007 Supplement)

3 BY repealing and reenacting, without amendments,
4 Article – Human Services
5 Section 8–101(a) and (k)
6 Annotated Code of Maryland
7 (2007 Volume)

8 BY adding to
9 Article – Human Services
10 Section 8–1101 through 8–1106 to be under the new subtitle “Subtitle 11.
11 Residential Child Care Programs – Behavior Management Interventions”
12 Annotated Code of Maryland
13 (2007 Volume)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Health – General**

17 19–301.

18 (a) In this subtitle the following words have the meanings indicated.

19 (p) “Residential treatment center” means a psychiatric institution that
20 provides campus–based intensive and extensive evaluation and treatment of children
21 and adolescents with severe and chronic emotional disturbances who require a
22 self–contained therapeutic, educational, and recreational program in a residential
23 setting.

24 **Article – Human Services**

25 8–101.

26 (a) In this title the following words have the meanings indicated.

27 (k) “Office” means the Governor’s Office for Children.

28 **SUBTITLE 11. RESIDENTIAL CHILD CARE PROGRAMS – BEHAVIOR**
29 **MANAGEMENT INTERVENTIONS.**

30 **8–1101.**

31 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
32 INDICATED.

1 **(B) “INDIVIDUAL SERVICE PLAN” MEANS A WRITTEN DESCRIPTION FOR**
2 **A CHILD OF:**

3 **(1) THE CHILD’S NEEDS;**

4 **(2) GOALS TO BE ACHIEVED;**

5 **(3) PERSONS AND AGENCIES RESPONSIBLE FOR CARRYING OUT**
6 **THE PLAN; AND**

7 **(4) PROGRAM ELEMENTS TO ACHIEVE IDENTIFIED GOALS,**
8 **INCLUDING:**

9 **(I) ASSESSMENTS;**

10 **(II) SERVICES;**

11 **(III) SUPPORTS; AND**

12 **(IV) EDUCATION AND LIFE SKILLS TRAINING, AS**
13 **APPROPRIATE.**

14 **(C) (1) “MECHANICAL RESTRAINT” MEANS THE USE OF ANY DEVICE**
15 **OR MATERIAL ATTACHED OR ADJACENT TO A CHILD’S BODY THAT RESTRICTS**
16 **FREEDOM OF MOVEMENT OR NORMAL ACCESS TO ANY PORTION OF THE CHILD’S**
17 **BODY AND THAT THE CHILD CANNOT EASILY REMOVE.**

18 **(2) “MECHANICAL RESTRAINT” DOES NOT INCLUDE A**
19 **PROTECTIVE OR STABILIZING DEVICE ORDERED BY A PHYSICIAN WHEN THE**
20 **DEVICE IS USED AS PRESCRIBED.**

21 **(D) (1) “PHYSICAL RESTRAINT” MEANS THE USE OF PHYSICAL**
22 **FORCE, WITHOUT THE USE OF ANY DEVICE OR MATERIAL, TO RESTRICT THE**
23 **FREE MOVEMENT OF ALL OR A PORTION OF A CHILD’S BODY.**

24 **(2) “PHYSICAL RESTRAINT” DOES NOT INCLUDE:**

25 **(I) BRIEFLY HOLDING A CHILD IN ORDER TO CALM OR**
26 **COMFORT THE CHILD;**

27 **(II) HOLDING A CHILD’S HAND TO ESCORT THE CHILD**
28 **SAFELY FROM ONE AREA TO ANOTHER; OR**

1 (III) MOVING A DISRUPTIVE CHILD WHO IS UNWILLING TO
2 LEAVE THE AREA WHEN OTHER METHODS SUCH AS COUNSELING HAVE BEEN
3 UNSUCCESSFUL.

4 (E) (1) (I) "RESIDENTIAL CHILD CARE PROGRAM" MEANS AN
5 ENTITY THAT PROVIDES 24-HOUR PER DAY CARE FOR CHILDREN WITHIN A
6 STRUCTURED SET OF SERVICES AND ACTIVITIES THAT ARE DESIGNED TO
7 ACHIEVE SPECIFIC OBJECTIVES RELATIVE TO THE NEEDS OF THE CHILDREN
8 SERVED AND THAT INCLUDE THE PROVISION OF FOOD, CLOTHING, SHELTER,
9 EDUCATION, SOCIAL SERVICES, HEALTH, MENTAL HEALTH, RECREATION, OR
10 ANY COMBINATION OF THESE SERVICES AND ACTIVITIES.

11 (II) "RESIDENTIAL CHILD CARE PROGRAM" INCLUDES A
12 PROGRAM:

13 1. LICENSED BY:

14 A. THE DEPARTMENT OF HEALTH AND MENTAL
15 HYGIENE;

16 B. THE DEPARTMENT OF HUMAN RESOURCES; OR

17 C. THE DEPARTMENT OF JUVENILE SERVICES; AND

18 2. THAT IS SUBJECT TO THE LICENSING
19 REGULATIONS OF THE MEMBERS OF THE CHILDREN'S CABINET GOVERNING
20 THE OPERATIONS OF RESIDENTIAL CHILD CARE PROGRAMS.

21 (2) "RESIDENTIAL CHILD CARE PROGRAM" DOES NOT INCLUDE A
22 RESIDENTIAL TREATMENT CENTER AS DEFINED IN § 19-301 OF THE
23 HEALTH - GENERAL ARTICLE.

24 (F) "SECLUSION" MEANS THE CONFINEMENT OF A CHILD IN A LOCKED
25 ROOM, CLOSET, BOX, OR OTHER SPACE FROM WHICH THE CHILD IS PHYSICALLY
26 PREVENTED FROM LEAVING.

27 8-1102.

28 THIS SUBTITLE APPLIES TO CHILDREN PLACED IN RESIDENTIAL CHILD
29 CARE PROGRAMS.

30 8-1103.

1 (A) (1) A PERSON MAY NOT USE SECLUSION OR MECHANICAL
2 RESTRAINT ON A CHILD.

3 (2) A PERSON MAY NOT USE PHYSICAL RESTRAINT AS A MEANS OF
4 DISCIPLINING A CHILD.

5 (B) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (C) OF THIS
6 SECTION, A PERSON MAY NOT USE PHYSICAL RESTRAINT ON A CHILD.

7 (C) A PERSON MAY USE PHYSICAL RESTRAINT ON A CHILD IF:

8 (1) THE CHILD POSES AN IMMEDIATE PHYSICAL RISK TO THE
9 CHILD OR TO ANOTHER INDIVIDUAL;

10 (2) THERE IS NO KNOWN MEDICAL CONTRAINDICATION TO ITS
11 USE;

12 (3) THE STAFF APPLYING PHYSICAL RESTRAINT HAS BEEN
13 TRAINED IN ITS SAFE APPLICATION AND HAS DEMONSTRATED SATISFACTORY
14 KNOWLEDGE AND SAFE APPLICATION OF THE USE OF PHYSICAL RESTRAINT;

15 (4) LESS INTRUSIVE ALTERNATIVES FOR THE CHILD HAVE FAILED
16 OR HAVE BEEN DEEMED INAPPROPRIATE; AND

17 (5) POSITIVE BEHAVIOR INTERVENTION STRATEGIES AND
18 SUPPORTS ALONE ARE NOT EFFECTIVE IN PREVENTING BEHAVIOR THAT IS
19 HARMFUL TO THE CHILD OR TO ANOTHER INDIVIDUAL.

20 (D) (1) IF THE STAFF RESPONSIBLE FOR DESIGNING A CHILD'S
21 INDIVIDUAL SERVICE PLAN REASONABLY ANTICIPATES THAT THE USE OF
22 PHYSICAL RESTRAINT ON THE CHILD MAY BE NECESSARY, THE STAFF SHALL:

23 (I) DETERMINE THE TYPE OF PHYSICAL RESTRAINT TO BE
24 USED; AND

25 (II) INCLUDE THE USE OF THAT TYPE OF PHYSICAL
26 RESTRAINT IN THE CHILD'S INDIVIDUAL SERVICE PLAN.

27 (2) BEFORE DETERMINING THAT THE USE OF PHYSICAL
28 RESTRAINT MAY BE INCLUDED IN A CHILD'S INDIVIDUAL SERVICE PLAN, THE
29 STAFF SHALL TAKE INTO ACCOUNT:

30 (I) THE CHILD'S:

- 1 1. **MEDICAL HISTORY;**
- 2 2. **DISABILITY CHARACTERISTICS;**
- 3 3. **PSYCHOSOCIAL HISTORY TO THE EXTENT KNOWN;**
- 4 **AND**
- 5 4. **BEHAVIORAL HISTORY; AND**

6 (II) **THE LIKELIHOOD OF A NEED TO USE PHYSICAL**
7 **RESTRAINT DURING THE DURATION OF THE CHILD'S INDIVIDUAL SERVICE**
8 **PLAN.**

9 (3) **IF PHYSICAL RESTRAINT IS NOT INCLUDED IN A CHILD'S**
10 **INDIVIDUAL SERVICE PLAN AND AN INCIDENT OCCURS IN WHICH PHYSICAL**
11 **RESTRAINT IS USED ON THE CHILD, THE STAFF SHALL CONVENE AS SOON AS**
12 **PRACTICABLE AFTER THE INCIDENT TO CONSIDER THE NEED TO INCLUDE THE**
13 **USE OF PHYSICAL RESTRAINT IN THE CHILD'S INDIVIDUAL SERVICE PLAN.**

14 (E) **WHEN PHYSICAL RESTRAINT IS USED ON A CHILD, THE STAFF**
15 **SHALL DOCUMENT THE INCIDENT COMPLETELY, INCLUDING:**

- 16 (1) **THE EVENTS LEADING UP TO THE INCIDENT;**
- 17 (2) **THE TYPE OF PHYSICAL RESTRAINT USED;**
- 18 (3) **THE STARTING AND STOPPING TIME OF THE PHYSICAL**
19 **RESTRAINT; AND**
- 20 (4) **THE STAFF INVOLVED.**

21 (F) **THE STAFF SHALL NOTIFY THE PARENTS OR LEGAL GUARDIAN OF A**
22 **CHILD WITHIN 24 HOURS OF THE INCIDENT IF PHYSICAL RESTRAINT IS USED ON**
23 **THE CHILD.**

24 **8-1104.**

25 (A) **THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE**
26 **DEPARTMENT OF HUMAN RESOURCES, THE DEPARTMENT OF JUVENILE**
27 **SERVICES, AND THE OFFICE JOINTLY SHALL ADOPT REGULATIONS TO**
28 **IMPLEMENT THIS SUBTITLE.**

1 **(B) IN WRITING THE REGULATIONS, THE DEPARTMENTS LISTED IN**
2 **SUBSECTION (A) OF THIS SECTION AND THE OFFICE SHALL SEEK INPUT AND**
3 **ADVICE FROM:**

4 **(1) REPRESENTATIVES OF A STATEWIDE ORGANIZATION**
5 **REPRESENTING PARENTS AND FAMILIES OF CHILDREN PLACED IN RESIDENTIAL**
6 **CHILD CARE PROGRAMS;**

7 **(2) REPRESENTATIVES OF A STATEWIDE ORGANIZATION**
8 **REPRESENTING RESIDENTIAL CHILD CARE PROGRAMS;**

9 **(3) ADVOCATES FOR CHILDREN PLACED IN RESIDENTIAL CHILD**
10 **CARE PROGRAMS; AND**

11 **(4) INDIVIDUALS WITH KNOWLEDGE OR EXPERTISE IN THE**
12 **DEVELOPMENT AND IMPLEMENTATION OF BEHAVIOR MANAGEMENT**
13 **INTERVENTIONS FOR CHILDREN WITH CHALLENGING BEHAVIORS.**

14 **8-1105.**

15 **THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, THE**
16 **DEPARTMENT OF HUMAN RESOURCES, THE DEPARTMENT OF JUVENILE**
17 **SERVICES, AND THE OFFICE JOINTLY SHALL:**

18 **(1) DEVELOP STANDARDS FOR PHYSICAL RESTRAINT TRAINING;**

19 **(2) DEVELOP AN APPLICATION AND APPROVAL PROCESS FOR**
20 **TRAINERS WHO WISH TO PROVIDE PHYSICAL RESTRAINT TRAINING; AND**

21 **(3) DEVELOP AND MAINTAIN A LIST OF APPROVED TRAINERS**
22 **AUTHORIZED TO PROVIDE PHYSICAL RESTRAINT TRAINING.**

23 **8-1106.**

24 **(A) A RESIDENTIAL CHILD CARE PROGRAM SHALL DEVELOP POLICIES**
25 **AND PROCEDURES THAT COMPLY WITH THIS SUBTITLE AND THE REGULATIONS**
26 **ADOPTED IN ACCORDANCE WITH THIS SUBTITLE THAT INCLUDE, AT A MINIMUM:**

27 **(1) A PROHIBITION AGAINST THE USE OF BEHAVIOR**
28 **MANAGEMENT INTERVENTIONS PROHIBITED UNDER § 8-1103(A) AND (B) OF**
29 **THIS SUBTITLE;**

30 **(2) A DESCRIPTION OF THE BEHAVIOR MANAGEMENT**
31 **INTERVENTIONS THAT MAY BE USED BY THE PROGRAM;**

1 **(3) THE POSITIONS OF THE STAFF WHO ARE AUTHORIZED TO USE**
2 **PHYSICAL RESTRAINT IF PHYSICAL RESTRAINT IS A PERMITTED BEHAVIOR**
3 **MANAGEMENT INTERVENTION;**

4 **(4) THE TRAINING REQUIREMENTS FOR STAFF REGARDING**
5 **BEHAVIOR MANAGEMENT INTERVENTIONS INCLUDING PHYSICAL RESTRAINT;**
6 **AND**

7 **(5) THE PROCEDURES FOR DOCUMENTING AND REPORTING**
8 **PHYSICAL RESTRAINT INTERVENTIONS IN ACCORDANCE WITH § 8-1103(E) AND**
9 **(F) OF THIS SUBTITLE.**

10 **(B) A RESIDENTIAL CHILD CARE PROGRAM THAT INCLUDES PHYSICAL**
11 **RESTRAINT AMONG THE BEHAVIOR MANAGEMENT INTERVENTIONS PERMITTED**
12 **IN THE PROGRAM'S POLICIES AND PROCEDURES UNDER SUBSECTION (A) OF**
13 **THIS SECTION SHALL:**

14 **(1) IDENTIFY THE POSITIONS OF STAFF WHO ARE AUTHORIZED TO**
15 **USE PHYSICAL RESTRAINT AS A BEHAVIOR MANAGEMENT INTERVENTION; AND**

16 **(2) ENSURE THAT STAFF WHO ARE AUTHORIZED TO USE**
17 **PHYSICAL RESTRAINT RECEIVE TRAINING IN ACCORDANCE WITH § 8-1105 OF**
18 **THIS SUBTITLE.**

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2008.