

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0359

HOUSE BILL NO. 1043

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise, repeal, and reenact certain provisions pertaining
2 to persons with developmental disabilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That §§ 27B-1-1 to 27B-1-13, inclusive, 27B-2-1 to 27B-2-13, inclusive, 27B-3-1
5 to 27B-3-7, inclusive, 27B-3-9 to 27B-3-12, inclusive, 27B-4-1 to 27B-4-8, inclusive, 27B-5-1
6 to 27B-5-18, inclusive, 27B-6-1 to 27B-6-5, inclusive, 27B-7-1 to 27B-1-23, inclusive, 27B-8-1
7 to 27B-8-35, inclusive, and 27B-9-1 to 27B-9-27, inclusive, be repealed.

8 Section 2. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 The purposes of this title are to enhance environments and provide supports to enable
11 persons with developmental disabilities to achieve and maintain physical well-being, personal and
12 professional satisfaction, participation as community members, and safety from abuse, neglect,
13 and exploitation; and to promote and safeguard the human dignity, constitutional and statutory
14 rights, social well-being, and general welfare of all persons with developmental disabilities in the
15 state.

16 Section 3. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The Department of Human Services shall develop, adopt, approve, coordinate, monitor,
3 evaluate, and administer state and federally funded services for persons with developmental
4 disabilities and their families within South Dakota in cooperation with all governmental and
5 private resources and organizations concerned with developmental disabilities.

6 From existing department funds or special funds appropriated by the Legislature, the
7 department shall:

8 (1) Carry out all functions and duties required by statute through collaboration and
9 consultation with persons with developmental disabilities, their families, guardians,
10 community resources, organizations, and people who provide services throughout the
11 state;

12 (2) Develop and maintain a statewide system of community-based services that reflect the
13 choices and needs of persons with developmental disabilities and their families;

14 (3) Facilitate or provide technical assistance to community service providers in planning,
15 developing, and implementing services and supports for persons with developmental
16 disabilities;

17 (4) Cooperate with federal agencies in the administration of the federal statutes and acts
18 relating to developmental disabilities programs, accept the benefits of such federal
19 statutes and acts subject to chapter 4-8, and comply with the requirements thereof;

20 (5) Conform the state plans to the federal requirements and submit them to the federal
21 agencies; and

22 (6) Maintain a data collection system on the prevalence of developmental disabilities,
23 including autism, based on the needs of persons with developmental disabilities in the
24 current service delivery system.

25 Section 4. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The Department of Human Services may establish and use state, regional, or local boards or
3 councils to assist in the planning and implementation of community services.

4 Section 5. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this title mean:

- 7 (1) "Adjustment training center," any nonprofit facility that is certified by the department
8 to provide prevocational or vocational training, residential training, and other
9 supports and services as needed by persons with developmental disabilities;
- 10 (2) "Aversive intervention technique," the application, contingent upon the exhibition of
11 a maladaptive behavior, of extremely unpleasant, startling, or painful stimuli that have
12 a potentially noxious effect;
- 13 (3) "Behavior intervention program," a written set of instructions for changing or
14 modifying the behavior of a person with a developmental disability that specifies
15 behavior objectives for completion, procedures to implement behavior objectives, and
16 data collection procedures and is written to increase desirable behaviors or decrease
17 undesirable behaviors;
- 18 (4) "Community services provider," any person or entity, whether for-profit or not-for-
19 profit, which receives compensation for providing services to persons with
20 developmental disabilities;
- 21 (5) "Danger to others," behavior which supports a reasonable expectation that the person
22 will inflict serious physical injury upon another person in the very near future. Such
23 behavior shall be evidenced by recent acts which constitute a danger of serious
24 physical injury to another person. Such acts may include a recently expressed threat
25 if the threat is such that, if considering its context or person's recent previous acts, it

1 is substantially supportive of an expectation that the threat will be carried out;

2 (6) "Danger to self," recent behavior or related physical conditions which show there is
3 a danger of serious personal harm in the very near future as evidenced by an inability
4 to provide for some basic human needs such as food, clothing, shelter, physical health,
5 or personal safety;

6 (7) "Department," the Department of Human Services;

7 (8) "Destructive behavior," behavior that presents a danger to self or a danger to others;

8 (9) "Director," the director of the South Dakota Developmental Center or a community
9 service provider;

10 (10) "Facility," the South Dakota Developmental Center in Redfield, South Dakota;

11 (11) "Informed consent," written consent voluntarily, knowingly, and competently given
12 without any element of force, fraud, deceit, duress, threat, or other form of coercion,
13 after explanation of all information that a reasonable person would consider significant
14 to the decision in a manner reasonably comprehensible to general lay understanding;

15 (12) "Least restrictive," an intervention in the life of a person with a developmental
16 disability that is the least intrusive and disruptive to the person's life and represents the
17 least departure from normal patterns of living that can be effective in meeting the
18 person's developmental needs;

19 (13) "PASARR" or "Preadmission Screening/Annual Resident Review," a federally
20 mandated review of the application to a skilled nursing facility by a person with a
21 known or suspected mental illness or developmental disability, or both, in order to
22 determine if the skilled nursing facility or another community service provider can
23 appropriately serve the person's needs;

24 (14) "Qualified mental retardation professional," any person with at least one year of
25 experience working directly with mental retardation or other developmental

1 disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a
2 person who holds at least a bachelor's degree in a professional category.

3 Section 6. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A developmental disability is any severe, chronic disability of a person that:

- 6 (1) Is attributable to a mental or physical impairment or combination of mental and
7 physical impairments;
- 8 (2) Is manifested before the person attains age twenty-two;
- 9 (3) Is likely to continue indefinitely;
- 10 (4) Results in substantial functional limitations in three or more of the following areas of
11 major life activity: self-care, receptive and expressive language, learning, mobility,
12 self-direction, capacity for independent living, and economic self-sufficiency; and
- 13 (5) Reflects the person's need for an array of generic services, met through a system of
14 individualized planning and supports over an extended time, including those of a life-
15 long duration.

16 Section 7. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 The Department of Human Services shall coordinate the utilization of existing facilities, state
19 departments, boards, or commissions involved in the field of developmental disabilities.

20 Section 8. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The Department of Human Services may receive, acquire, have charge of, and operate all
23 properties for the purposes authorized by statute. The department may receive gifts and
24 contributions from public and private sources and acquire other properties as an agency of the
25 State of South Dakota and hold and use them for statutory purposes. However, the department

1 may not purchase, lease anything except office quarters as approved by the state commissioner
2 of administration, sell, encumber, or alienate any real property without the specific consent and
3 prior approval of the Legislature.

4 Section 9. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A person with a developmental disability from another state or territory who enters this state
7 for the purpose of receiving services or education shall retain the residence of that person's
8 parent, guardian, or agency standing in the place of the person's parent or guardian.

9 Section 10. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 Any person with a developmental disability or any other interested person may make
12 application for department services by contacting in person or in writing any official state or field
13 office of the Department of Human Services and participating in an evaluation which may include
14 mental, physical, and educational assessments so that the department may determine if services
15 are needed.

16 Section 11. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 A person with a developmental disability or that person's parent or guardian may refuse
19 services offered by the Department of Human Services. If the person with a developmental
20 disability or that person's parent or guardian accepts services from the department, the
21 department, that person's parent or guardian, or the person with a developmental disability may
22 terminate the services at any time.

23 Section 12. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
24 as follows:

25 The secretary of the department shall promulgate, pursuant to chapter 1-26, reasonable and

1 necessary rules governing the procedure and conduct of contested cases, including notification
2 of the denial of services.

3 Section 13. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
4 as follows:

5 The secretary of the Department of Human Services shall promulgate, pursuant to chapter
6 1-26, reasonable and necessary rules establishing standards for community service providers,
7 South Dakota Developmental Center - Redfield, and other nonpublic facilities, services, and
8 supports for persons with developmental disabilities and for services and supports to be provided
9 or purchased by the Department of Human Services under this title. Such rules shall be adopted
10 in the following areas:

- 11 (1) Staff requirements, to include orientation, continuing staff development, instruction
12 on positive behavioral supports and medication administration;
- 13 (2) Administration, audit requirements, and record keeping;
- 14 (3) Services and supports provided;
- 15 (4) Client rights and safety;
- 16 (5) Facility fire safety and sanitation requirements;
- 17 (6) Respite care;
- 18 (7) Family support;
- 19 (8) Preadmission Screening/Annual Resident Review (PASARR);
- 20 (9) Such other standards and requirements as are necessary for federal financial
21 participation; and
- 22 (10) Any other services and supports necessary to implement this title.

23 Section 14. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
24 as follows:

25 Before a new employee, including a temporary employee, of a facility or a community service

1 provider receiving funds or providing services or supports pursuant to this title performs any
2 duties, the new employee shall be oriented to the facility or community service provider and its
3 policies, including policies and procedures concerning fire prevention, accident prevention, and
4 response to emergencies. By the time each new employee has worked thirty days in the facility
5 or community service provider, the new employee shall be oriented to resident rights, to the new
6 employee's position and duties, and to facility or community service provider procedures.

7 Section 15. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The Department of Human Services shall consider the needs in the field of developmental
10 disabilities and shall make recommendations to the Legislature and the Governor for changes in
11 existing legislation.

12 Section 16. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 This chapter may not be construed as repealing chapter 34-7, but shall be construed separate
15 and in addition to chapter 34-7.

16 Section 17. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The facility located and established upon lands donated and conveyed to this state at
19 Redfield, Spink County, shall be known as the South Dakota Developmental Center. The
20 supports and services provided by the South Dakota Developmental Center shall be under the
21 control and supervision of the Department of Human Services.

22 Section 18. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 The South Dakota Developmental Center shall provide supports and services for persons
25 with developmental disabilities and other persons who may benefit from those supports and

1 services offered by the South Dakota Developmental Center. The South Dakota Developmental
2 Center may provide onsite and offsite additional supports and services in order to increase the
3 self-direction of a person with a developmental disability, and to enhance a person with a
4 developmental disability to live in the least-restrictive environment. It is the mission of the South
5 Dakota Developmental Center to provide supports and services to persons with developmental
6 disabilities onsite only when suitable community supports and services are not available.

7 Section 19. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Any person with a developmental disability voluntarily or involuntarily admitted to the facility
10 shall be tested for communicable diseases as deemed necessary by a licensed physician in charge
11 of tests and immunizations at the facility, by such means of tests and immunizations as are
12 approved by the Department of Health or shall present:

- 13 (1) Certification from a licensed physician stating the physical condition of the person
14 with a developmental disability would be such that a test and immunization would
15 endanger the person's life or health;
- 16 (2) A written statement signed by a parent or guardian of the person with a
17 developmental disability that the person is adherent to a belief whose teachings are
18 opposed to the test and immunization;
- 19 (3) A written statement signed by a parent or guardian of the person with a
20 developmental disability requesting that the local health department or the facility give
21 the test and immunization because the parent or guardian lacks the means to pay for
22 the test and immunization; or
- 23 (4) A written statement from a licensed physician requesting that the person with a
24 developmental disability not be immunized.

25 Section 20. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The facility shall provide to persons with developmental disabilities the required tests and the
3 immunizations that are not provided by a parent or guardian and have not been exempted
4 pursuant to section 19 of this Act.

5 Section 21. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 The secretary of the Department of Human Services shall appoint a director to act as the
8 chief executive officer of the South Dakota Developmental Center. The director shall supervise
9 the supports, services, and education of the persons served at the facility, under the direction of
10 the secretary of the Department of Human Services.

11 Section 22. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 Any person who unlawfully detains a person with a developmental disability in any other
14 manner or in any other place than as authorized by law is guilty of a Class 1 misdemeanor.

15 Section 23. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Any person with a developmental disability may be admitted to the South Dakota
18 Developmental Center if the county review board orders commitment pursuant to the process
19 provided in this title.

20 Section 24. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any person who is eighteen years of age or older and who has a developmental disability may
23 be admitted to the South Dakota Developmental Center on a voluntary admission basis in
24 accordance with procedures established by the Department of Human Services if an application
25 for admission has been executed by the person with a developmental disability, if the person is

1 competent to do so, or by the person's guardian.

2 Section 25. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Any person who is under the age of eighteen years and who has a developmental disability
5 may be admitted to the South Dakota Developmental Center on a voluntary admission basis in
6 accordance with procedures established by the Department of Human Services if an application
7 for admission has been executed by the person's parent, guardian, or, in the absence of a parent
8 or guardian, a person acting as a parent in loco parentis.

9 Section 26. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 If it is determined that any other person would benefit from supports and services offered at
12 the South Dakota Developmental Center, that person may be admitted on a voluntary admission
13 basis in accordance with procedures established by the Department of Human Services.

14 Section 27. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Each person admitted to the South Dakota Developmental Center shall receive and complete
17 a comprehensive evaluation within thirty days of admission to determine the appropriateness of
18 continued supports and services at the facility. The appropriateness of continued supports and
19 services shall be reviewed at least annually, or more often if requested by a team member.

20 Section 28. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Upon accepting a person for admission to the South Dakota Developmental Center, the
23 county auditor of the person's county of residence shall be notified by the facility's director.

24 Section 29. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 Notwithstanding chapter 25-7, if any person is admitted to a facility, only the admittee is
2 responsible for the cost of supports and services to the extent and in the manner provided by this
3 chapter. If the cost of supports and services is a proper charge of the federal government, the
4 costs shall be assessed against the appropriate agency of the federal government.

5 Section 30. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 The Department of Human Services shall collect and process fees due to the state for the
8 cost of supports and services for persons with developmental disabilities.

9 Section 31. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The secretary of the Department of Human Services shall periodically determine the
12 individual cost of supports and services provided to persons in the facility.

13 Section 32. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person in the facility who is determined by the secretary of the Department of Human
16 Services to be financially able to pay shall be charged the per diem rate.

17 Section 33. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 Any person in the facility may apply to the secretary of the Department of Human Services
20 to pay less than the per diem rate. On receipt of such application, the secretary shall determine
21 the ability of the person in the facility to pay all or a part of the applicable charge.

22 Section 34. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Upon receipt of all information desired by the secretary of the Department of Human
25 Services, the secretary shall determine, based upon the financial ability of the person in the

1 facility, whether the person shall be charged with the full amount or a lesser amount. If a person
2 in the facility or county where the person in the facility resides, disagrees with the determination
3 of the secretary of the Department of Human Services, a grievance may be filed with the
4 secretary within thirty days from the date of such determination. However, each such grievance
5 may not be filed more than once every six months. The decision of the secretary is final.

6 Section 35. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 If any person in the facility refuses or fails to make such payments, the charges may be
9 collected by a civil action brought in the name of the State of South Dakota. The state may
10 commence an action against the person for payments due, and any judgment obtained shall be
11 a lien upon the real property of the person and shall be collected as other judgments. Any claim
12 arising under section 29 of this Act has the same force and effect against the real and personal
13 property of a deceased person as other debts of a decedent and shall be ascertained and
14 recovered in the same manner.

15 Section 36. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The statute of limitations upon any claim of the state for the care of a person in the facility
18 is three years and does not commence to run until the death of the person, but an action may be
19 commenced at any time during the life of the person.

20 Section 37. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Each county shall be assessed sixty dollars per month for each person receiving supports and
23 services at the South Dakota Developmental Center unless the responsibility therefore has been
24 placed upon the state. In the event of a dispute as to that person's residence, no payments made
25 by any county constitute an admission that the person in the facility is a resident of such county.

1 The procedures for determining the county of residence shall be that described in sections 39 and
2 40 of this Act. These moneys shall be used to match federal funds which may be made available
3 under the provisions of Title XIX of the Social Security Act as amended, or its successors, at
4 the South Dakota Developmental Center.

5 Section 38. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 If a person with a developmental disability has been placed under the control of a child
8 welfare agency as defined by § 26-6-1 for adoption, and prior to adoption is found to have a
9 developmental disability, then the county review board may direct that the expenses for the care,
10 education, and maintenance of that person be borne by the state in which event no finding as to
11 the county being legally obligated to support the person shall be made. The board shall forthwith
12 notify the Department of Social Services who may petition for letters of guardianship. For minors
13 in the custody of the state, the county is not legally obligated to pay for such person. Expenses
14 for such person shall be borne by the state.

15 Section 39. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 If the administrator of a facility has cared for or maintained a person with a developmental
18 disability from a county and the state's attorney or the county commissioners of the county claim
19 that the person is not a proper charge against the county, the state's attorney or the county
20 commissioners shall notify the attorney general that the person in the facility is a proper charge
21 against another county, or against the state if the person in the facility is not a resident of the
22 state. The attorney general shall notify the county auditor of the county to file any proof within
23 thirty days from the date of such notification. Upon receipt of such, the attorney general shall
24 investigate the location of the residence of the person in the facility to determine if a county and
25 which county should be charged. The attorney general shall notify the county auditor and the

1 director of the South Dakota Developmental Center of the determination. Thereafter, the
2 administrator shall charge for supports and services according to the determination of the
3 attorney general.

4 Section 40. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 If any county is dissatisfied with the determination of the attorney general, the county may
7 appeal to the circuit court.

8 Section 41. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
9 as follows:

10 Expenses paid by one county, on behalf of any person at the South Dakota Developmental
11 Center whose residence is in another county, shall be refunded with lawful interest by the county
12 of residence.

13 Section 42. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any charges to a county under section 37 of this Act shall be certified each month by the
16 secretary of the Department of Human Services to the county auditor. The billing shall include
17 an itemized listing of charges. The billing shall be sent to county auditors no later than the fifth
18 day of the month. Upon receiving the billing, the county shall pay the amount due to the state
19 remittance center within the time period established by chapter 4-3.

20 Section 43. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any payments made in accordance with this chapter for the supports and services of persons
23 at the South Dakota Developmental Center shall be deposited in the general fund.

24 Section 44. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 Any person in a state facility may be transferred to any other state or private facility if the
2 person would benefit from the treatment offered at the facility. A transfer may only be made with
3 the mutual consent of both facilities or agencies. No transfer may occur until all reasonable
4 efforts have been made to consult with the person and the person's nearest relative or guardian.
5 However, the transfer may be effected earlier if necessitated by an emergency. If an emergency
6 situation arises, the required notice shall be given as soon as possible thereafter.

7 Section 45. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The Department of Human Services, upon recommendation of the person's interdisciplinary
10 team, shall consult with the person with a developmental disability and that person's immediate
11 family or guardian regarding any proposed transfer from a facility of this state to a facility of
12 another state pursuant chapter 27A-6.

13 Section 46. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 Any person voluntarily entering a facility for persons with developmental disabilities shall be
16 given oral and written notice of release procedures upon admission. Any person voluntarily
17 entering the facility, regardless of age, has the right to discharge within twenty-four hours after
18 request.

19 Section 47. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 A facility may temporarily detain a voluntarily admitted person with a developmental
22 disability for twenty-four hours after the request for discharge to initiate emergency commitment
23 procedures, pursuant to section 70 of this Act, if the person's interdisciplinary team determines
24 that the person presents an immediate danger to self or others.

25 Section 48. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The director, based upon the recommendation of the person's interdisciplinary team, may at
3 any time discharge a voluntarily admitted person. If a person with a developmental disability was
4 voluntarily admitted by a parent or guardian, the director shall notify the parent or guardian of
5 the discharge ten days prior to the person's release and shall notify the parent or guardian of
6 other supports and services available in an alternative setting.

7 Section 49. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Any person with a developmental disability admitted to the facility pursuant to this title who
10 leaves the facility without authorization or fails to return to the facility while on an authorized
11 leave or other authorized absence from the facility, may be returned to the facility.

12 Section 50. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The South Dakota Developmental Center shall notify the Spink County sheriff and state radio
15 communications of any unauthorized absence from the facility. Any law enforcement officer
16 knowing the whereabouts of any person absent from the facility shall detain the absent person
17 and immediately notify both the South Dakota Developmental Center and the Spink County
18 sheriff. The South Dakota Developmental Center shall arrange for the return of the person with
19 a developmental disability to the facility within forty-eight hours thereafter.

20 Section 51. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 If the director of a facility determines that a person eighteen years of age or older with a
23 developmental disability receiving services and supports from the facility requires a guardian or
24 conservator and there is no one qualified and willing to petition for letters of guardianship or
25 conservatorship, the director shall inform the secretary of the Department of Human Services.

1 Section 52. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Six months prior to the eighteenth birthday of each person with a developmental disability
4 in the facility, the person shall be evaluated by the facility to determine whether the person is
5 competent to execute an application for voluntary admission.

6 Section 53. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 If the facility determines after evaluation pursuant to section 52 of this Act, that the person
9 with a developmental disability is not competent to execute an application for voluntary
10 admission or that the person otherwise requires the protective services of a guardian, that
11 person's parent, or if none, another interested person or entity shall be notified and requested to
12 file a petition for the appointment of a guardian. If no petition is filed, the director shall inform
13 the secretary of the Department of Human Services.

14 Section 54. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Each county may annually budget and appropriate funds for the establishment, support, or
17 operation of community service providers pursuant to § 27A-5-9.

18 Section 55. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Funds budgeted and appropriated under this chapter shall be used by community service
21 providers approved by the Department of Human Services.

22 Section 56. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Each county shall form a county review board which shall hear involuntary commitment
25 hearings and review continued commitments of persons with developmental disabilities in

1 accordance with sections 69 and 71 of this Act. The county review board shall consist of two
2 people appointed by the board of county commissioners for a three-year term and a magistrate
3 judge or lawyer appointed by the presiding circuit judge of the circuit in which the county is
4 situated. The two members appointed by the county commission shall be residents of the county.
5 The member appointed by the presiding circuit judge need not be a resident of the county. The
6 members of the county review board who are appointed by the board of county commissioners
7 may be appointed to more than one term, but may not serve more than two consecutive terms.
8 The law-trained magistrate or lawyer shall serve as the chair of the county review board. The
9 state's attorney for the county may not serve on the county review board. Each appointing
10 authority may also appoint alternates. Pursuant to chapter 1-24, two or more counties may
11 jointly contract to establish a county review board to serve all contracting counties.

12 Section 57. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 Before entering upon the duties of office, each member of a county review board shall take
15 and subscribe an oath or affirmation to support the Constitution of the United States and the
16 Constitution of this state and to discharge faithfully all official duties according to law. The oath
17 shall be filed in the office of the county auditor.

18 Section 58. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The county review board has jurisdiction over all applications or petitions for involuntary
21 commitment or for the safekeeping of persons subject to involuntary commitment within its
22 county, except in cases otherwise specially provided for. The board may issue subpoenas and
23 compel obedience thereto, and do any act of a court necessary and proper for the purpose of
24 discharging the duties required of it.

25 Section 59. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any interested person may file with the chair of the county review board a verified petition
3 which asserts that a person meets the criteria for board-ordered commitment as specified in
4 section 69 of this Act. If any person is alleged to have a developmental disability and to be in
5 such condition that immediate intervention is necessary for the protection from the physical harm
6 of self or others, any person, eighteen years of age or older, may petition the chair of the county
7 review board where such person with an alleged developmental disability is found, stating the
8 factual basis for concluding that the person is developmentally disabled and in immediate need
9 of intervention. The petition shall be upon a form and be verified by affidavit. The petition shall
10 include the following:

- 11 (1) A statement by the petitioner that the petitioner believes, on the basis of personal
12 knowledge, that the person is a danger to self or others;
- 13 (2) The specific nature of the danger;
- 14 (3) A summary of the information upon which the statement of danger is based;
- 15 (4) A statement of facts which caused the person to come to the petitioner's attention;
- 16 (5) The address and signature of the petitioner and a statement of the petitioner's interest
17 in the case; and
- 18 (6) The name of the person to be evaluated, the address, age, marital status, and
19 occupation of the person, and the name and address of the person's nearest relative.

20 Section 60. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 If a petition filed pursuant to section 59 of this Act appears on its face to be sufficient, the
23 chair of the county review board shall order that a psychiatric or psychological evaluation be
24 performed and a report of the findings and recommendations be completed. The board shall
25 appoint a licensed psychologist or psychiatrist to make the examination and to prepare a report

1 within five working days from the date the petition is filed, containing the information required
2 in section 63 of this Act. If it appears, based upon the foregoing evaluation, the criteria for
3 commitment is met, a copy of the report shall be provided to Department of Human Services.
4 If the person desires an independent psychiatric or psychological evaluation, the person may
5 obtain one at that person's own expense.

6 Section 61. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 The chair of the county review board shall give written notice of the petition to the
9 Department of Human Services which shall prepare a report containing a review of the person's
10 supports and service needs and a recommendation as to appropriate service locations. The
11 reports shall be filed with the county review board within forty-five calendar days from receipt
12 of the written notice from the board ordering the examination and report.

13 Section 62. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 If requested, information shall be disclosed:

- 16 (1) Pursuant to orders or subpoenas of a court of record or subpoenas of the Legislature
17 or chair of the county review board;
- 18 (2) To a prosecuting or defense attorney or to a qualified mental retardation professional
19 as necessary for participation in a proceeding governed by this title;
- 20 (3) To an attorney representing a person who is presently subject to the authority of this
21 title or who has been discharged if that person has given consent;
- 22 (4) If necessary in order to comply with another provision of law;
- 23 (5) To the Department of Human Services if the information is necessary to enable the
24 Department of Human Services to discharge a responsibility placed upon it by law;
- 25 or

1 (6) To a state's attorney or the attorney general for the purpose of investigation of an
2 alleged criminal act either committed by or upon a person with a developmental
3 disability.

4 Section 63. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
5 as follows:

6 The report required by section 60 of this Act shall contain:

7 (1) Evaluations of the person's mental, physical, and emotional status, and review of
8 social and educational history; and

9 (2) A statement as to whether the person meets the criteria for board-ordered
10 commitment specified in section 69 of this Act.

11 Section 64. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 If the county review board finds that a person meets the criteria in section 69 of this Act, the
14 board shall enter a finding, based on the criteria in § 28-13-3, of the county of residence of the
15 person or a finding that the person is a nonresident of this state.

16 Section 65. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Upon receipt of a petition and reports as provided for in sections 59, 60, and 63 of this Act,
19 the chair of the county review board shall:

20 (1) Fix a date, time, and place for a hearing within five days, excluding Saturdays,
21 Sundays, and holidays, of the board's receipt of the reports;

22 (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the
23 time, date, and place of the hearing to the petitioner, to the person alleged to meet the
24 criteria for board-ordered commitment, to the psychologist or psychiatrist completing
25 the report, to the person's attorney, or other attorney as specified in section 67 of this

1 Act, to the director of any facility in which the person is being served, and to the
2 secretary of the Department of Human Services; and

3 (3) Following the hearing, provide copies of all orders to the persons identified in
4 subdivision (2).

5 Section 66. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 Hearings convened to determine whether a person meets the criteria for board-ordered
8 commitment shall be governed by sections 59 to 65, inclusive, of this Act.

9 Section 67. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 The state's attorney of the county in which a county review board is meeting shall participate,
12 either in person or by assistant, in hearings convened by the board under this chapter.

13 Section 68. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 The petition shall be dismissed by the chair of the county review board unless the evaluating
16 psychiatrist or psychologist concludes, in writing, that the person meets the criteria for board-
17 ordered commitment. If the county review board finds that a person does not meet the criteria
18 for board-ordered commitment, the board shall enter a finding to that effect, shall dismiss the
19 petition, and shall direct that the person be immediately discharged if the person has been
20 detained prior to the hearing.

21 Section 69. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 A county review board may order the involuntary commitment of a person if the review
24 board finds by clear and convincing evidence that the person cannot exercise informed consent
25 to treatment by reason of that person's developmental disability, and that the person poses a

1 danger of physical injury to self or others making it necessary or advisable to receive appropriate
2 supports and services. If the person is found to meet the criteria for involuntary commitment, the
3 county review board may order the person to be placed under the control and care of the
4 Department of Human Services for placement in appropriate programs. If the person refuses to
5 comply with this order, the board may direct a law enforcement officer to take the person into
6 protective custody.

7 Section 70. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 The county review board may issue a detention order and direct a law enforcement officer
10 to immediately take the person to a community service provider or facility recommended by the
11 Department of Human Services, with the approval of the provider, to be detained for purposes
12 of an examination if the county review board finds from the petition, from other statements under
13 oath, or from reports of physicians, psychiatrists, psychologists, or other qualified mental
14 retardation professionals that there is reasonable basis to believe that the person to be committed
15 poses an immediate danger of physical injury to self or others.

16 If the county review board issues a detention order based on a petition that did not include
17 a recommendation for detention by a psychiatrist or psychologist, the person shall be examined
18 by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order,
19 excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county
20 review board. If the report is not received by the county review board within forty-eight hours,
21 excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement
22 with the community service provider. The report shall include:

- 23 (1) Whether the person may be diagnosed as having a developmental disability;
- 24 (2) Whether the person is capable of giving informed consent and whether the person has
25 agreed to voluntary admission;

1 (3) Whether supports and services are available and appropriate in lieu of county review
2 board proceedings; and

3 (4) Whether the person continues to pose an immediate danger of physical injury to self
4 or others.

5 Upon receipt of the report by the county review board, if it is determined that the person
6 continues to pose an immediate danger of physical injury to self or others, placement with a
7 community service provider shall continue while the commitment process is pending. If the
8 person does not continue to pose an immediate danger of physical injury to self or others, the
9 person shall be released from placement with the community service provider pending further
10 proceedings. No record of arrest may be charged against the person.

11 Section 71. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 The county review board shall review the commitment order and accompanying information
14 at least annually to make a determination of the continued need and supporting justification for
15 commitment. Prior to the annual review, the developmental disability community service provider
16 shall provide information to the county review board that issued the original commitment order
17 regarding the person's supports, services, and progress. Following ten days notice to the person,
18 the person's attorney, and the Department of Human Services, the county review board shall hold
19 a review hearing. The review hearing shall include participation by the state's attorney,
20 Department of Human Services, the community service provider, and the person's attorney. The
21 rights and procedures applicable during an initial commitment hearing are applicable to review
22 hearings. A petition pursuant to section 59 of this Act need not be filed. At the conclusion of the
23 review hearing, the county review board may issue an order of continued commitment or
24 immediately discharge the person from involuntary commitment if the conditions in section 69
25 of this Act justifying commitment no longer exist.

1 Section 72. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 The Department of Human Services shall notify the chair of the county review board of the
4 death of any person with a developmental disability committed by the review board.

5 Section 73. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 The person alleged to meet the criteria for board-ordered commitment shall be represented
8 by counsel. Such representation is not subject to waiver, and the counsel is entitled:

- 9 (1) To be present at the hearing;
- 10 (2) To obtain a continuance in order to adequately prepare a case;
- 11 (3) To present documents and witnesses;
- 12 (4) To cross-examine witnesses; and
- 13 (5) To require testimony in person from the psychiatrist or psychologist who performed
14 the evaluation required in section 60 of this Act.

15 Section 74. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 Counsel appointed for a person pursuant to this title shall be reasonably compensated for
18 such services and for necessary expenses and costs incident to the proceedings in an amount to
19 be fixed by the circuit judge. The costs described shall be allowed and paid out of county funds
20 and may not be assessed against the person with a developmental disability.

21 Section 75. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
22 as follows:

23 Costs of proceedings pursuant to this title, including costs for transportation and any
24 incidental costs of the person with a developmental disability, shall be reasonably compensated
25 in an amount to be determined by the county auditor. The costs described shall be allowed and

1 paid for out of county funds and may not be assessed against the person with a developmental
2 disability.

3 Section 76. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
4 as follows:

5 No person is incompetent to manage his or her affairs, to contract, to hold professional or
6 occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote,
7 or to make a will solely by reason of a diagnosis of a developmental disability, or by reason of
8 a commitment by a county review board.

9 Section 77. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A person may, within thirty days, appeal a final order of a county review board pursuant to
12 any hearing or review conducted under this title. In the case of a minor, or a person for whom
13 a guardian has been appointed, the right to appeal may be exercised on behalf of the person. The
14 person shall be advised both verbally and in writing of this right at the conclusion of any
15 proceedings. The appeal shall be conducted in accordance with the provisions of chapter 1-26.

16 Section 78. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Upon exhaustion of all administrative remedies, a person has the right to file an appeal in the
19 appropriate circuit court pursuant to chapter 1-26.

20 Section 79. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
21 as follows:

22 Any person involuntarily committed by a county review board and any person confined or
23 in any manner detained or restrained is entitled to the benefit of a writ of habeas corpus. If the
24 court finds that the criteria in section 69 of this Act are met, the court may authorize continued
25 involuntary commitment. Such authorization is not a bar to the issuing of the writ the second

1 time if it is alleged that the criteria in section 69 of this Act are no longer met.

2 Section 80. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read
3 as follows:

4 The secretary of the Department of Human Services may, pursuant to chapter 1-26, adopt
5 reasonable and necessary rules pertaining to involuntary commitment.

6 Section 81. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Unless modified by court order, a person with a developmental disability has the same legal
9 rights and responsibilities guaranteed to all other persons under the federal and state
10 constitutions and federal and state laws.

11 Section 82. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
12 as follows:

13 No person with a developmental disability may be required to perform any act or is subject
14 to any procedure which is contrary to the person's religious beliefs, and each person has the right
15 to practice personal religious beliefs and to be accorded the opportunity for religious worship.
16 No person may be coerced into engaging in or refraining from any religious activity, practice,
17 or belief.

18 Section 83. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Any person with a developmental disability has the right to receive publicly supported
21 educational services in accordance with federal and state education laws.

22 Section 84. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
23 as follows:

24 Any person with a developmental disability has the right to access to appropriate dental and
25 medical care and treatment for any physical ailments and for the prevention of illness or

1 disability.

2 Section 85. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
3 as follows:

4 Surgery and any other medical procedures may be performed without consent or court order
5 only if the life of the person with a developmental disability is threatened and there is not time
6 to obtain consent or a court order. Documentation of the necessity for the surgery shall be
7 entered into the record of the person as soon as practicable.

8 Section 86. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No person with a developmental disability is subject to any experimental research or
11 hazardous treatment procedures without the consent of:

12 (1) The person with a developmental disability, if eighteen years of age or over and
13 capable of giving informed consent. If any person's capacity to give informed consent
14 is challenged, the person, a qualified mental retardation professional, physician, or
15 interested person may file a petition with the court to determine competency to give
16 consent;

17 (2) The guardian of the person with a developmental disability, if the guardian is legally
18 empowered to execute such consent; or

19 (3) The parent or guardian of the person with a developmental disability, if the person
20 with a developmental disability is less than eighteen years of age.

21 No person with a developmental disability who is subject to an order of guardianship may
22 be subjected to experimental research or hazardous treatment procedures without prior
23 authorization of the circuit court.

24 Section 87. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 The receipt of services and supports pursuant to this chapter does not operate to deprive any
2 person with a developmental disability of any other rights, benefits, or privileges, does not cause
3 the person with a developmental disability to be declared legally incompetent, and may not be
4 construed to interfere with the rights and privileges of parents or guardians regarding the minor
5 child. No agency, community service provider, facility, school, or person who receives public
6 funds and provides services to persons with developmental disabilities may engage in the
7 following practices:

8 (1) Corporal punishment - physical or verbal abuse, such as shaking, screaming, swearing,
9 name calling, or any other activity that would be damaging to a person's physical well-
10 being or self-respect;

11 (2) Seclusion - placement of a person alone in a room or other area from which egress is
12 prevented;

13 (3) Denial of food - preventing a person from having access to a nutritionally adequate
14 diet as a means of modifying behavior. Persons enrolled in residential programs or
15 living units are expected to partake in meals at a predetermined scheduled time.

16 No person with a developmental disability receiving services may discipline other persons
17 with developmental disabilities receiving services, and no community service provider or facility
18 may mistreat, exploit, neglect, or abuse any person with a developmental disability.

19 Section 88. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 No agency, community service provider, facility, or school may retaliate against any staff
22 who reports in good faith suspected abuse, neglect, or exploitation, or against any person with
23 a developmental disability with respect to any report. An alleged perpetrator cannot self-report
24 solely for the purpose of claiming retaliation. There is a rebuttable presumption of retaliation for
25 any adverse actions taken within ninety days of a report of abuse, neglect, or exploitation.

1 Adverse action means only those adverse actions arising solely from the filing of an abuse report.
2 For the purposes of this chapter, adverse action means any action taken by a community service
3 provider or facility against the person making the report or against the person with a
4 developmental disability because of the report and includes:

- 5 (1) Discharge or transfer from the community service provider or facility except for
6 clinical reasons;
- 7 (2) Discharge from or termination of employment;
- 8 (3) Demotion or reduction in remuneration for services; or
- 9 (4) Restriction or prohibition of access to services and supports or the persons served.

10 Section 89. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Any person who knowingly engages in conduct with the intent to deprive persons with
13 developmental disabilities of any right as set forth in this title is guilty of a Class 1 misdemeanor.

14 Section 90. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Any person with a developmental disability receiving services has the right to:

- 17 (1) Communicate freely and privately with others of the person's own choosing;
- 18 (2) Receive and send sealed, unopened correspondence. No person's incoming or
19 outgoing correspondence shall be opened, delayed, held, or censored by any person;
- 20 (3) Receive and send packages. No person's outgoing packages may be opened, delayed,
21 held, or censored by any person;
- 22 (4) Reasonable access to telephones, both to make and to receive calls in privacy, and
23 reasonable and frequent opportunities to meet with visitors; and
- 24 (5) Suitable opportunities for interaction with others of the person's own choosing.

25 Section 91. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 All records kept pursuant to this chapter are confidential and not open to public inspection.
3 The information may be disclosed only in the circumstances and under the conditions set forth
4 in sections 92 to 94, inclusive, of this Act.

5 Section 92. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
6 as follows:

7 If the community service provider or facility and the person with a developmental disability
8 and the person's parent, if a minor, or the person's guardian consent, information may be
9 disclosed to providers of supports and services to the person with a developmental disability, or
10 to the person with a developmental disability, or to any other person or agency, if, in the
11 judgment of the community service provider or facility, the disclosure would not be detrimental
12 to the person with a developmental disability.

13 Section 93. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 If information is disclosed, the identity of the person to whom it pertains shall be protected
16 and may not be disclosed unless it is germane to the authorized purpose for which disclosure was
17 sought. If practicable, no other information may be disclosed unless it is germane to the
18 authorized purpose for which disclosure was made.

19 Section 94. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
20 as follows:

21 Any person receiving information made confidential by section 92 of this Act shall disclose
22 the information to others only to the extent consistent with the authorized purpose for which the
23 information was released.

24 Section 95. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
25 as follows:

1 The Legislature hereby finds that:

2 (1) Research does not support the long-term efficacy of aversive behavioral intervention;

3 (2) The use of aversive or abusive treatment raises disturbing legal and ethical issues, and
4 may well deprive the recipient of constitutional or statutory rights and be outside the
5 ethical guidelines imposed upon the treatment professional;

6 (3) Any person with a disability has the same right to be treated with dignity and respect
7 as any other citizen; and

8 (4) The use of aversive and abusive treatments on any person with a disability diminishes
9 the dignity and humanity of the treatment professional and the person with a disability.

10 The Legislature opposes any treatment or practice which violates the right to freedom from
11 harm. The Legislature promotes activities that lead to implementation and dissemination of
12 positive intervention alternatives.

13 Section 96. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
14 as follows:

15 No person may use aversive intervention techniques on a person with a developmental
16 disability.

17 Section 97. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
18 as follows:

19 The rights of any person with a developmental disability receiving services may only be
20 restricted as a result of due process in accordance with statute and the rules of the Department
21 of Human Services. The rights of any person with a developmental disability as specified in this
22 chapter may be suspended to protect that person from endangering self or others. In order to
23 provide specific services or supports to the person with a developmental disability, such rights
24 may be suspended only by due process that will promote the least restriction on the person's
25 rights.

1 Section 98. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
2 as follows:

3 Use of restraints may be applied only if a person with a developmental disability exhibits
4 destructive behavior and if alternative techniques including positive behavior intervention
5 techniques have failed.

6 Section 99. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
7 as follows:

8 Any behavior intervention program shall use, develop, and promote positive, respectful
9 approaches for teaching in every aspect of life.

10 Section 100. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
11 as follows:

12 Behavior intervention programs may only be implemented following the completion of a
13 comprehensive functional analysis if alternative nonrestrictive procedures have been proven to
14 be ineffective, and only with the informed consent of the person with a developmental disability,
15 if eighteen years of age or over and capable of giving informed consent, or the person's parent
16 or legal guardian. Behavior intervention programs shall be developed in conjunction with the
17 interdisciplinary team and implemented in accordance with section 97 of this Act.

18 Section 101. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 The use of any highly restrictive procedures, including restraints and time-out, shall be
21 described in written behavior intervention programs. Use of restraints shall be applied only in an
22 emergency if alternative techniques have failed. Physical restraint intended to restrict the
23 movement or normal functioning of a portion of a person's body through direct contact by staff,
24 shall be employed only if necessary to protect the person with a developmental disability from
25 immediate injury to self or others. No physical restraint may be employed as punishment, for the

1 convenience of staff, or as a substitute for a program of services and supports. Physical restraint
2 shall be applied only after alternative techniques have failed and only if such restraint is imposed
3 in the least possible restriction consistent with its purpose. Mechanical restraint using mechanical
4 devices intended to restrict the movement or normal functioning of a portion of a person's body
5 is subject to special review and oversight, as defined in rules promulgated pursuant to chapter
6 1-26. Any mechanical restraint shall be designed and used so as not to cause physical injury to
7 the person with a developmental disability and so as to cause the least possible discomfort. No
8 chemical restraint and medication may be used excessively, as punishment, for the convenience
9 of staff, as a substitute for a program, or in quantities that interfere with a person's
10 developmental program. In accordance with statute and the rules promulgated pursuant to
11 chapter 1-26, due process shall be assured pursuant to section 97 of this Act for the use of
12 physical, mechanical, or chemical restraints, including their use in an emergency or on a
13 continuing basis.

14 Section 102. That chapter 27B-8 be amended by adding thereto a NEW SECTION to read
15 as follows:

16 Time-out rooms used for separating a person with a developmental disability from other
17 persons receiving services and group activities may be employed only under close and direct staff
18 supervision and only as a technique in behavior intervention programs. No time-out room may
19 be used in an emergency situation. Behavior intervention programs utilizing a time-out procedure
20 may be implemented only if it incorporates a positive approach designed to result in the
21 acquisition.