

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Amend the Requirements for Approval of the Use of Physical Restraints

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 34-B MRSA §5605, sub-§14, as amended by PL 2003, c. 564, §3, is repealed.

Sec. 2. 34-B MRSA §5605, sub-§14-A is enacted to read:

14-A. Physical restraints. A person with mental retardation or autism is entitled to be free from a physical restraint unless:

A. The physical restraint is a short-term step to protect the person from imminent injury to that person or others; or

B. The physical restraint has been approved as a behavioral treatment program in accordance with this section.

A physical restraint may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services. A physical restraint may impose only the least possible restriction consistent with its purpose and must be removed as soon as the threat of imminent injury ends. A physical restraint may not cause physical injury to the person receiving services and must be designed to allow the greatest possible comfort and safety. The use of totally enclosed cribs and barred enclosures is prohibited in all circumstances.

Daily records of the use of physical restraints identified in paragraph A must be kept, which may be accomplished by meeting reportable event requirements.

Daily records of the use of physical restraints identified in paragraph B must be kept, and a summary of the daily records pertaining to the person must be made available for review by the person's planning team, as defined in section 5461, subsection 8-C, on a schedule determined by the team. The review by the personal planning team may occur no less frequently than quarterly. The summary of the daily records must state the type of physical restraint used, the duration of the use and the reasons for the use. A monthly summary of all daily records pertaining to all persons must be relayed to the Office of Advocacy.

Sec. 3. 34-B MRSA §5605, sub-§14-B is enacted to read:

14-B. Mechanical supports. Mechanical supports used in normative situations to achieve proper body position and balance are not considered physical restraints, but mechanical supports must be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment and circulation and allowance for change of position.

Sec. 4. 34-B MRSA §5605, sub-§14-C is enacted to read:

14-C. Safety devices. A safety device whose effect is to reduce or inhibit a person's movement in any way but whose purpose is to maintain or ensure the safety of the person is not considered behavioral treatment or a physical restraint. Safety devices include, but are not limited to, implements, garments, gates, barriers, locks or locking apparatus, alarms, helmets, masks, gloves, straps, belts or protective gloves whose purpose is to maintain the safety of the person. The department may adopt rules concerning the use and approval of safety devices. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUMMARY

This bill makes several changes in the statutes concerning the rights and protections of persons with mental retardation or autism. This bill establishes distinctions among physical restraints, mechanical supports and safety devices and describes each in a separate provision of the law. This bill removes the requirement in statute that a 3-person team approve the use of a safety device for a person with mental retardation or autism and delegates that authority to the Department of Health and Human Services, which may adopt rules concerning the use and approval of safety devices. Such rules are routine technical rules.

This bill clarifies the standards for the short-term use of physical restraints to prevent injury to the person being served or to others and prohibits entirely the use of totally enclosed cribs and barred enclosures. This bill requires that daily records of the use of physical restraints, either to prevent injury or as part of a behavioral treatment, be kept and reviewed at least quarterly by the person's planning team in a summary form. A monthly summary must be provided to the Department of Health and Human Services, Office of Advocacy.