

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2138

H.P. 1518

House of Representatives, January 8, 2008

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

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CRAVEN of Lewiston.
Cosponsored by Senator: SNOWE-MELLO of Androscoggin.

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

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3 repealed.

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

5 **14-A. Physical restraints.** A person with mental retardation or autism is entitled to
6 be free from a physical restraint unless:

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

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

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

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

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

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

28 **14-B. Mechanical supports.** Mechanical supports used in normative situations to
29 achieve proper body position and balance are not considered physical restraints, but
30 mechanical supports must be prescriptively designed and applied under the supervision of
31 a qualified professional with concern for principles of good body alignment and
32 circulation and allowance for change of position.

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

34 **14-C. Safety devices.** A safety device whose effect is to reduce or inhibit a person's
35 movement in any way but whose purpose is to maintain or ensure the safety of the person
36 is not considered behavioral treatment or a physical restraint. Safety devices include, but
37 are not limited to, implements, garments, gates, barriers, locks or locking apparatus,
38 alarms, helmets, masks, gloves, straps, belts or protective gloves whose purpose is to
39 maintain the safety of the person. The department may adopt rules concerning the use

1 and approval of safety devices. Rules adopted pursuant to this subsection are routine
2 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3

SUMMARY

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

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