

Bill No. SB 2012

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CHAMBER ACTION

Senate

House

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The Committee on Children and Families (Campbell) recommended the following **amendment to amendment** (422942):

Senate Amendment (with title amendment)

On page 92, between lines 8 and 9,

insert:

Section 35. Section 394.453, Florida Statutes, is amended to read:

394.453 Legislative intent.--It is the intent of the Legislature to authorize and direct the Department of Children and Family Services to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such persons be

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1 provided with emergency service and temporary detention for
2 evaluation when required; that they be admitted to treatment
3 facilities on a voluntary basis when extended or continuing
4 care is needed and unavailable in the community; that
5 involuntary placement be provided only when expert evaluation
6 determines that it is necessary; that any involuntary
7 treatment or examination be accomplished in a setting which is
8 clinically appropriate and most likely to facilitate the
9 person's return to the community as soon as possible; and that
10 individual dignity and human rights be guaranteed to all
11 persons who are admitted to mental health facilities or who
12 are being held under s. 394.463. It is the further intent of
13 the Legislature that the least restrictive means of
14 intervention be employed based on the individual needs of each
15 person, within the scope of available services. It is the
16 policy of this state that the use of restraint and seclusion
17 on clients is justified only as an emergency safety measure to
18 be used in response to imminent danger to the client or
19 others. It is, therefore, the intent of the Legislature to
20 achieve an ongoing reduction in the use of restraint and
21 seclusion in programs and facilities serving persons with
22 mental illness.

23 Section 36. Present subsections (28) through (33) of
24 section 394.455, Florida Statutes, are redesignated as
25 subsections (30) through (35), respectively, and new
26 subsections (28) and (29) are added to that section, to read:

27 394.455 Definitions.--As used in this part, unless the
28 context clearly requires otherwise, the term:

29 (28)(a) "Restraint" means a physical device, method,
30 or drug used to control behavior. A physical restraint is any
31 manual method or physical or mechanical device, material, or

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1 equipment attached or adjacent to the individual's body so
2 that he or she cannot easily remove the restraint and which
3 restricts freedom of movement or normal access to one's body.

4 (b) A drug used as a restraint is a medication used to
5 control the person's behavior or to restrict his or her
6 freedom of movement. Physically holding a person during a
7 procedure to forcibly administer psychotropic medication is a
8 physical restraint.

9 (c) Restraint does not include physical devices, such
10 as orthopedically prescribed appliances, surgical dressings
11 and bandages, supportive body bands, or other physical holding
12 when necessary for routine physical examinations and tests; or
13 for purposes of orthopedic, surgical, or other similar medical
14 treatment; when used to provide support for the achievement of
15 functional body position or proper balance; or when used to
16 protect a person from falling out of bed.

17 (29) "Seclusion" means the physical segregation of a
18 person in any fashion or involuntary isolation of a person in
19 a room or area from which the person is prevented from
20 leaving. The prevention may be by physical barrier or by a
21 staff member who is acting in a manner, or who is physically
22 situated, so as to prevent the person from leaving the room or
23 area. For purposes of this chapter, the term does not mean
24 isolation due to a person's medical condition or symptoms.

25 Section 37. Paragraph (b) of subsection (5) of section
26 394.457, Florida Statutes, is amended to read:

27 394.457 Operation and administration.--

28 (5) RULES.--

29 (b) The department shall adopt rules necessary for the
30 implementation and administration of the provisions of this
31 part, and a program subject to the provisions of this part

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1 shall not be permitted to operate unless rules designed to
 2 ensure the protection of the health, safety, and welfare of
 3 the patients treated through such program have been adopted.
 4 Rules adopted under this subsection must include provisions
 5 governing the use of restraint and seclusion which are
 6 consistent with recognized best practices and professional
 7 judgment; prohibit inherently dangerous restraint or seclusion
 8 procedures; establish limitations on the use and duration of
 9 restraint and seclusion; establish measures to ensure the
 10 safety of program participants and staff during an incident of
 11 restraint or seclusion; establish procedures for staff to
 12 follow before, during, and after incidents of restraint or
 13 seclusion; establish professional qualifications of and
 14 training for staff who may order or be engaged in the use of
 15 restraint or seclusion; and establish mandatory reporting,
 16 data-collection, and data-dissemination procedures and
 17 requirements. Rules adopted under this subsection must require
 18 that each instance of the use of restraint or seclusion be
 19 documented in the record of the patient.

20 Section 38. Paragraph (g) is added to subsection (1)
 21 of section 394.879, Florida Statutes, to read:

22 394.879 Rules; enforcement.--

23 (1) The department, in consultation with the agency,
 24 shall adopt rules pursuant to ss. 120.536(1) and 120.54 to
 25 implement the provisions of this chapter, including, at a
 26 minimum, rules providing standards to ensure that:

27 (g) The use of restraint and seclusion is consistent
 28 with recognized best practices and professional judgment; that
 29 inherently dangerous restraint or seclusion procedures are
 30 prohibited; that limitations are established on the use and
 31 duration of restraint and seclusion; that measures are

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1 established to ensure the safety of program participants and
 2 staff during an incident of restraint or seclusion; that
 3 procedures are created for staff to follow before, during, and
 4 after incidents of restraint or seclusion; that professional
 5 qualifications and training are established for staff who may
 6 order or be engaged in the use of restraint or seclusion; and
 7 that mandatory reporting, data-collection, and
 8 data-dissemination procedures and requirements are instituted.

9 Rules adopted under this section must require that any
 10 instance of the use of restraint or seclusion shall be
 11 documented in the record of the client.

12 Section 39. Present subsections (14) and (15) of
 13 section 400.960, Florida Statutes, are redesignated as
 14 subsections (15) and (17), respectively, and new subsections
 15 (14) and (16) are added to that section, to read:

16 400.960 Definitions.--As used in this part, the term:

17 (14)(a) "Restraint" means a physical device, method,
 18 or drug used to control behavior. A physical restraint is any
 19 manual method or physical or mechanical device, material, or
 20 equipment attached or adjacent to the individual's body so
 21 that he or she cannot easily remove the restraint and which
 22 restricts freedom of movement or normal access to one's body.

23 (b) A drug used as a restraint is a medication used to
 24 control the person's behavior or to restrict his or her
 25 freedom of movement. Physically holding a person during a
 26 procedure to forcibly administer psychotropic medication is a
 27 physical restraint.

28 (c) Restraint does not include physical devices, such
 29 as orthopedically prescribed appliances, surgical dressings
 30 and bandages, supportive body bands, or other physical holding
 31 when necessary for routine physical examinations and tests;

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1 for purposes of orthopedic, surgical, or other similar medical
 2 treatment; when used to provide support for the achievement of
 3 functional body position or proper balance; or when used to
 4 protect a person from falling out of bed.

5 (16) "Seclusion" means the physical segregation of a
 6 person in any fashion or the involuntary isolation of a person
 7 in a room or area from which the person is prevented from
 8 leaving. The prevention may be by physical barrier or by a
 9 staff member who is acting in a manner, or who is physically
 10 situated, so as to prevent the person from leaving the room or
 11 area. For purposes of this part, the term does not mean
 12 isolation due to a person's medical condition or symptoms.

13 Section 40. Subsection (2) of section 400.967, Florida
 14 Statutes, is amended to read:

15 400.967 Rules and classification of deficiencies.--

16 (2) Pursuant to the intention of the Legislature, the
 17 agency, in consultation with the Agency for Persons with
 18 Disabilities ~~Department of Children and Family Services and~~
 19 ~~the Department of Elderly Affairs~~, shall adopt and enforce
 20 rules to administer this part, which shall include reasonable
 21 and fair criteria governing:

22 (a) The location and construction of the facility;
 23 including fire and life safety, plumbing, heating, cooling,
 24 lighting, ventilation, and other housing conditions that will
 25 ensure the health, safety, and comfort of residents. The
 26 agency shall establish standards for facilities and equipment
 27 to increase the extent to which new facilities and a new wing
 28 or floor added to an existing facility after July 1, 2000, are
 29 structurally capable of serving as shelters only for
 30 residents, staff, and families of residents and staff, and
 31 equipped to be self-supporting during and immediately

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1 following disasters. The Agency for Health Care Administration
2 shall work with facilities licensed under this part and report
3 to the Governor and the Legislature by April 1, 2000, its
4 recommendations for cost-effective renovation standards to be
5 applied to existing facilities. In making such rules, the
6 agency shall be guided by criteria recommended by nationally
7 recognized, reputable professional groups and associations
8 having knowledge concerning such subject matters. The agency
9 shall update or revise such criteria as the need arises. All
10 facilities must comply with those lifesafety code requirements
11 and building code standards applicable at the time of approval
12 of their construction plans. The agency may require
13 alterations to a building if it determines that an existing
14 condition constitutes a distinct hazard to life, health, or
15 safety. The agency shall adopt fair and reasonable rules
16 setting forth conditions under which existing facilities
17 undergoing additions, alterations, conversions, renovations,
18 or repairs are required to comply with the most recent updated
19 or revised standards.

20 (b) The number and qualifications of all personnel,
21 including management, medical nursing, and other personnel,
22 having responsibility for any part of the care given to
23 residents.

24 (c) All sanitary conditions within the facility and
25 its surroundings, including water supply, sewage disposal,
26 food handling, and general hygiene, which will ensure the
27 health and comfort of residents.

28 (d) The equipment essential to the health and welfare
29 of the residents.

30 (e) A uniform accounting system.

31 (f) The care, treatment, and maintenance of residents

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1 and measurement of the quality and adequacy thereof.

2 (g) The preparation and annual update of a
3 comprehensive emergency management plan. The agency shall
4 adopt rules establishing minimum criteria for the plan after
5 consultation with the Department of Community Affairs. At a
6 minimum, the rules must provide for plan components that
7 address emergency evacuation transportation; adequate
8 sheltering arrangements; postdisaster activities, including
9 emergency power, food, and water; postdisaster transportation;
10 supplies; staffing; emergency equipment; individual
11 identification of residents and transfer of records; and
12 responding to family inquiries. The comprehensive emergency
13 management plan is subject to review and approval by the local
14 emergency management agency. During its review, the local
15 emergency management agency shall ensure that the following
16 agencies, at a minimum, are given the opportunity to review
17 the plan: the Department of Elderly Affairs, the Department of
18 Children and Family Services, the Agency for Health Care
19 Administration, the Agency for Persons with Disabilities, and
20 the Department of Community Affairs. Also, appropriate
21 volunteer organizations must be given the opportunity to
22 review the plan. The local emergency management agency shall
23 complete its review within 60 days and either approve the plan
24 or advise the facility of necessary revisions.

25 (h) Each licensee shall post its license in a
26 prominent place that is in clear and unobstructed public view
27 at or near the place where residents are being admitted to the
28 facility.

29 (i) The use of restraint and seclusion. Such rules
30 must be consistent with recognized best practices and
31 professional judgment; prohibit inherently dangerous restraint

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1 or seclusion procedures; establish limitations on the use and
 2 duration of restraint and seclusion; establish measures to
 3 ensure the safety of program participants and staff during an
 4 incident of restraint or seclusion; create procedures for
 5 staff to follow before, during, and after incidents of
 6 restraint or seclusion; establish professional qualifications
 7 of and training for staff who may order or be engaged in the
 8 use of restraint or seclusion; and provide for mandatory
 9 reporting, data-collection, and data-dissemination procedures
 10 and requirements. Rules adopted under this section must
 11 require that any instance of the use of restraint or seclusion
 12 shall be documented in the facility's record of the client.

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14 (Redesignate subsequent sections.)

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17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 On page 137, line 13, after the first semicolon,

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21 insert:

22 amending s. 394.453, F.S.; declaring that the
 23 policy of the state is to achieve an ongoing
 24 reduction of the use of restraint and seclusion
 25 on persons with mental illness who are served
 26 by programs and facilities operated, licensed,
 27 or monitored by the agency; amending s.
 28 394.455, F.S.; defining the terms "restraint"
 29 and "seclusion" for purposes of the Baker Act;
 30 amending s. 394.457, F.S.; requiring the
 31 Department of Children and Family Services to

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1 adopt rules for the use of restraint and
2 seclusion for cases handled under the Baker
3 Act; amending ss. 394.879 and 400.967, F.S.;
4 requiring that rules be adopted for the use of
5 restraint and seclusion; amending s. 400.960,
6 F.S.; defining the terms "restraint" and
7 "seclusion" for purposes of provisions
8 governing intermediate care facilities for
9 developmentally disabled persons;

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