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# A BILL FOR AN ACT

RELATING TO BEHAVIORAL SUPPORT REVIEW OF RESTRAINTS AND  
SECLUSION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 321, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4       **"PART       .   BEHAVIORAL SUPPORT REVIEW OF RESTRAINTS OR SECLUSION**  
5       **USED ON PERSONS WITH DEVELOPMENTAL OR INTELLECTUAL DISABILITIES**

6       **§321-       Definitions.** Whenever used in this part, unless  
7 the context otherwise requires:

8           "Department" means the department of health.

9           "Developmental disability" shall be as defined in section  
10 333F-1.

11          "Director" means the director of health or the director's  
12 designee.

13          "Intellectual disability" means significantly sub-average  
14 general intellectual functioning resulting in or associated with  
15 concurrent moderate, severe, or profound impairments in adaptive  
16 behavior and manifested during the developmental period.



1 "Person with developmental or intellectual disabilities"  
2 means a youth or an adult with a developmental or intellectual  
3 disability.

4 "Restraints" means the methods of restricting a person's  
5 freedom of movement by holding a person (manual or physical  
6 restraint); using a mechanical device; or using a psychotropic  
7 medication prescribed without the appropriate Diagnostic and  
8 Statistical Manual (DSM) diagnosis or prescribed on an as needed  
9 basis (chemical restraint). A restraint does not include  
10 briefly holding a person without undue force, in order to calm  
11 or comfort the person, or holding a person's hand to safely  
12 escort the person from one area to another.

13 "Seclusion" means any involuntary confinement to a room or  
14 area where one is physically prevented from leaving.

15 **§321- Behavioral support review.** The department may  
16 conduct multidisciplinary and multiagency reviews of restraints  
17 or seclusion of persons with developmental or intellectual  
18 disabilities to reduce the risk of harm or death to persons with  
19 developmental or intellectual disabilities.

20 **§321- Access to information.** (a) Upon written request  
21 of the director, all providers of residential supports, and  
22 state and county agencies, shall disclose to the department and



1 to those individuals appointed by the director to participate in  
2 the behavioral support review of a person with developmental or  
3 intellectual disabilities, the circumstances of restraints or  
4 seclusion used for a person with developmental or intellectual  
5 disabilities to allow the department to conduct  
6 multidisciplinary reviews of restraints or seclusion used for  
7 persons with developmental or intellectual disabilities pursuant  
8 to section 321-31 and this part.

9 (b) To the extent that this section conflicts with other  
10 state confidentiality laws, this section shall prevail.

11 **§321- Exception.** Information regarding an ongoing civil  
12 or criminal investigation shall be disclosed at the discretion  
13 of the applicable state, county, or federal law enforcement  
14 agency.

15 **§321- Use and review of information and records and**  
16 **activities pertaining to behavioral support review of persons**  
17 **with developmental or intellectual disabilities.** (a) Except as  
18 otherwise provided in this part, all information and records  
19 acquired by the department during its multidisciplinary,  
20 multiagency reviews of restraints or seclusion of persons with  
21 developmental or intellectual disabilities pursuant to this part



1 shall be kept confidential and may be disclosed only as  
2 necessary to carry out the purposes of this part.

3 (b) Information and statistical compilations of data from  
4 the multidisciplinary reviews of restraints or seclusion of  
5 persons with developmental or intellectual disabilities that do  
6 not contain any information that would permit the identification  
7 of any person shall be public records.

8 (c) No individual participating in the department's  
9 multidisciplinary review of the restraints or seclusion of a  
10 person with developmental or intellectual disabilities may be  
11 questioned in any civil or criminal proceeding regarding  
12 information presented in, or opinions formed, as a result of  
13 meetings of the multidisciplinary review of restraints or  
14 seclusion. Nothing in this subsection shall be construed to  
15 prevent a person from testifying to information obtained  
16 independently of the department's multidisciplinary behavioral  
17 support review, or that is public information, or where  
18 disclosure is required by law or court order.

19 (d) Information held by the department as a result of a  
20 multidisciplinary review of the restraints or seclusion of a  
21 person with developmental or intellectual disabilities conducted  
22 under this part shall not be subject to subpoena, discovery, or



1 introduction into evidence in any civil or criminal proceeding,  
2 except that information otherwise available from other sources  
3 shall not be immune from subpoena, discovery, or introduction  
4 into evidence through those sources solely because it was  
5 provided as required by this part.

6       **§321- Immunity from liability.** All agencies and  
7 individuals participating in multidisciplinary reviews of  
8 restraints or seclusion of persons with developmental or  
9 intellectual disabilities pursuant to this part shall be immune  
10 from civil or criminal liability for the use and review of  
11 information, records, and activities pertaining to behavioral  
12 support reviews of persons with developmental or intellectual  
13 disabilities as required under this part."

14       SECTION 2. This Act shall take effect on July 1, 2050.



**Report Title:**

Behavioral Support Review of Restraints and Seclusion

**Description:**

Establishes a behavioral support review process to assess the use of restraints and seclusion for individuals with developmental or intellectual disabilities. Provides disclosure, use, review, and immunity from liability provisions with respect to behavioral support review of persons with developmental or intellectual disabilities. Effective July 1, 2050. (HB2302 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

