
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 "Developmental period" is the stage of a person's life
12 commencing at birth and ending when the person attains the age
13 of twenty-two.

14 "Director" means the director of health or the director's
15 designee.

16 "Intellectual disability" means significantly sub-average
17 general intellectual functioning resulting in or associated with



1 concurrent moderate, severe, or profound impairments in adaptive
2 behavior and manifested during the developmental period.

3 "Person with developmental or intellectual disabilities"
4 means a youth or an adult with a developmental or intellectual
5 disability.

6 "Residential support services" means those services
7 provided in a family- or home-like setting to persons with
8 developmental or intellectual disabilities to facilitate the
9 acquisition, retention, or improvement of:

- 10 (1) Skills development;
- 11 (2) Socialization and relationships;
- 12 (3) Community participation and inclusion;
- 13 (4) Decision making, choice, and control;
- 14 (5) Health and safety; and
- 15 (6) Meaningful activities.

16 Residential support services may include services provided to
17 persons with developmental or intellectual disabilities in
18 state-licensed or state-certified facilities, independent living
19 settings, or shared living arrangements. Residential support
20 services shall not include payments for room and board.

21 "Restraints" means the methods of restricting a person's
22 freedom of movement by holding a person (manual or physical



1 restraint); using a mechanical device; or using a psychotropic
2 medication prescribed without the appropriate Diagnostic and
3 Statistical Manual diagnosis or prescribed on an as-needed basis
4 (chemical restraint). Restraints do not include briefly holding
5 a person without undue force, in order to calm or comfort the
6 person, or holding a person's hand to safely escort the person
7 from one area to another.

8 "Seclusion" means any involuntary confinement to a room or
9 area where a person is physically prevented from leaving.

10 **§321- Behavioral support review.** The department may
11 conduct multidisciplinary and multiagency reviews of restraints
12 or seclusion of persons with developmental or intellectual
13 disabilities to reduce the risk of harm or death to persons with
14 developmental or intellectual disabilities.

15 **§321- Access to information.** (a) Upon written request
16 of the director, all providers of residential support services
17 and state and county agencies shall disclose to the department,
18 and to those individuals appointed by the director to
19 participate in a behavioral support review of a person with
20 developmental or intellectual disabilities, the circumstances of
21 restraints or seclusion of a person with developmental or
22 intellectual disabilities to allow the department to conduct



1 multidisciplinary reviews of restraints or seclusions used for
2 persons with developmental or intellectual disabilities pursuant
3 to section 321-31 and this part.

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

6 **§321- Exception.** Information regarding an ongoing civil
7 or criminal investigation shall be disclosed at the discretion
8 of the applicable state, county, or federal law enforcement
9 agency.

10 **§321- Use and review of information and records and**
11 **activities pertaining to behavioral support review of persons**
12 **with developmental or intellectual disabilities.** (a) Except as
13 otherwise provided in this part, all information and records
14 acquired by the department during its multidisciplinary,
15 multiagency reviews of restraints or seclusions of persons with
16 developmental or intellectual disabilities pursuant to this part
17 shall be kept confidential and may be disclosed only as
18 necessary to carry out the purposes of this part.

19 (b) Information and statistical compilations of data from
20 the multidisciplinary reviews of restraints or seclusions of
21 persons with developmental or intellectual disabilities that do



1 not contain any information that would permit the identification
2 of any person shall be public records.

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

14 (d) Information held by the department as a result of a
15 multidisciplinary review of restraints or seclusions of a person
16 with developmental or intellectual disabilities conducted under
17 this part shall not be subject to subpoena, discovery, or
18 introduction into evidence in any civil or criminal proceeding,
19 except that information otherwise available from other sources
20 shall not be immune from subpoena, discovery, or introduction
21 into evidence through those sources solely because it was
22 provided as required by this part.



1 **§321- Immunity from liability.** All agencies and
2 individuals participating in multidisciplinary reviews of
3 restraints or seclusions of persons with developmental or
4 intellectual disabilities pursuant to this part shall not be
5 held civilly or criminally liable for providing information
6 required under this part."

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



Report Title:

Behavioral Support Review of Restraints and Seclusion

Description:

Authorizes a behavioral support review process to assess the use of restraints and seclusion of individuals with developmental or intellectual disabilities. Provides disclosure, use, review, and immunity from liability provisions with respect to behavioral support reviews. Effective July 1, 2050. (HB2302 HD2)

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