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# A BILL FOR AN ACT

RELATING TO BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH  
DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

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

- 1           SECTION 1. The department of health's position on behavior  
2 support is to ensure that behavior interventions are implemented  
3 appropriately to assist and support individuals receiving  
4 services and those providing support to them. This position:
- 5           (1) Emphasizes positive behavior supports that promote the  
6 growth, development, and independence of individuals;  
7 individual choice in daily decision-making; self-  
8 management; and individual responsibility for  
9 behaviors;
- 10          (2) Provides for working with persons with challenging  
11 behavior (with a focus on teaching replacement  
12 behaviors that serve as the function for what the  
13 individual is communicating rather than the  
14 suppression or elimination of undesirable behaviors),  
15 and specification of prohibited interventions; and
- 16          (3) Enables appropriate safeguards and oversight if  
17 aversive procedures (planned or crisis) are used, with



1           planning for the eventual elimination of seclusion and  
2           restraints.

3           When an individual with intellectual or developmental  
4           disabilities is a danger to oneself or to others, restraints or  
5           seclusion may be recommended. Before and after such methods are  
6           administered, however, a behavior support review committee  
7           should be convened to evaluate such cases and make  
8           recommendations.

9           The behavior support review committee membership may  
10          include a parent of an individual receiving service from the  
11          department of health's developmental disabilities division, a  
12          developmental disabilities division service provider who  
13          provides at least two services to participants, a community  
14          member with no direct involvement with the developmental  
15          disabilities division's waiver provider programs, a department  
16          of health facilitator with experience or training in best  
17          practices to support behaviors of individuals with developmental  
18          disabilities, a department of health case manager with  
19          experience in supporting participants with behavior concerns,  
20          and a person receiving services from the developmental  
21          disabilities division.





- 1 (1) Manual or physical restraint by holding a person to
- 2 restrict the person's freedom of movement;
- 3 (2) Application of a device specifically designed to
- 4 safely restrain or assist in restraining; or
- 5 (3) Chemical restraint by using a psychotropic medication
- 6 prescribed without the appropriate Diagnostic and
- 7 Statistical Manual of Mental Disorders diagnosis or
- 8 prescribed on an as needed basis;
- 9 provided that restraint does not include brief and minimally
- 10 restrictive physical contact in order to calm or comfort the
- 11 person, or holding a person's hand to safely escort the person
- 12 from one area to another.

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

15 **§321- Behavior support review.** The department of health  
16 may convene a committee to conduct multidisciplinary and  
17 multiagency reviews of restraints or seclusion of persons with  
18 developmental or intellectual disabilities in order to ensure  
19 appropriate use and to reduce the risk of harm or death to  
20 persons with developmental or intellectual disabilities.



1           **§321- Access to information.** (a) Upon written request  
2 of the director, all providers of residential supports and state  
3 and county agencies shall disclose to the department and those  
4 individuals appointed by the director to participate in the  
5 behavior support review committee of a person with developmental  
6 or intellectual disabilities the circumstances of restraints or  
7 seclusion used or to be used for a person with developmental or  
8 intellectual disabilities to allow the department to conduct  
9 multidisciplinary reviews of restraints or seclusion used or to  
10 be used for persons with developmental or intellectual  
11 disabilities pursuant to section 321-31 and this part.

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

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

18           **§321- Use and review of information and records and**  
19 **activities pertaining to behavior support review of persons with**  
20 **developmental or intellectual disabilities.** (a) Except as  
21 otherwise provided in this part, all information and records



1 acquired by the department during its multidisciplinary,  
2 multiagency reviews of the restraint or seclusion of persons  
3 with developmental or intellectual disabilities pursuant to this  
4 part shall be kept confidential and may be disclosed only as  
5 necessary to carry out the purposes of this part.

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

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



1 (d) Information held by the department as a result of a  
2 multidisciplinary review of the restraint or seclusion of a  
3 person with developmental or intellectual disabilities conducted  
4 under this part shall not be subject to subpoena, discovery, or  
5 introduction into evidence in any civil or criminal proceeding.

6 **§321- Immunity from liability.** All agencies and  
7 individuals participating in multidisciplinary reviews of the  
8 restraint 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 and records pertaining to behavior support review of  
12 persons with developmental or intellectual disabilities as  
13 required under this part. All agencies and individuals  
14 participating in multidisciplinary reviews or seclusions of  
15 persons with developmental or intellectual disabilities pursuant  
16 to this part shall be presumed to be acting in good faith and  
17 shall be immune from civil liability for taking or recommending  
18 actions as part of the behavior support review committee. The  
19 presumption of good faith may be rebutted upon a showing by  
20 preponderance of the evidence that the agency or individual



1 relied upon information or opinion that it knew was false or  
2 misleading."

3 SECTION 3. This Act shall take effect upon its approval.





**Report Title:**

Behavior Support Review Committee for Persons with Developmental or Intellectual Disabilities

**Description:**

Authorizes the department of health to establish a behavior support review process to conduct multidisciplinary reviews of the restraint or seclusion of persons with developmental or intellectual disabilities. Exempts those who participate in the reviews from liability. (SD1)

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

