

BILL ANALYSIS

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S.B. 751
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In December 2008, the United States Department of Justice found fault with the liberal use, type, and purpose of restraints used in Texas's state-run system that serves persons with intellectual disabilities. From January through September 2008, a total of 10,143 restraints were applied to 751 consumers. The use of restraints actually increased in some facilities, despite a similar report released in December 2006, that documented similar issues.

Currently, the Department of Aging and Disability Services (DADS) allows state school staff to include physical restraints in consumer behavior plans. Mechanical restraints are regarded as the most restrictive type of restraints and increasingly are forbidden by a growing number of providers. Yet, in Texas' state school system, mechanical restraints account for a high percentage of all restraints used. Residents have suffered broken bones, black eyes, and even death as a result of poor restraint policies. Moreover, there is a causal relationship between the system's failure to coordinate communication services with behavioral supports and the high use of restraints.

As proposed, S.B. 751 prohibits the use of certain physical restraints in state schools. This bill also requires a state school to report to the executive commissioner of the Health and Human Services Commission each incident in which a physical or a mechanical restraint is administered to a resident of a state school.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 592.102 and 592.105, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 592, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.101. DEFINITION. Defines "executive commissioner."

Sec. 592.102. USE OF RESTRAINTS. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to ensure that a mechanical or physical restraint is not administered to a resident of a state school unless the restraint is necessary to prevent imminent physical injury to the resident or another, and the least restrictive restraint effective to prevent imminent physical injury; the administration of a mechanical or physical restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates; and a mechanical or physical restraint is not administered to a resident of a state school as punishment or as part of a behavior plan.

(b) Requires the executive commissioner to adopt rules to prohibit the use of prone and supine holds on a resident of a state school except as transitional holds.

Sec. 592.103. STANDING ORDERS FOR RESTRAINTS PROHIBITED. (a) Prohibits a person from issuing a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state school.

(b) Prohibits a person from administering mechanical or physical restraints to a resident of a state school pursuant to a standing order to administer restraints on an as-needed basis.

Sec. 592.104. STRAIGHTJACKETS PROHIBITED. Prohibits a person from using a straightjacket to restrain a resident of a state school.

Sec. 592.105. DUTY TO REPORT. Requires a state school to report to the executive commissioner each incident in which a physical or a mechanical restraint is administered to a resident of a state school. Requires that the report contain information and be in the form required by rules of the executive commissioner.

Sec. 592.106. CONFLICT WITH OTHER LAW. Provides that to the extent of a conflict between this subchapter and Chapter 322 (Use of Restraint and Seclusion in Certain Health Care Facilities), this subchapter controls.

SECTION 2. Requires the executive commissioner to adopt rules required under Sections 592.102 and 592.105, Health and Safety Code, as added by this Act, not later than January 1, 2010.

SECTION 3. Effective date: upon passage or September 1, 2009.