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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- RIGHT TO FREEDOM FROM
RESTRAINT ACT

Introduced By: Representatives Naughton, Valencia, E Coderre, Slater, and Gallison

Date Introduced: May 08, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 72.11

4 RIGHT TO FREEDOM FROM RESTRAINT ACT

5 **42-72.11-1. Short title.** -- This chapter shall be known and may be cited as the "Right to
6 Freedom from Restraint Act."

7 **42-72.11-2. Fundamental purpose.** -- This chapter is enacted to protect and promote the
8 right of each person who is served by a covered facility to be free from physical or mental abuse,
9 corporal punishment, involuntary seclusion, and any physical or chemical restraints (as defined in
10 this chapter).

11 **42-72.11-3. Definitions.** -- For the purposes of this chapter:

12 (1) "Service provider" means any person employed or contracted by a covered facility to
13 provide support or care, residential support, education, or direct supervision.

14 (2) "Covered facility" means any agency, organization, or public or private entity,
15 regardless of the state agency under whose authority its license or certification is established, that
16 provides support or care, residential support, education, or direct supervision.

17 (3) "Physical restraint" means the use of a staff member's body to immobilize or reduce
18 the free movement of a person's arms, legs, torso, or head, in order to ensure the physical safety

1 of that person or other individual in the facility. The term does not include:

2 (i) Briefly holding a person in order to calm or comfort the person; or

3 (ii) A physical escort, such as the temporary touching or holding of the hand, wrist, arm,

4 shoulder, or back for the purpose of inducing a person to walk to a safe location.

5 (4) "Mechanical restraint" means any mechanical restriction that immobilizes or reduces

6 the free movement of a person's arms, legs, torso, or head. This term does not include:

7 (i) Medical devices, including, but not limited to, supports prescribed by a health care

8 provider to achieve proper body position or balance;

9 (ii) Helmets or other protective gear used to protect a person from injuries due to a fall; or

10 (iii) Helmets, mitts and similar devices used to prevent self-injury when the device is part

11 of a documented treatment plan and is the least restrictive means available to prevent the self-

12 injury.

13 (5) "Life threatening physical restraint" means any physical restraint or hold on a person

14 that may cause death, including prone restraint or any restraint that is contraindicated by a

15 person's physical or mental health.

16 (6) "Chemical restraint" means a medication used to control behavior or restrict the

17 patient's freedom of movement that is not a standard treatment for the person's medical or

18 psychiatric condition.

19 (7) "Seclusion" means the involuntary confinement in a room in a covered facility,

20 whether alone or with staff supervision, in a manner that prevents the person from leaving. This

21 definition does not pertain to the use of "time out" as an acceptable form of short-term behavioral

22 management.

23 (8) "Time out" means the brief voluntary separation designed to help the person de-

24 escalate. During the "time out," a person's freedom of movement is not restricted and the person

25 need not be directly supervised, but must be visually monitored.

26 **42-72.11-4. Use of restraints. --** (a) No service provider may use a life-threatening

27 physical restraint, any mechanical restraint, or any chemical restraint at any time.

28 (b) After January 1, 2014, no service provider shall administer a restraint on a person

29 unless trained in accordance with the provisions of this chapter.

30 (c) No service provider shall administer a physical restraint on a person except to prevent

31 imminent risk of serious physical danger to the individual or other person.

32 (d) All de-escalation techniques and less restrictive interventions available must be

33 utilized prior to any physical restraint.

34 (e) Any use of restraint on a person must be in accordance with safe and appropriate

1 restraining techniques and be administered only by service providers that have both initial and
2 ongoing education and training in the proper and safe use of restraints as established in this
3 chapter.

4 (f) The condition of the person in a restraint must be continually assessed, monitored, and
5 reevaluated and the restriction of movement or activity by restraint must be ended at the earliest
6 possible time, considering the physical safety of the person being restrained and other individuals.

7 For the purposes of this section, "monitor" means:

8 (1) Direct observation; or

9 (2) Observation by way of video monitoring within physical proximity sufficient to
10 provide aid as may be needed;

11 (g) Restraints may not be written as a standing order or on "as needed" (PRN) basis, in a
12 Behavioral Intervention Plan (BIP), or as part of any health care, treatment, or educational plan;
13 and

14 (h) All restraints must be recorded by the individuals administering the restraints and
15 reviewed by supervisory and medical personnel immediately. A debriefing must occur with all
16 staff involved in the restraint, supervisory personnel, medical staff, and the individual restrained,
17 as well as family members, guardians, advocates, and any other appropriate individuals within
18 seventy-two (72) hours after the restraint was administered.

19 **42-72.11-5. Seclusion.** -- No service provider may cause the involuntary placement of a
20 person in seclusion.

21 **42-72.11-6. Recording and data collection.** -- (a) Any use of restraint or seclusion on a
22 person must be documented. This documentation must be maintained by the covered facility and
23 shall be submitted electronically to the licensing agency within four (4) days. The following
24 information must be included:

25 (1) The name of the person restrained;

26 (2) The name of the covered facility;

27 (3) The names of the staff participating in the restraint;

28 (4) The names of other staff present (including medical professionals);

29 (5) The date and time of the restraint;

30 (6) The length of time of the restraint;

31 (7) The location of the restraint;

32 (8) The nature of the emergency and what steps were taken to prevent the emergency
33 from arising if there were indications that such an emergency was likely to arise;

34 (9) The attempts of de-escalation and positive behavioral supports utilized;

- 1 (10) When and how the family or advocate was contacted;
2 (11) Who attended the debriefing and when the debriefing occurred; and
3 (12) The outcome of the debriefing.
4 (b) If the use of restraint or seclusion results in serious physical injury or death to the
5 person, the covered facility shall report the incident immediately to the director of the state
6 agency that has jurisdiction or supervisory control over the covered facility. The director shall
7 report any incidence of serious injury or death to the attorney general, and if a child, to the child
8 advocate.

9 **42-72.11-7. Training and policies.** -- (a) Each covered facility shall:

- 10 (1) Develop policies and procedures that establish monitoring, documentation, reporting,
11 and internal review of the use of restraint and seclusion in accordance with this chapter;
12 (2) Require training of all service providers in the reduction/elimination of restraint and
13 seclusion. The training shall include, but not be limited to:
14 (i) Leadership towards organizational change;
15 (ii) Use of data to inform practice;
16 (iii) Workforce development;
17 (iv) Use of prevention tools;
18 (v) Inclusion of individuals, families, and advocates; and
19 (vi) Debriefing techniques and outcomes.
20 (3) Make the policies and procedures required under subdivision (a)(1) available to the
21 director of the state agency that has jurisdiction or supervisory control over the covered facility.

22 **42-72.11-8. Penalties.** -- (a) Any covered facility that does not comply with the
23 provisions of this chapter is subject to licensing action, including, but not limited to, license or
24 certification revocation, by the agency or department of state government that has jurisdiction or
25 supervisory control over the covered facility.

26 (b) Any service provider who willfully and intentionally violates the provisions of this
27 chapter, and by reason of that violation inflicts physical injury upon a person, shall, upon
28 conviction of the violation be fined a sum not exceeding five hundred dollars (\$500) and/or
29 imprisoned for a term not exceeding six (6) months. However, if the service provider is
30 exonerated, all costs incurred in defense of these charges shall be paid by the covered facility.

31 (c) Nothing contained in this chapter shall be construed to limit or restrict any criminal or
32 civil action available to an appropriate party under applicable state law.

33 **42-72.11-9. Rules and regulations.** -- The office of health and human services, the
34 department of education, the department of children, youth, and families, the department of

1 [human services, the department of health, and the department of behavioral healthcare,](#)
2 [developmental disabilities and hospitals shall promulgate rules and regulations pursuant to the](#)
3 [Administrative Procedures Act, title 42, chapter 35, on or before January 1, 2014, to implement](#)
4 [the intent of this chapter.](#)

5 SECTION 2. Section 40.1-26-3 of the General Laws in Chapter 40.1-26 entitled "Rights
6 for Persons with Developmental Disabilities" is hereby amended to read as follows:

7 **40.1-26-3. Participants' rights.** -- In addition to any other rights provided by state or
8 federal laws, a participant as defined in this chapter shall be entitled to the following rights:

9 (1) To be treated with dignity, respect for privacy and have the right to a safe and
10 supportive environment;

11 (2) To be free from verbal and physical abuse;

12 (3) (i) To engage in any activity including employment, appropriate to his or her age, and
13 interests in the most integrated community setting;

14 (ii) No participant shall be required to perform labor, which involves the essential
15 operation and maintenance of the agency or the regular supervision or care of other participants.
16 Participants may however, be requested to perform labor involving normal housekeeping and
17 home maintenance functions if such responsibilities are documented in the participant's
18 individualized plan;

19 (4) To participate in the development of his or her individualized plan and to provide
20 informed consent to its implementation or to have an advocate provide informed consent if the
21 participant is not competent to do so;

22 (5) To have access to his or her individualized plan and other medical, social, financial,
23 vocational, psychiatric, or other information included in the file maintained by the agency;

24 (6) To give written informed consent prior to the imposition of any plan designed to
25 modify behavior, including those which utilizes aversive techniques or impairs the participant's
26 liberty or to have an advocate provide written informed consent if the participant is not competent
27 to do so. Provided, however, that if the participant is competent to provide consent but cannot
28 provide written consent, the agency shall accept an alternate form of consent and document in the
29 participant's record how such consent was obtained;

30 (7) To register a complaint regarding an alleged violation of rights through the grievance
31 procedure delineated in section 40.1-26-5;

32 ~~(8) To be free from unnecessary restraint. Restraints shall not be employed as~~
33 ~~punishment, for the convenience of the staff, or as a substitute for an individualized plan.~~
34 ~~Restraints shall impose the least possible restrictions consistent with their purpose and shall be~~

1 ~~removed when the emergency ends. Restraints shall not cause physical injury to the participant~~
2 ~~and shall be designed to allow the greatest possible comfort. Restraints shall be subject to the~~
3 ~~following conditions:~~

4 ~~(i) Physical restraint shall be employed only in emergencies to protect the participant or~~
5 ~~others from imminent injury or when prescribed by a physician, when necessary, during the~~
6 ~~conduct of a specific medical or surgical procedure or if necessary for participant protection~~
7 ~~during the time that a medical condition exists;~~

8 ~~(ii) Chemical restraint shall only be used when prescribed by a physician in extreme~~
9 ~~emergencies in which physical restraint is not possible and the harmful effects of the emergency~~
10 ~~clearly outweigh the potential harmful effects of the chemical restraints;~~

11 ~~(iii) No participant shall be placed in seclusion;~~

12 ~~(iv) The agency shall have a written policy that defines the use of restraints, the staff~~
13 ~~members who may authorize their use, and a mechanism for monitoring and controlling their use;~~

14 ~~(v) All orders for restraint as well as the required frequency of staff observation of the~~
15 ~~participant shall be written; [To be free from restraint in accordance with chapter 42-72.11.](#)~~

16 (9) To have reasonable access to telephone communication;

17 (10) To receive visitors of a participant's choosing at all reasonable hours;

18 (11) To keep and be allowed to spend a reasonable amount of one's own money;

19 (12) To be provided advance written notice explaining the reason(s) why the participant
20 is no longer eligible for service from the agency;

21 (13) To religious freedom and practice;

22 (14) To communicate by sealed mail or otherwise with persons of one's choosing;

23 (15) To select and wear one's own clothing and to keep and use one's own personal
24 possessions;

25 (16) To have reasonable, prompt access to current newspapers, magazines and radio and
26 television programming;

27 (17) To have opportunities for physical exercise and outdoor recreation;

28 (18) (i) To provide informed consent prior to the imposition of any invasive medical
29 treatment including any surgical procedure or to have a legal guardian, or in the absence of a legal
30 guardian, a relative as defined in this chapter, provide informed consent if the participant is not
31 competent to do so. Information upon which a participant shall make necessary treatment and/or
32 surgery decisions shall be presented to the participant in a manner consistent with his or her
33 learning style and shall include, but not be limited to:

34 (A) The nature and consequences of the procedure(s);

1 (B) The risks, benefits and purpose of the procedure(s); and

2 (C) Alternate procedures available;

3 (ii) The informed consent of a participant or his or her legal guardian or, in the absence
4 of a legal guardian, a relative as defined in this chapter, may be withdrawn at any time, with or
5 without cause, prior to treatment. The absence of informed consent notwithstanding, a licensed
6 and qualified physician may render emergency medical care or treatment to any participant who
7 has been injured or who is suffering from an acute illness, disease, or condition if, within a
8 reasonable degree of medical certainty, delay in initiation of emergency medical care or treatment
9 would endanger the health of the participant;

10 (19) Each participant shall have a central record. The record shall include data pertaining
11 to admissions and such other information as may be required under regulations by the
12 department;

13 (20) Admissions -- As part of the procedure for the admission of a participant to an
14 agency, each participant or applicant, or advocate if the participant or applicant is not competent,
15 shall be fully informed, orally and in writing, of all rules, regulations, and policies governing
16 participant conduct and responsibilities, including grounds for dismissal, procedures for
17 discharge, and all anticipated financial charges, including all costs not covered under federal
18 and/or state programs, by other third party payors or by the agency's basic per diem rate. The
19 written notice shall include information regarding the participant's or applicant's right to appeal
20 the admission or dismissal decisions of the agency;

21 (21) Upon termination of services to or death of a participant, a final accounting shall be
22 made of all personal effects and/or money belonging to the participant held by the agency. All
23 personal effects and/or money including interest shall be promptly released to the participant or
24 his or her heirs;

25 (22) Nothing in this chapter shall preclude intervention in the form of appropriate and
26 reasonable restraint should it be necessary to protect individuals from physical injury to
27 themselves or others.

28 SECTION 3. Section 42-72-15 of the General Laws in Chapter 42-72 entitled
29 "Department of Children, Youth, and Families" is hereby amended to read as follows:

30 **42-72-15. Children's bill of rights.** -- (a) No child placed or treated under the
31 supervision of the department in any public or private facility shall be deprived of any personal
32 property or civil rights, except in accordance with due process.

33 (b) Each child placed or treated under the supervision of the department in any public or
34 private facility shall receive humane and dignified treatment at all times, with full respect for the

1 child's personal dignity and right to privacy, consistent with the child's treatment plan.

2 (c) Each child placed in a secure facility under the supervision of the department shall be
3 permitted to communicate with any individual, group, or agency consistent with the child's
4 treatment objectives; shall be provided writing materials and postage; and shall be permitted to
5 make or receive telephone calls to or from his or her attorneys, guardians ad litem, special
6 advocates, or child advocate at any reasonable time.

7 (d) The department shall adopt rules and regulations pursuant to the Administrative
8 Procedures Act, title 42, chapter 35, regarding children placed in secure facilities to specify the
9 following:

10 (1) ~~When a child may be placed in restraint or seclusion or when force may be used upon~~
11 ~~a child~~ [Restraint regulations in accordance with chapter 42-72.11;](#)

12 (2) When the head of a facility may limit the use or receipt of mail by any child and a
13 procedure for return of unopened mail; and

14 (3) When the head of a facility may restrict the use of a telephone by any child.

15 (e) A copy of any order placing a child at a secure facility under the supervision of the
16 department in restraint or seclusion shall be made a part of the child's permanent clinical record.
17 In addition, any special restriction on the use or receipt of mail or telephone calls shall be noted in
18 writing, signed by the head of the facility or the facility head's designee, and made a part of the
19 child's permanent clinical record.

20 (f) Each child placed or treated in a secure facility under the supervision of the
21 department shall be permitted to receive visitors subject to reasonable restriction consistent with
22 the child's treatment plan. The head of each facility shall establish visiting hours and inform all
23 children and their families and other visitors of these hours. Any special restrictions shall be
24 noted in writing, signed by the head of the facility or his or her designee, and made a part of the
25 child's permanent clinical record.

26 (g) Each child may receive his or her clergyman, attorney, guardian ad litem, special
27 advocate, or child advocate at any reasonable time.

28 (h) No person shall be denied employment, housing, civil service rank, any license or
29 permit, including a professional license, or any other civil or legal right, solely because of a
30 present or past placement with the department except as otherwise provided by statute.

31 (i) Each child under the supervision of the department shall have the right to counsel,
32 and the right to receive visits from physicians and mental health professionals.

33 (j) Each child shall have a right to a hearing pursuant to rules and regulations
34 promulgated by the department if the child is involuntarily transferred by the department to any

1 facility outside of the state in accordance with the procedure set forth in section 42-72-14.

2 (k) The children's bill of rights shall be posted in a conspicuous place within any secure
3 facility for the residential housing of children.

4 (l) Every deliverer of services with whom the department enters into a purchased
5 services agreement shall agree, in writing, to observe and post in a conspicuous place, the
6 children's bill of rights.

7 (m) Any child aggrieved by a violation of the children's bill of rights may petition the
8 family court for appropriate equitable relief. The family court shall have exclusive original
9 jurisdiction, notwithstanding any remedy contained in chapter 35 of this title.

10 (n) A child victim or witness shall be afforded the protections of section 12-28-9 under
11 the direction of the department of children, youth, and families, and the department shall advise
12 the court and the police and the prosecutor on the capacity of the child victim to understand and
13 participate in the investigation and in the court proceedings and of the potential effect of the
14 proceedings on the child.

15 (o) Every child placed in the care of the department of children, youth, and families shall
16 be entitled to a free appropriate education, in accordance with state and federal law. Immediately
17 upon the assumption of that care, the department shall provide for the enrollment of each child in
18 a school program. During the time that the child shall remain in that care, the department and
19 appropriate state and local education agencies shall coordinate their efforts in order to provide for
20 the timely initiation and continuation of educational services.

21 (p) No person shall be denied access to available treatment for an alcohol or drug related
22 condition, solely because of a present or past placement with the department.

23 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO STATE AFFAIRS AND GOVERNMENT -- RIGHT TO FREEDOM FROM
RESTRAINT ACT

1 This act would protect and promote the right of each person who is served by a covered
2 facility to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and
3 any physical or chemical restraints.

4 This act would take effect upon passage.

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