

SENATE BILL 852

By Black

AN ACT to amend Tennessee Code Annotated, Title 33,
Chapter 8 and Title 37, Chapter 5, relative to
children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 5, is amended by adding a
new part as follows:

§ 37-5-701.

This part shall be known and may be cited as the Isolation and Restraint
Modernization and Positive Behavioral Supports Act.

§ 37-5-702.

The purposes of this part are:

- (1) To ensure that every child in the department's care is free from the
unreasonable, unsafe and unwarranted uses of isolation and restraint practices;
- (2) To encourage the use of positive behavioral interventions and support
methods in the department;
- (3) To develop properly trained staff in order to promote positive behavioral
supports that reduce dependence on isolation and restraint practices; and
- (4) To ensure that staff is properly trained to protect the child, staff and others
from physical harm, if isolation or restraint is necessary.

§ 37-5-703.

For the purposes of this part, unless the context otherwise requires:

- (1) Chemical restraint means a medication that is prescribed to restrict a
child's freedom of movement for the control of extreme violent physical behavior.

Chemical restraints are medications used in addition to, or in replacement of, a child's regular drug regimen to control extreme violent physical behavior. The medications that comprise the child's regular medical regimen, including PRN medications, are not considered chemical restraints, even if their purpose is to treat ongoing behavioral symptoms;

(2) Isolation or seclusion means the confinement of a child alone in a room or an area where the child is physically prevented from leaving. This definition is not limited to instances in which a child is confined by a locked or closed door. Isolation does not include time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual child from others;

(3) Mechanical restraint means the application of a mechanical device, material or equipment attached or adjacent to the child's body, including ambulatory restraints, which the child cannot easily remove and that restrict freedom of movement or normal access to the child's body. Mechanical restraint does not include the use of restraints for medical immobilization, adaptive support, or medical protection;

(4) Noxious substance means the use of any defense spray or substance as defined by departmental rule;

(5) Physical holding restraint means the use of body contact by department staff with a child to restrict freedom of movement or normal access to the child's body; and

(6) Department staff means an individual employed on a full-time or part-time basis by the department of children's services, a foster parent, or an

employee of any agencies which have contracted with the department to provide services for children.

§ 37-5-704.

(a) A child may be restrained or isolated, only if the restraint or isolation is provided for in the child's family services plan, except that the child may be restrained or isolated in emergency situations, if necessary to assure the physical safety of the child or others nearby.

(b)

(1) If department staff imposes restraints or isolation in an emergency situation, the department shall immediately contact appropriate staff who is designated under department rules to authorize the isolation or restraint. Such staff authorized by department rules shall see and evaluate the child's condition within a reasonable time after the intervention and the child's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used. Department staff shall be held harmless if reasonable effort has been made to comply with this subdivision (b)(1).

(2) If the child's family services plan does not provide for the use of isolation or restraint for the behavior precipitating such action or if department staff are required to use isolation or restraint over an extended period of time as determined by department rules, then a family services plan meeting shall be convened within ten (10) days following the use of the isolation or restraint. If the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law.

(3)

(A) Department staff may report a suspected crime by calling a law enforcement official; or

(B) Department staff may file a juvenile petition against a child only after conducting a manifestation determination that results in a determination that the behavior that resulted in the act requiring disciplinary action was not caused by a disability the child may have.

(c)

(1) Department staff who must isolate or restrain a child, whether or not the isolation or restraint was in an emergency situation or provided for in the child's family services plan, shall report the incident to the child's case manager or the department's designee who shall record the use of the isolation or restraint and the facts surrounding such use. A copy of the record shall be made available at family services plan meetings and upon the request of the child's parent or legal guardian.

(2) If the child's case manager, other department staff designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint have reason to believe that the isolation or restraint was unreasonable, unsafe or unwarranted, and the isolation or restraint caused injury to the child, the incident shall be reported pursuant to § 37-1-403.

(3) Department staff shall remain in the physical presence of any restrained child and shall continuously observe a child who is in isolation or being restrained to monitor the health and well-being of the child.

§ 37-5-705.

(a) Administering a chemical restraint to a child is prohibited; provided, that nothing in this subsection (a) shall prohibit the administration of a chemical restraint

when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.

(b) Administering a noxious substance to a child is prohibited.

(c) The use of any mechanical restraint on a child is prohibited.

(d) Any form of life threatening restraint, including restraint that restricts the flow of air into a person's lungs, whether by chest compression or any other means, to a child is prohibited.

(e)

(1) The use of isolation or physical holding restraint as a means of coercion, punishment, convenience or retaliation on a child is prohibited.

(2)

(A) The use of physical holding restraint in the following circumstances is not prohibited:

(i) The brief holding by an adult in order to calm or comfort;

(ii) The minimum contact necessary to physically escort a child from one area to another;

(iii) Assisting a child in completing a task or response if the child does not resist, or resistance is minimal in intensity or duration; or

(iv) Holding a child for a brief time in order to prevent any impulsive behavior that threatens the child's immediate safety.

(B) The facility is not required to notify the child's parent or guardian pursuant to § 37-5-704 in any of the circumstances listed in subdivision (e)(2)(A).

(f) The use of a locked door, or use of any physical structure that substantially accomplishes the intent of locking a child in a room or structure, to isolate or seclude a child is prohibited.

(g) Notwithstanding this section, actions undertaken by department staff to break up a fight or to take a weapon from a child are not prohibited; however, these acts shall be reported.

§ 37-5-706.

The department of children's services shall promulgate rules and regulations concerning the use of isolation or restraint with children so that isolation or restraint is not used when such procedures are unsafe, unreasonable or unwarranted. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Title 33, Chapter 8, is amended by adding a new part as follows:

§ 33-8-401.

This part shall be known and may be cited as the Mental Health Care Isolation and Restraint Modernization and Positive Behavioral Supports Act.

§ 33-8-402.

The purposes of this part are:

(1) To ensure that every child in mental health care is free from the unreasonable, unsafe and unwarranted uses of isolation and restraint practices;

(2) To encourage the use of positive behavioral interventions and support methods in mental health care;

(3) To develop properly trained mental health staff in order to promote positive behavioral supports that reduce dependence on isolation and restraint practices; and

(4) To ensure that mental health staff is properly trained to protect the child, staff and others from physical harm, if isolation or restraint is necessary.

§ 33-8-403.

For the purposes of this part, unless the context otherwise requires:

(1) Chemical restraint means a medication that is prescribed to restrict a child's freedom of movement for the control of extreme violent physical behavior. Chemical restraints are medications used in addition to, or in replacement of, a child's regular drug regimen to control extreme violent physical behavior. The medications that comprise the child's regular medical regimen, including PRN medications, are not considered chemical restraints, even if their purpose is to treat ongoing behavioral symptoms;

(2) Isolation or seclusion means the confinement of a child alone in a room or an area where the child is physically prevented from leaving. This definition is not limited to instances in which a child is confined by a locked or closed door. Isolation does not include time-out, a behavior management procedure in which the opportunity for positive reinforcement is withheld, contingent upon the demonstration of undesired behavior. Time-out may involve the voluntary separation of an individual child from others;

(3) Mechanical restraint means the application of a mechanical device, material or equipment attached or adjacent to the child's body, including ambulatory restraints, which the child cannot easily remove and that restrict freedom of movement or normal access to the child's body. Mechanical restraint does not include the use of restraints for medical immobilization, adaptive support, or medical protection;

(4) Mental health facility means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, halfway house, or any other entity that provides a mental health or developmental disabilities services;

(5) Noxious substance means the use of any defense spray or substance as defined by departmental rule;

(6) Physical holding restraint means the use of body contact by mental health staff with a child to restrict freedom of movement or normal access to the child's body; and

(7) Mental health staff means an individual employed on a full-time or part-time basis by a mental health facility.

§ 33-8-404.

(a) A child may be restrained or isolated, only if the restraint or isolation is provided for in the child's treatment plan, except that the child may be restrained or isolated in emergency situations, if necessary to assure the physical safety of the child or others nearby.

(b)

(1) If mental health staff imposes restraints or isolation in an emergency situation, the mental health facility shall immediately contact appropriate staff in the facility who are designated under department rules to authorize the isolation or restraint. Such staff authorized by department rules shall see and evaluate the child's condition within a reasonable time after the intervention and the child's parent or guardian shall be notified, orally or by written or printed communication, the same day the isolation or restraint was used. Mental Health staff shall be held

harmless if reasonable effort has been made to comply with this subdivision (b)(1).

(2) If the child's treatment plan does not provide for the use of isolation or restraint for the behavior precipitating such action or if mental health staff are required to use isolation or restraint over an extended period of time as determined by facility rules, then a treatment plan meeting shall be convened within ten (10) days following the use of the isolation or restraint. If the behavior precipitating such action also warrants a change of placement, the child will have all rights provided under applicable state and federal law.

(3)

(A) Mental health staff may report a suspected crime by calling a law enforcement official; or

(B) Mental health staff may file a juvenile petition against a child only after conducting a manifestation determination that results in a determination that the behavior that resulted in the act requiring disciplinary action was not caused by a disability the child may have.

(c)

(1) Mental health staff who must isolate or restrain a child whether or not the isolation or restraint was in an emergency situation or provided for in the child's treatment plan, shall report the incident to the department of mental health's designee who shall record the use of the isolation or restraint and the facts surrounding such use. A copy of the record shall be made available at treatment plan meetings and upon the request of the child's parent or legal guardian.

(2) If the child's parent, other mental health staff designated under department rules to authorize the isolation or restraint, or any person having knowledge of the isolation or restraint have reason to believe that the isolation or restraint was unreasonable, unsafe or unwarranted, and the isolation or restraint caused injury to the child, the incident shall be reported pursuant to § 37-1-403.

(3) Mental health staff shall remain in the physical presence of any restrained child and shall continuously observe a child who is in isolation or being restrained to monitor the health and well-being of the child.

§ 33-8-405.

(a) Administering a chemical restraint to a child is prohibited; provided, that nothing in this subsection (a) shall prohibit the administration of a chemical restraint when administered for therapeutic purposes under the direction of a physician and with the child's parent or guardian's consent to administer such chemical restraint.

(b) Administering a noxious substance to a child is prohibited.

(c) The use of any mechanical restraint on a child is prohibited.

(d) Any form of life threatening restraint, including restraint that restricts the flow of air into a person's lungs, whether by chest compression or any other means, to a child is prohibited.

(e)

(1) The use of isolation or physical holding restraint as a means of coercion, punishment, convenience or retaliation on a child is prohibited.

(2)

(A) The use of physical holding restraint in the following circumstances is not prohibited:

(i) The brief holding by an adult in order to calm or comfort;

(ii) The minimum contact necessary to physically escort a child from one area to another;

(iii) Assisting a child in completing a task or response if the child does not resist, or resistance is minimal in intensity or duration; or

(iv) Holding a child for a brief time in order to prevent any impulsive behavior that threatens the child's immediate safety.

(B) The mental health facility is not required to notify the child's parent or guardian pursuant to § 33-8-404 in any of the circumstances listed in subdivision (e)(2)(A).

(f) The use of a locked door, or use of any physical structure that substantially accomplishes the intent of locking a child in a room or structure, to isolate or seclude a child is prohibited.

(g) Notwithstanding this section, actions undertaken by mental health staff to break up a fight or to take a weapon from a child are not prohibited; however, these acts shall be reported.

§ 33-8-406.

The department of mental health shall promulgate rules and regulations concerning the use of isolation or restraint with children so that isolation or restraint is not used when such procedures are unsafe, unreasonable or unwarranted. The rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 3. This act shall take effect July 1, 2009, the public welfare requiring it.