

# HOUSE BILL No. 5373

September 15, 2009, Introduced by Reps. Spade, Gonzales, Polidori, Kurtz, Neumann,  
Leland and Kennedy and referred to the Committee on Families and Children's Services.

A bill to amend 1973 PA 116, entitled

"An act to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to prescribe powers and duties of certain departments of this state and adoption facilitators; to provide penalties; and to repeal acts and parts of acts,"

by amending sections 2b, 2c, 2d, and 2e (MCL 722.112b, 722.112c, 722.112d, and 722.112e), section 2b as amended by 2007 PA 217 and sections 2c, 2d, and 2e as added by 2004 PA 531.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 2b. (1) As used in this section and sections 2c, 2d, and  
2           2e, unless the context requires otherwise:

3           (a) "Adaptive device" means a mechanical device incorporated  
4           in the individual plan of services that is intended to provide  
5           anatomical support or to assist the minor child with adaptive  
6           skills.

7           (b) "Chemical restraint" means a drug that meets all of the

1 following criteria:

2 (i) Is administered to manage a minor child's behavior in a way  
3 that reduces the safety risk to the minor child or others.

4 (ii) Has the temporary effect of restricting the minor child's  
5 freedom of movement.

6 (iii) Is not a standard treatment for the minor child's medical  
7 or psychiatric condition.

8 (c) "Emergency safety intervention" means use of personal  
9 restraint or seclusion as an immediate response to an emergency  
10 safety situation.

11 (d) "Emergency safety situation" means the onset of an  
12 unanticipated, severely aggressive, or destructive behavior that  
13 places the minor child or others at serious threat of violence or  
14 injury if no intervention occurs and that calls for an emergency  
15 safety intervention.

16 (e) "Individual plan of services" means that term as defined  
17 in section 100b of the mental health code, 1974 PA 258, MCL  
18 330.1100b.

19 (f) "Licensed practitioner" means an individual who has been  
20 trained in the use of personal restraint and seclusion, who is  
21 knowledgeable of the risks inherent in the implementation of  
22 personal restraint and seclusion, and who is 1 of the following:

23 (i) A physician licensed under article 15 of the public health  
24 code, 1978 PA 368, MCL 333.16101 to 333.18838.

25 (ii) An individual who has been issued a specialty  
26 certification as a nurse practitioner under article 15 of the  
27 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

1 (iii) A physician's assistant licensed under article 15 of the  
2 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

3 (iv) A registered nurse licensed under article 15 of the public  
4 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

5 (v) A psychologist and a limited licensed psychologist  
6 licensed under article 15 of the public health code, 1978 PA 368,  
7 MCL 333.16101 to 333.18838.

8 (vi) A counselor and a limited licensed counselor licensed  
9 under article 15 of the public health code, 1978 PA 368, MCL  
10 333.16101 to 333.18838.

11 (vii) A licensed master's social worker **AND A LIMITED LICENSED**  
12 **SOCIAL WORKER** licensed under article 15 of the public health code,  
13 1978 PA 368, MCL 333.16101 to 333.18838.

14 (g) "Mechanical restraint" means a device attached or adjacent  
15 to the minor child's body that he or she cannot easily remove and  
16 that restricts freedom of movement or normal access to his or her  
17 body. Mechanical restraint does not include the use of a protective  
18 or adaptive device or a device primarily intended to provide  
19 anatomical support. Mechanical restraint does not include use of a  
20 mechanical device to ensure security precautions appropriate to the  
21 condition and circumstances of a minor child placed in the child  
22 caring institution as a result of an order of the family division  
23 of circuit court under section 2(a) of chapter XIIA of the probate  
24 code of 1939, 1939 PA 288, MCL 712A.2.

25 (h) "Personal restraint" means the application of physical  
26 force without the use of a device, for the purpose of restraining  
27 the free movement of a minor child's body. Personal restraint does

1 not include:

2 (i) The use of a protective or adaptive device.

3 (ii) Briefly holding a minor child without undue force in order  
4 to calm or comfort him or her.

5 (iii) Holding a minor child's hand, wrist, shoulder, or arm to  
6 safely escort him or her from 1 area to another.

7 (iv) The use of a protective or adaptive device or a device  
8 primarily intended to provide anatomical support.

9 (i) "Protective device" means an individually fabricated  
10 mechanical device or physical barrier, the use of which is  
11 incorporated in the individualized written plan of service. The use  
12 of a protective device is intended to prevent the minor child from  
13 causing serious self-injury associated with documented, frequent,  
14 and unavoidable hazardous events.

15 (j) "Seclusion" means the involuntary placement of a minor  
16 child in a room alone, where the minor child is **PHYSICALLY**  
17 prevented from exiting, ~~by any means,~~ including the physical  
18 presence of a staff person if the sole purpose of that staff  
19 person's presence is to prevent the minor child from exiting the  
20 room. Seclusion does not include the use of a sleeping room during  
21 regular sleeping hours to ensure security precautions appropriate  
22 to the condition and circumstances of a minor child placed in the  
23 child caring institution as a result of an order of the family  
24 division of circuit court under section 2(a) and (b) of chapter  
25 XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, if the  
26 minor child's individual case treatment plan indicates that the  
27 security precautions would be in the minor child's best interest.

1 (k) "Serious injury" means any significant impairment of the  
2 physical condition of the minor child as determined by qualified  
3 medical personnel that results from an emergency safety  
4 intervention. This includes, but is not limited to, burns,  
5 lacerations, bone fractures, substantial hematoma, and injuries to  
6 internal organs, whether self-inflicted or inflicted by someone  
7 else.

8 (2) The provisions of this section and sections 2c, 2d, and 2e  
9 only apply to a child caring institution that contracts with or  
10 receives payment from a community mental health services program or  
11 prepaid inpatient health plan for the care, treatment, maintenance,  
12 and supervision of a minor child in that child caring institution.

13 Sec. 2c. (1) If a child caring institution contracts with and  
14 receives payment from a community mental health services program or  
15 prepaid inpatient health plan for the care, treatment, maintenance,  
16 and supervision of a minor child in a child caring institution, the  
17 child caring institution may place a minor child in personal  
18 restraint or seclusion only as provided in this section and  
19 sections 2d and 2e but shall not use mechanical restraint **EXCEPT TO**  
20 **TRANSPORT TO OR FROM COURT OR HOSPITALIZATION** or chemical restraint  
21 **UNDER ANY CIRCUMSTANCES.**

22 ~~(2) Not later than 180 days after the effective date of the~~  
23 ~~amendatory act that added this section, a~~ **A** child caring  
24 institution shall require its staff to have ongoing education,  
25 training, and demonstrated knowledge of all of the following:

26 (a) Techniques to identify minor children's behaviors, events,  
27 and environmental factors that may trigger emergency safety

1 situations.

2 (b) The use of nonphysical intervention skills, such as de-  
3 escalation, mediation conflict resolution, active listening, and  
4 verbal and observational methods to prevent emergency safety  
5 situations.

6 (c) The safe use of personal restraint or seclusion, including  
7 the ability to recognize and respond to signs of physical distress  
8 in minor children who are in personal restraint or seclusion or who  
9 are being placed in personal restraint or seclusion.

10 (3) A child caring institution's staff shall be trained in the  
11 use of personal restraint and seclusion, shall be knowledgeable of  
12 the risks inherent in the implementation of personal restraint and  
13 seclusion, and shall demonstrate competency regarding personal  
14 restraint or seclusion before participating in the implementation  
15 of personal restraint or seclusion. A child caring institution's  
16 staff shall demonstrate their competencies in these areas on a  
17 semiannual basis. The state agency licensing child caring  
18 institutions shall review and determine the acceptability of the  
19 child caring institutions' staff education, training, knowledge,  
20 and competency requirements required by this subsection and the  
21 training and knowledge required of a licensed practitioner in the  
22 use of personal restraint and seclusion.

23 Sec. 2d. (1) Personal restraint or seclusion shall not be  
24 imposed as a means of coercion, discipline, convenience, or  
25 retaliation by a child caring institution's staff.

26 (2) An order for personal restraint or seclusion shall not be  
27 written as a standing order or on an as-needed basis.

1 (3) Personal restraint or seclusion must not result in harm or  
2 **SERIOUS** injury to the minor child and shall be used only to ensure  
3 the minor child's safety or the safety of others during an  
4 emergency safety situation. Personal restraint or seclusion shall  
5 only be used until the emergency safety situation has ceased and  
6 the minor child's safety and the safety of others can be ensured  
7 even if ~~the~~**AN** order for personal restraint or seclusion has not  
8 expired. Personal restraint and seclusion of a minor child shall  
9 not be used simultaneously.

10 (4) Personal restraint or seclusion shall be performed in a  
11 manner that is safe, appropriate, and proportionate to the severity  
12 of the minor child's behavior, chronological and developmental age,  
13 size, gender, physical condition, medical condition, psychiatric  
14 condition, and personal history, including any history of physical  
15 or sexual abuse.

16 (5) Except as provided in subsection (6), at the time a minor  
17 child is admitted to a child caring institution, the child caring  
18 institution shall do all of the following:

19 (a) Inform the minor child and his or her parent or legal  
20 guardian of the provider's policy regarding the use of personal  
21 restraint or seclusion during an emergency safety situation that  
22 may occur while the minor child is under the care of the child  
23 caring institution.

24 (b) Communicate the provider's personal restraint and  
25 seclusion policy in a language that the minor child or his or her  
26 parent or legal guardian will understand, including American sign  
27 language, if appropriate. The provider shall procure an interpreter

1 or translator, if necessary to fulfill the requirement of this  
2 subdivision.

3 (c) Obtain a written acknowledgment from the minor child's  
4 parent or legal guardian that he or she has been informed of the  
5 provider's policy on the use of personal restraint and seclusion  
6 during an emergency safety situation. The child caring  
7 institution's staff shall file the acknowledgment in the minor  
8 child's records.

9 (d) Provide a copy of the policy to the minor child's parent  
10 or legal guardian.

11 (6) The child caring institution is not required to inform,  
12 communicate, and obtain the written acknowledgment from a minor  
13 child's parent or legal guardian as specified in subsection (5) if  
14 the minor child is within the care and supervision of the child  
15 caring institution as a result of an order of commitment of the  
16 family division of circuit court to a state institution, state  
17 agency, or otherwise, and has been adjudicated to be a dependent,  
18 neglected, or delinquent under chapter XIIIA of the probate code of  
19 1939, 1939 PA 288, MCL 712A.1 to 712A.32, if the minor child's  
20 individual case treatment plan indicates that notice would not be  
21 in the minor child's best interest.

22 (7) An order for personal restraint or seclusion shall only be  
23 written by a licensed practitioner.

24 (8) A licensed practitioner shall order the least restrictive  
25 emergency safety intervention measure that is most likely to be  
26 effective in resolving the emergency safety situation based on  
27 consultation with staff. Consideration of less restrictive



1 emergency safety intervention measures shall be documented in the  
2 minor child's record.

3 (9) If the order for personal restraint or seclusion is  
4 verbal, it must be received by a child caring institution staff  
5 member who is 1 of the following:

6 (a) A licensed practitioner.

7 (b) A social ~~services~~**SERVICE** supervisor as described in R  
8 400.4118 of the Michigan administrative code.

9 (c) A supervisor of direct care workers as described in R  
10 400.4120 of the Michigan administrative code.

11 (d) A practical nurse licensed under article 15 of the public  
12 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

13 (10) A verbal order must be received ~~while personal restraint~~  
14 ~~or seclusion is being initiated by child caring institution staff~~  
15 ~~or immediately after the emergency safety situation begins~~ **FOR**

16 **PERSONAL RESTRAINT THAT IS MORE THAN 15 MINUTES IN DURATION OR**  
17 **SECLUSION THAT IS MORE THAN 30 MINUTES IN DURATION.** The licensed  
18 practitioner shall be available to staff for consultation, at least  
19 by telephone, throughout the period of **ORDERED** personal restraint  
20 or seclusion. The licensed practitioner shall verify the verbal  
21 order in signed written form in the minor child's record **WITHIN 72**  
22 **CLOCK HOURS AFTER ISSUING THE ORDER.**

23 (11) An order for personal restraint or seclusion shall meet  
24 both of the following criteria:

25 (a) Be limited to no longer than the duration of the emergency  
26 safety situation.

27 (b) Not exceed 4 hours for a minor child 18 years of age or

1 older; 2 hours for a minor child 9 to 17 years of age; or 1 hour  
2 for a minor child under 9 years of age.

3 (12) If more than 2 orders for personal restraint or seclusion  
4 are ordered for a minor child within a 24-hour period, the director  
5 of the child caring institution or his or her designated management  
6 staff shall be notified to determine whether additional measures  
7 should be taken to facilitate discontinuation of personal restraint  
8 or seclusion.

9 (13) If personal restraint continues for less than 15 minutes  
10 or seclusion continues for less than 30 minutes from the onset of  
11 the emergency safety intervention, the child caring institution  
12 staff qualified to receive a verbal order for personal restraint or  
13 seclusion, in consultation with the licensed practitioner, shall  
14 evaluate the minor child's psychological well-being immediately  
15 after the minor child is removed from seclusion or personal  
16 restraint. Staff shall also evaluate the minor child's physical  
17 well-being or determine if an evaluation is needed by a licensed  
18 practitioner authorized to conduct a face-to-face assessment under  
19 subsection (14).

20 (14) A face-to-face assessment shall be conducted if the  
21 personal restraint continues for 15 minutes or more from the onset  
22 of the emergency safety intervention or if seclusion continues for  
23 30 minutes or more from the onset of the emergency safety  
24 intervention. This face-to-face assessment shall be conducted by a  
25 licensed practitioner who is 1 of the following:

26 (a) A physician licensed under article 15 of the public health  
27 code, 1978 PA 368, MCL 333.16101 to 333.18838.

1 (b) An individual who has been issued a ~~speciality~~**SPECIALTY**  
2 certification as a nurse practitioner under article 15 of the  
3 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

4 (c) A physician's assistant licensed under article 15 of the  
5 public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

6 (d) A registered nurse licensed under article 15 of the public  
7 health code, 1978 PA 368, MCL 333.16101 to 333.18838.

8 **(E) AN EMERGENCY MEDICAL TECHNICIAN LICENSED UNDER PART 209 OF**  
9 **THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.20901 TO 333.20979.**

10 (15) The face-to-face assessment shall be conducted within 1  
11 hour of the onset of the emergency safety intervention and  
12 immediately after the minor child is removed from personal  
13 restraint or seclusion. The face-to-face assessment of the physical  
14 and psychological well-being of the minor child shall include, but  
15 is not limited to, all of the following:

16 (a) The minor child's physical and psychological status.

17 (b) The minor child's behavior.

18 (c) The appropriateness of the intervention measures.

19 (d) Any complications resulting from the intervention.

20 Sec. 2e. (1) A minor child shall be released from personal  
21 restraint or seclusion whenever the circumstance that justified the  
22 use of personal restraint or seclusion no longer exists.

23 (2) Each instance of personal restraint or seclusion requires  
24 full justification for its use, and the results of the evaluation  
25 immediately following the use of personal restraint or seclusion  
26 shall be placed in the minor child's record.

27 (3) Each order for personal restraint or seclusion shall

1 include all of the following:

2 (a) The name of the licensed practitioner ordering personal  
3 restraint or seclusion.

4 (b) The date and time the order was obtained.

5 (c) The personal restraint or seclusion ordered, including the  
6 length of time for which the licensed practitioner ordered its use.

7 (4) The child caring institution staff shall document the use  
8 of ~~the~~ personal restraint or seclusion in the minor child's record.  
9 That documentation shall be completed by the end of the shift in  
10 which the personal restraint or seclusion occurred. If the personal  
11 restraint or seclusion does not end during the shift in which it  
12 began, documentation shall be completed during the shift in which  
13 the personal restraint or seclusion ends. Documentation shall  
14 include all of the following:

15 (a) Each ~~order for~~ **INSTANCE OF** personal restraint or  
16 seclusion.

17 (b) The time the personal restraint or seclusion actually  
18 began and ended.

19 (c) The time and results of the 1-hour assessment.

20 (d) The emergency safety situation that required the resident  
21 to be personally restrained or secluded.

22 (e) The name of the staff involved in the personal restraint  
23 or seclusion.

24 **(F) THE SPECIFIC LOCATION OF THE PERSONAL RESTRAINT OR**  
25 **SECLUSION.**

26 (5) The child caring institution staff trained in the use of  
27 personal restraint shall continually assess and monitor the

1 physical and psychological well-being of the minor child and the  
2 safe use of personal restraint throughout the duration of its  
3 implementation.

4 (6) The child caring institution staff trained in the use of  
5 seclusion shall be physically present ~~in or immediately~~ **AND IN THE**  
6 **IMMEDIATE VICINITY**, outside the seclusion room, continually  
7 assessing, monitoring, and evaluating the physical and  
8 psychological well-being of the minor. Video monitoring shall not  
9 be exclusively used to meet this requirement.

10 (7) The child caring institution staff shall ensure that  
11 documentation of staff monitoring and observation is entered into  
12 the minor child's record.

13 (8) If the emergency safety intervention continues beyond the  
14 time limit of ~~the~~ **AN** order for use of personal restraint or  
15 seclusion, child caring institution staff authorized to receive  
16 verbal orders for personal restraint or seclusion shall immediately  
17 contact the licensed practitioner to receive further instructions.

18 (9) The child caring institution staff shall notify the minor  
19 child's parent or legal guardian and the appropriate state or local  
20 government agency that has responsibility for the minor child if  
21 the minor child is under the supervision of the child caring  
22 institution as a result of an order of commitment by the family  
23 division of circuit court to a state institution or otherwise as  
24 soon as possible after the initiation of personal restraint or  
25 seclusion. This notification shall be documented in the minor  
26 child's record, including the date and time of the notification,  
27 the name of the staff person providing the notification, and the

1 name of the person to whom notification of the incident was  
2 reported. The child caring institution is not required to notify  
3 the parent or legal guardian as provided in this subsection if the  
4 minor child is within the care and supervision of the child caring  
5 institution as a result of an order of commitment of the family  
6 division of circuit court to a state institution, state agency, or  
7 otherwise, and has been adjudged to be dependent, neglected, or  
8 delinquent under chapter XIIIA of the probate code of 1939, 1939 PA  
9 288, MCL 712A.1 to 712A.32, if the minor child's individual case  
10 treatment plan indicates that the notice would not be in the minor  
11 child's best interest.

12 (10) Within 24 hours after the use of personal restraint or  
13 seclusion, child caring institution staff involved in the emergency  
14 safety intervention and the minor child shall have a face-to-face  
15 debriefing session. The debriefing shall include ~~all~~ staff involved  
16 in the seclusion or personal restraint except if the presence of a  
17 particular staff person may jeopardize the well-being of the minor  
18 child. Other staff members and the minor child's parent or legal  
19 guardian may participate in the debriefing if it is considered  
20 appropriate by the child caring institution.

21 (11) The child caring institution shall conduct a debriefing  
22 in a language that is understood by the minor child. The debriefing  
23 shall provide both the minor child and the staff opportunity to  
24 discuss the circumstances resulting in the use of personal  
25 restraint or seclusion and strategies to be used by staff, the  
26 minor child, or others that could prevent the future use of  
27 personal restraint or seclusion.

1           (12) Within 24 hours after the use of personal restraint or  
2 seclusion, ~~all~~ child caring institution staff involved in the  
3 emergency safety intervention, and appropriate supervisory and  
4 administrative staff, shall conduct a debriefing session that  
5 includes, at a minimum, all of the following:

6           (a) Discussion of the emergency safety situation that required  
7 personal restraint or seclusion, including a discussion of  
8 precipitating factors that led up to the situation.

9           (b) Alternative techniques that might have prevented the use  
10 of personal restraint or seclusion.

11           (c) The procedures, if any, that child caring institution  
12 staff are to implement to prevent a recurrence of the use of  
13 personal restraint or seclusion.

14           (d) The outcome of the emergency safety intervention,  
15 including any injury that may have resulted from the use of  
16 personal restraint or seclusion.

17           (13) The child caring institution staff shall document in the  
18 minor child's record that both debriefing sessions took place and  
19 shall include the names of staff who were present for the  
20 debriefings, names of staff that were excused from the debriefings,  
21 and changes to the minor child's treatment plan that result from  
22 the debriefings.

23           (14) Each child caring institution subject to this section and  
24 sections 2c and 2d shall report each serious occurrence to the  
25 state agency licensing the child caring institution. The state  
26 agency licensing the child caring institution shall make the  
27 reports available to the designated state protection and advocacy

1 system upon request of the designated state protection and advocacy  
2 system. Serious occurrences to be reported include a minor child's  
3 death, a serious injury to a minor child, and a minor child's  
4 suicide attempt. Staff shall report any serious occurrence  
5 involving a minor child by no later than close of business of the  
6 next business day after a serious occurrence. The report shall  
7 include the name of the minor child involved in the serious  
8 occurrence, a description of the occurrence, and the name, street  
9 address, and telephone number of the child caring institution. The  
10 child caring institution shall notify the minor child's parent or  
11 legal guardian and the appropriate state or local government agency  
12 that has responsibility for the minor child if the minor child is  
13 under the supervision of the child caring institution as a result  
14 of an order of commitment by the family division of circuit court  
15 to a state institution or otherwise as soon as possible and not  
16 later than 24 hours after the serious occurrence. Staff shall  
17 document in the minor child's record that the serious occurrence  
18 was reported to both the state agency licensing the child caring  
19 institution and the state-designated protection and advocacy  
20 system, including the name of the person to whom notification of  
21 the incident was reported. A copy of the report shall be maintained  
22 in the minor child's record, as well as in the incident and  
23 accident report logs kept by the child caring institution.

24 (15) Each child caring institution subject to this section and  
25 sections 2c and 2d shall maintain a record of the incidences in  
26 which personal restraint or seclusion was used for all minor  
27 children. The record shall include all of the following



1 information:

2 (a) Whether personal restraint or seclusion was used.

3 (b) The setting, unit, or location in which personal restraint  
4 or seclusion was used.

5 (c) Staff who initiated the process.

6 (d) The duration of each use of personal restraint or  
7 seclusion.

8 (e) The date, time, and day of the week restraint or seclusion  
9 was initiated.

10 (f) Whether injuries were sustained by the minor child or  
11 staff.

12 (g) The age and gender of the minor child.

13 (16) Each child caring institution subject to this section and  
14 sections 2c and 2d shall ~~submit a report annually~~ to the state  
15 agency that licenses the child caring institution ~~containing the~~  
16 ~~aggregate data from the record of incidences for each 12-month~~  
17 ~~period as~~ **IN THE MANNER** directed by the state licensing agency. The  
18 state licensing agency shall prepare reporting forms **OR SYSTEMS** to  
19 be used by the child caring institution, shall aggregate the data  
20 collected from each child caring institution, and shall annually  
21 report the data to each child caring institution and the state-  
22 designated protection and advocacy system.