

CHAPTER 375

SB 396-FN – FINAL VERSION

03/10/10 0864s

21Apr2010... 1354h

12May2010... 1852h

06/02/10 2423eba

2010 SESSION

10-2824

05/04

SENATE BILL ***396-FN***

AN ACT limiting the use of child restraint practices in schools and treatment facilities.

SPONSORS: Sen. Sgambati, Dist 4; Sen. Kelly, Dist 10; Sen. Hassan, Dist 23; Rep. Rous, Straf 7; Rep. Reeve, Belk 4; Rep. Stiles, Rock 15; Rep. Merry, Belk 2

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill restricts the use of restraint practices in schools and treatment facilities and establishes certain notification requirements regarding the use of such practices.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/10/10 0864s

21Apr2010... 1354h

12May2010... 1852h

06/02/10 2423eba

10-2824

05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT limiting the use of child restraint practices in schools and treatment facilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

375:1 Statement of Purpose. The purpose of this chapter is to eliminate child restraint techniques which endanger children and to promote the overall reduction of the use of restraint of children in schools and treatment facilities in New Hampshire.

375:2 New Chapter; Limiting the Use of Child Restraint Practices in Schools and Treatment Facilities. Amend RSA by inserting after chapter 126-S the following new chapter:

CHAPTER 126-T

LIMITING THE USE OF CHILD RESTRAINT PRACTICES

IN SCHOOLS AND TREATMENT FACILITIES

126-T:1 Definitions. In this chapter:

I. "Child" means a person who has not reached the age of 18 years and who is not under adult criminal prosecution or sentence of actual incarceration resulting therefrom, either due to having reached the age of 17 years or due to the completion of proceedings for transfer to the adult criminal justice system under RSA 169-B:24, RSA 169-B:25, or RSA 169-B:26.

II. "Director" refers to the program director, school principal, or other official highest in rank and with authority over the activities of a school or facility.

III. "Facility" includes any of the following when used for the placement, custody, or treatment of children:

(a) The youth services center maintained by the department of health and human services, or any other setting established for the commitment or detention of children pursuant to RSA 169-B, RSA 169-C, or RSA 169-D.

(b) Child care agencies regulated by RSA 170-E.

(c) Any foster home, group home, crisis home, or shelter care setting used for the placement of children at any stage of proceedings under RSA 169-B, RSA 169-C, or RSA 169-D or following disposition under those chapters.

(d) Any hospital, building, or other place, whether public or private, which is part of the state services systems established under RSA 135-C:3 and RSA 171-A:4, including but not limited to:

(1) The Anna Philbrook center.

(2) The acute psychiatric services building.

(3) Any designated receiving facility.

(4) A community mental health center as defined in RSA 135-C:7, or any of its subdivisions or contractors.

(5) An area agency as defined in RSA 171-A:2, or any of its subdivisions or contractors.

(e) Any residence, treatment center, or other place used for the voluntary or involuntary custody, treatment or care of children with developmental, intellectual, or other disabilities under RSA 171-A or 171-B.

(f) Community living facilities for persons with developmental disabilities or mental illness as authorized by RSA 126-A:19, when used for the placement of children.

IV. "Restraint" means bodily physical restriction, mechanical devices, or any device that unreasonably limits freedom of movement. It includes mechanical restraint, physical restraint, and medication restraint used to control behavior in an emergency or any involuntary medication.

(a) "Medication restraint" occurs when a child is given medication involuntarily for the purpose of immediate control of the child's behavior.

(b) “Mechanical restraint” occurs when a physical device or devices are used to restrict the movement of a child or the movement or normal function of a portion of his or her body.

(c) “Physical restraint” occurs when a manual method is used to restrict a child’s freedom of movement or normal access to his or her body.

(d) Restraint shall not include:

(1) Holding a child to calm or comfort the child, holding a child’s hand or arm to escort the child safely from one area to another, or intervening in an ongoing assault or fight.

(2) Brief periods of physical restriction by person-to-person contact, without the aid of medication or mechanical restraints, accomplished with minimal force and designed either to prevent a child from completing an act that potentially would result in physical harm to himself or herself or to another person, or to remove a disruptive child who is unwilling to leave an area voluntarily.

(3) Physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, and supportive body bands, or other physical holding when necessary for routine physical examinations and tests or for orthopedic, surgical, and other similar medical treatment purposes, or when used to provide support for the achievement of functional body position or proper balance or to protect a person from falling out of bed, or to permit a child to participate in activities without the risk of physical harm.

(4) The use of seat belts, safety belts, or similar passenger restraints during the transportation of a child in a motor vehicle.

(5) The use of force by a person to defend himself or herself or a third person from what the actor reasonably believes to be the imminent use of unlawful force by a child, when the actor uses a degree of such force which he or she reasonably believes to be necessary for such purpose.

V. “School” means:

(a) A school operated by a school district.

(b) A chartered public school governed by RSA 194-B.

(c) A public academy as defined in RSA 194:23, II.

(d) A nonpublic school subject to the approval authority of the state board of education under RSA 186:11, XXIX.

(e) A private or public provider of any component of a child's individualized education program under RSA 186-C.

VI. "Serious injury" means any harm to the body which requires hospitalization or results in the fracture of any bone, non-superficial lacerations, injury to any internal organ, second- or third-degree burns, or any severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.

126-T:2 Written Policies Required. Each facility and school shall have a written policy and procedures for managing the behavior of children. Such policy shall describe how and under what circumstances restraint is used and shall be provided to the parent, guardian, or legal representative of each child at such facility or school.

126-T:3 Post Admission Planning in Facilities.

I. As soon as possible after admission to a facility, the treatment staff of the facility, the child, and the child's parent or guardian shall develop a plan to:

- (a) Identify the child's history of physical, sexual, or emotional trauma, if any.
- (b) Identify effective responses to potential behavior or situations which will avoid the use of restraint.
- (c) Identify health conditions which may make the child vulnerable to injury while at the facility.

II. The plan described in this section is not required if the child is expected to be at the facility for fewer than 72 hours and, after conducting a reasonable inquiry, the staff of the facility is not informed of any history of the use of restraint of the child.

126-T:4 Prohibition of Dangerous Restraint Techniques. No school or facility shall use or threaten to use any of the following restraint and behavior control techniques:

I. Any physical restraint or containment technique that:

- (a) Obstructs a child's respiratory airway or impairs the child's breathing or respiratory capacity or restricts the movement required for normal breathing;
- (b) Places pressure or weight on, or causes the compression of, the chest, lungs, sternum, diaphragm, back, or abdomen of a child;
- (c) Obstructs the circulation of blood;

(d) Involves pushing on or into the child's mouth, nose, eyes, or any part of the face or involves covering the face or body with anything, including soft objects such as pillows, blankets, or washcloths; or

(e) Endangers a child's life or significantly exacerbates a child's medical condition.

II. The intentional infliction of pain, including the use of pain inducement to obtain compliance.

III. The intentional release of noxious, toxic, caustic, or otherwise unpleasant substances near a child for the purpose of controlling or modifying the behavior of or punishing the child.

IV. Any technique that unnecessarily subjects the child to ridicule, humiliation, or emotional trauma.

126-T:5 Limitation of the Use of Restraint to Emergencies Only.

I. Restraint shall only be used in a school or facility to ensure the immediate physical safety of persons when there is a substantial and imminent risk of serious bodily harm to the child or others. It shall be used only by trained personnel using extreme caution when all other interventions have failed or have been deemed inappropriate.

II. Restraint shall never be used explicitly or implicitly as punishment for the behavior of a child.

126-T:6 Schools Limited to Physical Restraint. Use of restraint in schools shall be limited to physical restraint as permitted by this chapter. Schools shall not use medication restraint and shall not use mechanical restraint except as otherwise permitted in the transportation of children pursuant to RSA 126-T:12.

126-T:7 Notice and Record-Keeping Requirements.

I. Unless prohibited by court order, the facility or school shall, within 24 hours, make reasonable efforts to verbally notify the child's parent or guardian and guardian ad litem whenever restraint has been used on the child.

II. A facility employee or school employee who uses restraint, or if the facility employee or school employee is unavailable, a supervisor of such employee, shall, within 5 business days after the occurrence, submit a written notification containing the following information to the director or his or her designee:

(a) The date, time, and duration of the use of restraint.

(b) A description of the actions of the child before, during, and after the occurrence.

(c) A description of any other relevant events preceding the use of restraint, including the justification for initiating the use of restraint.

(d) The names of the persons involved in the occurrence.

(e) A description of the actions of the facility or school employees involved before, during, and after the occurrence.

(f) A description of any interventions used prior to the use of the restraint.

(g) A description of the restraint used, including any hold used and the reason the hold was necessary.

(h) A description of any injuries sustained by, and any medical care administered to, the child, employees, or others before, during, or after the use of restraint.

(i) A description of any property damage associated with the occurrence.

(j) A description of actions taken to address the emotional needs of the child during and following the restraint incident.

(k) A description of future actions to be taken to control the child's problem behaviors.

(l) The name and position of the employee completing the notification.

(m) The anticipated date of the final report.

III. Unless prohibited by court order, the director or his or her designee shall, within 2 business days of receipt of the notification required in paragraph II, send or transmit by first class mail or electronic transmission to the child's parent or guardian and the guardian ad litem the information contained in the notification. Each notification prepared under this section shall be retained by the school or facility for review in accordance with rules adopted under RSA 541-A by the state board of education and the department of health and human services.

126-T:8 Review of Restraint Records by Department of Education. The state board of education shall adopt rules, pursuant to RSA 541-A, establishing a process for periodic, regular review of records of restraint usage kept by schools and providing a process for complaints and investigations of reports of improper use of restraint in schools. Beginning November 1, 2010, and each November 1 thereafter, the state board of education shall provide an annual report to the chairperson of the children and family law committee of the house of representatives regarding the use of

restraint in schools. The annual report shall be prepared from the periodic, regular review of such records, and shall include the number and location of reported incidents and the status of any outstanding investigations.

126-T:9 Review of Restraint Records by Department of Health and Human Services. The commissioner of the department of health and human services shall adopt rules, pursuant to RSA 541-A, establishing a process for periodic, regular review of records of restraint usage kept by facilities and providing a process for complaints and investigations of reports of improper use of restraint in facilities, which may be through the department of health and human services, office of the ombudsman, or otherwise. Beginning November 1, 2010, and each November 1 thereafter, the commissioner of the department of health and human services shall provide an annual report to the chairperson of the children and family law committee of the house of representatives regarding the use of restraint in facilities. The annual report shall be based on the periodic, regular review of such records and shall include the number and location of reported incidents and the status of any outstanding investigations.

126-T:10 Injury or Death During Incidents of Restraint.

I. In cases involving serious injury or death to a child subject to restraint in a facility, the facility shall, in addition to the provisions of RSA 126-T:7, notify the commissioner of the department of health and human services, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the notification required in RSA 126-T:7, II.

II. In cases involving serious injury or death to a child subject to restraint in a school, the school shall, in addition to the provisions of RSA 126-T:7, notify the commissioner of the department of education, the attorney general, and the state's federally-designated protection and advocacy agency for individuals with disabilities. Such notice shall include the written notification required in RSA 126-T:7, II.

126-T:11 Authorization and Monitoring of Extended Restraint. In a school or facility:

I. Restraint shall not be imposed for longer than is necessary to protect the child or others from the substantial and imminent risk of serious bodily harm.

II. Children in restraint shall be the subject of continuous direct observation by personnel trained in the safe use of restraint.

III. No period of restraint of a child may exceed 15 minutes without the approval of the director or a supervisory employee designated by the director to provide such approval.

IV. No period of restraint of a child may exceed 30 minutes unless a face-to-face assessment of the mental, emotional, and physical well-being of the child is conducted by the facility or school director or by a supervisory employee designated by the director who is trained to conduct such assessments. The assessment shall also include a determination of whether the restraint is being conducted safely and for a purpose authorized by this chapter. Such assessments shall be repeated at least every 30 minutes during the period of restraint. Each such assessment shall be documented in writing and such records shall be retained by the facility or school as part of the written notification required in RSA 126-T:7, II.

126-T:12 Restriction of the Use of Mechanical Restraint During the Transport of Children.

I. A school or facility shall not use mechanical restraints during the transportation of children unless case-specific circumstances dictate that such methods are necessary.

II. Whenever a child is transported to a location outside a school or facility, the director shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort the child in a manner which:

- (a) Prevents physical and psychological trauma;
- (b) Respects the privacy of the child; and
- (c) Represents the least restrictive means necessary for the safety of the child.

III. Whenever a child is transported using mechanical restraints, the director shall document in writing the reasons for the use of mechanical restraints. Such documentation shall be treated as a notification of restraint under RSA 126-T:7.

126-T:13 Restriction of the Use of Mechanical Restraint in Courtrooms. At any hearing under RSA 169-B, RSA 169-C, or RSA 169-D, the judge may subject a child to mechanical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the child's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child's attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

375:3 Contingency. If HB 1692 of the 2010 regular legislative session becomes law, then all references to RSA 126-T in section 2 of this act shall be renumbered as RSA 126-U.

375:4 Effective Date.

I. Section 3 of this act shall take effect upon its passage.

II. The remainder of this act shall take effect September 1, 2010.

Approved: July 26, 2010

Effective Date: I. Section 3 shall take effect July 26, 2010.

II. Remainder shall take effect September 1, 2010.