

JAN 23 2015

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# A BILL FOR AN ACT

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RELATING TO BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH  
DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The Hawaii department of health's position on  
2 behavior support is to ensure that behavior interventions are  
3 implemented appropriately to assist and support individuals  
4 receiving services and those providing support to them. This  
5 position:

6       (1) Emphasizes positive behavior supports that promote the  
7 growth, development, and independence of individuals;  
8 individual choice in daily decision-making; self-  
9 management; and individual responsibility for  
10 behaviors;

11       (2) Provides for working with persons with challenging  
12 behavior (with a focus on teaching replacement  
13 behaviors that serve as the function for what the  
14 individual is communicating rather than the  
15 suppression or elimination of undesirable behaviors),  
16 and specification of prohibited interventions; and



1           (3)   Enables appropriate safeguards and oversight if  
2                   aversive procedures (planned or crisis) are used, with  
3                   planning for the eventual elimination of seclusion and  
4                   restraints.

5           When an individual with intellectual or developmental  
6   disabilities is a danger to oneself or to others, restraints or  
7   seclusion may be recommended. After such methods are  
8   administered, however, a behavior support review committee is  
9   convened to evaluate such cases and make recommendations.

10          The behavior support review committee membership may  
11   include a parent of an individual receiving service from the  
12   department of health's developmental disabilities division, a  
13   developmental disabilities division service provider who  
14   provides at least two services to participants, a community  
15   member with no direct involvement with the developmental  
16   disabilities division's waiver provider programs, a department  
17   of health facilitator with experience or training in best  
18   practices to support behaviors of individuals with developmental  
19   disabilities, a department of health case manager with  
20   experience in supporting participants with behavior concerns,



1 and a person receiving services from the developmental  
2 disabilities division.

3 The purpose of this Act is to describe the behavioral  
4 support review process and to provide behavior support review  
5 committee members with immunity from liability.

6 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
7 amended by adding a new part to be appropriately designated and  
8 to read as follows:

9 "PART . BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH  
10 DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

11 §321- Definitions. Whenever used in this part, unless  
12 the context otherwise requires:

13 "Department" means the department of health.

14 "Developmental disability" shall be as defined in section  
15 333F-1.

16 "Director" means the director of health or the director's  
17 designated representative.

18 "Intellectual disability" shall be as defined in section  
19 333F-1.



"Person with developmental or intellectual disabilities" means a youth or an adult with a developmental or intellectual disability.

"Restraints" means:

- (1) Manual or physical restraint by holding a person to restrict the person's freedom of movement;
- (2) Application of a device specifically designed to safely restrain or assist in restraining; or
- (3) Chemical restraint by using a psychotropic medication prescribed without the appropriate Diagnostic and Statistical Manual of Mental Disorders diagnosis or prescribed on an as needed basis;

provided that a restraint does not include brief and minimally restrictive physical contact in order to calm or comfort the person, or holding a person's hand to safely escort the person from one area to another.

"Seclusion" means any involuntary confinement to a room or area where a person is physically prevented from leaving.

**§321- Behavior support review.** The department of health may convene a committee to conduct multidisciplinary and multiagency reviews of restraints or seclusion of persons with



1 developmental or intellectual disabilities in order to ensure  
2 appropriate use and to reduce the risk of harm or death to  
3 persons with developmental or intellectual disabilities.

4       **§321- Access to information.** (a) Upon written request  
5 of the director, all providers of residential supports and state  
6 and county agencies, shall disclose to the department and those  
7 individuals appointed by the director to participate in the  
8 behavior support review committee of a person with developmental  
9 or intellectual disabilities, the circumstances of restraints or  
10 seclusion used for a person with developmental or intellectual  
11 disabilities to allow the department to conduct  
12 multidisciplinary reviews of restraints or seclusion used for  
13 persons with developmental or intellectual disabilities pursuant  
14 to section 321-31 and this part.

15       (b) To the extent that this section conflicts with other  
16 state confidentiality laws, this section shall prevail.

17       **§321- Exception.** Information regarding an ongoing civil  
18 or criminal investigation shall be disclosed at the discretion  
19 of the applicable state, county, or federal law enforcement  
20 agency.



1           §321-     Use and review of information and records and  
2   activities pertaining to behavior support review of persons with  
3   developmental or intellectual disabilities. (a) Except as  
4   otherwise provided in this part, all information and records  
5   acquired by the department during its multidisciplinary,  
6   multiagency reviews of restraints or seclusion of persons with  
7   developmental or intellectual disabilities pursuant to this part  
8   shall be kept confidential and may be disclosed only as  
9   necessary to carry out the purposes of this part.

10           (b) Information and statistical compilations of data from  
11   the multidisciplinary reviews of restraints or seclusion of  
12   persons with developmental or intellectual disabilities that do  
13   not contain any information that would permit the identification  
14   of any person shall be public record.

15           (c) No individual participating in the department's  
16   multidisciplinary review of the restraints or seclusion of a  
17   person with developmental or intellectual disabilities shall be  
18   questioned in any civil or criminal proceeding regarding  
19   information presented in, or opinions formed, as a result of  
20   meetings of the multidisciplinary review of restraints or  
21   seclusion. Nothing in this subsection shall be construed to



1 prevent a person from testifying to information obtained  
2 independently of the department's multidisciplinary behavior  
3 support review, or that is public information, or where  
4 disclosure is required by law or court order.

5 (d) Information held by the department as a result of a  
6 multidisciplinary review of the restraints or seclusion of a  
7 person with developmental or intellectual disabilities conducted  
8 under this part shall not be subject to subpoena, discovery, or  
9 introduction into evidence in any civil or criminal proceeding.

10 **§321- Immunity from liability.** All agencies and  
11 individuals participating in multidisciplinary reviews of  
12 restraints or seclusion of persons with developmental or  
13 intellectual disabilities pursuant to this part shall be immune  
14 from civil or criminal liability for the use and review of  
15 information and records pertaining to behavior support review of  
16 persons with developmental or intellectual disabilities as  
17 required under this part. All agencies and individuals  
18 participating in multidisciplinary reviews or seclusions of  
19 persons with developmental or intellectual disabilities pursuant  
20 to this part shall be presumed to be acting in good faith and  
21 shall be immune from civil liability for taking or recommending



1 actions as part of the behavior support review committee. The  
2 presumption of good faith may be rebutted upon a showing by  
3 preponderance of the evidence that the agency or individual  
4 relied upon information or opinion that it knew as false or  
5 misleading."

6 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: 





**Report Title:**

Behavior Support Review Committee for Persons with Developmental or Intellectual Disabilities

**Description:**

Authorizes the department of health to establish a behavioral support review process to conduct multidisciplinary reviews of restraints or seclusion of persons with developmental or intellectual disabilities. Exempts those who participate in the reviews from liability.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

