

ASSEMBLY, No. 2883

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblywoman NANCY F. MUNOZ

District 21 (Morris, Somerset and Union)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Establishes "Matthew's Law Limiting the Use of Restraints."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2020)

1 AN ACT concerning persons with developmental disabilities and
2 persons with traumatic brain injuries, amending and
3 supplementing P.L.1977, c.82 and amending P.L.1983, c.524.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) Sections 6 through 10 of P.L. , c.
9 (C.) (pending before the Legislature as this bill) shall be
10 known and may be cited as "Matthew's Law Limiting the Use of
11 Restraints."

12
13 2. Section 3 of P.L.1977, c.82 (C.30:6D-3) is amended to read
14 as follows:

15 3. As used in **[this act]** P.L.1977, c.82 (C.30:6D-1 et seq.) and
16 P.L. , c. (C.) (pending before the Legislature as this bill),
17 unless a different meaning clearly appears from the context:

18 a. "Developmental disability" means a severe, chronic
19 disability of a person **[which]** that:

20 (1) is attributable to a mental or physical impairment or
21 combination of mental or physical impairments;

22 (2) is manifest before age 22;

23 (3) is likely to continue indefinitely;

24 (4) results in substantial functional limitations in three or more
25 of the following areas of major life activity, that is, self-care,
26 receptive and expressive language, learning, mobility, self-
27 direction, and capacity for independent living or economic self-
28 sufficiency; and

29 (5) reflects the need for a combination and sequence of special
30 inter-disciplinary or generic care, treatment, or other services
31 **[which]** that are of lifelong or extended duration and are
32 individually planned and coordinated. Developmental disability
33 includes, but is not limited to, severe disabilities attributable to**[,]**
34 an intellectual disability, autism, cerebral palsy, epilepsy, spina
35 bifida, and other neurological impairments where the above criteria
36 are met;

37 b. "Services" or "services for persons with developmental
38 disabilities" means specialized services or special adaptations of
39 generic services provided by any public or private agency,
40 organization, or institution and directed toward the alleviation of a
41 developmental disability or toward the social, personal, physical, or
42 economic habilitation or rehabilitation of an individual with such a
43 disability; and **[such term]** includes diagnosis, evaluation,
44 treatment, personal care, day care, domiciliary care, special living
45 arrangements, training, education, sheltered employment,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 recreation, counseling of the individual with **[such]** a
2 developmental disability and of his family, protective and other
3 social and socio-legal services, information and referral services,
4 follow-along services, and transportation services necessary to
5 assure delivery of services to persons with developmental
6 disabilities; **[and]**

7 c. "Facility" or "facility for persons with developmental
8 disabilities" means a facility operated by any public or private
9 agency, organization or institution for the provision of services for
10 persons with developmental disabilities;

11 d. "Aversive technique" means the presentation of stimuli or
12 conditions to decrease the frequency, intensity, or duration of
13 maladaptive behavior by inducing distress, discomfort, or pain,
14 which may place the individual at some degree of risk of physical
15 or psychological injury;

16 e. "Commissioner" means the Commissioner of Human
17 Services;

18 f. "Division" means the Division of Developmental Disabilities
19 in the Department of Human Services;

20 g. "Emergency" means a situation in which immediate
21 intervention is necessary to protect the physical safety of a person
22 receiving services at a facility or from a public or private agency, or
23 to protect the safety of others from an immediate threat of serious
24 physical injury;

25 h. "Mechanical restraint" means the application of a device, at
26 a facility or a public or private agency, that restricts a person's
27 freedom of movement either partially or totally and includes, but is
28 not limited to, a bedside rail, mitt, jumpsuit, arm splint, vest,
29 helmet, and body harness, but does not include a domed or enclosed
30 crib;

31 i. "Person with traumatic brain injury" means a person who has
32 sustained an injury, illness, or traumatic changes to the skull, the
33 brain contents, or its coverings, which results in a temporary or
34 permanent physiobiological decrease of cognitive, behavioral,
35 social, or physical functioning that causes partial or total disability;

36 j. "Physical restraint" means physical contact by facility or
37 public or private agency staff that restricts a person's freedom of
38 movement either partially or totally;

39 k. "Public or private agency" means an entity under contract
40 with, licensed by, or working in collaboration with, the division or
41 Department of Human Services, as appropriate, to provide services
42 for persons with developmental disabilities; and

43 l. "Unusual incident" means: an event involving a person
44 receiving services at a facility or from a public or private agency,
45 which event includes indications or allegations of criminal actions,
46 injury, negligence, exploitation, abuse, clinical mismanagement, or
47 medical malpractice; a major unforeseen event, including a serious
48 fire, explosion, or power failure, which presents a significant danger

1 to the safety or well-being of persons served or staff; or a
2 newsworthy incident, including an incident that affects the
3 Department of Human Services or the division in a manner that may
4 attract media interest or calls, especially those incidents involving
5 potential criminal charges, famous, notorious, or dangerous people,
6 or relating to a news item of wide public interest.
7 (cf: P.L.2010, c.50, s.52)

8
9 3. Section 5 of P.L.1977, c.82 (C.30:6D-5) is amended to read
10 as follows:

11 5. a. No person receiving services for persons with developmental
12 disabilities at any facility shall:

13 (1) be subjected to any corporal punishment;

14 (2) be administered any medication or chemical restraint, except
15 upon the written authorization of a physician when necessary and
16 appropriate as an element of the service being received or as a
17 treatment of any medical or physical condition in conformity with
18 accepted standards for that treatment. The nature, amount of, and
19 reasons for the administration of any medication or chemical
20 restraint shall be promptly recorded in the person's medical record;
21 or

22 (3) be **【physically or】** chemically restrained or isolated in any
23 manner, except in emergency situations for the control of violent,
24 disturbed, or depressed behavior **【which】** that may immediately
25 result in or has resulted in harm to the person or other person **【or in**
26 **substantial property damage】**.

27 The chief administrator of the facility, or the chief
28 administrator's designee, shall be notified immediately upon the
29 application of any chemical restraint or isolation, and thereafter, the
30 restraint or isolation shall be continued only upon the written order
31 of the administrator or designee. The order shall be effective for
32 not more than 24 hours, and may be renewed for additional periods
33 of not more than 24 hours each if the administrator or designee
34 **【shall determine】** determines that continued restraint or isolation is
35 necessary. While in restraint or isolation, the person shall be
36 checked by an attendant every 15 minutes**【,】** and bathed every 24
37 hours. The restraint or isolation shall be terminated at any time if
38 an attending physician **【shall find】** finds the restraint or isolation to
39 be medically contraindicated. The nature, duration of, reasons for,
40 and notation of attendant checks shall be promptly recorded in the
41 person's medical record;

42 (4) be subjected to shock treatment, psychosurgery, sterilization,
43 or medical, behavioral, or pharmacological research without the
44 express and informed consent of the person, if the person is an adult
45 who has mental capacity, or of the person's guardian ad litem
46 specifically appointed by a court for the matter of consent to these
47 proceedings, if the person is a minor **【or】**, is an adult who lacks

1 mental capacity, or is a person administratively determined to have
2 a mental deficiency. The consent shall be made in writing and shall
3 be placed in the person's record.

4 Either the party alleging the necessity of the procedure or the
5 person or the person's guardian ad litem may petition a court of
6 competent jurisdiction to hold a hearing to determine the necessity
7 of the procedure at which the client is physically present,
8 represented by counsel, and provided the right and opportunity to be
9 confronted with and to cross-examine all witnesses alleging the
10 necessity of the procedure. In the proceedings, the burden of proof
11 shall be on the party alleging the necessity of the procedure. In the
12 event that a person cannot afford counsel, the court shall appoint an
13 attorney not less than 10 days before the hearing. An attorney so
14 appointed shall be entitled to a reasonable fee to be determined by
15 the court and paid by the county from which the person was
16 admitted. Under no circumstances may a person in treatment be
17 subjected to hazardous or intrusive experimental research **【which】**
18 that is not directly related to the specific goals of the person's
19 treatment program.

20 (5) Notwithstanding the provisions of paragraph (4) of this
21 subsection to the contrary, nothing in this section shall prohibit
22 consent obtained or research conducted pursuant to the provisions
23 of P.L.2007, c.316 (C.26:14-1 et seq.) as provided in this paragraph
24 (5).

25 (a) In addition to meeting the requirements of sections 4 and 5
26 of P.L.2007, c.316 (C.26:14-4 and C.26:14-5), medical research
27 involving persons who are protected by the provisions of this
28 subsection shall also meet the approval of the Interdisciplinary
29 Research Committee established herein.

30 (b) The members of the Interdisciplinary Research Committee
31 shall be appointed by the Assistant Commissioner of the Division of
32 Developmental Disabilities in the Department of Human Services,
33 and shall serve at the pleasure of the Assistant Commissioner. The
34 members shall have diverse backgrounds, represent a variety of
35 professions, and include at least one self-advocate and one family
36 member, neither of whom shall be an employee of the department.

37 (c) The committee shall independently determine whether the
38 criteria set forth in section 3 of P.L.2007, c.316 (C.26:14-3), and
39 where required, the informed consent provisions of section 4 of
40 P.L.2007, c.316 (C.26:14-4), have been met. In addition, the
41 committee may impose such other conditions on approval as it
42 determines are necessary to protect the health, safety, and autonomy
43 of the individuals participating in the medical research.

44 (d) Notices of proposals for medical research received by the
45 committee, and the committee's action on the proposals, shall be
46 posted on the department's website and forwarded to the New Jersey
47 Council on Developmental Disabilities, The Elizabeth M. Boggs

1 Center on Developmental Disabilities, and Disability Rights of New
2 Jersey.

3 (e) Two years after enactment of P.L.2011, c.182 and every two
4 years thereafter, the division shall provide to the Legislature,
5 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), and post on
6 the division's Internet website, a summary of the research proposals
7 reviewed by the committee and the actions taken.

8 b. Every person with a developmental disability in residence at
9 any facility shall be provided with a nutritionally adequate and
10 sufficient diet and shall receive appropriate and sufficient medical
11 and dental care on a regular basis and whenever otherwise
12 necessary.

13 c. Every person with a developmental disability between the
14 ages of five and 21, inclusive, in residence or full-time attendance
15 at any facility shall be provided a thorough and efficient education
16 suited to the person's age and abilities.

17 (cf: P.L.2013, c.103, s.92)

18

19 4. Section 11 of P.L.1977, c.82 (C.30:6D-11) is amended to
20 read as follows:

21 11. **【Such】** The plan shall:

22 a. Include a statement of the long-term habilitation goals for
23 **【such】** the person and the intermediate objectives relating to the
24 attainments of **【such】** the goals. **【Such】** These objectives shall be
25 stated specifically and in sequence and shall be expressed in
26 behavioral or other terms that provide measurable indices of
27 progress;

28 b. Describe how the objectives will be achieved and the
29 barriers that might interfere with the achievement of them;

30 c. State an objective criteria and an evaluation procedure and
31 schedule for determining whether **【such objective】** the objectives
32 and goals are being achieved;

33 d. Provide a coordinator who will be responsible for the
34 implementation of the plan;

35 e. Specify habilitation services to be provided;

36 f. Describe the personnel, including their qualifications,
37 necessary for the provision of the services described in **【such】** the
38 plan;

39 g. Specify the date of initiation and the anticipated duration of
40 each service to be provided;

41 h. Specify the role and objectives of all parties to the
42 implementation of the plan.

43 The plan shall not include physical or mechanical restraints or
44 aversive techniques as a planned intervention, but may provide for
45 the use of physical or mechanical restraints in accordance with the
46 provisions of subsection b. of section 6 of P.L. , c. (C.)

1 (pending before the Legislature as this bill) and subsection b. of
2 section 7 of P.L. , c. (C.) (pending before the Legislature
3 as this bill).

4 (cf: P.L.1977, c.82, s.11)

5
6 5. Section 5 of P.L.1983, c.524 (C.30:6D-17) is amended to
7 read as follows:

8 5. a. The department shall ensure that every developmentally
9 disabled person in a community residential facility receives
10 adequate medical and dental care, a nutritionally adequate diet, a
11 full daily program of structured activities, and those other services
12 which are necessary to maximize the developmental potential of the
13 developmentally disabled person in a manner least restrictive of
14 personal liberty. Every developmentally disabled person shall have
15 adequate protection from abuse and a wholesome environment in
16 which to live.

17 b. All rights and procedures for the enforcement of rights
18 recognized in sections 4, 5, and 7 of the "Developmentally
19 Disabled Rights Act," P.L.1977, c.82 (C.30:6D-4, 5, 7), and all
20 rights and procedures specified in P.L. , c. (C.)(pending
21 before the Legislature as this bill) shall apply to persons covered by
22 **【this act】** P.L.1983, c.524 (C.30:6D-13 et seq.).

23 c. The department shall ensure that:

24 (1) aversive techniques are not used on a person with traumatic
25 brain injury who is in a community residence licensed under
26 P.L.1977, c.448 (C.30:11B-1 et seq.); and

27 (2) if a physical or mechanical restraint is used on a person with
28 traumatic brain injury who is in a community residence licensed
29 under P.L.1977, c.448 (C.30:11B-1 et seq.), that use shall be in
30 accordance with the provisions of sections 6 and 7 of
31 P.L. , c. (C.) (pending before the Legislature as this bill).

32 (cf: P.L.1983, c.524, s.5)

33
34 6. (New section) a. Except as provided in subsection b. of
35 this section, a person receiving services for persons with
36 developmental disabilities at a facility or from a public or private
37 agency shall not be subjected to physical restraint unless:

38 (1) an emergency exists that necessitates the use of physical
39 restraint;

40 (2) the physical restraint is used only for the period that is
41 necessary to contain the behavior of the person so that the person no
42 longer poses an immediate threat of causing serious physical injury
43 to himself or others, except that this period shall not exceed one
44 hour;

45 (3) a medical order authorizing the use of physical restraint is
46 obtained from the person's treating physician before the application
47 of the physical restraint or not later than 15 minutes after the
48 application;

1 (4) the physician who signed the order referred to in paragraph
2 (3) of this subsection or the attending physician examines the
3 person not later than one working day after the application of the
4 physical restraint; and

5 (5) the use of force in the application of physical restraint does
6 not exceed the force that is reasonable and necessary under the
7 circumstances precipitating the use of physical restraint.

8 b. The provisions of subsection a. of this section shall not
9 apply in the case of physical restraint that is applied to:

10 (1) assist a person in completing a task if the person does not
11 resist the application of physical restraint or if the restraint is
12 minimal in intensity and duration;

13 (2) escort or carry a person to safety if the person is in danger in
14 his present location; or

15 (3) enable a health care professional to treat the medical needs
16 of the person.

17 c. Within one working day of the use of physical restraint on a
18 person in an emergency, the use shall be reported as an unusual
19 incident, in accordance with the division's policy for reporting
20 unusual incidents, which shall include reporting these incidents to
21 the person's parent or legal guardian, an unusual incident report
22 coordinator in the division, and the Office of Operations Support, or
23 its successor, in the Department of Human Services.

24

25 7. (New section) a. Except as provided in subsection b. of
26 this section, a person receiving services for persons with
27 developmental disabilities at a facility or from a public or private
28 agency shall not be subjected to mechanical restraint unless:

29 (1) an emergency exists that necessitates the use of mechanical
30 restraint;

31 (2) a medical order authorizing the use of mechanical restraint is
32 obtained from the person's treating physician before the application
33 of the mechanical restraint or not later than 15 minutes after the
34 application of the mechanical restraint;

35 (3) the physician who signed the order referred to in paragraph
36 (2) of this subsection or the attending physician examines the
37 person not later than one working day immediately after the
38 application of the mechanical restraint;

39 (4) the mechanical restraint is applied by staff trained in the use
40 and application of the particular restraint;

41 (5) the person is given the opportunity to move and exercise the
42 parts of his body that are restrained at least 10 minutes for every 60
43 minutes of restraint;

44 (6) a member of the staff lessens or discontinues the mechanical
45 restraint every 15 minutes to determine whether the person will stop
46 or control dangerous behavior without the use of the restraint;

47 (7) the record of the person contains a notation that includes:
48 the time of day that the mechanical restraint was lessened or

1 discontinued pursuant to paragraph (6) of this subsection; the
2 response of the person to the lessening or discontinuation of the
3 restraint; and the action taken by the member of the staff to lessen
4 or discontinue the mechanical restraint, as appropriate;

5 (8) a member of the staff continuously monitors the person
6 during the time that mechanical restraint is used on the person; and

7 (9) the mechanical restraint is used only for the period that is
8 necessary to contain the behavior of the person so that the person no
9 longer poses an immediate threat of causing serious physical injury
10 to himself or others.

11 b. If a medical order authorizing the use of mechanical restraint
12 is first obtained from the person's treating physician for any of the
13 purposes listed in this subsection, the provisions of subsection a. of
14 this section shall not apply when the mechanical restraint is used to:

15 (1) enable a health care professional to treat the medical needs
16 of the person;

17 (2) protect a person who is known to be at risk of injury to
18 himself because he lacks coordination or suffers from frequent loss
19 of consciousness;

20 (3) provide proper body alignment of a person; or

21 (4) position a person who has physical disabilities in a manner
22 described in the person's individual habilitation plan.

23 c. Within one working day of the use of mechanical restraint
24 on a person in an emergency, the use shall be reported as an unusual
25 incident, in accordance with the division's policy for reporting
26 unusual incidents, which shall include reporting these incidents to
27 the person's parent or legal guardian, to an unusual incident report
28 coordinator in the division, and to the Office of Operations Support,
29 or its successor, in the Department of Human Services.

30
31 8. (New section) As a condition of licensure, the Department
32 of Human Services shall require that a private facility or agency
33 that provides services for persons with traumatic brain injury shall
34 not:

35 a. use aversive techniques on a person with traumatic brain
36 injury; and

37 b. use physical or mechanical restraints on a person with
38 traumatic brain injury, unless that use is in accordance with the
39 provisions of sections 6 and 7 of P.L. , c. (C.) (pending
40 before the Legislature as this bill).

41
42 9. (New section) a. The division shall ensure that staff at a
43 facility for persons with developmental disabilities, at a public or
44 private agency providing services for persons with developmental
45 disabilities, and at a public or private facility or agency providing
46 services for persons with traumatic brain injury receive training that
47 includes:

1 (1) positive approaches to behavior, including, but not limited
2 to, methods of relationship-building, communication, de-escalation
3 and resolution of conflict, and the implementation of environmental
4 supports and accommodations for persons with challenging
5 behaviors; and

6 (2) a course in understanding the legal and ethical responsibility
7 of staff to persons under their care with developmental disabilities
8 and traumatic brain injury.

9 b. Staff working at a public or private facility or agency on the
10 effective date of P.L. , c. (C.) (pending before the
11 Legislature as this bill) who work directly with persons with
12 developmental disabilities or traumatic brain injury shall
13 successfully complete the training program provided for in
14 subsection a. of this section within six months of the effective date
15 of P.L. , c. (C.) (pending before the Legislature as this
16 bill).

17 c. Staff hired at a public or private facility or agency after the
18 effective date of P.L. , c. (C.) (pending before the
19 Legislature as this bill) who work directly with persons with
20 developmental disabilities or traumatic brain injury shall
21 successfully complete the training program provided for in
22 subsection a. of this section within six months of their date of hire.

23
24 10. (New section) The department shall develop and maintain a
25 web site that shall be updated quarterly and shall include: statistical
26 information about the number of unusual incidents that occurred at
27 a public or private facility or agency providing services for persons
28 with developmental disabilities or traumatic brain injury; and any
29 reports or findings from any State monitoring agency regarding the
30 public or private facility or agency.

31
32 11. Pursuant to the "Administrative Procedure Act,"
33 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human
34 Services shall adopt rules and regulations necessary to effectuate
35 the purposes of this act.

36
37 12. This act shall take effect on the 90th day after enactment, but
38 the Commissioner of Human Services may take such anticipatory
39 administrative action in advance as shall be necessary for the
40 implementation of the act.

41
42
43 STATEMENT

44
45 This bill restricts the use of physical and mechanical restraints on
46 persons with developmental disabilities by providing that, except in
47 limited circumstances, physical and mechanical restraints may be
48 used in emergency situations only. Under current law, in addition

1 to emergency use, such restraints may be used as planned
2 interventions as part of approved behavior modification plans, and
3 as a result of inclusion in these plans, the unusual incident reporting
4 requirements of the Division of Developmental Disabilities in the
5 Department of Human Services do not apply. The bill also excludes
6 aversive techniques as planned interventions.

7 Specifically, under the provisions of the bill, a person receiving
8 services for persons with developmental disabilities at a public or
9 private facility or from a public or private agency that provides
10 services for persons with developmental disabilities, would not be
11 subjected to physical restraint unless: 1) an emergency exists that
12 necessitates the use of physical restraint; 2) the physical restraint is
13 used only for the period that is necessary to contain the behavior of
14 the person so that the person no longer poses an immediate threat of
15 causing serious physical injury to himself or others, except that this
16 period may not exceed one hour; 3) a medical order authorizing the
17 use of physical restraint is obtained from the person's treating
18 physician before the application of physical restraint or not later
19 than 15 minutes after the application; 4) the physician who signed
20 the order or the attending physician examines the person not later
21 than one working day after the application of physical restraint; and
22 5) the use of force in the application of the physical restraint does
23 not exceed the force that is reasonable and necessary under the
24 circumstances precipitating the use of physical restraint.

25 The limited circumstances under which the above provisions
26 would not apply are when physical restraint is applied for the
27 following reasons: to assist a person in completing a task if the
28 person does not resist the application of physical restraint or if the
29 restraint is minimal in intensity and duration; to escort or carry a
30 person to safety if the person is in danger in his present location; or
31 to enable a health care professional to treat the medical needs of the
32 person.

33 With regard to mechanical restraints, a person receiving services
34 for persons with developmental disabilities at a facility or from a
35 public or private agency would not be subjected to mechanical
36 restraint unless: 1) an emergency exists that necessitates the use of
37 mechanical restraint; 2) a medical order authorizing the use of
38 mechanical restraint is obtained from the person's treating physician
39 before the application of the mechanical restraint or not later than
40 15 minutes after the application of the mechanical restraint; 3) the
41 physician who signed the order or the attending physician examines
42 the person not later than one working day after the application of
43 mechanical restraint; 4) the mechanical restraint is applied by staff
44 trained in the use and application of the particular restraint; 5) the
45 person is given the opportunity to move and exercise the parts of his
46 body that are restrained at least 10 minutes for every 60 minutes of
47 restraint; 6) a member of the staff lessens or discontinues the
48 mechanical restraint every 15 minutes to determine whether the

1 person will stop or control dangerous behavior without the use of
2 the restraint; 7) the record of the person contains a notation that
3 includes the time of day that the mechanical restraint was lessened
4 or discontinued, the response of the person to the lessening or
5 discontinuation of the restraint, and the action taken by the member
6 of the staff to lessen or discontinue the mechanical restraint, as
7 appropriate; 8) a member of the staff continuously monitors the
8 person during the time that mechanical restraint is used on the
9 person; and 9) the mechanical restraint is used only for the period
10 that is necessary to contain the behavior of the person so that the
11 person no longer poses an immediate threat of causing serious
12 physical injury to himself or others.

13 The limited circumstances under which the above provisions
14 would not apply are when mechanical restraint is applied for the
15 following reasons: to enable a health care professional to treat the
16 medical needs of the person; to protect a person who is known to be
17 at risk of injury to himself because he lacks coordination or suffers
18 from frequent loss of consciousness; to provide proper body
19 alignment of a person; or to position a person who has physical
20 disabilities in a manner described in the person's individual
21 habilitation plan. In these circumstances, however, a medical order
22 authorizing the use of mechanical restraint for any of these purposes
23 would first need to be obtained.

24 For both physical and mechanical restraints, the bill provides that
25 within one working day of the use of the restraint, the use is to be
26 reported as an unusual incident, in accordance with the Division of
27 Developmental Disabilities' policy for reporting unusual incidents,
28 which would include reporting these incidents to the person's parent
29 or legal guardian, to an unusual incident report coordinator in the
30 division, and to the Office of Operations Support, or its successor,
31 in the Department of Human Services.

32 The bill also provides that, as a condition of licensure, a private
33 facility or agency that provides services for persons with traumatic
34 brain injury may not use aversive techniques on persons with
35 traumatic brain injury, and may not use physical or mechanical
36 restraints unless that use is in accordance with the procedures
37 outlined in the bill.

38 In addition, the bill includes a provision requiring staff training
39 in positive approaches to behavior and completion of a course in
40 understanding the legal and ethical responsibilities of staff. The bill
41 also requires the department to develop and maintain a web site for
42 statistical information about the number of unusual incidents
43 occurring at public or private facilities or agencies, as well as any
44 reports or findings from any State monitoring agencies.

45 The bill defines "emergency" as a situation in which immediate
46 intervention is necessary to protect the physical safety of a person
47 receiving services at a facility or from a public or private agency, or
48 to protect the safety of others from an immediate threat of serious

1 physical injury.

2 The bill amends N.J.S.A.30:6D-5 to exclude "substantial
3 property damage" as a basis for using chemical restraint in
4 emergency situations, and it amends N.J.S.A.30:6D-11 to provide
5 that individual habilitation plans may not include aversive
6 techniques or physical or mechanical restraint as planned
7 interventions, but may provide for the use of physical or mechanical
8 restraint in accordance with the limited circumstances described
9 above.

10 This bill is based on Nevada and Pennsylvania law and is
11 intended to reduce the use of physical and mechanical restraints and
12 eliminate the use of aversive techniques in the State in order to
13 address the tragic situation that occurred at a State-licensed facility
14 in Haddonfield, where a teenage boy with autism, named Matthew,
15 was improperly restrained and left unattended.