

ASSEMBLY BILL NO. 280—ASSEMBLYMEN BUCKLEY, CARPENTER, OHRENSCHALL, LESLIE, THOMAS, SEGERBLOM, PERKINS, GIUNCHIGLIANI, LEE, ARBERRY, PARKS, WILLIAMS, MANENDO, ANDERSON, PRICE, FREEMAN, GOLDWATER, GIBBONS, MCCLAIN, KOIVISTO, COLLINS, BACHE, TIFFANY, NEIGHBORS, NOLAN, HETTRICK AND EVANS

FEBRUARY 18, 1999

Referred to Committee on Health and Human Services

SUMMARY—Prohibits use of aversive intervention and deprivation techniques on persons with disabilities under certain circumstances. (BDR 39-286)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to persons with disabilities; prohibiting the use of aversive intervention and deprivation techniques on persons with disabilities under certain circumstances; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 433 of NRS is hereby amended by adding thereto
2 a new section to read as follows:
3 ***1. A person employed by a facility shall not use any aversive***
4 ***intervention or deprivation technique on a client to modify or change the***
5 ***behavior of the client. For the purposes of this section, an aversive***
6 ***intervention or deprivation technique does not include the use of***
7 ***reasonable and necessary force on a client if the force is used:***
8 ***(a) To quell a disturbance that threatens physical injury to any person***
9 ***or threatens the destruction of property;***
10 ***(b) To obtain possession of a weapon or other dangerous object that is***
11 ***within the control of the client;***
12 ***(c) For self-defense or the defense of another person; or***

1 (d) To escort a client away from the scene of a disturbance being
2 caused by the client if the client has refused to leave voluntarily with the
3 proper authorities.

4 2. Unless a more severe penalty is prescribed by specific statute
5 because of the nature of the aversive intervention or deprivation
6 technique used on the client or the injury suffered as a result of the use
7 of such intervention or technique, a person who violates this section:

8 (a) For a first violation, is guilty of a gross misdemeanor; and

9 (b) For a second or subsequent violation, is guilty of a category E
10 felony.

11 3. If a person is found guilty of violating the provisions of subsection
12 1, the attorney general shall, when applicable, give notice of the
13 conviction to each agency of this state or a local government that has
14 issued a license, registration, certificate or permit to:

15 (a) The person so convicted; and

16 (b) The facility in which the aversive intervention or deprivation
17 technique was used.

18 4. A conviction pursuant to this section is, when applicable, grounds
19 for disciplinary action against the person so convicted and the facility in
20 which the aversive intervention or deprivation technique was used,
21 including, without limitation:

22 (a) The suspension or revocation of the license, registration,
23 certificate or permit of the person so convicted or of the facility in which
24 the aversive intervention or deprivation technique was used; or

25 (b) The withholding of state funding for the facility until the state
26 agency that administers the funding is satisfied that the facility has taken
27 or is taking reasonable actions to prevent future use of the aversive
28 intervention or deprivation technique.

29 5. As used in this section, unless the context otherwise requires,
30 "aversive intervention or deprivation technique" means any intervention,
31 technique, stimulus or procedure that causes physical pain or extreme
32 discomfort, psychological pain or humiliation to a client upon whom the
33 intervention, technique, stimulus or procedure is used. The term
34 includes, without limitation:

35 (a) The use of noxious odors and tastes;

36 (b) The use of water and other mists or sprays;

37 (c) Blasts of air;

38 (d) Corporal punishment;

39 (e) Electric shock;

40 (f) Physical or chemical restraint, or both;

41 (g) Seclusion;

1 *(h) Any intervention, technique or procedure that deprives a client of*
2 *the use of one or more of his senses, regardless of the length of*
3 *deprivation; and*

4 *(i) The deprivation of necessities needed to sustain the health of a*
5 *client, regardless of the length of the deprivation.*

6 **Sec. 2.** NRS 433.456 is hereby amended to read as follows:

7 433.456 As used in NRS 433.456 to 433.536, inclusive, *and section 1*
8 *of this act*, unless the context otherwise requires, the words and terms
9 defined in NRS 433.458 to 433.462, inclusive, have the meanings ascribed
10 to them in those sections.

11 **Sec. 3.** Chapter 435 of NRS is hereby amended by adding thereto a
12 new section to read as follows:

13 **1.** *A person employed by a mental retardation center or a community*
14 *center for training retarded persons shall not use any aversive*
15 *intervention or deprivation technique on a mentally retarded person to*
16 *modify or change the behavior of the mentally retarded person. For the*
17 *purposes of this section, an aversive intervention or deprivation*
18 *technique does not include the use of reasonable and necessary force on*
19 *a mentally retarded person if the force is used:*

20 *(a) To quell a disturbance that threatens physical injury to any person*
21 *or threatens the destruction of property;*

22 *(b) To obtain possession of a weapon or other dangerous object that is*
23 *within the control of the mentally retarded person;*

24 *(c) For self-defense or the defense of another person; or*

25 *(d) To escort a mentally retarded person away from the scene of a*
26 *disturbance being caused by the mentally retarded person if he has*
27 *refused to leave voluntarily with the proper authorities.*

28 **2.** *Unless a more severe penalty is prescribed by specific statute*
29 *because of the nature of the aversive intervention or deprivation*
30 *technique used on the mentally retarded person or the injury suffered as*
31 *a result of the use of such intervention or technique, a person who*
32 *violates this section:*

33 *(a) For a first violation, is guilty of a gross misdemeanor; and*

34 *(b) For a second or subsequent violation, is guilty of a category E*
35 *felony.*

36 **3.** *If a person is found guilty of violating the provisions of subsection*
37 *1, the attorney general shall, when applicable, give notice of the*
38 *conviction to each agency of this state or a local government that has*
39 *issued a license, registration, certificate or permit to:*

40 *(a) The person so convicted; and*

41 *(b) The center in which the aversive intervention or deprivation*
42 *technique was used.*

1 **4. A conviction pursuant to this section is, when applicable, grounds**
2 **for disciplinary action against the person so convicted and the center in**
3 **which the aversive intervention or deprivation technique was used,**
4 **including, without limitation:**

5 **(a) The suspension or revocation of the license, registration,**
6 **certificate or permit of the person so convicted or of the center in which**
7 **the aversive intervention or deprivation technique was used; or**

8 **(b) The withholding of state funding for the center until the state**
9 **agency that administers the funding is satisfied that the center has taken**
10 **or is taking reasonable actions to prevent future use of the aversive**
11 **intervention or deprivation technique.**

12 **5. As used in this section, unless the context otherwise requires**
13 **“aversive intervention or deprivation technique” means any intervention,**
14 **technique, stimulus or procedure that causes physical pain or extreme**
15 **discomfort, psychological pain or humiliation to a mentally retarded**
16 **person upon whom the intervention, technique, stimulus or procedure is**
17 **used. The term includes, without limitation:**

18 **(a) The use of noxious odors and tastes;**

19 **(b) The use of water and other mists or sprays;**

20 **(c) Blasts of air;**

21 **(d) Corporal punishment;**

22 **(e) Electric shock;**

23 **(f) Physical or chemical restraint, or both;**

24 **(g) Seclusion;**

25 **(h) Any intervention, technique or procedure that deprives a mentally**
26 **retarded person of the use of one or more of his senses, regardless of the**
27 **length of deprivation; and**

28 **(i) The deprivation of necessities needed to sustain the health of a**
29 **mentally retarded person, regardless of the length of the deprivation.**

30 **Sec. 4.** Chapter 388 of NRS is hereby amended by adding thereto a
31 new section to read as follows:

32 **1. A person employed at a public school shall not use any aversive**
33 **intervention or deprivation technique on a pupil with a disability to**
34 **modify or change the behavior of the pupil. For the purposes of this**
35 **section, an aversive intervention or deprivation technique does not**
36 **include the use of reasonable and necessary force on a pupil with a**
37 **disability if the force is used:**

38 **(a) To quell a disturbance that threatens physical injury to any person**
39 **or threatens the destruction of property;**

40 **(b) To obtain possession of a weapon or other dangerous object that is**
41 **within the control of the pupil with a disability;**

42 **(c) For self-defense or the defense of another person; or**

1 (d) To escort a pupil with a disability away from the scene of a
2 disturbance being caused by the pupil if the pupil has refused to leave
3 voluntarily with the proper authorities.

4 2. Unless a more severe penalty is prescribed by specific statute
5 because of the nature of the aversive intervention or deprivation
6 technique used on the pupil with a disability or the injury suffered as a
7 result of the use of such intervention or technique, a person who violates
8 the provisions of subsection 1:

9 (a) For a first violation, is guilty of a gross misdemeanor; and

10 (b) For a second or subsequent violation, is guilty of a category E
11 felony.

12 3. If a person is found guilty of violating the provisions of subsection
13 1, the attorney general shall give notice of the conviction to:

14 (a) The superintendent of public instruction; and

15 (b) The board of trustees of the school district in which is located the
16 school in which the aversive intervention or deprivation technique was
17 used.

18 4. A conviction pursuant to this section is grounds for disciplinary
19 action against the person so convicted, including, without limitation, the
20 suspension or revocation of his license or the termination of his
21 employment.

22 5. As used in this section, unless the context otherwise requires,
23 "aversive intervention or deprivation technique" means any intervention,
24 technique, stimulus or procedure that causes physical pain or extreme
25 discomfort, psychological pain or humiliation to a pupil with a disability
26 upon whom the intervention, technique, stimulus or procedure is used.
27 The term includes, without limitation:

28 (a) The use of noxious odors and tastes;

29 (b) The use of water and other mists or sprays;

30 (c) Blasts of air;

31 (d) Corporal punishment;

32 (e) Electric shock;

33 (f) Physical or chemical restraint, or both;

34 (g) Seclusion;

35 (h) Any intervention, technique or procedure that deprives a pupil
36 with a disability of the use of one or more of his senses, regardless of the
37 length of deprivation; and

38 (i) The deprivation of necessities needed to sustain the health of a
39 pupil with a disability, regardless of the length of the deprivation.

40 Sec. 5. NRS 388.440 is hereby amended to read as follows:

41 388.440 As used in NRS 388.440 to 388.520, inclusive ~~1-1~~, and
42 section 4 of this act:

1 1. "Gifted and talented pupil" means a person under the age of 18
2 years who demonstrates such outstanding academic skills or aptitudes that
3 he cannot progress effectively in a regular school program and therefore
4 needs special instruction or special services.

5 2. "Pupil with a disability" means a person under the age of 22 years
6 who deviates either educationally, physically, socially or emotionally so
7 markedly from normal patterns that he cannot progress effectively in a
8 regular school program and therefore needs special instruction or special
9 services.

10 **Sec. 6.** Chapter 394 of NRS is hereby amended by adding thereto a
11 new section to read as follows:

12 *1. A person employed by a private school or postsecondary*
13 *educational institution shall not use any aversive intervention or*
14 *deprivation technique on a pupil with a disability or a student with a*
15 *disability to modify or change the behavior of the pupil or student. For*
16 *the purposes of this section, an aversive intervention or deprivation*
17 *technique does not include the use of reasonable and necessary force on*
18 *a pupil with a disability or a student with a disability if the force is used:*

19 *(a) To quell a disturbance that threatens physical injury to any person*
20 *or threatens the destruction of property;*

21 *(b) To obtain possession of a weapon or other dangerous object that is*
22 *within the control of the pupil or student;*

23 *(c) For self-defense or the defense of another person; or*

24 *(d) To escort a pupil with a disability or a student with a disability*
25 *away from the scene of a disturbance being caused by the pupil or*
26 *student if he has refused to leave voluntarily with the proper authorities.*

27 *2. Unless a more severe penalty is prescribed by specific statute*
28 *because of the nature of the aversive intervention or deprivation*
29 *technique used on the pupil with a disability or the student with a*
30 *disability, or the injury suffered as a result of the use of such intervention*
31 *or technique, a person who violates this section:*

32 *(a) For a first violation, is guilty of a gross misdemeanor; and*

33 *(b) For a second or subsequent violation, is guilty of a category E*
34 *felony.*

35 *3. If a person is found guilty of violating the provisions of subsection*
36 *1, the attorney general shall give notice of the conviction:*

37 *(a) If the person so convicted is licensed pursuant to chapter 391 of*
38 *NRS, to the superintendent; and*

39 *(b) If the educational institution in which the aversive intervention or*
40 *deprivation technique was used is:*

41 *(1) A private school, to the state board; or*

42 *(2) A postsecondary educational institution, to the commission.*

1 4. A conviction pursuant to this section is grounds for disciplinary
2 action against the person so convicted and any private school or
3 postsecondary educational institution in which the aversive intervention
4 or deprivation technique was used, including, without limitation:

5 (a) If the person is licensed pursuant to chapter 391 of NRS, the
6 suspension or revocation of his license; and

7 (b) The suspension or revocation of the license of the private school or
8 postsecondary educational institution.

9 5. As used in this section, unless the context otherwise requires:

10 (a) "Aversive intervention or deprivation technique" means any
11 intervention, technique, stimulus or procedure that causes physical pain
12 or extreme discomfort, psychological pain or humiliation to a pupil with
13 a disability or a student with a disability upon whom the intervention,
14 technique, stimulus or procedure is used. The term includes, without
15 limitation:

16 (1) The use of noxious odors and tastes;

17 (2) The use of water and other mists or sprays;

18 (3) Blasts of air;

19 (4) Corporal punishment;

20 (5) Electric shock;

21 (6) Physical or chemical restraint, or both;

22 (7) Seclusion;

23 (8) Any intervention, technique or procedure that deprives a pupil
24 with a disability or a student with a disability of the use of one or more of
25 his senses, regardless of the length of deprivation; and

26 (9) The deprivation of necessities needed to sustain the health of a
27 pupil with a disability or a student with a disability, regardless of the
28 length of the deprivation.

29 (b) "Pupil with a disability" has the meaning ascribed to it in NRS
30 388.440.

31 (c) "Student with a disability" means a student who is enrolled in a
32 postsecondary educational institution who:

33 (1) Has a physical or mental impairment that substantially limits
34 one or more of the major life activities of the person;

35 (2) Has a record of such an impairment; or

36 (3) Is regarded as having such an impairment.

37 Sec. 7. Chapter 432B of NRS is hereby amended by adding thereto a
38 new section to read as follows:

39 1. A person who is employed by a public agency authorized to care
40 for children in need of protection or a private institution or agency
41 licensed by the department of human resources to care for such children
42 shall not use any aversive intervention or deprivation technique on a

1 *child with a disability to modify or change the behavior of the child. For*
2 *the purposes of this section, an aversive intervention or deprivation*
3 *technique does not include the use of reasonable and necessary force on*
4 *a child with a disability if the force is used:*

5 *(a) To quell a disturbance that threatens physical injury to any person*
6 *or threatens the destruction of property;*

7 *(b) To obtain possession of a weapon or other dangerous object that is*
8 *within the control of the child with a disability;*

9 *(c) For self-defense or the defense of another person; or*

10 *(d) To escort a child with a disability away from the scene of a*
11 *disturbance being caused by the child if the child has refused to leave*
12 *voluntarily with the proper authorities.*

13 *2. Unless a more severe penalty is prescribed by specific statute*
14 *because of the nature of the aversive intervention or deprivation*
15 *technique used on the child with a disability or the injury suffered as a*
16 *result of the use of such intervention or technique, a person who violates*
17 *this section:*

18 *(a) For a first violation, is guilty of a gross misdemeanor; and*

19 *(b) For a second or subsequent violation, is guilty of a category E*
20 *felony.*

21 *3. If a person is found guilty of violating the provisions of subsection*
22 *1, the attorney general shall, when applicable, give notice of the*
23 *conviction to each agency of this state or a local government that has*
24 *issued a license, registration, certificate or permit to:*

25 *(a) The person so convicted; and*

26 *(b) The agency or institution in which the aversive intervention or*
27 *deprivation technique was used.*

28 *4. A conviction pursuant to this section is, when applicable, grounds*
29 *for disciplinary action against the person so convicted and the agency or*
30 *institution in which the aversive intervention or deprivation technique*
31 *was used, including, without limitation:*

32 *(a) The suspension or revocation of the license, registration,*
33 *certificate or permit of the person so convicted or of the agency or*
34 *institution in which the aversive intervention or deprivation technique*
35 *was used; or*

36 *(b) The withholding of state funding for the agency or institution until*
37 *the state agency that administers the funding is satisfied that the agency*
38 *or institution has taken or is taking reasonable actions to prevent future*
39 *use of the aversive intervention or deprivation technique.*

40 *5. As used in this section, unless the context otherwise requires:*

1 (a) "Aversive intervention or deprivation technique" means any
2 intervention, technique, stimulus or procedure that causes physical pain
3 or extreme discomfort, psychological pain or humiliation to a child with
4 a disability upon whom the intervention, technique, stimulus or
5 procedure is used. The term includes, without limitation:

- 6 (1) The use of noxious odors and tastes;
7 (2) The use of water and other mists or sprays;
8 (3) Blasts of air;
9 (4) Corporal punishment;
10 (5) Electric shock;
11 (6) Physical or chemical restraint, or both;
12 (7) Seclusion;
13 (8) Any intervention, technique or procedure that deprives a child
14 with a disability of the use of one or more of his senses, regardless of the
15 length of deprivation; and
16 (9) The deprivation of necessities needed to sustain the health of a
17 child with a disability, regardless of the length of the deprivation.

18 (b) "Child with a disability" means a child who:
19 (1) Has a physical or mental impairment that substantially limits
20 one or more of the major life activities of the child;
21 (2) Has a record of such an impairment; or
22 (3) Is regarded as having such an impairment.

23 **Sec. 8.** NRS 432B.490 is hereby amended to read as follows:

24 432B.490 1. An agency which provides protective services:

25 (a) Shall, within 10 days after the hearing on protective custody, unless
26 good cause exists, initiate a proceeding in court by filing a petition which
27 meets the requirements set forth in NRS 432B.510 or recommend against
28 any further action in court; or

29 (b) If a child is not placed in protective custody, may, after an
30 investigation is made under NRS 432B.010 to 432B.400, inclusive, **and**
31 **section 7 of this act**, file a petition which meets the requirements set forth
32 in NRS 432B.510.

33 2. If the agency recommends against further action, the court may, on
34 its own motion, initiate proceedings when it finds that it is in the best
35 interests of the child.

36 3. If a child has been placed in protective custody and if further action
37 in court is taken, an agency which provides protective services shall make
38 recommendations to the court concerning whether the child should be
39 returned to the person responsible for his welfare pending further action in
40 court.

1 **Sec. 9.** Chapter 449 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 **1. A person employed by a facility licensed by the board pursuant to**
4 **this chapter shall not use any aversive intervention or deprivation**
5 **technique on a person with a disability to modify or change the behavior**
6 **of the person with a disability. For the purposes of this section, an**
7 **aversive intervention or deprivation technique does not include the use of**
8 **reasonable and necessary force on a person with a disability if the force**
9 **is used:**

10 **(a) To quell a disturbance that threatens physical injury to any person**
11 **or threatens the destruction of property;**

12 **(b) To obtain possession of a weapon or other dangerous object that is**
13 **within the control of the person with a disability;**

14 **(c) For self-defense or the defense of another person; or**

15 **(d) To escort a person with a disability away from the scene of a**
16 **disturbance being caused by him if he has refused to leave voluntarily**
17 **with the proper authorities.**

18 **2. Unless a more severe penalty is prescribed by specific statute**
19 **because of the nature of the aversive intervention or deprivation**
20 **technique used on the person with a disability or the injury suffered as a**
21 **result of the use of such intervention or technique, a person who violates**
22 **this section:**

23 **(a) For a first violation, is guilty of a gross misdemeanor; and**

24 **(b) For a second or subsequent violation, is guilty of a category E**
25 **felony.**

26 **3. If a person is found guilty of violating the provisions of subsection**
27 **1, the attorney general shall, when applicable, give notice of the**
28 **conviction to each agency of this state or a local government that has**
29 **issued a license, registration, certificate or permit to:**

30 **(a) The person so convicted; and**

31 **(b) The facility in which the aversive intervention or deprivation**
32 **technique was used.**

33 **4. A conviction pursuant to this section is, when applicable, grounds**
34 **for disciplinary action against the person so convicted and the facility in**
35 **which the aversive intervention or deprivation technique was used,**
36 **including, without limitation:**

37 **(a) The suspension or revocation of the license, registration,**
38 **certificate or permit of the person so convicted or of the facility in which**
39 **the aversive intervention or deprivation technique was used; or**

40 **(b) The withholding of state funding for the facility until the state**
41 **agency that administers the funding is satisfied that the facility has taken**
42 **or is taking reasonable actions to prevent future use of the aversive**
43 **intervention or deprivation technique.**

1 5. As used in this section, unless the context otherwise requires:

2 (a) "Aversive intervention or deprivation technique" means any
3 intervention, technique, stimulus or procedure that causes physical pain
4 or extreme discomfort, psychological pain or humiliation to a person
5 with a disability upon whom the intervention, technique, stimulus or
6 procedure is used. The term includes, without limitation:

7 (1) The use of noxious odors and tastes;

8 (2) The use of water and other mists or sprays;

9 (3) Blasts of air;

10 (4) Corporal punishment;

11 (5) Electric shock;

12 (6) Physical or chemical restraint, or both;

13 (7) Seclusion;

14 (8) Any intervention, technique or procedure that deprives a person
15 with a disability of the use of one or more of his senses, regardless of the
16 length of deprivation; and

17 (9) The deprivation of necessities needed to sustain the health of a
18 person with a disability, regardless of the length of the deprivation.

19 (b) "Person with a disability" means a person who is a patient at a
20 facility licensed by the board pursuant to this chapter and who:

21 (1) Has a physical or mental impairment that substantially limits
22 one or more of the major life activities of the person;

23 (2) Has a record of such an impairment; or

24 (3) Is regarded as having such an impairment.

25 **Sec. 10.** The amendatory provisions of this act do not apply to
26 offenses that were committed before October 1, 1999.