

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

CHAPTER.....

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

WHEREAS, Providing appropriate health and educational services to persons with disabilities is essential to fulfilling this state's important goal of ensuring equality of opportunity, full participation, independent living and economic self-sufficiency for persons with disabilities; and

WHEREAS, A person with a disability who is receiving health or educational services in this state deserves to receive those services in an environment that is the least restrictive, as determined by his disability, and deserves to be treated with dignity and respect by the staff of the facility or school where he is receiving services; and

WHEREAS, A person with a disability who is receiving health or educational services in this state deserves a comprehensive treatment or educational program that does not authorize disciplinary measures when convenient for the members of the staff of the facility or school; now, therefore,

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

Section 1. Chapter 433 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 19, inclusive, of this act.

Sec. 2. *As used in sections 2 to 19, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Aversive intervention” means any of the following actions if the action is used to punish a person with a disability or to eliminate, reduce or discourage maladaptive behavior of a person with a disability:*

- 1. The use of noxious odors and tastes;*
- 2. The use of water and other mists or sprays;*
- 3. The use of blasts of air;*
- 4. The use of corporal punishment;*
- 5. The use of verbal and mental abuse;*
- 6. The use of electric shock;*
- 7. Requiring a person to perform exercise under forced conditions if the:*

(a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability;

(b) Exercise is harmful to the health of the person because of his disability; or

(c) Nature of the person's disability prevents him from engaging in the exercise;

8. Any intervention, technique or procedure that deprives a person of the use of one or more of his senses, regardless of the length of the deprivation, including, without limitation, the use of sensory screens; or

9. The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of:

(a) Food or liquid at a time when it is customarily served; or

(b) Medication.

Sec. 4. "Chemical restraint" means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.

Sec. 5. "Corporal punishment" means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.

Sec. 6. "Electric shock" means the application of electric current to a person's skin or body. The term does not include electroconvulsive therapy.

Sec. 7. "Emergency" means a situation in which immediate intervention is necessary to protect the physical safety of a person or others from an immediate threat of physical injury or to protect against an immediate threat of severe property damage.

Sec. 8. "Mechanical restraint" means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person's movement or hold a person immobile.

Sec. 9. "Person with a disability" means a person who:

1. Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;

2. Has a record of such an impairment; or

3. Is regarded as having such an impairment.

Sec. 10. "Physical restraint" means the use of physical contact to limit a person's movement or hold a person immobile.

Sec. 11. "Verbal and mental abuse" means verbal intimidation or coercion of a person without a redeeming purpose.

Sec. 12. A person employed by a facility or any other person shall not use any aversive intervention on a person with a disability who is a client.

Sec. 13. *Notwithstanding the provisions of sections 14 to 17, inclusive, of this act to the contrary, a facility may use or authorize the use of physical restraint, mechanical restraint or chemical restraint on a person with a disability who is a client if the facility is:*

- 1. Accredited by a nationally recognized accreditation association or agency; or*
- 2. Certified for participation in the Medicaid or Medicare program,*
only to the extent that the accreditation or certification allows the use of such restraint.

Sec. 14. *A person employed by a facility or any other person shall not:*

- 1. Except as otherwise provided in section 15 of this act, use physical restraint on a person with a disability who is a client.*
- 2. Except as otherwise provided in section 16 of this act, use mechanical restraint on a person with a disability who is a client.*
- 3. Except as otherwise provided in section 17 of this act, use chemical restraint on a person with a disability who is client.*

Sec. 15. *1. Except as otherwise provided in subsection 2, physical restraint may be used on a person with a disability who is a client only if:*
(a) An emergency exists that necessitates the use of physical restraint;
(b) The physical restraint is used only for the period that is necessary to contain the behavior of the client so that the client is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage; and

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

2. Physical restraint may be used on a person with a disability who is a client and the provisions of subsection 1 do not apply if the physical restraint is used to:

- (a) Assist the client in completing a task or response if the client does not resist the application of physical restraint or if his resistance is minimal in intensity and duration;*
- (b) Escort or carry a client to safety if the client is in danger in his present location; or*
- (c) Conduct medical examinations or treatments on the client that are necessary.*

3. If physical restraint is used on a person with a disability who is a client in an emergency, the use of the procedure must be reported as a denial of rights pursuant to NRS 433.534, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.

Sec. 16. *1. Except as otherwise provided in subsection 2, mechanical restraint may be used on a person with a disability who is a client only if:*

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint is obtained from the client's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the client not later than 1 working day immediately after the application of the mechanical restraint;

(d) The mechanical restraint is applied by a member of the staff of the facility who is trained and qualified to apply mechanical restraint;

(e) The client is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint;

(f) A member of the staff of the facility lessens or discontinues the restraint every 15 minutes to determine whether the client will stop or control his inappropriate behavior without the use of the restraint;

(g) The record of the client contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the client and the response of the member of the staff of the facility who applied the mechanical restraint;

(h) A member of the staff of the facility continuously monitors the client during the time that mechanical restraint is used on the client; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the client so that the client is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage.

2. Mechanical restraint may be used on a person with a disability who is a client and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

(a) Treat the medical needs of a client;

(b) Protect a client who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(c) Provide proper body alignment to a client; or

(d) Position a client who has physical disabilities in a manner prescribed in the client's plan of services.

3. If mechanical restraint is used on a person with a disability who is a client in an emergency, the use of the procedure must be reported as a denial of rights pursuant to NRS 433.534, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.

Sec. 17. 1. Chemical restraint may only be used on a person with a disability who is a client if:

(a) *The client has been diagnosed as mentally ill, as defined in NRS 433A.115, and is receiving mental health services from a facility;*

(b) *The chemical restraint is administered to the client while he is under the care of the facility;*

(c) *An emergency exists that necessitates the use of chemical restraint;*

(d) *A medical order authorizing the use of chemical restraint is obtained from the client's attending physician or psychiatrist;*

(e) *The physician or psychiatrist who signed the order required pursuant to paragraph (d) examines the client not later than 1 working day immediately after the administration of the chemical restraint; and*

(f) *The chemical restraint is administered by a person licensed to administer medication.*

2. *If chemical restraint is used on a person with a disability who is a client, the use of the procedure must be reported as a denial of rights pursuant to NRS 433.534, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.*

Sec. 18. 1. *Each facility shall develop a program of education for the members of the staff of the facility to provide instruction in positive behavioral interventions and positive behavioral supports that:*

(a) *Includes positive methods to modify the environment of clients to promote adaptive behavior and reduce the occurrence of inappropriate behavior;*

(b) *Includes methods to teach skills to clients so that clients can replace inappropriate behavior with adaptive behavior;*

(c) *Includes methods to enhance a client's independence and quality of life;*

(d) *Includes the use of the least intrusive methods to respond to and reinforce the behavior of clients; and*

(e) *Offers a process for designing interventions based upon the client that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the client.*

2. *Each facility shall provide appropriate training for the members of the staff of the facility who are authorized to carry out and monitor physical restraint, mechanical restraint and chemical restraint to ensure that those members of the staff are competent and qualified to carry out the procedures in accordance with sections 2 to 19, inclusive, of this act.*

Sec. 19. 1. *A facility where a violation of the provisions of sections 2 to 19, inclusive, of this act occurs shall:*

(a) *Not later than 24 hours after a violation occurs, or as soon thereafter as the violation is discovered, report the violation to the division; and*

(b) *Develop, in cooperation with the division, a corrective plan to ensure that within 30 calendar days after the violation occurred, appropriate action is taken by the facility to prevent future violations.*

2. The division shall forward the plan to the director of the department. The director or his designee shall review the plan to ensure that it complies with applicable federal law and the statutes and regulations of this state. The director or his designee may require appropriate revision of the plan to ensure compliance.

3. If the facility where the violation occurred does not meet the requirements of the plan to the satisfaction of the director or his designee, the department may withhold funding for the facility until the facility meets the requirements of the plan.

Sec. 20. NRS 433.484 is hereby amended to read as follows:

433.484 Each client admitted for evaluation, treatment or training to a facility has the following rights concerning care, treatment and training, a list of which must be prominently posted in all facilities providing those services and must be otherwise brought to the attention of the client by such additional means as prescribed by regulation:

1. To medical, psychosocial and rehabilitative care, treatment and training including prompt and appropriate medical treatment and care for physical and mental ailments and for the prevention of any illness or disability. All of that care, treatment and training must be consistent with standards of practice of the respective professions in the community and is subject to the following conditions:

(a) Before instituting a plan of care, treatment or training or carrying out any necessary surgical procedure, express and informed consent must be obtained in writing from:

(1) The client if he is 18 years of age or over or legally emancipated and competent to give that consent, and from his legal guardian, if any;

(2) The parent or guardian of a client under 18 years of age and not legally emancipated; or

(3) The legal guardian of a client of any age who has been adjudicated mentally incompetent;

(b) An informed consent requires that the person whose consent is sought be adequately informed as to:

(1) The nature and consequences of the procedure;

(2) The reasonable risks, benefits and purposes of the procedure; and

(3) Alternative procedures available;

(c) The consent of a client as provided in paragraph (b) may be withdrawn by the client in writing at any time with or without cause;

(d) Even in the absence of express and informed consent, a licensed and qualified physician may render emergency medical care or treatment to any client who has been injured in an accident or who is suffering from an acute illness, disease or condition, if within a reasonable degree of medical certainty, delay in the initiation of emergency medical care or treatment would endanger the health of the client and if the treatment is immediately entered into the client's record of treatment, subject to the provisions of paragraph (e); and

(e) If the proposed emergency medical care or treatment is deemed by the chief medical officer of the facility to be unusual, experimental or generally occurring infrequently in routine medical practice, the chief medical officer shall request consultation from other physicians or practitioners of healing arts who have knowledge of the proposed care or treatment.

2. To be free from ~~[the application of any mechanical restraint, except if prescribed by a physician. If so prescribed, the restraint must be removed whenever the condition justifying its use no longer exists, and any use of a mechanical restraint, together with the reasons therefor, must be made a part of the client's record of treatment.]~~ **abuse, neglect and aversive intervention.**

3. To consent to his transfer from one facility to another, except that the administrator of the division of mental health and developmental services of the department or his designee, or the administrator of the division of child and family services of the department or his designee, may order a transfer to be made whenever conditions concerning care, treatment or training warrant it. If the client in any manner objects to the transfer, the person ordering it must enter the objection and a written justification of the transfer in the client's record of treatment and immediately forward a notice of the objection to the administrator who ordered the transfer, and the commission shall review the transfer pursuant to subsection 3 of NRS 433.534.

4. Other rights concerning care, treatment and training as may be specified by regulation of the commission.

Sec. 21. NRS 433.554 is hereby amended to read as follows:

433.554 1. An employee of a public or private mental health facility or any other person, except a client, who:

(a) Has reason to believe that a client of the division or of a private facility offering mental health services has been or is being abused or neglected and fails to report it;

(b) Brings intoxicating beverages or a controlled substance into any division facility occupied by clients unless specifically authorized to do so by the administrative officer or a staff physician of the facility;

(c) Is under the influence of liquor or a controlled substance while employed in contact with clients, unless in accordance with a lawfully issued prescription;

(d) Enters into any transaction with a client involving the transfer of money or property for personal use or gain at the expense of the client; or

(e) Contrives the escape, elopement or absence of a client, is guilty of a misdemeanor, in addition to any other penalties provided by law.

2. In addition to any other penalties provided by law, an employee of a public or private mental health facility or any other person, except a client, who willfully abuses or neglects a client:

(a) ~~[(If no)]~~ *For a first violation that does not result in* substantial bodily harm to the client, ~~[results,]~~ is guilty of a gross misdemeanor.

(b) ~~[(If)]~~ *For a first violation that results in* substantial bodily harm to the client, ~~[results,]~~ is guilty of a category B felony. ~~[and]~~

(c) *For a second or subsequent violation, is guilty of a category B felony.*

A person convicted of a category B felony pursuant to this section shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

3. A person who is convicted pursuant to this section is ineligible for 5 years for appointment to or employment in a position in the state service and, if he is an officer or employee of the state, he forfeits his office or position.

4. *A conviction pursuant to NRS 433.554 is, when applicable, grounds for disciplinary action against the person so convicted and the facility where the violation occurred. The division may recommend to the appropriate agency or board the suspension or revocation of the professional license, registration, certificate or permit of a person convicted pursuant to NRS 433.554.*

5. For the purposes of this section:

(a) "Abuse" means any willful and unjustified infliction of pain, injury or mental anguish upon a client, including, but not limited to:

(1) The rape, sexual assault or sexual exploitation of the client;

(2) ~~[(Striking the client);~~

~~—(3) Verbal intimidation or coercion of the client without a redeeming purpose;~~

~~—(4) The use of excessive force when placing the client in physical restraints; and~~

~~—(5)] The use of any type of aversive intervention;~~

(3) Except as otherwise provided in section 13 of this act, a violation of section 14 of this act; and

(4) The use of physical, ~~[(or)]~~ chemical or mechanical restraints or the use of seclusion in violation of ~~[(state or)]~~ federal law.

Any act which meets the standard of practice for care and treatment does not constitute abuse.

(b) "Client" includes any person who seeks, on his own or others' initiative, and can benefit from care, treatment and training in a public or private institution or facility offering mental health services. The term ~~[(does not include)]~~ *includes* a client of the division of child and family services of the department.

(c) "Neglect" means any omission to act which causes injury to a client or which places the client at risk of injury, including, but not limited to, the failure to follow:

(1) An appropriate plan of treatment to which the client has consented; and

(2) The policies of the facility for the care and treatment of clients. Any omission to act which meets the standard of practice for care and treatment does not constitute neglect.

(d) "Standard of practice" means the skill and care ordinarily exercised by prudent professional personnel engaged in health care.

Sec. 22. NRS 435.350 is hereby amended to read as follows:

435.350 1. Each mentally retarded person or person with a related condition admitted to a division facility is entitled to all rights enumerated in *sections 2 to 19, inclusive, of this act and* NRS 433.482 and 433.484.

2. The administrator shall designate a person or persons to be responsible for establishment of regulations relating to denial of rights of mentally retarded persons and persons with related conditions. The person designated shall file the regulations with the administrator.

3. Clients' rights specified in NRS 433.482 and 433.484 may be denied only for cause. Any denial of such rights must be entered in the client's treatment record, and notice of the denial must be forwarded to the administrator's designee or designees as provided in subsection 2. Failure to report denial of rights by an employee may be grounds for dismissal.

4. Upon receipt of notice of a denial of rights as provided in subsection 3, the administrator's designee or designees shall cause a full report to be prepared which sets forth in detail the factual circumstances surrounding the denial. A copy of the report must be sent to the administrator and the commission.

5. The commission has such powers and duties with respect to reports of denial of rights as are enumerated in subsection 3 of NRS 433.534.

Sec. 23. Chapter 388 of NRS is hereby amended by adding thereto the provisions set forth as sections 24 to 42, inclusive, of this act.

Sec. 24. *As used in sections 24 to 42, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 25 to 33, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 25. *"Aversive intervention" means any of the following actions if the action is used to punish a pupil with a disability or to eliminate, reduce or discourage maladaptive behavior of a pupil with a disability:*

- 1. The use of noxious odors and tastes;*
- 2. The use of water and other mists or sprays;*
- 3. The use of blasts of air;*
- 4. The use of corporal punishment;*
- 5. The use of verbal and mental abuse;*
- 6. The use of electric shock;*
- 7. The administration of chemical restraint to a person;*
- 8. The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room;*

9. *Requiring a person to perform exercise under forced conditions if the:*

(a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability;

(b) Exercise is harmful to the health of the person because of his disability; or

(c) Nature of the person's disability prevents him from engaging in the exercise; or

10. *The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of:*

(a) Food or liquid at a time when it is customarily served; or

(b) Medication.

Sec. 26. *“Chemical restraint” means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.*

Sec. 27. *“Corporal punishment” means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.*

Sec. 28. *“Electric shock” means the application of electric current to a person's skin or body. The term does not include electroconvulsive therapy.*

Sec. 29. *“Emergency” means a situation in which immediate intervention is necessary to protect the physical safety of a person or others from an immediate threat of physical injury or to protect against an immediate threat of severe property damage.*

Sec. 29.5. *“Individualized education program” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).*

Sec. 30. *“Individualized education program team” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(B).*

Sec. 31. *“Mechanical restraint” means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person's movement or hold a person immobile.*

Sec. 32. *“Physical restraint” means the use of physical contact to limit a person's movement or hold a person immobile.*

Sec. 33. *“Verbal and mental abuse” means actions or utterances that are intended to cause and actually cause severe emotional distress to a person.*

Sec. 34. *A person employed by the board of trustees of a school district or any other person shall not use any aversive intervention on a pupil with a disability.*

Sec. 35. *A person employed by the board of trustees of a school district or any other person shall not:*

1. Except as otherwise provided in section 36 of this act, use physical restraint on a pupil with a disability.

2. Except as otherwise provided in section 37 of this act, use mechanical restraint on a pupil with a disability.

Sec. 36. *1. Except as otherwise provided in subsection 2, physical restraint may be used on a pupil with a disability only if:*

(a) An emergency exists that necessitates the use of physical restraint;

(b) The physical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage; and

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

2. Physical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the physical restraint is used to:

(a) Assist the pupil in completing a task or response if the pupil does not resist the application of physical restraint or if his resistance is minimal in intensity and duration;

(b) Escort or carry a pupil to safety if the pupil is in danger in his present location; or

(c) Conduct medical examinations or treatments on the pupil that are necessary.

3. If physical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees determines that a denial of the pupil's rights has occurred, the board of trustees may submit a report to the department in accordance with section 42 of this act.

Sec. 37. *1. Except as otherwise provided in subsection 2, mechanical restraint may be used on a pupil with a disability only if:*

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint is obtained from the pupil's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the pupil as soon as practicable;

(d) The mechanical restraint is applied by a member of the staff of the school who is trained and qualified to apply mechanical restraint;

(e) The pupil is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint, unless otherwise prescribed by the physician who signed the order;

(f) A member of the staff of the school lessens or discontinues the restraint every 15 minutes to determine whether the pupil will stop or control his inappropriate behavior without the use of the restraint;

(g) The record of the pupil contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the pupil and the response of the member of the staff of the school who applied the mechanical restraint;

(h) A member of the staff of the school continuously monitors the pupil during the time that mechanical restraint is used on the pupil; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage.

2. Mechanical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

(a) Treat the medical needs of the pupil;

(b) Protect a pupil who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(c) Provide proper body alignment to a pupil; or

(d) Position a pupil who has physical disabilities in a manner prescribed in the pupil's individualized education program.

3. If mechanical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record and a confidential file maintained for the pupil not later than 1 working day after the procedure is used. A copy of the report must be provided to the board of trustees of the school district, the pupil's individualized education program team and the parent or guardian of the pupil. If the board of trustees determines that a denial of the pupil's rights has occurred, the board of trustees may submit a report to the department in accordance with section 42 of this act.

Sec. 38. 1. The department shall develop a model program of education for use by the school districts to train the members of the staff of the schools within the school districts who are identified in the individualized education programs of pupils with disabilities to provide services to those pupils. The model program of education must provide instruction in positive behavioral interventions and positive behavioral supports that:

(a) Includes positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;

(b) Includes methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;

(c) Includes methods to enhance the independence and quality of life for pupils with disabilities;

(d) Includes the use of the least intrusive methods to respond to and reinforce the behavior of pupils with disabilities; and

(e) Offers a process for designing interventions based upon the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil.

2. The board of trustees of each school district shall provide for appropriate training for the members of the staff of the schools within the school district who are authorized to carry out and monitor physical restraint and mechanical restraint to ensure that those members of the staff are qualified to carry out the procedures in accordance with sections 24 to 42, inclusive, of this act.

Sec. 39. In addition to any penalty prescribed by specific statute, a person who intentionally uses aversive intervention on a pupil with a disability or intentionally violates section 35 of this act, is subject to disciplinary action pursuant to NRS 391.312 or 391.330, or both.

Sec. 40. 1. A school where a violation of sections 24 to 42, inclusive, of this act occurs shall report the violation to the board of trustees of the school district not later than 24 hours after the violation occurred, or as soon thereafter as the violation is discovered.

2. The board of trustees of the school district where the violation occurred shall develop, in cooperation with the superintendent of schools of the school district, a corrective plan to ensure that within 30 calendar days after the violation occurred, appropriate action is taken by the school and the board of trustees to prevent future violations.

3. The superintendent of schools of the school district shall submit the plan to the department. The department shall review the plan to ensure that it complies with applicable federal law and the statutes and regulations of this state. The department may require appropriate revision of the plan to ensure compliance.

4. If the school where the violation occurred does not meet the requirements of the plan to the satisfaction of the department, the department may appoint a licensed administrator to oversee the school to ensure that the school meets the requirements of the plan. An administrator serves at the pleasure of the superintendent of public instruction and is entitled to receive such compensation as may be set by the superintendent. A school district that contains a school for which an administrator is appointed pursuant to this subsection shall reimburse the department for any expenses incurred by the department pursuant to this subsection.

Sec. 41. *An officer, administrator or employee of a public school shall not retaliate against any person for having:*

- 1. Reported a violation of sections 24 to 42, inclusive, of this act; or*
- 2. Provided information regarding a violation of sections 24 to 42, inclusive, of this act,*

by a public school or a member of the staff of the public school.

Sec. 42. *1. A denial of rights of a pupil with a disability pursuant to sections 24 to 42, inclusive, of this act must be entered in the pupil's cumulative record and a confidential file maintained for that pupil. Notice of the denial must be provided to the board of trustees of the school district.*

2. If the board of trustees of a school district receives notice of a denial of rights pursuant to subsection 1, it shall cause a full report to be prepared which must set forth in detail the factual circumstances surrounding the denial. A copy of the report must be provided to the department.

3. The department:

(a) Shall receive reports made pursuant to subsection 2;

(b) May investigate apparent violations of the rights of pupils with disabilities; and

(c) May act to resolve disputes relating to apparent violations.

Sec. 43. NRS 388.440 is hereby amended to read as follows:

388.440 As used in NRS 388.440 to 388.520, inclusive ~~§~~, and sections 24 to 42, inclusive, of this act:

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

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

Sec. 44. NRS 391.312 is hereby amended to read as follows:

391.312 1. A teacher may be suspended, dismissed or not reemployed and an administrator may be demoted, suspended, dismissed or not reemployed for the following reasons:

(a) Inefficiency;

(b) Immorality;

(c) Unprofessional conduct;

(d) Insubordination;

(e) Neglect of duty;

(f) Physical or mental incapacity;

(g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;

- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;
- (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (l) Failure to show normal improvement and evidence of professional training and growth;
- (m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
- (n) Any cause which constitutes grounds for the revocation of a teacher's license;
- (o) Willful neglect or failure to observe and carry out the requirements of this Title;
- (p) Dishonesty; ~~for~~
- (q) Breaches in the security or confidentiality of the questions and answers of the achievement and proficiency examinations that are administered pursuant to NRS 389.015 ~~for~~; or
- (r) An intentional violation of section 34 or 35 of this act.***

2. In determining whether the professional performance of a licensed employee is inadequate, consideration must be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

Sec. 45. NRS 391.330 is hereby amended to read as follows:

391.330 The state board may suspend or revoke the license of any teacher, administrator or other licensed employee, after notice and an opportunity for hearing have been provided pursuant to NRS 391.322 and 391.323, for:

1. Immoral or unprofessional conduct.
2. Evident unfitness for service.
3. Physical or mental incapacity which renders the teacher, administrator or other licensed employee unfit for service.
4. Conviction of a felony or crime involving moral turpitude.
5. Conviction of a sex offense under NRS 200.366, 200.368, 201.190, 201.220, 201.230 or 207.260 in which a pupil enrolled in a school of a county school district was the victim.
6. Knowingly advocating the overthrow of the Federal Government or of the State of Nevada by force, violence or unlawful means.
7. Persistent defiance of or refusal to obey the regulations of the state board, the commission or the superintendent of public instruction, defining and governing the duties of teachers, administrators and other licensed employees.

8. Breaches in the security or confidentiality of the questions and answers of the achievement and proficiency examinations that are administered pursuant to NRS 389.015.

9. *An intentional violation of section 34 or 35 of this act.*

Sec. 46. Chapter 394 of NRS is hereby amended by adding thereto the provisions set forth as sections 47 to 66, inclusive, of this act.

Sec. 47. *As used in sections 47 to 66, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 48 to 57, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 48. *“Aversive intervention” means any of the following actions if the action is used to punish a pupil with a disability or to eliminate, reduce or discourage maladaptive behavior of a pupil with a disability:*

- 1. The use of noxious odors and tastes;*
- 2. The use of water and other mists or sprays;*
- 3. The use of blasts of air;*
- 4. The use of corporal punishment;*
- 5. The use of verbal and mental abuse;*
- 6. The use of electric shock;*
- 7. The administration of chemical restraint to a person;*
- 8. The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room;*
- 9. Requiring a person to perform exercise under forced conditions if the:*
 - (a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability;*
 - (b) Exercise is harmful to the health of the person because of his disability; or*
 - (c) Nature of the person’s disability prevents him from engaging in the exercise; or*
- 10. The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of:*
 - (a) Food or liquid at a time when it is customarily served; or*
 - (b) Medication.*

Sec. 49. *“Chemical restraint” means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.*

Sec. 50. *“Corporal punishment” means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.*

Sec. 51. *“Electric shock” means the application of electric current to a person’s skin or body. The term does not include electroconvulsive therapy.*

Sec. 52. *“Emergency” means a situation in which immediate intervention is necessary to protect the physical safety of a person or others from an immediate threat of physical injury or to protect against an immediate threat of severe property damage.*

Sec. 53. *“Individualized education program team” has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(B).*

Sec. 54. *“Mechanical restraint” means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person’s movement or hold a person immobile.*

Sec. 55. *“Physical restraint” means the use of physical contact to limit a person’s movement or hold a person immobile.*

Sec. 56. *“Pupil with a disability” has the meaning ascribed to it in NRS 388.440.*

Sec. 57. *“Verbal and mental abuse” means actions or utterances that are intended to cause and actually cause severe emotional distress to a person.*

Sec. 58. *A person employed by a private school or any other person shall not use any aversive intervention on a pupil with a disability.*

Sec. 59. *A person employed by a private school or any other person shall not:*

1. *Except as otherwise provided in section 60 of this act, use physical restraint on a pupil with a disability.*

2. *Except as otherwise provided in section 61 of this act, use mechanical restraint on a pupil with a disability.*

Sec. 60. 1. *Except as otherwise provided in subsection 2, physical restraint may be used on a pupil with a disability only if:*

(a) *An emergency exists that necessitates the use of physical restraint;*

(b) *The physical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage; and*

(c) *The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.*

2. *Physical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the physical restraint is used to:*

(a) *Assist the pupil in completing a task or response if the pupil does not resist the application of physical restraint or if his resistance is minimal in intensity and duration;*

(b) *Escort or carry a pupil to safety if the pupil is in danger in his present location; or*

(c) Conduct medical examinations or treatments on the pupil that are necessary.

3. If physical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record not later than 1 working day after the procedure is used. A copy of the report must be provided to the superintendent, the administrator of the private school, the pupil's individualized education program team, if applicable, and the parent or guardian of the pupil. If the administrator of the private school determines that a denial of the pupil's rights has occurred, the administrator shall submit a report to the superintendent in accordance with section 66 of this act.

Sec. 61. 1. Except as otherwise provided in subsection 2, mechanical restraint may be used on a pupil with a disability only if:

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint is obtained from the pupil's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the pupil as soon as practicable after the application of the mechanical restraint;

(d) The mechanical restraint is applied by a member of the staff of the private school who is trained and qualified to apply mechanical restraint;

(e) The pupil is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint, unless otherwise prescribed by the physician who signed the order;

(f) A member of the staff of the private school lessens or discontinues the restraint every 15 minutes to determine whether the pupil will stop or control his inappropriate behavior without the use of the restraint;

(g) The record of the pupil contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the pupil and the response of the member of the staff of the private school who applied the mechanical restraint;

(h) A member of the staff of the private school continuously monitors the pupil during the time that mechanical restraint is used on the pupil; and

(i) The mechanical restraint is used only for the period that is necessary to contain the behavior of the pupil so that the pupil is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage.

2. Mechanical restraint may be used on a pupil with a disability and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

(a) Treat the medical needs of the pupil

;

(b) Protect a pupil who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;

(c) Provide proper body alignment to a pupil; or

(d) Position a pupil who has physical disabilities in a manner prescribed in the pupil's service plan developed pursuant to 34 C.F.R. § 300.455 or the pupil's individualized education program, whichever is appropriate.

3. If mechanical restraint is used on a pupil with a disability in an emergency, the use of the procedure must be reported in the pupil's cumulative record not later than 1 working day after the procedure is used. A copy of the report must be provided to the superintendent, the administrator of the private school, the pupil's individualized education program team, if applicable, and the parent or guardian of the pupil. If the administrator of the private school determines that a denial of the pupil's rights has occurred, the administrator shall submit a report to the superintendent in accordance with section 66 of this act.

4. As used in this section, "individualized education program" has the meaning ascribed to it in 20 U.S.C. § 1414(d)(1)(A).

Sec. 62. 1. If a private school provides instruction to pupils with disabilities, the school shall develop a program of education for the members of the staff of the school who provide services to pupils with disabilities. The program of education must provide instruction in positive behavioral interventions and positive behavioral supports that:

(a) Includes positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;

(b) Includes methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;

(c) Includes methods to enhance the independence and quality of life for pupils with disabilities;

(d) Includes the use of the least intrusive methods to respond to and reinforce the behavior of pupils with disabilities; and

(e) Offers a process for designing interventions based upon the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil.

2. If a private school provides instruction to pupils with disabilities, the school shall provide appropriate training for the members of the staff of the school who are authorized to carry out and monitor physical restraint and mechanical restraint to ensure that those members of the staff are qualified to carry out the procedures in accordance with sections 47 to 66, inclusive, of this act.

Sec. 63. In addition to any penalty prescribed by specific statute, a person who intentionally uses aversive intervention on a pupil with a disability or intentionally violates section 59 of this act, is subject to appropriate disciplinary action by the private school that employs him.

Sec. 64. 1. *A private school where a violation of sections 47 to 66, inclusive, of this act occurs shall report the violation to the superintendent not later than 24 hours after the violation occurred, or as soon thereafter as the violation is discovered.*

2. The private school where a violation occurred shall develop, in cooperation with the superintendent, a corrective plan to ensure that within 30 calendar days after the violation occurred, appropriate action is taken by the private school to prevent future violations.

3. The superintendent shall submit the plan to the department. The department shall review the plan to ensure that it complies with applicable federal law and the statutes and regulations of this state. The department may require appropriate revision of the plan to ensure compliance.

Sec. 65. *An officer, administrator or employee of a private school shall not retaliate against any person for having:*

1. Reported a violation of sections 47 to 66, inclusive, of this act; or

2. Provided information regarding a violation of sections 47 to 66, inclusive, of this act,
by a private school or a member of the staff of the private school.

Sec. 66. 1. *A denial of rights of a pupil with a disability pursuant to sections 47 to 66, inclusive, of this act must be entered in the pupil's cumulative record. Notice of the denial must be provided to the administrator of the private school.*

2. If the administrator of a private school receives notice of a denial of rights pursuant to subsection 1, he shall cause a full report to be prepared which must set forth in detail the factual circumstances surrounding the denial. A copy of the report must be provided to the superintendent.

3. The superintendent:

(a) Shall receive reports made pursuant to subsection 2;

(b) May investigate apparent violations of the rights of pupils with disabilities; and

(c) May act to resolve disputes relating to apparent violations.

Sec. 67. Chapter 449 of NRS is hereby amended by adding thereto the provisions set forth as sections 68 to 86, inclusive, of this act.

Sec. 68. *As used in sections 68 to 86, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 69 to 77, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 69. *“Aversive intervention” means any of the following actions if the action is used to punish a person with a disability or to eliminate, reduce or discourage maladaptive behavior of a person with a disability:*

1. The use of noxious odors and tastes;

2. The use of water and other mists or sprays;

3. The use of blasts of air;

4. The use of corporal punishment

;

5. *The use of verbal and mental abuse;*
6. *The use of electric shock;*
7. *Requiring a person to perform exercise under forced conditions if the:*

(a) Person is required to perform the exercise because he exhibited a behavior that is related to his disability;

(b) Exercise is harmful to the health of the person because of his disability; or

(c) Nature of the person's disability prevents him from engaging in the exercise;

8. *Any intervention, technique or procedure that deprives a person of the use of one or more of his senses, regardless of the length of the deprivation, including, without limitation, the use of sensory screens; or*

9. *The deprivation of necessities needed to sustain the health of a person, regardless of the length of the deprivation, including, without limitation, the denial or unreasonable delay in the provision of:*

(a) Food or liquid at a time when it is customarily served; or

(b) Medication.

The term does not include the withholding or withdrawal of life-sustaining treatment in accordance with NRS 449.626.

Sec. 69.5. *“Chemical restraint” means the administration of drugs for the specific and exclusive purpose of controlling an acute or episodic aggressive behavior when alternative intervention techniques have failed to limit or control the behavior. The term does not include the administration of drugs on a regular basis, as prescribed by a physician, to treat the symptoms of mental, physical, emotional or behavioral disorders and for assisting a person in gaining self-control over his impulses.*

Sec. 70. *“Corporal punishment” means the intentional infliction of physical pain, including, without limitation, hitting, pinching or striking.*

Sec. 71. *“Electric shock” means the application of electric current to a person's skin or body. The term does not include electroconvulsive therapy.*

Sec. 72. *“Emergency” means a situation in which immediate intervention is necessary to protect the physical safety of a person or others from an immediate threat of physical injury or to protect against an immediate threat of severe property damage.*

Sec. 73. *“Facility” means a facility licensed pursuant to this chapter that is a psychiatric hospital or a unit of a hospital that is specifically designated to provide care and services to persons with psychiatric or developmental disabilities.*

Sec. 74. *“Mechanical restraint” means the use of devices, including, without limitation, mittens, straps and restraint chairs to limit a person's movement or hold a person immobile.*

Sec. 75. *“Person with a disability” means a person who:*

- 1. Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;*
- 2. Has a record of such an impairment; or*
- 3. Is regarded as having such an impairment.*

Sec. 76. *“Physical restraint” means the use of physical contact to limit a person’s movement or hold a person immobile.*

Sec. 77. *“Verbal and mental abuse” means actions or utterances that are intended to cause and actually cause severe emotional distress to a person.*

Sec. 78. *A person employed by a facility licensed pursuant to this chapter or any other person shall not use any aversive intervention on a person with a disability who is a patient at the facility.*

Sec. 78.5. *Notwithstanding the provisions of sections 79 to 81.5, inclusive, of this act to the contrary, a facility may use or authorize the use of physical restraint, mechanical restraint or chemical restraint on a person with a disability who is a patient if the facility is:*

- 1. Accredited by a nationally recognized accreditation association or agency; or*
- 2. Certified for participation in the Medicaid or Medicare program,*
only to the extent that the accreditation or certification allows the use of such restraint.

Sec. 79. *A person employed by a facility licensed pursuant to this chapter or any other person shall not:*

- 1. Except as otherwise provided in section 80 of this act, use physical restraint on a person with a disability who is a patient at the facility.*
- 2. Except as otherwise provided in section 81 of this act, use mechanical restraint on a person with a disability who is a patient at the facility.*
- 3. Except as otherwise provided in section 81.5 of this act, use chemical restraint on a person with a disability who is a patient at the facility.*

Sec. 80. *1. Except as otherwise provided in subsection 2, physical restraint may be used on a person with a disability who is a patient at a facility only if:*

- (a) An emergency exists that necessitates the use of physical restraint;*
- (b) The physical restraint is used only for the period that is necessary to contain the behavior of the patient so that the patient is no longer an immediate threat of causing physical injury to himself or others or causing severe property damage; and*
- (c) The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating the use of physical restraint.*

2. *Physical restraint may be used on a person with a disability who is a patient at a facility and the provisions of subsection 1 do not apply if the physical restraint is used to:*

(a) Assist the patient in completing a task or response if the patient does not resist the application of physical restraint or if his resistance is minimal in intensity and duration;

(b) Escort or carry a patient to safety if the patient is in danger in his present location; or

(c) Conduct medical examinations or treatments on the patient that are necessary.

3. *If physical restraint is used on a person with a disability who is a patient at a facility in an emergency, the use of the procedure must be reported as a denial of rights pursuant to section 86 of this act, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.*

Sec. 81. 1. *Except as otherwise provided in subsection 2, mechanical restraint may be used on a person with a disability who is a patient at a facility only if:*

(a) An emergency exists that necessitates the use of mechanical restraint;

(b) A medical order authorizing the use of mechanical restraint is obtained from the patient's treating physician before the application of the mechanical restraint or not later than 15 minutes after the application of the mechanical restraint;

(c) The physician who signed the order required pursuant to paragraph (b) or the attending physician examines the patient not later than 1 working day immediately after the application of the mechanical restraint;

(d) The mechanical restraint is applied by a member of the staff of the facility who is trained and qualified to apply mechanical restraint;

(e) The patient is given the opportunity to move and exercise the parts of his body that are restrained at least 10 minutes per every 60 minutes of restraint;

(f) A member of the staff of the facility lessens or discontinues the restraint every 15 minutes to determine whether the patient will stop or control his inappropriate behavior without the use of the restraint;

(g) The record of the patient contains a notation that includes the time of day that the restraint was lessened or discontinued pursuant to paragraph (f), the response of the patient and the response of the member of the staff of the facility who applied the mechanical restraint;

(h) A member of the staff of the facility continuously monitors the patient during the time that mechanical restraint is used on the patient; and

(i) The patient is released from the mechanical restraint as soon as his behavior no longer presents an immediate threat to himself or others.

2. Mechanical restraint may be used on a person with a disability who is a patient at a facility and the provisions of subsection 1 do not apply if the mechanical restraint is used to:

- (a) Treat the medical needs of a patient;
- (b) Protect a patient who is known to be at risk of injury to himself because he lacks coordination or suffers from frequent loss of consciousness;
- (c) Provide proper body alignment to a patient; or
- (d) Position a patient who has physical disabilities in a manner prescribed in the patient's plan of treatment.

3. If mechanical restraint is used on a person with a disability who is a patient at a facility in an emergency, the use of the procedure must be reported as a denial of rights pursuant to section 86 of this act, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.

Sec. 81.5. 1. Chemical restraint may only be used on a person with a disability who is a patient at a facility if:

- (a) The patient has been diagnosed as mentally ill, as defined in NRS 433A.115, and is receiving mental health services from a facility;
- (b) The chemical restraint is administered to the patient while he is under the care of the facility;
- (c) An emergency exists that necessitates the use of chemical restraint;
- (d) A medical order authorizing the use of chemical restraint is obtained from the patient's attending physician or psychiatrist;
- (e) The physician or psychiatrist who signed the order required pursuant to paragraph (d) examines the patient not later than 1 working day immediately after the administration of the chemical restraint; and
- (f) The chemical restraint is administered by a person licensed to administer medication.

2. If chemical restraint is used on a person with a disability who is a patient, the use of the procedure must be reported as a denial of rights pursuant to section 86 of this act, regardless of whether the use of the procedure is authorized by statute. The report must be made not later than 1 working day after the procedure is used.

Sec. 82. 1. Each facility shall develop a program of education for the members of the staff of the facility to provide instruction in positive behavioral interventions and positive behavioral supports that:

- (a) Includes positive methods to modify the environment of patients to promote adaptive behavior and reduce the occurrence of inappropriate behavior;
- (b) Includes methods to teach skills to patients so that patients can replace inappropriate behavior with adaptive behavior;
- (c) Includes methods to enhance a patient's independence and quality of life;

(d) Includes the use of the least intrusive methods to respond to and reinforce the behavior of patients; and

(e) Offers a process for designing interventions based upon the patient that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the patient.

2. Each facility shall provide appropriate training for the members of the staff of the facility who are authorized to carry out and monitor physical restraint and mechanical restraint to ensure that those members of the staff are competent and qualified to carry out the procedures in accordance with sections 68 to 86, inclusive, of this act.

Sec. 83. 1. Unless a more severe penalty is prescribed by specific statute, a person who willfully uses aversive intervention on a person with a disability who is a patient at a facility or, except as otherwise provided in section 78.5 of this act, violates section 79 of this act:

(a) For a first violation that does not result in substantial bodily harm to the person with a disability, is guilty of a gross misdemeanor.

(b) For a first violation that results in substantial bodily harm to the person with a disability, is guilty of a category B felony.

(c) For a second or subsequent violation, is guilty of a category B felony.

A person who is convicted of a category B felony pursuant to this section shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

2. A person who is convicted pursuant to this section is ineligible for 5 years for employment with a facility.

3. A conviction pursuant to this section is, when applicable, grounds for disciplinary action against the person so convicted and the facility where the violation occurred. The health division may recommend to the appropriate agency or board the suspension or revocation of the professional license, registration, certificate or permit of a person convicted.

Sec. 84. 1. A facility where a violation of the provisions of sections 68 to 86, inclusive, of this act occurs shall report the violation to the health division not later than 24 hours after the violation occurred, or as soon thereafter as the violation is discovered.

2. A facility where a violation occurred shall develop, in cooperation with the health division, a corrective plan to ensure that within 30 calendar days after the violation occurred, appropriate action is taken by the facility to prevent future violations.

3. The health division shall forward the plan to the board. The board shall review the plan to ensure that it complies with applicable federal law and the statutes and regulations of this state. The board may require appropriate revision of the plan to ensure compliance.

4. If the facility where the violation occurred does not meet the requirements of the plan to the satisfaction of the board, the board may direct the agency that administers funding for the facility to withhold state funding for the facility until the facility meets the requirements of the plan.

Sec. 85. *An officer, administrator or employee of a facility licensed pursuant to this chapter shall not retaliate against any person for having:*

- 1. Reported a violation of sections 68 to 86, inclusive, of this act; or*
- 2. Provided information regarding a violation of sections 68 to 86, inclusive, of this act,*

by a facility or a member of the staff of the facility.

Sec. 86. *1. A denial of rights of a person with a disability who is a patient of a facility pursuant to sections 68 to 86, inclusive, of this act must be entered in the patient's record. Notice of the denial must be provided to the administrator of the facility.*

2. If the administrator of a facility receives notice of a denial of rights pursuant to subsection 1, he shall cause a full report to be prepared which must set forth in detail the factual circumstances surrounding the denial. A copy of the report must be provided to the health division.

3. The health division:

- (a) Shall receive reports made pursuant to subsection 2;*
- (b) May investigate apparent violations of the rights of persons with disabilities who are patients at facilities; and*
- (c) May act to resolve disputes relating to apparent violations.*

Sec. 87. NRS 449.730 is hereby amended to read as follows:

449.730 *1. Every medical facility, facility for the dependent and home for individual residential care shall inform each patient or his legal representative, upon his admission to the facility or home, of the patient's rights as listed in NRS 449.700, 449.710 and 449.720.*

2. In addition to the requirements of subsection 1, if a person with a disability is a patient at a facility, as that term is defined in section 73 of this act, the facility shall inform the patient of his rights pursuant to sections 68 to 86, inclusive, of this act.

Sec. 88. NRS 449.850 is hereby amended to read as follows:

449.850 *1. The attorney in fact may not consent to:*

- (a) Commitment or placement of the principal in a facility for treatment of mental illness;*
- (b) Convulsive treatment;*
- (c) Psychosurgery;*
- (d) Sterilization;*
- (e) Abortion; ~~for~~*
- (f) Aversive intervention, as that term is defined in section 69 of this act; or*

(g) Any other treatment to which the principal, in the power of attorney, states that the attorney in fact may not consent.

2. The attorney in fact must make decisions concerning the use or nonuse of life sustaining treatment which conform to the known desires of the principal. The principal may make these desires known in the power of attorney.

Sec. 89. The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.

Sec. 90. Section 20 of this act becomes effective at 12:01 a.m. on October 1, 1999.

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