

By Mr. Albano, a petition (accompanied by bill, Senate, No. 509) of Salvatore R. Albano, Richard A. Kraus, John W. Olver, John Patrick Houston, Peter C. Webber and Lois G. Pines for legislation to regulate the use of aversive procedures. Human Services and Elderly Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT REGULATING THE USE OF AVERSIVE PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 6 of the General Laws is hereby
2 amended by inserting after Section 71 the following section: —

3 Section 72. (a) As used in this section, the following words shall
4 have the following meanings: —

5 “Agency” shall mean an agency of the commonwealth which
6 funds, operates, licenses or approves a day or residential program
7 which uses aversives.

8 “Aversive” shall mean any systematic use of negative or
9 unpleasant stimuli, environmental deprivation or other negative
10 procedure designed to modify the behavior of a disabled person.

11 “Positive program” shall mean a program which uses only
12 positive reinforcement techniques to modify the behavior of a
13 disabled person and which poses no significant risk of harm to
14 the disabled person.

15 (b) This section shall apply only to aversives which are or will
16 be applied to a mentally or physically disabled person in a day
17 or residential program funded operated, licensed or approved by
18 an agency of the commonwealth.

19 (c) No person, agency or other entity may authorize, order,
20 consent to or pay for with public funds any aversive which is
21 subject to this section and prohibited pursuant to this subsection.

22 Any aversive which causes obvious signs of physical pain or which
23 is designed to cause physical pain, including but not limited to
24 the use of electrical shock or any hitting, pinching of the body
25 is prohibited. Any aversive which denies adequate sleep, food,
26 shelter, bedding or bathroom facilities is prohibited.

27 (d) Each agency, as defined in subsection (a), shall promulgate
28 regulations governing the use of aversives. The regulations shall
29 prohibit aversives described in subsection (c), shall regulate the
30 use of other aversives and shall establish minimum standards of
31 training and experiences for persons administering aversives.
32 Regulations of any agency under the Executive Office of Human
33 Services shall be subject to the prior approval of the Secretary
34 of the Executive Office of Human Services who shall ensure that
35 the regulations provide consistent procedures and standards and
36 do not require duplicate review of aversives.

37 Pursuant to the regulations, each agency shall establish an
38 appropriate number of review committees to review aversives
39 which may cause harm or significant discomfort to a mentally or
40 physically disabled person. Said aversion shall be reviewed prior
41 to their use, except in an emergency in which case the review shall
42 occur as soon as practicable and no later than three days. For
43 purposes of this subsection, an emergency is a situation where (i)
44 the immediate use of an aversive is necessary to avoid significant
45 harm to a disabled person and (ii) the aversive has not previously
46 been disapproved for the particular disabled person, pursuant to
47 this subsection.

48 The review committee shall disapprove aversives described in
49 subsection (c) and shall approve or disapprove such other
50 aversives which it reviews, pursuant to the procedures and
51 standards in this section. Any final decision of a review committee
52 may be appealed to the head of the agency who shall determine
53 only whether the review committee made its decision consistent
54 with this section and the regulations thereunder.

55 A review committee shall approve an aversive only if the
56 committee determines that (i) the aversive is in the best interests
57 of the particular disabled person, (ii) the aversive is likely to be
58 an effective procedure for the particular disabled person, (iii) the
59 aversive is necessary to modify behavior which presents a
60 significant risk of serious harm to the particular disabled person

61 or other persons, and (iv) the aversive is the least restrictive
62 procedure feasible. No review committee or head of an agency
63 may authorize an aversive prohibited by subsection (c) of this
64 section.

65 Each review committee shall be appointed by the head of the
66 agency, shall be entirely independent of the program using the
67 aversives, shall consist of no fewer than five and no more than
68 nine persons, and shall include one or more persons who are
69 advocates for and knowledgeable about the legal rights of disabled
70 persons and one or more persons who are experienced in and
71 knowledgeable about the use of positive programs.

72 (e) Restraint shall not be used except in cases of emergency,
73 such as the occurrence of, or serious threat of, extreme violence,
74 personal injury or attempted suicide. For purposes of this
75 subsection, restraint shall mean bodily physical force, mechanical
76 devices, chemicals, confinement in a place of seclusion other than
77 the placement of an inpatient or resident in his room for the night,
78 or any other means which unreasonably limit freedom of
79 movement, but restraint shall not include firm but gentle holding
80 of an individual. Section 21 of chapter 123 of the General Laws
81 shall apply to the use of restraint in a program operated, funded,
82 regulated or licensed by the Department of Mental Health.
83 Section 8 of chapter 123B of the General Laws shall apply to the
84 use of restraint in a program operated, funded, regulated or
85 licensed by the Department of Mental Retardation.

86 (f) Each agency shall report to the Office of Handicapped
87 Affairs the aversives approved and disapproved, the reasons for
88 the approvals and disapprovals and any other information
89 necessary for the Office of Handicapped Affairs to monitor the
90 use of aversives. The Office of Handicapped Affairs shall annually
91 prepare for public distribution a report on the use of aversives
92 in the Commonwealth.

93 (g) Any violation of this section by a program subject to its
94 provisions shall be grounds for revocation or suspension of its
95 license, approval, certification and funding.

1 SECTION 2. Chapter 6 of the General Laws is hereby further
2 amended by inserting after Section 72 the following section: —

3 Section 73. The Commissioner of the Department of Mental

4 Health shall conduct a study to identify the types of services
5 required by autistic citizens of the Commonwealth, appropriate
6 standards for the provision of those services, a plan for the
7 development of such services, and funding requirements.

8 Subject to the appropriation and consistent with the purpose
9 and provisions of this section and Section 72 of chapter 6 of the
10 General Laws, the Department of Education and the Executive
11 Office of Human Services, directly or through its agencies, shall
12 take such steps as may be necessary to develop and maintain
13 positive programs and such other appropriate services in the
14 commonwealth for disabled citizens whose disabilities include
15 substantial behavioral problems. Such programs and services
16 shall not be dependent on the use of mechanical or chemical
17 restraint or seclusion, nor solely on behavior management for
18 appropriate treatment and habilitation.

1 SECTION 3. The Department of Mental Health, the Depart-
2 ment of Mental Retardation and the Department of Education
3 shall identify those mentally or physically disabled persons who,
4 prior to April 1, 1987, received aversives prohibited by subsection
5 (c) of Section 72 of chapter 6 of the General Laws and who then
6 continued to receive said aversives during the period of April 1,
7 1987 to the date the Governor signed this Act into law. Said
8 subsection (c) and all references to subsection (c) in said section
9 72 shall not apply to the disabled persons so identified by the
10 Departments of Mental Health, Mental Retardation and
11 Education until nine months after the date the Governor signed
12 this Act into law. The identified disabled persons whose services
13 are funded by a political subdivision or agency of the
14 commonwealth shall have priority for services established
15 pursuant to Section 73 of chapter 6 of the General Laws, and the
16 Departments of Mental Health, Mental Retardation and
17 Education shall ensure that a transition plan to provide these
18 services for each of these disabled persons is prepared no later
19 than ninety days after the Governor signed this Act into law.