

**SENATE . . . . . No. 551**

By Mr. Albano, a petition (accompanied by bill, Senate, No. 551) of Salvatore R. Albano, Richard A. Kraus, Peter C. Webber, Nicholas J. Costello, John Patrick Houston 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 Ninety.

AN ACT TO PROTECT DISABLED PERSONS.

*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 6A of the General Laws is hereby  
2 amended by inserting after section 16 the following new  
3 sections: —

4 Section 16B. No program funded, operated, licensed, or  
5 approved by any agency or subdivision of the Commonwealth  
6 may employ on any person with a physical or mental disability  
7 any procedure which causes obvious signs of physical pain or  
8 which is designed to cause physical pain, including, but not limited  
9 to hitting, pinching, and electric shock, for the purpose of  
10 changing the behavior of said individual.

11 No such program may employ any form of physical contact or  
12 punishment which is otherwise prohibited by law, or would be  
13 prohibited if used on a non-disabled person.

14 No such program may utilize a white noise helmet for the  
15 purpose of punishing or changing the behavior of a person with  
16 a physical or mental disability.

17 No such program may employ any procedure which denies a  
18 person with a physical or mental disability adequate sleep, food,  
19 shelter, bedding, or bathroom facilities.

20 Any such program shall make all reasonable efforts to prevent  
21 such persons from inflicting pain or physical damage upon  
22 themselves or others, except that such efforts shall not include  
23 procedures prohibited by this section.

24 Any violation of this section shall be grounds for revocation  
25 or suspension of a program's license, approval, certification, and  
26 funding by the state licensing agency in consultation with the  
27 executive office of human services or the department of education,  
28 as appropriate.

29 The provisions of this section shall not be construed as  
30 prohibiting the use of restraint as otherwise permitted by law to  
31 prevent a physically or mentally disabled person from inflicting  
32 pain or physical damage upon himself or others, nor shall said  
33 provisions be construed as prohibiting the use of electro-  
34 convulsive therapy in accordance with the provisions of section  
35 23 of chapter 123 of the General Laws.

36 Section 16C. Subject to appropriation and consistent with the  
37 purpose and provisions of chapters 6, 71B, 123, and 123B of the  
38 General Laws, and section 16B of this chapter, the executive office  
39 of human services, directly or through its departments, and the  
40 department of education shall take such steps as may be necessary:

41 (1) To develop and maintain adequate and appropriate  
42 programs of residential, habilitative, and educational services for  
43 Massachusetts residents with physical or mental disabilities whose  
44 disabilities include substantial behavioral problems, and to ensure  
45 that such programs and services remain available to such disabled  
46 residents for as long as may be necessary.

47 Such programs and services shall be adequate to prevent long  
48 term deterioration in goal/need areas identified in such disabled  
49 persons' individual service plans or individual education plans.

50 Such programs and services shall not be unduly dependent on  
51 the use of chemical or physical restraint, as defined and regulated  
52 by chapter 123B of the General Laws, nor shall they rely on such  
53 restraint as the primary form of treatment or habilitation.

54 (2) To develop and maintain one or more teams of independent  
55 professionals with recognized expertise in the provision of non-  
56 punitive residential, habilitative, and educational services for  
57 persons with physical or mental disabilities whose disabilities  
58 involve substantial behavioral problems. Such expert teams:

59 (a) shall be capable of comprehensively evaluating

60 (i) the treatment and education-related needs of such  
61 disabled persons, including, to the extent possible, the medical,

62 neurological, psychological, and chemical determinants of  
63 problematic behaviors for which treatment is sought, and

64 (ii) the adequacy and appropriateness of pharmacological,  
65 therapeutic, residential, habilitative, and educational programs  
66 and services proposed, or currently employed, to meet the needs  
67 of such disabled persons, and

68 (b) shall be available for such consultation upon the request  
69 of the commissioner of education or the secretary of human  
70 services or a superior court judge or administrative law judge who,  
71 upon hearing an appeal of an individual education plan or an  
72 individual service plan, determines that the present placement of  
73 such a disabled Massachusetts resident in a program or service  
74 is threatened by the inability of said program or service, without  
75 undue use of chemical or physical restraint, or use of procedures  
76 prohibited by section 16B of this chapter, to prevent said  
77 individual from causing pain or physical damage to himself or  
78 others, generally, or as a consequence of said disabled resident's  
79 participation in appropriate habilitative or educational activities.

1 SECTION 2. The secretary of human services and the  
2 commissioner of education shall conduct a study to identify the  
3 types of residential, habilitative, and educational services required  
4 by persons with physical or mental disabilities whose disabilities  
5 include substantial behavior problems. Such study shall also  
6 identify appropriate standards for the provisions of those services,  
7 a plan for the development of such services, including, as  
8 necessary, the provision of training for existing providers of  
9 related services, and funding requirements.

1 SECTION 3. The secretary of human services and commis-  
2 sioner of education shall identify those persons with mental or  
3 physical disabilities who, prior to April 1, 1989 and during the  
4 period from April 1, 1989 until the date that the Governor signed  
5 this Act into law, were subjected to procedures, physical contact,  
6 or punishment prohibited by section 16B of chapter 6A, as  
7 inserted by this Act, and who, but for the provisions of said section  
8 16B would continue to be subjected to such procedures, physical  
9 contact, or punishment. Said provisions of said section 16B shall

10 not apply to disabled persons so identified until one year after  
11 the Governor signed this Act into law.

12 The executive office of human services, directly or through its  
13 departments, and the department of education shall take such  
14 steps as are necessary to ensure that such residential, habilitative,  
15 and educational programs and services as are specified in section  
16 16C of chapter 6A, as inserted by this Act, and the clinical support  
17 to provide such services for each of the disabled Massachusetts  
18 residents so identified, are available no later than six months after  
19 the Governor signed this Act into law, and are maintained for as  
20 long as necessary thereafter.

21 Disabled Massachusetts residents so identified shall have  
22 priority for such programs and services established pursuant to  
23 the provisions of this Act, and subject to the provisions and  
24 protections of chapters 71B, 123, and 123B of the General Laws;  
25 provided that

26 (1) Each such disabled Massachusetts resident shall be  
27 evaluated by an independent team of professionals, hereinafter  
28 referred to as the "expert team", as provided for in said section  
29 16C, for the purpose of determining, to the extent possible, the  
30 medical, neurological, psychological, and chemical determinants  
31 of problematic behaviors for which treatment is sought.

32 (2) Said expert team shall also participate in the design and  
33 evaluate the adequacy of any residential, habilitative, or  
34 educational program or service for which a political subdivision  
35 or agency of the Commonwealth proposes to contract on behalf  
36 of said disabled Massachusetts resident, and shall make  
37 recommendations regarding the adequacy of and need for  
38 modifications of such a program or service.

39 (3) Nine months after the governor signs this Act into law, said  
40 expert team shall file a report with the joint committee on human  
41 services and elderly affairs and with the senate and house  
42 committees on ways and means describing the progress in  
43 implementing the provisions of this section. Said report shall  
44 indicate whether any disabled Massachusetts residents so  
45 identified, who are still receiving procedures prohibited by section  
46 16B of chapter 6A of the General Laws, as inserted by this Act,  
47 are likely to inflict pain or physical damage on themselves or

48 others after the end of the one year period specified in this section,  
49 solely as a result of the absence of an available program or service  
50 which satisfies the requirements of this section.

51 Upon receipt of such report, the legislature may take such action  
52 as it deems appropriate, including extension of the one-year  
53 period provided for in the first paragraph of this section.

54 (4) Twenty-four months after the effective date of this Act, said  
55 expert team shall file a report with the joint committee on human  
56 services and elderly affairs and with the senate and house  
57 committees on ways and means describing the progress in  
58 implementing the provisions of this section. Said report shall  
59 describe, for each disabled Massachusetts resident so identified

60 (a) the residential, habilitative, and educational programs  
61 and services made available and funded pursuant to the provisions  
62 of this section; and

63 (b) the behavioral, habilitative, and educational progress  
64 made by such disabled Massachusetts residents receiving care and  
65 treatment in such programs and services funded by the  
66 Commonwealth.

67 (5) Nothing in this Act shall be construed as prohibiting any  
68 program or service which admits as a client one of the disabled  
69 Massachusetts residents so identified from administering, for a  
70 transitional period no longer than three months, a procedure  
71 prohibited by this Act, provided that

72 (a) Said procedure was administered to said disabled  
73 Massachusetts resident prior to the date this Act was signed into  
74 law by the Governor, and subsequent to the effective date of this  
75 Act;

76 (b) Continued and diminished administration of said  
77 procedure for a period of not more than three months is necessary,  
78 in the judgment of the team of experts, to prevent said disabled  
79 Massachusetts resident from causing pain or physical harm to  
80 himself or others, during the transition from a form of treatment  
81 otherwise prohibited by section 16B of chapter 6A, as inserted by  
82 section 1 of this Act, to a form of treatment not therein prohibited;  
83 and

84 (c) Such continued and diminished administration of said  
85 procedure shall be accomplished under the oversight of said expert  
86 team.



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