

7587

I N S E N A T E

May 10, 2016

Introduced by Sen. GOLDEN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to the development of standards for the use of aversive interventions for children in public and private schools and programs, including residential facilities

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

- 1 Section 1. Subdivisions 7, 8 and 9 of section 483-d of the social
2 services law are renumbered subdivisions 8, 9 and 10 and a new subdivi-
3 sion 7 is added to read as follows:
4 7. AVERSIVE INTERVENTIONS. (A) NO PUBLIC FUNDING SHALL SUPPORT PLACE-
5 MENT OF A CHILD IN ANY PROGRAM OR SCHOOL THAT ENGAGES IN THE USE OF
6 AVERSIVE INTERVENTIONS ON CHILDREN IN VIOLATION OF THIS SUBDIVISION. A
7 SCHOOL OR PROGRAM USING AVERSIVE INTERVENTIONS IN VIOLATION OF THIS
8 SUBDIVISION SHALL BE REMOVED FROM ANY REGISTRY OF APPROVED SCHOOLS OR
9 PROGRAMS AFTER WRITTEN NOTICE BY THE MEMBER AGENCY.
10 (B) DEFINITIONS. AS USED IN THIS SUBDIVISION:
11 (I) "AVERSIVE INTERVENTIONS" MEANS AN INTERVENTION KNOWN OR INTENDED
12 TO INDUCE PAIN OR DISCOMFORT FOR THE PURPOSE OF ELIMINATING OR REDUCING
13 MALADAPTIVE BEHAVIORS, AND INCLUDE BUT ARE NOT LIMITED TO:
14 (1) CONTINGENT APPLICATION OF NOXIOUS, PAINFUL, INTRUSIVE STIMULI OR
15 ACTIVITIES;
16 (2) ANY FORM OF NOXIOUS, PAINFUL, OR INTRUSIVE TASTE, SPRAY, OR INHA-
17 LANT;
18 (3) WITHHOLDING SLEEP, SHELTER, BEDDING, BATHROOM FACILITIES OR CLOTH-
19 ING;
20 (4) CONTINGENT FOOD PROGRAMS THAT INCLUDE DENIAL OR DELAY OF MEALS OR
21 INTENTIONALLY ALTERING STAPLE FOOD OR DRINK IN ORDER TO MAKE IT
22 DISTASTEFUL;
23 (5) MOVEMENT LIMITATION USED AS A PUNISHMENT, INCLUDING BUT NOT LIMIT-
24 ED TO USE OF HELMETS AND MECHANICAL RESTRAINT DEVICES;
25 (6) ELECTRIC SHOCK THERAPY; AND
26 (7) OTHER SIMILAR STIMULI, TREATMENTS, INTERVENTIONS, OR ACTIONS.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 THE FOREGOING TO THE CONTRARY NOTWITHSTANDING, AVERSIVE INTERVENTIONS
2 DO NOT INCLUDE INTERVENTIONS SUCH AS VOICE CONTROL, LIMITED TO LOUD,
3 FIRM COMMANDS; TIME-LIMITED IGNORING OF A SPECIFIC BEHAVIOR; TOKEN FINES
4 AS PART OF A TOKEN ECONOMY SYSTEM; BRIEF PHYSICAL PROMPTS TO INTERRUPT
5 OR PREVENT A SPECIFIC BEHAVIOR; INTERVENTIONS MEDICALLY NECESSARY FOR
6 THE TREATMENT OR PROTECTION OF THE STUDENT; OR OTHER SIMILAR INTER-
7 VENTIONS.

8 (II) "CHILD" MEANS AN INDIVIDUAL WHO IS TWENTY-ONE YEARS OF AGE OR
9 LESS, PROVIDED THAT A MEMBER AGENCY MAY UTILIZE AN ALTERNATIVE DEFINI-
10 TION OF A CHILD, INCLUDING SPECIFYING A DIFFERENT AGE, FOR PURPOSES OF
11 COMPLIANCE WITH THIS SUBDIVISION, SO LONG AS SUCH DEFINITION IS STANDARD
12 AND APPROPRIATE TO ITS PLACEMENT PROCEDURES.

13 (III) "MEMBER AGENCY" MEANS A STATE AGENCY THAT IS A MEMBER OF THE
14 OUT-OF-STATE PLACEMENT COMMITTEE.

15 (IV) "PUBLIC FUNDING" MEANS FUNDING FOR CARE, SERVICES, PROGRAMS, AND
16 SERVICES PROGRAMS WHICH ARE PROVIDED OR APPROVED DIRECTLY OR INDIRECTLY
17 BY OR UNDER THE JURISDICTION OF A MEMBER AGENCY, EXCLUSIVE OF FUNDING
18 FOR WHICH FEDERAL REQUIREMENTS OR DIRECTIVES OVERRIDE, SUPERSEDE, OR
19 REQUIRE APPROVAL IN A MANNER CONTRARY TO THE REQUIREMENTS OF THIS SUBDI-
20 VISION, OR FOR WHICH, IN THE JUDGMENT OF THE MEMBER AGENCY, COMPLIANCE
21 WITH THIS SUBDIVISION WOULD VIOLATE FEDERAL LAW OR REGULATIONS.

22 (V) THE TERMS "CARE," "SERVICES," AND "SERVICES PROGRAMS" HAVE THE
23 SAME MEANINGS AS IN SUBDIVISION ONE OF SECTION FOUR HUNDRED
24 EIGHTY-THREE-B OF THIS ARTICLE.

25 (VI) "SCHOOL" MEANS ANY RESIDENTIAL OR NON-RESIDENTIAL PUBLIC OR
26 PRIVATE SCHOOL LOCATED WITHIN OR OUTSIDE THE STATE THAT PROVIDES
27 INSTRUCTION TO A CHILD AND THAT: (A) IS SUBJECT TO OVERSIGHT,
28 INSPECTION, REGULATION, APPROVAL OR LICENSURE OR CERTIFICATION BY ANY
29 MEMBER AGENCY; OR (B) RECEIVES PUBLIC FUNDING, INCLUDING FUNDING FOR THE
30 PLACEMENT OF ANY CHILD IN SUCH SCHOOL. SCHOOL AS USED HEREIN INCLUDES A
31 PUBLIC SCHOOL, BOCES, CHARTER SCHOOL, PRESCHOOL PROGRAM, PRIVATE SCHOOL,
32 STATE-OPERATED OR STATE-SUPPORTED SCHOOL IN THIS STATE, APPROVED
33 OUT-OF-STATE DAY OR RESIDENTIAL SCHOOL, OR REGISTERED NONPUBLIC NURSERY,
34 KINDERGARTEN, ELEMENTARY OR SECONDARY SCHOOL IN THIS STATE.

35 (VII) "PROGRAM" MEANS ANY RESIDENTIAL OR NON-RESIDENTIAL PUBLIC OR
36 PRIVATE PROGRAM, OTHER THAN A SCHOOL, THAT PROVIDES CARE, SERVICES,
37 PROGRAMS, AND SERVICES PROGRAMS TO A CHILD AND THAT: (A) IS SUBJECT TO
38 OVERSIGHT, INSPECTION, REGULATION, APPROVAL OR LICENSURE OR CERTIFI-
39 CATION BY ANY MEMBER AGENCY; OR (B) RECEIVES PUBLIC FUNDING, INCLUDING
40 FUNDING FOR THE PLACEMENT OF ANY CHILD IN SUCH SCHOOL.

41 S 2. Severability. If any portion of this act or the application ther-
42 eof to any person or circumstances shall be adjudged invalid by a court
43 of competent jurisdiction, such order or judgment shall be confined in
44 its operation to the controversy in which it was rendered, and shall not
45 affect or invalidate the remainder of any provision of this act or the
46 application of any part thereof to any other person or circumstances and
47 to this end each of the provisions of this act are hereby declared to be
48 separable.

49 S 3. This act shall take effect October 1, 2016; provided that, effec-
50 tive immediately, member agencies of the out-of-state placement commit-
51 tee are authorized and directed to promulgate any regulations necessary
52 to implement the provisions of this act on such effective date.