

STATE OF NEW YORK

1166

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, in relation to prohibiting the use of aversive conditioning and other certain punishments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The social services law is amended by adding a new section
2 498 to read as follows:

3 § 498. Aversive conditioning. Notwithstanding any provision of law to
4 the contrary:

5 1. No program, agency or facility that is funded, operated, licensed,
6 or approved by the state or an agency or political subdivision of the
7 state shall administer or cause to be administered to a vulnerable
8 person any procedure which uses aversive conditioning.

9 2. No program, agency or facility that is funded, operated, licensed,
10 or approved by the state or an agency or political subdivision of the
11 state shall use any form of physical contact or punishment that is
12 otherwise prohibited by law, or would be prohibited if used on a person
13 who is not vulnerable.

14 3. No program, agency or facility that is funded, operated, licensed,
15 or approved by the state or an agency or political subdivision of the
16 state shall use any procedure or punishment that denies a vulnerable
17 person reasonable sleep, shelter, bedding, bathroom facilities and any
18 other aspect expected of a humane existence.

19 4. Any student with an individualized education program that is effec-
20 tive as of the effective date of this section shall be permitted to
21 complete such program, provided that such student is not subjected to:
22 aversive conditioning; physical contact or punishment that is otherwise
23 prohibited by law, or would be prohibited if used on a person who is not
24 vulnerable; or any other procedure or punishment that denies a vulner-
25 able person reasonable sleep, shelter, bedding, bathroom facilities and

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

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1 any other aspect expected of a humane existence. Provided, however, that
2 no further individualized education plans shall be funded, operated,
3 licensed, or approved by the state or any agency or political subdivi-
4 sion of the state, if any related program, agency, or facility connected
5 to such individualized education program engages in any conduct that
6 would otherwise be prohibited by this section.

7 5. The provisions of this section shall apply regardless of the
8 location of the relevant conduct or the residence of any impacted
9 persons.

10 § 2. Paragraph (e) of subdivision 1 of section 488 of the social
11 services law, as added by section 1 of part B of chapter 501 of the laws
12 of 2012, is amended to read as follows:

13 (e) "Use of aversive conditioning," which shall mean the application
14 of a physical stimulus that is intended to induce pain or discomfort in
15 order to modify or change the behavior of a person [~~receiving services~~
16 ~~in the absence of a person-specific authorization by the operating,~~
17 ~~licensing or certifying state agency pursuant to governing state agency~~
18 ~~regulations~~]. Aversive conditioning may include but is not limited to,
19 the use of physical stimuli such as noxious odors, noxious tastes,
20 blindfolds, the withholding of meals and the provision of substitute
21 foods in an unpalatable form [~~and~~], movement limitations used as punish-
22 ment, including but not limited to helmets and mechanical restraint
23 devices and any procedure which causes obvious signs of physical pain,
24 including but not limited to hitting, pinching and electric shock.

25 § 3. Section 488 of the social services law is amended by adding a new
26 subdivision 17 to read as follows:

27 17. "Program" shall mean any residential or non-residential public or
28 private program that provides care, services, programs, and/or support
29 to vulnerable persons.

30 § 4. This act shall take effect on the sixtieth day after it shall
31 have become a law. Effective immediately, the addition, amendment and/or
32 repeal of any rule or regulation necessary for the implementation of
33 this act on its effective date are authorized to be made and completed
34 on or before such date.