

ASSEMBLY, No. 2855

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED OCTOBER 7, 2002

Sponsored by:

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District 21 (Essex, Morris, Somerset and Union)

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Co-Sponsored by:

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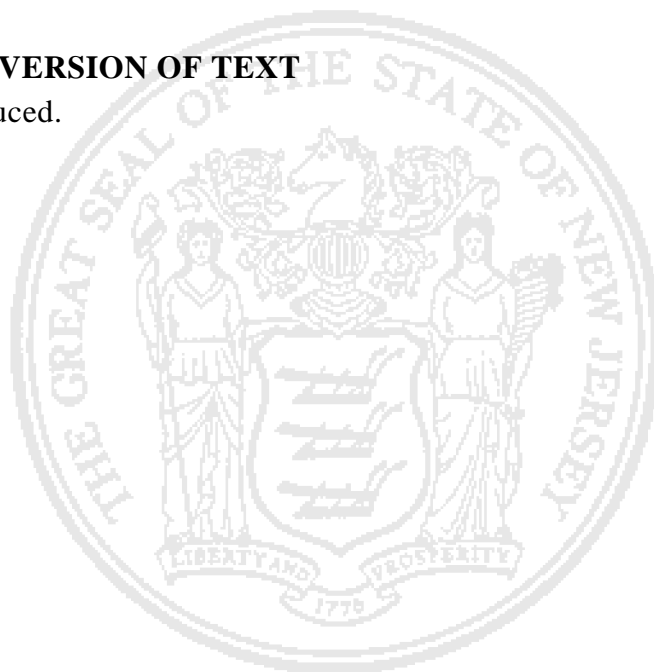
Vandervalk and Assemblyman Wolfe

SYNOPSIS

Establishes "Matthew's Law Limiting the Use of Restraints."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2003)

1 AN ACT concerning persons with developmental disabilities,
2 amending and supplementing P.L.1977, c.82 and amending
3 P.L.1983, c.524.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. (New section) Sections 6 through 10 of this act shall be known
9 and may be cited as "Matthew's Law Limiting the Use of Restraints."

10

11 2. Section 3 of P.L.1977, c.82 (C.30:6D-3) is amended to read as
12 follows:

13 3. As used in this act and P.L. , c. (C.)(pending before the
14 Legislature as this bill), unless a different meaning clearly appears from
15 the context:

16

a. "Developmental disability" means a
17 severe, chronic disability of a person which:

18 (1) is attributable to a mental or physical impairment or
19 combination of mental or physical impairments;

20 (2) is manifest before age 22;

21 (3) is likely to continue indefinitely;

22 (4) results in substantial functional limitations in three or more of
23 the following areas of major life activity, that is, self-care, receptive
24 and expressive language, learning, mobility, self-direction and capacity
25 for independent living or economic self-sufficiency; and

26 (5) reflects the need for a combination and sequence of special
27 inter-disciplinary or generic care, treatment or other services which are
28 of lifelong or extended duration and are individually planned and
29 coordinated. Developmental disability includes but is not limited to
30 severe disabilities attributable to mental retardation, autism, cerebral
31 palsy, epilepsy, spina bifida and other neurological impairments where
32 the above criteria are met;

33

b. "Services" or "services for persons with developmental
34 disabilities" means specialized services or special adaptations of
35 generic services provided by any public or private agency, organization
36 or institution and directed toward the alleviation of a developmental
37 disability or toward the social, personal, physical, or economic
38 habilitation or rehabilitation of an individual with such a disability; and
39 **[such]the** term includes diagnosis, evaluation, treatment, personal
40 care, day care, domiciliary care, special living arrangements, training,
41 education, sheltered employment, recreation, counseling of the
42 individual with **[such]the** disability and of his family, protective and
43 other social and socio-legal services, information and referral services,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 follow-along services, and transportation services necessary to assure
2 delivery of services to persons with developmental disabilities; [and]
3 c. "Facility" or "facility for persons with developmental disabilities"
4 means a facility operated by any public or private agency, organization
5 or institution for the provision of services for persons with
6 developmental disabilities;
- 7 d. "Aversive technique" means the presentation of stimuli or
8 conditions to decrease the frequency, intensity or duration of
9 maladaptive behavior by inducing distress, discomfort or pain, which
10 may place the individual at some degree of risk of physical or
11 psychological injury;
- 12 e. "Commissioner" means the Commissioner of Human Services;
- 13 f. "Division" means the Division of Developmental Disabilities in
14 the Department of Human Services;
- 15 g. "Emergency" means a situation in which immediate intervention
16 is necessary to protect the physical safety of a person receiving
17 services at a facility or from a public or private agency, or to protect
18 the safety of others from an immediate threat of serious physical
19 injury;
- 20 h. "Mechanical restraint" means the application of a device, at a
21 facility or a public or private agency, that restricts a person's freedom
22 of movement either partially or totally and includes, but is not limited
23 to, a bedside rail, mitt, jumpsuit, arm splint, vest, helmet and body
24 harness, but does not include a domed or enclosed crib;
- 25 i. "Person with traumatic brain injury" means a person who has
26 sustained an injury, illness or traumatic changes to the skull, the brain
27 contents or its coverings which results in a temporary or permanent
28 physiobiological decrease of cognitive, behavioral, social or physical
29 functioning which causes partial or total disability;
- 30 j. "Physical restraint" means physical contact by facility or public
31 or private agency staff that restricts a person's freedom of movement
32 either partially or totally;
- 33 k. "Public or private agency" means an entity under contract with,
34 licensed by or working in collaboration with the division or
35 Department of Human Services, as appropriate, to provide services for
36 persons with developmental disabilities; and
- 37 l. "Unusual incident" means an event involving a person receiving
38 services at a facility or from a public or private agency, involving
39 indications or allegations of criminal actions, injury, negligence,
40 exploitation, abuse, clinical mismanagement or medical malpractice; a
41 major unforeseen event, including a serious fire, explosion or power
42 failure, which presents a significant danger to the safety or well being
43 of persons served or staff; or a newsworthy incident which includes
44 incidents that affect the Department of Human Services or the division
45 in a manner that may attract media interest or calls, especially those
46 incidents involving potential criminal charges, famous, notorious or

1 dangerous people or relating to a news item of wide public interest.
2 (cf: P.L.1985,c.145, s.12)

3
4 3. Section 5 of P.L.1977, c.82 (C.30:6D-5) is amended to read as
5 follows:

6 5. a. No person receiving services for the developmentally disabled
7 at any facility shall:

8 (1) be subjected to any corporal punishment;

9 (2) be administered any medication or chemical restraint, except
10 upon the written authorization of a physician when necessary and
11 appropriate as an element of the service being received or as a
12 treatment of any medical or physical condition in conformity with
13 accepted standards for ~~such~~ the treatment. The nature, amount of,
14 and reasons for the administration of any medication or chemical
15 restraint shall be promptly recorded in ~~such~~ the person's medical
16 record;

17 (3) be ~~physically or~~ chemically restrained or isolated in any
18 manner, except in emergency situations for the control of violent,
19 disturbed or depressed behavior which may immediately result in or
20 has resulted in harm to ~~such~~ the person or other person ~~or in~~
21 ~~substantial property damage~~].

22 The chief administrator of the facility, or his designee, shall be
23 notified immediately upon the application of any ~~such~~ chemical
24 restraint or isolation, and thereafter ~~such~~ the restraint or isolation
25 shall be continued only upon the written order of the administrator or
26 designee. ~~Such~~ The order shall be effective for not more than 24
27 hours, and may be renewed for additional periods of not more than 24
28 hours each if the administrator or designee shall determine that ~~such~~
29 the continued restraint or isolation is necessary. While in restraint or
30 isolation, ~~such~~ the person shall be checked by an attendant every 15
31 minutes, and bathed every 24 hours. ~~Such~~ The restraint or isolation
32 shall be terminated at any time if an attending physician shall find
33 ~~such~~ the restraint or isolation to be medically contraindicated. The
34 nature, duration of, reasons for and notation of attendant checks shall
35 be promptly recorded in ~~such~~ the person's medical record;

36 (4) be subjected to shock treatment, psychosurgery, sterilization or
37 medical behavioral or pharmacological research without the express
38 and informed consent of ~~such~~ the person, if a competent adult, or of
39 ~~such~~ the person's guardian ad litem specifically appointed by a court
40 for the matter of consent to these proceedings, if a minor or an
41 incompetent adult or a person administratively determined to be
42 mentally deficient. ~~Such~~ The consent shall be made in writing and
43 shall be placed in ~~such~~ the person's record.

44 Either the party alleging the necessity of ~~such~~ the procedure or
45 ~~such~~ the person or ~~such~~ the person's guardian ad litem may petition

1 a court of competent jurisdiction to hold a hearing to determine the
2 necessity of ~~[such]the~~ procedure at which the client is physically
3 present, represented by counsel, and provided the right and
4 opportunity to be confronted with and to cross-examine all witnesses
5 alleging the necessity of ~~[such]the~~ procedure. In ~~[such]the~~
6 proceedings, the burden of proof shall be on the party alleging the
7 necessity of ~~[such]the~~ procedure. In the event that a person cannot
8 afford counsel, the court shall appoint an attorney not less than 10
9 days before the hearing. An attorney so appointed shall be entitled to
10 a reasonable fee to be determined by the court and paid by the county
11 from which the person was admitted. Under no circumstances may a
12 person in treatment be subjected to hazardous or intrusive
13 experimental research which is not directly related to the specific goals
14 of his treatment program.

15 b. Every developmentally disabled person in residence at any
16 facility shall be provided with a nutritionally adequate and sufficient
17 diet and shall receive appropriate and sufficient medical and dental
18 care on a regular basis and whenever otherwise necessary.

19 c. Every developmentally disabled person between the ages of 5
20 and 21, inclusive, in residence or full-time attendance at any facility
21 shall be provided a thorough and efficient education suited to
22 ~~[such]the~~ person's age and abilities.

23 (cf: P.L.1977, c.82, s.5)

24

25 4. Section 11 of P.L.1977, c.82 (C.30:6D-11) is amended to read
26 as follows:

27 11. ~~[Such]The~~ plan shall:

28 a. Include a statement of the long-term habilitation goals for
29 ~~[such]the~~ person and the intermediate objectives relating to the
30 attainments of ~~[such]the~~ goals. ~~[Such]These~~ objectives shall be
31 stated specifically and in sequence and shall be expressed in behavioral
32 or other terms that provide measurable indices of progress;

33 b. Describe how the objectives will be achieved and the barriers
34 that might interfere with the achievement of them;

35 c. State an objective criteria and an evaluation procedure and
36 schedule for determining whether ~~[such]the~~ objective and goals are
37 being achieved;

38 d. Provide a coordinator who will be responsible for the
39 implementation of the plan;

40 e. Specify habilitation services to be provided;

41 f. Describe the personnel, including their qualifications, necessary
42 for the provision of the services described in ~~[such]the~~ plan;

43 g. Specify the date of initiation and the anticipated duration of each
44 service to be provided;

45 h. Specify the role and objectives of all parties to the

1 implementation of the plan.

2 The plan shall not include physical or mechanical restraint or
3 aversive techniques as a planned intervention, but may provide for the
4 use of physical or mechanical restraint in accordance with the
5 provisions of subsection b. of section 6 of P.L. , c. (C.)(pending
6 before the Legislature as this bill) and subsection b. of section 7 of
7 P.L. , c. (C.)(pending before the Legislature as this bill).
8 (cf: P.L.1977, c.82, s.11)

9
10 5. Section 5 of P.L.1983, c.524 (C.30:6D-17) is amended to read
11 as follows:

12 5. a. The department shall ensure that every developmentally
13 disabled person in a community residential facility receives adequate
14 medical and dental care, a nutritionally adequate diet, a full daily
15 program of structured activities, and those other services which are
16 necessary to maximize the developmental potential of the
17 developmentally disabled person in a manner least restrictive of
18 personal liberty. Every developmentally disabled person shall have
19 adequate protection from abuse and a wholesome environment in
20 which to live.

21 b. All rights and procedures for the enforcement of rights
22 recognized in sections 4, 5 and 7 of the "Developmentally Disabled
23 Rights Act," P.L. 1977, c. 82 (C. 30:6D-4, 5, 7), and all rights and
24 procedures specified in P.L. , c. (C.)(pending before the
25 Legislature as this bill) shall apply to persons covered by [this
26 act]P.L.1983, c.524 (C.30:6D-13 et seq.).

27 c. The department shall ensure that:

28 (1) aversive techniques are not used on a person with traumatic
29 brain injury who is in a community residence licensed under P.L. 1977,
30 c.448 (C.30:11B-1 et seq.); and

31 (2) if physical or mechanical restraint is used on a person with
32 traumatic brain injury who is in a community residence licensed under
33 P.L.1977, c.448 (C.30:11B-1 et seq.), that use shall be in accordance
34 with the provisions of sections 6 and 7 of P.L. , c. (C.)
35 (pending before the Legislature as this bill).

36 (cf: P.L.1983, c.524, s.5)

37

38 6. (New section) a. Except as provided in subsection b. of this
39 section, a person receiving services for persons with developmental
40 disabilities at a facility or from a public or private agency shall not be
41 subjected to physical restraint unless:

42 (1) an emergency exists that necessitates the use of physical
43 restraint;

44 (2) the physical restraint is used only for the period that is
45 necessary to contain the behavior of the person so that the person no
46 longer poses an immediate threat of causing serious physical injury to

1 himself or others, except that this period shall not exceed one hour;

2 (3) a medical order authorizing the use of physical restraint is
3 obtained from the person's treating physician before the application of
4 the physical restraint or not later than 15 minutes after the application;

5 (4) the physician who signed the order referred to in paragraph (3)
6 of this subsection or the attending physician examines the person not
7 later than one working day after the application of the physical
8 restraint; and

9 (5) the use of force in the application of physical restraint does not
10 exceed the force that is reasonable and necessary under the
11 circumstances precipitating the use of physical restraint.

12 b. The provisions of subsection a. of this section shall not apply in
13 the case of physical restraint that is applied to:

14 (1) assist a person in completing a task if the person does not resist
15 the application of physical restraint or if the restraint is minimal in
16 intensity and duration;

17 (2) escort or carry a person to safety if the person is in danger in his
18 present location; or

19 (3) enable a health care professional to treat the medical needs of
20 the person.

21 c. Within one working day of the use of physical restraint on a
22 person in an emergency, the use shall be reported as an unusual
23 incident, in accordance with the division's policy for reporting unusual
24 incidents, which shall include reporting these incidents to the person's
25 parent or legal guardian, an unusual incident report coordinator in the
26 division and the Office of Operations Support, or its successor, in the
27 Department of Human Services.

28

29 7. (New section) a. Except as provided in subsection b. of this
30 section, a person receiving services for persons with developmental
31 disabilities at a facility or from a public or private agency shall not be
32 subjected to mechanical restraint unless:

33 (1) an emergency exists that necessitates the use of mechanical
34 restraint;

35 (2) a medical order authorizing the use of mechanical restraint is
36 obtained from the person's treating physician before the application of
37 the mechanical restraint or not later than 15 minutes after the
38 application of the mechanical restraint;

39 (3) the physician who signed the order referred to in paragraph (2)
40 of this subsection or the attending physician examines the person not
41 later than one working day immediately after the application of the
42 mechanical restraint;

43 (4) the mechanical restraint is applied by staff trained in the use and
44 application of the particular restraint;

45 (5) the person is given the opportunity to move and exercise the
46 parts of his body that are restrained at least 10 minutes for every 60

1 minutes of restraint;

2 (6) a member of the staff lessens or discontinues the mechanical
3 restraint every 15 minutes to determine whether the person will stop
4 or control dangerous behavior without the use of the restraint;

5 (7) the record of the person contains a notation that includes: the
6 time of day that the mechanical restraint was lessened or discontinued
7 pursuant to paragraph (6) of this subsection; the response of the
8 person to the lessening or discontinuation of the restraint; and the
9 action taken by the member of the staff to lessen or discontinue the
10 mechanical restraint, as appropriate;

11 (8) a member of the staff continuously monitors the person during
12 the time that mechanical restraint is used on the person; and

13 (9) the mechanical restraint is used only for the period that is
14 necessary to contain the behavior of the person so that the person no
15 longer poses an immediate threat of causing serious physical injury to
16 himself or others.

17 b. If a medical order authorizing the use of mechanical restraint is
18 first obtained from the person's treating physician for any of the
19 purposes listed in this subsection, the provisions of subsection a. of
20 this section shall not apply when the mechanical restraint is used to:

21 (1) enable a health care professional to treat the medical needs of
22 the person;

23 (2) protect a person who is known to be at risk of injury to himself
24 because he lacks coordination or suffers from frequent loss of
25 consciousness;

26 (3) provide proper body alignment of a person; or

27 (4) position a person who has physical disabilities in a manner
28 described in the person's individual habilitation plan.

29 c. Within one working day of the use of mechanical restraint on a
30 person in an emergency, the use shall be reported as an unusual
31 incident, in accordance with the division's policy for reporting unusual
32 incidents, which shall include reporting these incidents to the person's
33 parent or legal guardian, an unusual incident report coordinator in the
34 division and the Office of Operations Support, or its successor, in the
35 Department of Human Services.

36

37 8. (New section) As a condition of licensure, the Department of
38 Human Services shall require that a private facility or agency that
39 provides services for persons with traumatic brain injury shall not:

40 a. use aversive techniques on a person with traumatic brain injury;
41 and

42 b. use physical or mechanical restraints on a person with traumatic
43 brain injury unless that use is in accordance with the provisions of
44 sections 6 and 7 of this act.

45

46 9. (New section) a. The division shall ensure that staff at a facility

1 for persons with developmental disabilities, a public or private agency
2 providing services for persons with developmental disabilities and a
3 public or private facility or agency providing services for persons with
4 traumatic brain injury receive training that includes:

5 (1) positive approaches to behavior, including, but not limited to,
6 methods of relationship-building, communication, de-escalation and
7 resolution of conflict and the implementation of environmental
8 supports and accommodations for persons with challenging behaviors;
9 and

10 (2) a course in understanding the legal and ethical responsibility of
11 staff to persons under their care with developmental disabilities and
12 traumatic brain injury.

13 b. Staff working at a public or private facility or agency on the
14 effective date of this act who work directly with persons with
15 developmental disabilities or traumatic brain injury shall successfully
16 complete the training program provided for in subsection a. of this
17 section within six months of the effective date of this act.

18 c. Staff hired at a public or private facility or agency after the
19 effective date of this act who work directly with persons with
20 developmental disabilities or traumatic brain injury shall successfully
21 complete the training program provided for in subsection a. of this
22 section within six months of their date of hire.

23
24 10. (New section) The department shall develop and maintain a
25 web site that shall be updated quarterly and shall include: statistical
26 information about the number of unusual incidents that occurred at a
27 public or private facility or agency providing services for persons with
28 developmental disabilities or traumatic brain injury; and any reports or
29 findings from any State monitoring agency regarding the public or
30 private facility or agency.

31
32 11. Pursuant to the "Administrative Procedure Act," P.L.1968,
33 c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services shall
34 adopt rules and regulations necessary to effectuate the purposes of this
35 act.

36
37 12. This act shall take effect on the 90th day after enactment, but
38 the Commissioner of Human Services may take such anticipatory
39 administrative action in advance as shall be necessary for the
40 implementation of the act.

41

42

43

STATEMENT

44

45 This bill restricts the use of physical and mechanical restraints on
46 persons with developmental disabilities by providing that, except in

1 limited circumstances, physical and mechanical restraints may be used
2 in emergency situations only. Under current law, in addition to
3 emergency use, they may be used as planned interventions as part of
4 approved behavior modification plans, and as a result of inclusion in
5 these plans, the unusual incident reporting requirements of the
6 Division of Developmental Disabilities in the Department of Human
7 Services do not apply. The bill also excludes aversive techniques as
8 planned interventions.

9 Specifically, under the provisions of the bill, a person receiving
10 services for persons with developmental disabilities at a public or
11 private facility or from a public or private agency that provides
12 services for persons with developmental disabilities, would not be
13 subjected to physical restraint unless:

- 14 C An emergency exists that necessitates the use of physical restraint;
- 15 C The physical restraint is used only for the period that is necessary
16 to contain the behavior of the person so that the person no longer
17 poses an immediate threat of causing serious physical injury to
18 himself or others, except that this period shall not exceed one hour;
- 19 C A medical order authorizing the use of physical restraint is obtained
20 from the person's treating physician before the application of
21 physical restraint or not later than 15 minutes after the application;
- 22 C The physician who signed the order or the attending physician
23 examines the person not later than one working day after the
24 application of physical restraint; and
- 25 C The use of force in the application of the physical restraint does not
26 exceed the force that is reasonable and necessary under the
27 circumstances precipitating the use of physical restraint.

28 The limited circumstances under which the above provisions would
29 not apply are when physical restraint is applied to: assist a person in
30 completing a task if the person does not resist the application of
31 physical restraint or if the restraint is minimal in intensity and duration;
32 escort or carry a person to safety if the person is in danger in his
33 present location; or enable a health care professional to treat the
34 medical needs of the person.

35 With regard to mechanical restraints, a person receiving services for
36 persons with developmental disabilities at a facility or from a public or
37 private agency would not be subjected to mechanical restraint unless:

- 38 C An emergency exists that necessitates the use of mechanical
39 restraint;
- 40 C A medical order authorizing the use of mechanical restraint is
41 obtained from the person's treating physician before the application
42 of the mechanical restraint or not later than 15 minutes after the
43 application of the mechanical restraint;
- 44 C The physician who signed the order or the attending physician
45 examines the person not later than one working day after the
46 application of mechanical restraint;

- 1 C The mechanical restraint is applied by staff trained in the use and
2 application of the particular restraint;
- 3 C The person is given the opportunity to move and exercise the parts
4 of his body that are restrained at least 10 minutes for every 60
5 minutes of restraint;
- 6 C A member of the staff lessens or discontinues the mechanical
7 restraint every 15 minutes to determine whether the person will
8 stop or control dangerous behavior without the use of the restraint;
- 9 C The record of the person contains a notation that includes: the time
10 of day that the mechanical restraint was lessened or discontinued;
11 the response of the person to the lessening or discontinuation of the
12 restraint; and the action taken by the member of the staff to lessen
13 or discontinue the mechanical restraint, as appropriate;
- 14 C A member of the staff continuously monitors the person during the
15 time that mechanical restraint is used on the person; and
- 16 C The mechanical restraint is used only for the period that is
17 necessary to contain the behavior of the person so that the person
18 no longer poses an immediate threat of causing serious physical
19 injury to himself or others.

20 The limited circumstances under which the above provisions would
21 not apply are when mechanical restraint is applied to: enable a health
22 care professional to treat the medical needs of the person; protect a
23 person who is known to be at risk of injury to himself because he lacks
24 coordination or suffers from frequent loss of consciousness; provide
25 proper body alignment of a person; or position a person who has
26 physical disabilities in a manner described in the person's individual
27 habilitation plan. In these circumstances, however, a medical order
28 authorizing the use of mechanical restraint for any of these purposes
29 would first need to be obtained.

30 For both physical and mechanical restraints, the bill provides that
31 within one working day of the use of the restraint, the use would be
32 reported as an unusual incident, in accordance with the Division of
33 Developmental Disabilities' policy for reporting unusual incidents,
34 which would include reporting these incidents to the person's parent
35 or legal guardian, an unusual incident report coordinator in the
36 division and the Office of Operations Support, or its successor, in the
37 Department of Human Services.

38 The bill also provides that, as a condition of licensure, a private
39 facility or agency that provides services for persons with traumatic
40 brain injury shall not use aversive techniques on persons with
41 traumatic brain injury, and shall not use physical or mechanical
42 restraints unless that use is in accordance with the procedures outlined
43 in the bill.

44 In addition, the bill includes a provision requiring staff training in
45 positive approaches to behavior and completion of a course in
46 understanding the legal and ethical responsibilities of staff. The bill

1 also requires the department to develop and maintain a web site for
2 statistical information about the number of unusual incidents occurring
3 at public or private facilities or agencies, as well as any reports or
4 findings from any State monitoring agencies.

5 The bill defines "emergency" as a situation in which immediate
6 intervention is necessary to protect the physical safety of a person
7 receiving services at a facility or from a public or private agency, or to
8 protect the safety of others from an immediate threat of serious
9 physical injury.

10 In addition, the bill amends: N.J.S.A.30:6D-5 to exclude
11 "substantial property damage" as a basis for using chemical restraint
12 in emergency situations; and N.J.S.A.30:6D-11 to provide that
13 individual habilitation plans shall not include aversive techniques or
14 physical or mechanical restraint as planned interventions, but the plans
15 may provide for the use of physical or mechanical restraint in
16 accordance with the limited circumstances described above.

17 This bill is based on Nevada and Pennsylvania law and is intended
18 to reduce the use of physical and mechanical restraints and eliminate
19 aversive techniques in the State, and to address the tragic situation
20 that occurred at a State-licensed facility in Haddonfield, where a
21 teenage boy with autism, named Matthew, was improperly restrained
22 and left unattended.