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## A BILL FOR AN ACT

RELATING TO A BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH  
DEVELOPMENTAL OR INTELLECTUAL DISABILITIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the department of  
2 health's position on behavior support is to ensure that behavior  
3 interventions are implemented appropriately to assist and  
4 support individuals receiving services and those providing  
5 support to them. This position:

6           (1) Emphasizes positive behavior supports that promote the  
7 growth, development, and independence of individuals;  
8 individual choice in daily decision-making; self-  
9 management; and individual responsibility for  
10 behaviors;

11           (2) Provides for working with persons with challenging  
12 behavior (with a focus on teaching replacement  
13 behaviors that serve as the function for what the  
14 individual is communicating rather than the  
15 suppression or elimination of undesirable behaviors,) and  
16 and specification of prohibited interventions; and



1           (3) Enables appropriate safeguards and oversight if  
2           aversive procedures (planned or crisis) are used, with  
3           planning for the eventual elimination of seclusion and  
4           restraints.

5           The legislature also finds that, when an individual with  
6           intellectual or developmental disabilities is a danger to  
7           themselves or others, restraints or seclusion may be recommended  
8           and administered. After these methods are administered, a  
9           behavior support review committee is convened in the department  
10          of health developmental disabilities division to evaluate such  
11          cases and make recommendations. The behavior support review  
12          committee membership may include:

13          (1) A parent of an individual receiving service from the  
14          department of health developmental disabilities  
15          division;

16          (2) A developmental disabilities division service provider  
17          who provides at least two services to participants;

18          (3) A community member with no direct involvement with  
19          developmental disabilities division waiver provider  
20          programs;



1 (4) A department of health facilitator with experience or  
2 training in best practices to support behaviors of  
3 individuals with developmental disabilities;

4 (5) A department of health case manager with experience in  
5 supporting participants with behavior concerns; and

6 (6) A person receiving services from the developmental  
7 disabilities division.

8 The purpose of this Act is to establish the behavioral  
9 support review process and to provide behavior support review  
10 committee members with immunity from liability.

11 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
12 amended by adding a new part to be appropriately designated and  
13 to read as follows:

14 "PART . BEHAVIOR SUPPORT REVIEW COMMITTEE FOR PERSONS WITH  
15 DEVELOPMENTAL OR INTELLECTUAL DISABILITIES

16 §321- Definitions. Whenever used in this part, unless  
17 the context otherwise requires:

18 "Department" means the department of health.

19 "Developmental disability" shall be as defined in section  
20 333F-1.



1 "Director" means the director of health or the director's  
2 designee.

3 "Intellectual disability" shall be as defined in section  
4 333F-1.

5 "Person with developmental or intellectual disabilities"  
6 means a youth or an adult with a developmental or intellectual  
7 disability.

8 "Restraints" means the methods of restricting a person's  
9 freedom of movement by holding a person (manual or physical  
10 restraint); the application of a device specifically designed to  
11 safely restrain or assist in retraining; or using a psychotropic  
12 medication prescribed without the appropriate Diagnostic and  
13 Statistical Manual diagnosis or prescribed on an as needed basis  
14 (chemical restraint). A restraint does not include brief and  
15 minimally restrictive physical contact in order to calm or  
16 comfort the person, or holding a person's hand to safely escort  
17 the person from one area to another.

18 "Seclusion" means any involuntary confinement to a room or  
19 area where one is physically prevented from leaving.

20 §321- Behavior support review. The department may  
21 convene a behavior support review committee to conduct



1 multidisciplinary and multiagency reviews of the administration  
2 of restraints or seclusion on persons with developmental or  
3 intellectual disabilities to:

- 4 (1) Ensure appropriate use of restraints or seclusion; and
- 5 (2) Reduce the risk of harm or death to persons with  
6 developmental or intellectual disabilities.

7 §321- Access to information. Upon written request of  
8 the director, all providers of residential supports and state  
9 and county agencies, shall disclose to the department and the  
10 members of a behavior support review committee for a person with  
11 developmental or intellectual disabilities the circumstances of  
12 restraints or seclusion used for the person with developmental  
13 or intellectual disabilities, to allow the department to conduct  
14 multidisciplinary reviews of restraints or seclusion used for  
15 persons with developmental or intellectual disabilities,  
16 pursuant to section 321-31 and this part.

17 (b) To the extent that this section conflicts with any  
18 other state confidentiality law, this section shall prevail.

19 §321- Exception. Information regarding an ongoing  
20 civil or criminal investigation shall be disclosed at the



1 discretion of the applicable state, county, or federal law  
2 enforcement agency.

3 §321- Use and review of information and records and  
4 activities pertaining to behavior support review of persons with  
5 developmental or intellectual disabilities. (a) Except as  
6 otherwise provided in this part, all information and records  
7 acquired by the department or committee during its  
8 multidisciplinary, multiagency reviews of restraints or  
9 seclusion of persons with developmental or intellectual  
10 disabilities pursuant to this part shall be kept confidential  
11 and may be disclosed only as necessary to carry out the purposes  
12 of this part.

13 (b) Information and statistical compilations of data from  
14 the multidisciplinary reviews of restraints or seclusion of  
15 persons with developmental or intellectual disabilities that do  
16 not contain any information that would permit the identification  
17 of any person shall be public records.

18 (c) No individual participating in the department's  
19 multidisciplinary review of the restraints or seclusion of a  
20 person with developmental or intellectual disabilities may be  
21 questioned in any civil or criminal proceeding regarding



1 information presented in, or opinions formed, as a result of  
2 meetings of the multidisciplinary review of restraints or  
3 seclusion. Nothing in this subsection shall be construed to  
4 prevent a person from testifying to information obtained  
5 independently of the department's multidisciplinary behavior  
6 support review, or that is public information, or where  
7 disclosure is required by law or court order.

8 (d) Information held by the department as a result of a  
9 multidisciplinary review of the restraints or seclusion of a  
10 person with developmental or intellectual disabilities conducted  
11 under this part shall not be subject to subpoena, discovery, or  
12 introduction into evidence in any civil or criminal proceeding;  
13 provided that information otherwise available from other sources  
14 shall not be immune from subpoena, discovery, or introduction  
15 into evidence through those sources solely because it was  
16 provided as required by this part.

17 §321- Immunity from liability. All agencies and  
18 individuals participating in multidisciplinary reviews of  
19 restraints or seclusions of persons with developmental or  
20 intellectual disabilities pursuant to this part shall not be



1 held civilly or criminally liable for providing information  
2 required under this part."

3 SECTION 3. This Act shall take effect upon its approval.

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# H.B. NO. 1109

**Report Title:**

Behavior Support Review Committee for Persons with Developmental and Intellectual Disabilities

**Description:**

Describes the behavioral support review process to conduct multidisciplinary reviews of restraints or seclusion of persons with developmental or intellectual disabilities, and exempts those who participate in the reviews from liability.

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