

I MINA'BENTE OCHO NA LIHESLATURAN GUÅHAN
2006 (SECOND) Regular Session

Bill No. 267 (EC)

Introduced by:

Mike Cruz, MD
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AN ACT TO *AMEND* SECTION 82101, ARTICLE 1, CHAPTER 82, DIVISION 4, TITLE 10 OF THE GUAM CODE ANNOTATED, AND *ADD* SECTIONS 82610, 82611, AND 82612, ARTICLE 6, CHAPTER 82, DIVISION 4, TITLE 10 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE FRAMEWORK OF A SECLUSION AND RESTRAINT POLICY, AND SETTING RESTRICTIONS ON THE USE OF PHYSICAL RESTRAINTS ON PERSONS WITH MENTAL, BEHAVIORAL DIFFICULTIES, AND/OR DEVELOPMENTAL DISABILITIES.

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan*
3 finds that persons with mental, behavioral difficulties, and/or
4 developmental disabilities require appropriate care and treatment during
5 agitated or excited delirium states. The use of any form of physical
6 restraint is not appropriate unless direct service personnel are properly
7 trained in safe crisis intervention strategies.

8 *I Liheslaturan Guåhan* finds that improper restraint and particularly
9 prone restraint (face down) is potentially lethal, particularly for individuals
10 who are overweight, have diagnosed breathing disorders, are pregnant, or
11 prior to and during restraint on individuals who have been agitated and
12 struggling. A few states, after the death of an individual, banned the use of

1 prone restraint or have opted to limit prone restraint to a maximum
2 intervention of five (5) minutes when used as the last resort to manage
3 extreme situations and then only by trained personnel only.

4 *I Liheslaturan Guåhan* finds that in circumstances such as this, it is
5 critical that direct service workers are trained in an evidence-based,
6 strength-based behavior intervention program that strives to ensure the
7 safety of the client/student, personnel involved, and all stakeholders.
8 Therefore, it is the intent of *I Liheslaturan Guåhan* to provide for the safety of
9 individuals with mental, behavioral difficulties, and/or developmental
10 disabilities experiencing out-of-control behaviors by providing a
11 framework for a seclusion and restraint policy based on the least restrictive
12 alternative policy and by setting restrictions on the use of physical
13 restraints in Government of Guam agencies and agents of the Government
14 of Guam that provide services for individuals with mental, behavior
15 difficulties, and/or developmental disabilities.

16 **Section 2. Section 82101, Article 1, Chapter 82, Division 4, Title 10**
17 **of the Guam Code Annotated is hereby *amended* and all following**
18 **subsections are *renumbered* to read as follows:**

19 "§ 82101. **Definitions.** As used in this Chapter, unless the context
20 requires otherwise:

21 (a) *Department* means the Department of Mental Health and
22 Substance Abuse and Director means the Director of the Department of
23 Mental Health and Substance Abuse.

1 (b) *Facility* means a public or privately operated institution
2 operated by or contracted with a Government of Guam agency, which has
3 been designated by the Director as being adequately equipped for the care
4 of persons suffering from mental illness.

5 (c) *Gravely disabled* means a person who, as a result of mental
6 disorder, is unable to use the elements of life, which are essential to health
7 or safety, including food, clothing or shelter, even though provided to the
8 persons by others.

9 (d) *Investigator or Investigating Officer* means a person or
10 organization appointed by a Judge of the Superior Court.

11 (e) *Least Restrictive Alternative* means a policy principle that is used
12 to guide intervention practice. It refers to using the least amount of force
13 or intervention necessary to try and ensure a safe outcome to problem
14 behavior.

15 (e)(f) *Mentally ill or Mentally disordered* means a person having a
16 psychiatric or other disorder, which substantially impairs the person's
17 mental health, but does not include a person suffering from:

- 18 (1) epilepsy; or
- 19 (2) mental retardation; or
- 20 (3) brief periods of intoxication caused by substances such as
21 alcohol and drugs.

22 (f)(g) *Patient* means a person under evaluation, care or treatment in a
23 facility pursuant to the provisions of this Title.

24 (h) *Physical Restraint* means the use of a physical hold to restrict
25 freedom of movement of all or part of a person's body to restrict normal

1 access to the person's body, and that is used as a behavioral restraint.
2 Physical restraint is any staff-to-person physical contact in which the
3 person unwillingly participates. Physical restraint does not include
4 momentarily holding a person without undue force in order to calm or
5 comfort, or physical contact intended to gently assist a person in
6 performing tasks or to assist a person from one area to another.

7 (1) Extended restraint means a physical restraint the duration of
8 which is more than twenty (20) minutes.

9 (2) Mechanical restraint means the use of a mechanical device,
10 material, or equipment attached or adjacent to the person's
11 body that he or she cannot easily remove and that restricts
12 normal access to the person's body.

13 (3) Prone restraint means a physical restraint position that is lying
14 face down.

15 (4) Supine position means a physical restraint position that is face
16 up.

17 (i) Positional asphyxiation means insufficient intake of oxygen as a
18 result of body position that interferes with one's ability to breathe.

19 ~~(g)~~(j) *Professional staff, professional person or qualified mental health*
20 *professional* means a licensed professional designated by the Director as
21 specially qualified by training or experience in the diagnosis of mental or
22 related illness. The following licensed professionals shall be so designated:

23 (1) a psychiatrist;

- 1 (2) a clinical psychologist;
2 (3) a certified psychiatric nurse at the Master's level; or
3 (4) a physician.

4 (k) Seclusion means a behavior technique involving locked
5 isolation. Such term does not include a time out.

6 (l) Time out means a behavior management technique that is part
7 of an approved treatment program and may involve the separation of the
8 client/student from the group, in a non-locked setting, for the purpose of
9 calming. Time out is not seclusion.

10 (~~h~~)(m) *Treatment* shall mean any therapy approved by the
11 American Psychiatric Association or other recognized medical body; but
12 shall not include those forms of treatment known as Electro-Convulsive
13 Shock, Insulin Shock, Psycho-Surgery or any other measure which requires
14 the physical invasion of the patient's body.

15 **Section 3. Sections 82610 and 82611, Article 6, Chapter 82, Division**
16 **4, Title 10 of the Guam Code Annotated is hereby *added* to read as**
17 **follows:**

18 "§ 82610. **Seclusion and Restraint Policy.** This section shall apply
19 to all direct service personnel within Government of Guam agencies and
20 agents of the Government of Guam who provide services to persons with
21 mental, behavioral difficulties, and/or developmental disabilities.
22 Seclusions or restraints are imposed only under emergency circumstances
23 and only to ensure the immediate physical safety of the client/student,

1 personnel, or others and less restrictive alternatives have been determined
2 to be ineffective in which training shall be provided annually and include
3 the following:

- 4 (1) needs and behaviors of the population served;
- 5 (2) relationship building;
- 6 (3) alternatives to restraint and seclusion;
- 7 (4) de-escalation methods;
- 8 (5) avoiding power struggles;
- 9 (6) thresholds for restraints and seclusion;
- 10 (7) the physiological and psychological impact of restraint and
11 seclusion;
- 12 (8) monitoring physical signs of distress and obtaining medical
13 assistance;
- 14 (9) legal issues;
- 15 (10) positional asphyxia;
- 16 (11) escape and evasion techniques;
- 17 (12) time limits;
- 18 (13) the process for obtaining approval for continued restraints;
- 19 (14) procedures to address problematic restraints;
- 20 (15) documentation; *and*
- 21 (16) processing with client/student, and follow-up with personnel,
22 and investigation of injuries and complaints.

1 § 82611. **Proper Administration of Physical Restraint.** This
2 section shall apply to all direct service personnel within Government of
3 Guam agencies and agents of the government of Guam providing services
4 to persons with mental, behavioral difficulties, and/or developmental
5 disabilities.

6 (a) **Properly trained personnel.** Physical restraints shall be
7 prohibited unless personnel administering the restraint have received in-
8 depth training according to the requirements set forth in Section 82610,
9 Article 6, Chapter 82, 10 GCA, have demonstrated proficiency in other
10 approved techniques, and in the judgment of the trained personnel, there
11 are no other safe options and it is the last alternative to provide safety for
12 the client/student or others present. All direct service personnel shall
13 receive annual training as set forth in Section 82610, Article 6, Chapter 82,
14 10 GCA.

15 (b) **Use of force.** A person administering a physical restraint shall
16 use only the amount of force necessary to protect the client/student or
17 others from physical injury or harm.

18 (c) **Safest method.** A person administering physical restraint shall
19 use the safest available and appropriate to the situation subject to the safety
20 requirements set forth in Section 82611(b)(5), Article 6, Chapter 82, 10 GCA.
21 Floor or prone restraints shall be prohibited unless the staff member
22 administering the restraint has received in-depth training according to

1 requirements of Section 82610 and, in the judgment of the trained staff,
2 such method is required to provide safety for the student or others present.

3 (d) **Duration of restraint.** A person administering physical
4 restraint shall discontinue such restraint as soon as possible. If, due to
5 unusual circumstances, a restraint continues for more than twenty (20)
6 minutes, it shall be considered an "extended restraint" for purposes of the
7 reporting requirements in Section 82611(f), Article 6, Chapter 82, Title 10
8 GCA.

9 (e) **Safety requirements.** Additional requirements for the use of
10 physical restraint:

11 (1) No restraint shall be administered in such a way that the
12 client/student is prevented from breathing or speaking. During
13 the administration of a restraint, a staff member shall
14 continuously monitor the physical status of the client/student,
15 including skin color and respiration. A restraint shall be
16 released immediately upon determination by the staff member
17 administering the restraint that the client/student is no longer
18 at risk of causing imminent physical harm to him or herself or
19 others.

20 (2) Restraint shall be administered in such a way so as to prevent
21 or minimize physical harm. If, at any time during a physical
22 restraint, the client/student demonstrates significant physical
23 distress, the client/student shall be released from the restraint

1 immediately, and staff members shall take steps to seek
2 medical assistance.

3 (4) Program staff shall review and consider any known medical or
4 psychological limitations and/or behavioral intervention plans
5 regarding the use of physical restraint on an individual
6 client/student.

7 (5) Following the release of a client/student from a restraint, the
8 program shall implement follow-up procedures. These
9 procedures shall include reviewing the incident with the
10 client/student to address the behavior that precipitated the
11 restraint, reviewing the incident with the staff person(s) who
12 administered the restraint to discuss whether proper restraint
13 procedures were followed, and consideration of whether any
14 follow-up is appropriate for students who witnessed the
15 incident.

16 (f) **Reporting Requirements:** Personnel shall report the use of
17 physical restraint as defined in Section 82101(h), Article 1, Chapter 82, Title
18 10 GCA after administration of a physical restraint of a duration longer
19 than five minutes to program staff within twenty-four (24) hours. All
20 deaths and severe injuries on the frequency of the facilities of the use of
21 seclusion and restraint shall provide reports to the Division of Evaluation,
22 Enforcement, and Compliance, DISID, and the Department of Public
23 Health and Social Services on a quarterly basis.

1 § 82612. **Seclusion and Restraint Policy. Prohibited Acts.** This

2 section shall apply to all direct service workers within Government of
3 Guam agencies and agents of the Government of Guam providing services
4 to persons with mental, behavioral difficulties, and/or developmental
5 disabilities. Personnel may not use any of the following:

6 (a) seclusion is prohibited in school settings;

7 (b) a physical restraint or containment technique that obstructs a
8 person's respiratory airway or impairs the person's breathing or respiratory
9 capacity, including techniques in which a staff member places pressure on
10 a person's back or places his or her body weight against the person's torso
11 or back;

12 (c) a pillow, blanket, or other item covering the person's face as
13 part of a physical or mechanical restraint or containment process; *or*

14 (d) prone restraint on a minor or a person at risk for positional
15 asphyxiation as a result of one of the following risk factors that are known
16 to the personnel:

17 (1) obesity;

18 (2) pregnancy;

19 (3) agitated delirium or excited delirium syndromes;

20 (4) cocaine, methamphetamine, or alcohol intoxication;

21 (5) exposure to pepper spray;

22 (6) preexisting heart disease, including, but not limited to, an
23 enlarged heart or other cardiovascular disorders; *and*

1 (7) respiratory conditions, including emphysema, bronchitis, or
2 asthma."

3 **Section 4. Implementation.** This Act shall be effective within sixty
4 (60) days of enactment.

5 **Section 5. Severability.** *If* any provision of this Law or its
6 application to any person or circumstance is found to be invalid or contrary
7 to law, such invalidity shall *not* affect other provisions or applications of
8 this Law, which can be given effect without the invalid provisions or
9 application, and to this end the provisions of this Law are severable.

MINA' BENTE OCHO NA LIHESLATURAN GUÅHAN
(SECOND) REGULAR SESSION

Bill No. ²⁵⁰ (EC)

Introduced by:

R. J. Respicio

Mark Forbes

B. J. F. Cruz

AN ACT TO OFFICIALLY NAME THE AREA NOW REFERRED TO AS THE "DEDEDO FLEA MARKET" AS THE "MAYOR JOSE A. RIVERA MARKETPLACE," AND TO HAVE A PLAQUE PLACED ON THE SITE COMMEMORATING THE LATE MAYOR RIVERA'S ROLE IN ESTABLISHING THE MARKET AS A BENEFIT FOR THE RESIDENTS OF DEDEDO.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Name Change.** The name of the area currently referred to
3 as the "Dededo Flea Market" shall be changed to the "Mayor Jose A. Rivera
4 Marketplace." Such change shall take place upon enactment of this act into
5 law. All references within Government of Guam documentation and
6 signage shall reflect this change.

7 **Section 2. Commemorative Plaque.** The Department of Parks and
8 Recreation (DPR) shall design and have produced an appropriate
9 commemorative plaque to be placed at the site that bears the late Mayor
10 Rivera's name. DPR shall work with the Mayors' Council of Guam and the
11 Dededo Mayor's Office to determine the appropriate wording, design and
12 location for the plaque.