

SENATE NO. 1123

AN ACT CREATING AND AUTHORIZING LEVEL IV BEHAVIORAL TREATMENT INTERVENTIONS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. The Department of Mental Retardation hereby creates a new classification of behavioral
2 treatment interventions, to be known as Level IV. Level IV interventions involve the most intrusive
3 form of treatment intervention and they shall be considered to only be used as a consequence to
4 address target behaviors which present a clear risk of injury or harm to self or others, such as self-
5 injury, aggression. Level IV interventions are not appropriate for addressing minor behavior problems,
6 even if said behaviors have served as precursors to self-injury or aggression in the past.

7 SECTION 2. Level IV interventions shall include those procedures which involve the systematic use
8 of noxious or intrusive stimuli which a client is known to find painful or unpleasant. These
9 interventions are restricted to techniques and procedures which meet scientifically validated standards,
10 have been published in peer-reviewed journals, and are consistent with the 2004 amendments to the
11 Individuals with Disabilities Education Act (IDEA) No Child Left Behind Act. These will include, but
12 not be limited to: use of contingent electric shock, corporal punishment, aromatic ammonia, Tabasco
13 sauce, etc.

14 SECTION 3. All Level IV interventions must be designed by a Board Certified Behavior Analyst or a
15 Licensed Psychologist who holds a Board Certification by the American Board of Professional
16 Psychology as a Board Certified Behavioral Psychologist. Level IV interventions may only be
17 implemented by staff who received specific training in the application of the intervention and the
18 individualized treatment plan. Any staff member who is not, at a minimum, a Board Certified
19 Associate Behavior Analyst can only implement a Level IV intervention under the direct observation
20 and supervision of a professional who holds said certification.

21 SECTION 4. The governor will appoint three licensed behavior analysts who are also licensed
22 psychologists with appropriate clinical expertise to serve as a single state-wide Peer Review
23 Committee which would be charged with the review, approval and oversight of all Level IV treatment
24 interventions occurring in the Commonwealth. All recommendations and findings of the Peer Review
25 Committee with respect to any individual treatment plan will be submitted to the Probate and Family
26 Court as part of the approval and review of said substituted judgment treatment plan. In any civil
27 action brought against a member, the Peer Review Committee shall be indemnified for all expenses
28 incurred in the defense thereof and shall be indemnified for damages to the same extent as provided
29 for public employees in chapter two hundred and fifty-eight; provided, however, that the claim arose
30 out of acts performed by such member while acting within the scope of his official duties as a member
31 of the Peer Review Committee.

32 SECTION 5. Level IV interventions are permitted only when authorized as part of a court-ordered
33 “substituted judgment” treatment plan for an individual client. Such interventions will be initially
34 approved for no more than 30 days by the state-wide Peer Review Committee, and may be re-reviewed
35 and approved for a maximum of six months.

36 SECTION 6. The implementation of any Level IV intervention beyond the scope of a court-ordered
37 “substituted judgment” treatment plan or by a staff member who does not meet the requirements of
38 this section will be considered an act of mistreatment, pursuant to section 13K of chapter 265 and shall
39 be reported to the Disabled Persons Protection Commission.

40 SECTION 7. Within 90 days after the passage of this act, the secretary of health and human services
41 shall draft, pursuant to chapter 30A, proposed rules and regulations regarding the development,
42 review, approval, and on-going review and monitoring process for Level IV treatment plans.

