

Stop the Shock: **Andre's Law (S.8935)**

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

This legislation would prohibit New York State from financially supporting, and sending its children to, institutions that employ electro-shock and other “aversive therapies,” which are widely recognized as cruel and harmful.

What is “Aversive Conditioning”?

“Aversive conditioning” is the practice of repeatedly and intentionally inducing pain or discomfort in an attempt to alter a person’s behavior. **Most US states have already completely banned aversive conditioning.**

New York’s \$100 Million Loophole

In 2005, New York prohibited aversive conditioning. The practice legally cannot happen here within the borders of New York. However, **New York state agencies still send disabled children to out-of-state facilities that use electro-shock and other forms of aversive conditioning.**

In fact, New York State has spent more than \$100 million over the past decade doing so. Andre’s Law would close this loophole by legally requiring New York — together with any agency or political subdivision of the state — to cease funding, operating, licensing, or approving any programs, agencies, or facilities that use aversive conditioning practices.

New York cannot entrust its disabled children to entities that engage in aversive conditioning practices.

Why “Andre’s Law”?

This bill is named in honor of Andre McCollins, a survivor of aversive conditioning. Andre was diagnosed with a neurodevelopmental disorder and sent to an out-of-state, DOE-approved facility as a teenager. He was subjected to aversive conditioning there until he was ultimately hospitalized after being tied to a board and electro-shocked thirty-one times over seven hours. **New York State continues to send children to this same facility.**

More on Electro-Shock:

Medical Professionals, Federal Agencies, and International Human Rights Groups Oppose Electro-Shock “Treatment”

There is widespread agreement that the administration of electrical shocks as aversive therapy is not appropriate for anyone, including children and persons with disabilities. The broad consensus opposing this use of electrical shocks includes the U.S. Food and Drug Administration, the American Academy of Pediatrics, the American Academy of Developmental Medicine and Dentistry, the American Association on Intellectual and Developmental Disabilities, the International Association for the Scientific Study of Intellectual and Developmental Disabilities, the National Association for the Dually Diagnosed, the National Association of State Directors of Developmental Disabilities Services, and the National Association of State Directors of Special Education. In fact, Manfred Nowak, the UN’s Special Rapporteur on Torture, has bluntly stated: “This is torture.”

The FDA’s Attempt to Prevent the Use of Electro-Shock Devices Recently Lost a Legal Challenge on Narrow Technical Grounds

The FDA has determined that the use of electric shocks for aversive conditioning is painful, psychologically damaging, and often physically harmful. Moreover, there is no justification for subjecting people to such unreasonable risk of injury, pain, and illness; safe, effective, and less restrictive treatments are available and widely used. The FDA identified numerous studies that reveal physical harm resulting from such devices, as well as negative emotional reactions such as fear, avoidance, aversion, anxiety, and depression. The FDA sought to ban the use of such electrical devices as aversive therapy, in a well-reasoned position that is consistent with the overwhelming weight of scientific literature on this topic, and actual treatment practices across the country.

This legislation is necessary because, on July 6, 2021, the United States Court of Appeals for the District of Columbia Circuit issued an opinion stating that, although “no one disputes” that the FDA has the ability “to ban a device completely,” the agency did not have the authority under 21 U.S.C. § 360 to issue a ban on the use of such electric shock devices that was targeted at “specific uses that states regard as legitimate medical practice.” Chief Judge Srinivasan dissented from this opinion, arguing that the FDA’s undisputed power to “ban a medical device altogether” means that the agency can similarly “exercise its banning authority in a more tailored fashion.” The divided court’s opinion explicitly noted that this is “an area that is traditionally the province of state law.” Accordingly, this legislation will codify New York’s agreement with the U.S. Food and Drug Administration’s assessment, and the overwhelming weight of authority, to cease such practices where New York’s most vulnerable are concerned.