

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0162.03 Jacob Baus x2173

HOUSE BILL 23-1013

HOUSE SPONSORSHIP

Amabile,

SENATE SPONSORSHIP

Fields and Rodriguez,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO REGULATE THE USE OF RESTRICTIVE**
102 **PRACTICES ON INDIVIDUALS IN CORRECTIONAL FACILITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill prohibits the use of a clinical restraint on an individual, unless:

- The use is to prevent the individual from committing imminent and serious harm to the individual's self or

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
Amended 2nd Reading
April 21, 2023

another person, based on immediately present evidence and circumstances;

- All less restrictive interventions have been exhausted; and
- The clinical restraint is ordered by a licensed mental health provider.

The bill requires facilities that utilize clinical restraints to implement procedures to ensure frequent and consistent monitoring for the individual subjected to the clinical restraint and uniform documentation procedures concerning the use of the clinical restraint.

The bill limits the amount of time an individual may be subjected to a clinical restraint per each restraint episode and within a calendar year.

The bill prohibits the use of an involuntary medication on an individual, unless:

- The individual is determined to be dangerous to the individual's self or another person and the treatment is in the individual's medical interest;
- All less restrictive alternative interventions have been exhausted; and
- The involuntary medication is administered after exhaustion of procedural requirements that ensure a hearing, opportunity for review, and right to counsel.

The bill requires the department of corrections (department) to submit an annual report to the judiciary committees of the senate and house of representatives with data concerning the use of clinical restraints and involuntary medication in the preceding calendar year.

The bill requires the department to include specific data concerning the placement of individuals in settings with heightened restrictions in its annual administrative segregation report.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add 17-1-167** as
3 follows:

4 **17-1-167. Use of restraints for state inmates - criteria -**
5 **documentation - intake assessment - report - rules - definitions.**

6 (1) BY JULY 1, 2027, THE DEPARTMENT SHALL IMPLEMENT POLICIES AND
7 PRACTICES THAT CONFORM TO THE MINIMUM STANDARDS PRESCRIBED BY
8 THE MOST UPDATED RESTRAINT AND SECLUSION STANDARDS OF THE
9 NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE. THE

1 DEPARTMENT SHALL CONTINUOUSLY AMEND ITS PRACTICES AND POLICIES
2 TO COMPLY, AT A MINIMUM, WITH THE THOSE MINIMUM STANDARDS.

3 (2) (a) A FACILITY OR QUALIFIED FACILITY SHALL ENSURE THAT
4 THE USE OF RESTRAINT IS DOCUMENTED AND MAINTAINED IN THE
5 ELECTRONIC HEALTH RECORD OF THE INDIVIDUAL WHO WAS RESTRAINED.
6 AT A MINIMUM, THE FACILITY OR QUALIFIED FACILITY SHALL DOCUMENT:

7 (I) THE ORDER FOR CLINICAL RESTRAINT, THE DATE AND TIME OF
8 THE ORDER, AND THE SIGNATURE OF THE LICENSED OR LICENSE-ELIGIBLE
9 MENTAL HEALTH PROVIDER WHO ISSUED THE CLINICAL RESTRAINT ORDER.
10 IF THE ORDER IS AUTHORIZED BY TELEPHONE, THE ORDER MUST BE
11 TRANSCRIBED AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH
12 AUTHORITY TO ACCEPT ORDERS. THE ORDERING LICENSED OR LICENSE-
13 ELIGIBLE MENTAL HEALTH PROVIDER SHALL SIGN THE ORDER AS SOON AS
14 PRACTICABLE.

15 (II) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF THE
16 CLINICAL RESTRAINT, INCLUDING THE LESS-INTRUSIVE INTERVENTIONS
17 THAT WERE EMPLOYED AND FAILED, AND EVIDENCE OF THE IMMEDIATE
18 CIRCUMSTANCES JUSTIFYING THE BELIEF THAT THE USE OF RESTRAINT WAS
19 TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS
20 HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON;

21 (III) THE SPECIFIC BEHAVIORAL CRITERIA THE INDIVIDUAL MUST
22 EXHIBIT FOR THE CLINICAL RESTRAINT EPISODE TO BE TERMINATED;

23 (IV) ANY MODIFICATIONS TO THE ORDER, AND THE TIME AND
24 DATE, AND THE SIGNATURE OF THE LICENSED OR LICENSE-ELIGIBLE
25 MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY
26 DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO MODIFIES
27 THE ORDER;

1 (V) THE DATE AND TIME OF AN ORDER MODIFICATION, THE DATE
2 AND TIME OF THE MODIFICATION, AND THE SIGNATURE OF THE LICENSED
3 OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, OR MENTAL HEALTH
4 CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE
5 DEPARTMENT, WHO ISSUED THE CLINICAL RESTRAINT ORDER. IF THE ORDER
6 IS MODIFIED BY TELEPHONE, THE MODIFICATION MUST BE TRANSCRIBED
7 AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH AUTHORITY TO
8 ACCEPT THE MODIFICATION. THE ORDERING LICENSED OR
9 LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, OR MENTAL HEALTH
10 CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE
11 DEPARTMENT, SHALL SIGN THE ORDER AS SOON AS PRACTICABLE; AND

12 (VI) THE DATE AND TIME OF THE TERMINATION OF THE ORDER, THE
13 SIGNATURE OF THE PERSON WHO TERMINATED THE ORDER, THE
14 OBSERVATIONS, AND EVIDENCE THAT THE INDIVIDUAL EXHIBITED
15 BEHAVIOR JUSTIFYING THE TERMINATION OF THE ORDER.

16 (b) THE FACILITY OR QUALIFIED FACILITY SHALL ENSURE THE
17 DOCUMENTATION AND RETENTION REQUIRED PURSUANT TO THIS SECTION
18 ARE CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND FEDERAL
19 LAWS REGARDING THE CONFIDENTIALITY OF THE INDIVIDUAL'S
20 INFORMATION AND SHALL ENSURE AN INDIVIDUAL MAY ACCESS THE
21 INFORMATION OR DEMAND RELEASE OF THE INFORMATION TO A THIRD
22 PARTY.

23 (3) A QUALIFIED FACILITY SHALL PERFORM AN EVALUATION UPON
24 EVERY INDIVIDUAL'S INTAKE TO THE RESPECTIVE FACILITY FOR THE
25 PURPOSE OF ASSESSING THE INDIVIDUAL'S RISK OF SELF-HARM BEHAVIORS
26 AND WHETHER THE INDIVIDUAL HAS BEEN PREVIOUSLY SUBJECTED TO
27 CLINICAL FOUR-POINT RESTRAINTS. A LICENSED OR LICENSE-ELIGIBLE

1 MENTAL HEALTH PROVIDER, MENTAL HEALTH CLINICIAN AS DEFINED BY
2 DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, QUALIFIED
3 HEALTH-CARE PROVIDER, OR MENTAL HEALTH ADMINISTRATOR SHALL
4 INITIATE APPROPRIATE SAFETY PLANNING TO ADDRESS CONCERNS AND
5 ATTEMPT TO AVOID THE USE OF CLINICAL RESTRAINTS, IF POSSIBLE.

6 (4) (a) SUBJECT TO THE PROVISIONS OF THIS SECTION, A QUALIFIED
7 FACILITY SHALL NOT USE AN INVOLUNTARY MEDICATION ON AN
8 INDIVIDUAL UNLESS:

9 (I) THE INDIVIDUAL IS DETERMINED TO BE DANGEROUS TO THE
10 INDIVIDUAL'S SELF OR ANOTHER PERSON, AND THE TREATMENT IS IN THE
11 INDIVIDUAL'S MEDICAL INTEREST;

12 (II) THE QUALIFIED FACILITY HAS EXHAUSTED ALL
13 LESS-RESTRICTIVE ALTERNATIVE INTERVENTIONS;

14 (III) THE INVOLUNTARY MEDICATION IS ADMINISTERED AFTER
15 EXHAUSTION OF PROCEDURAL REQUIREMENTS ESTABLISHED PURSUANT TO
16 THIS SECTION; AND

17 (IV) THE MAJORITY OF THE INVOLUNTARY MEDICATION
18 COMMITTEE DESCRIBED IN SUBSECTION (4)(b) OF THIS SECTION APPROVES
19 OF THE INVOLUNTARY MEDICATION.

20 (b) THE QUALIFIED FACILITY SHALL CONVENE AN INVOLUNTARY
21 MEDICATION COMMITTEE, COMPRISED OF A LICENSED PSYCHIATRIST, A
22 LICENSED PSYCHOLOGIST, A LICENSED OR LICENSE-ELIGIBLE MENTAL
23 HEALTH PROVIDER, AND THE SUPERINTENDENT OF THE QUALIFIED FACILITY
24 OR THE SUPERINTENDENT'S DESIGNEE.

25 (c) AN ORDER FOR AN INVOLUNTARY MEDICATION MUST NOT:

26 (I) EXCEED ONE HUNDRED EIGHTY DAYS FROM THE DATE OF THE
27 ORDER; AND

1 (II) PERMIT THE USE OF MORE THAN TEN DIFFERENT PSYCHOTROPIC
2 MEDICATIONS DURING THE ONE HUNDRED EIGHTY-DAY PERIOD. THIS DOES
3 NOT LIMIT THE AMOUNT OF DOSES OF THE MEDICATIONS TO BE
4 ADMINISTERED, AS MEDICALLY APPROPRIATE.

5 (d) A QUALIFIED FACILITY SHALL ENSURE THAT THE USE OF
6 INVOLUNTARY MEDICATION IS DOCUMENTED AND MAINTAINED IN THE
7 INDIVIDUAL'S ELECTRONIC HEALTH RECORD. AT A MINIMUM, THE
8 QUALIFIED FACILITY SHALL DOCUMENT:

9 (I) THE ORDER FOR INVOLUNTARY MEDICATION;

10 (II) THE DATE AND TIME OF THE ORDER; AND

11 (III) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF
12 THE INVOLUNTARY MEDICATION, INCLUDING THE LESS-INTRUSIVE
13 INTERVENTIONS THAT WERE EMPLOYED AND FAILED AND EVIDENCE OF THE
14 IMMEDIATE CIRCUMSTANCES JUSTIFYING THE DETERMINATION THAT THE
15 INDIVIDUAL IS DANGEROUS TO THE INDIVIDUAL'S SELF OR ANOTHER
16 PERSON AND THAT THE TREATMENT IS IN THE INDIVIDUAL'S MEDICAL
17 INTEREST.

18 (e) THE FACILITY OR QUALIFIED FACILITY SHALL ENSURE THE
19 DOCUMENTATION AND MAINTENANCE REQUIRED PURSUANT TO THIS
20 SECTION ARE CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND
21 FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF THE INFORMATION.

22 (f) THIS SUBSECTION (4) DOES NOT APPLY TO EMERGENCY
23 MEDICINE ADMINISTERED PURSUANT TO DEPARTMENT POLICY.

24 (5) (a) ON OR BEFORE JANUARY 1, 2024 AND ON OR BEFORE
25 JANUARY 1 EACH YEAR THEREAFTER, THE EXECUTIVE DIRECTOR OF THE
26 DEPARTMENT SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF
27 THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR

1 COMMITTEES, CONCERNING THE USE OF CLINICAL RESTRAINTS AND
2 INVOLUNTARY MEDICATION IN THE PRECEDING CALENDAR YEAR. AT A
3 MINIMUM, THE REPORT MUST INCLUDE:

4 (I) THE TOTAL NUMBER OF CLINICAL AMBULATORY RESTRAINT
5 EPISODES AND CLINICAL FOUR-POINT RESTRAINT EPISODES;

6 (II) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION ORDERS
7 ISSUED;

8 (III) THE AVERAGE AMOUNT OF TIME OF A CLINICAL AMBULATORY
9 RESTRAINT EPISODE AND CLINICAL FOUR-POINT RESTRAINT EPISODE;

10 (IV) THE AVERAGE DURATION OF INVOLUNTARY MEDICATION
11 ORDERS ISSUED;

12 (V) THE LONGEST CLINICAL AMBULATORY RESTRAINT EPISODE
13 AND THE LONGEST CLINICAL FOUR-POINT RESTRAINT EPISODE;

14 (VI) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY
15 RESTRAINT EPISODES THAT EXCEEDED TWO HOURS, AND THE PERCENTAGE
16 OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT EXCEEDED
17 TWO HOURS;

18 (VII) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY
19 RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A
20 BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL
21 DISABILITY, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT
22 RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A
23 BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL
24 DISABILITY;

25 (VIII) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION
26 ORDERS THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL
27 HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY,

1 AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT
2 EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A
3 BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL
4 DISABILITY;

5 (IX) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY
6 RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS
7 SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE
8 WITHIN THE YEAR, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT
9 RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS
10 SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE
11 WITHIN THE YEAR;

12 (X) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION
13 ORDERS THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO A
14 SECOND OR SUBSEQUENT ORDER WITHIN THE YEAR;

15 (XI) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION ORDERS
16 THAT EXCEEDED ONE HUNDRED EIGHTY DAYS; AND

17 (XII) AN IMPLEMENTATION PLAN TO CONFORM WITH THE
18 REQUIREMENTS PURSUANT TO SUBSECTION (1) OF THIS SECTION,
19 INCLUDING TIME LINES, A SUMMARY OF PROGRESS, AND A COMPLIANCE
20 REPORT.

21 (b) BEGINNING IN 2024 AND EACH YEAR THEREAFTER, THE
22 DEPARTMENT SHALL PRESENT FINDINGS FROM THE REPORT DESCRIBED BY
23 THIS SECTION TO THE HOUSE OF REPRESENTATIVES AND SENATE JUDICIARY
24 COMMITTEES, OR ANY SUCCESSOR COMMITTEES, DURING THE HEARINGS
25 HELD PURSUANT TO THE "SMART ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

26 (c) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136
27 (11)(a)(I), THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS

1 SUBSECTION (5) CONTINUES INDEFINITELY.

2 (d) THE DEPARTMENT SHALL ENSURE THE REPORT REQUIRED IN
3 THIS SUBSECTION (5) DOES NOT DISCLOSE ANY INFORMATION IN VIOLATION
4 OF APPLICABLE STATE AND FEDERAL LAWS REGARDING THE
5 CONFIDENTIALITY OF INDIVIDUALS' INFORMATION.

6 (6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
7 REQUIRES:

8 (a) "CLINICAL AMBULATORY RESTRAINT" MEANS A DEVICE USED
9 TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT, BUT
10 STILL PERMITS THE ABILITY OF THE INDIVIDUAL TO WALK AND MOVE
11 WHILE SUBJECTED TO THE DEVICE.

12 (b) "CLINICAL FOUR-POINT RESTRAINT" MEANS A DEVICE USED TO
13 INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT BY
14 SECURING THE INDIVIDUAL'S ARMS AND LEGS.

15 (c) "CLINICAL RESTRAINT" MEANS A DEVICE USED TO
16 INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT.
17 "CLINICAL RESTRAINT" INCLUDES CLINICAL AMBULATORY RESTRAINTS
18 AND CLINICAL FOUR-POINT RESTRAINTS.

19 (d) "CORRECTIONAL FACILITY" HAS THE SAME MEANING AS SET
20 FORTH IN SECTION 17-1-102 (1.7).

21 (e) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS,
22 CREATED AND EXISTING PURSUANT TO SECTION 24-1-128.5.

23 (f) "FACILITY" MEANS A CORRECTIONAL FACILITY OR A PRIVATE
24 CONTRACT PRISON.

25 (g) "INVOLUNTARY MEDICATION" MEANS GIVING AN INDIVIDUAL
26 MEDICATION INVOLUNTARILY; EXCEPT THAT "INVOLUNTARY MEDICATION"
27 DOES NOT INCLUDE THE INVOLUNTARY ADMINISTRATION OF MEDICATION

1 OR ADMINISTRATION OF MEDICATION FOR VOLUNTARY LIFE-SAVING
2 MEDICAL PROCEDURES.

3 (h) "LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER"
4 HAS THE SAME MEANING AS DEFINED IN SECTION 27-60-108 (2)(a), OR
5 MEANS A PERSON WHO HAS COMPLETED THE EDUCATION REQUIREMENTS
6 TO BE A LICENSED MENTAL HEALTH PROVIDER AS DEFINED IN SECTION
7 27-60-108 (2)(a), BUT IS IN THE PROCESS OF COMPLETING THE EXPERIENCE
8 AND EXAMINATION REQUIREMENTS TO BECOMING LICENSED.

9 (i) "PRIVATE CONTRACT PRISON" HAS THE SAME MEANING AS SET
10 FORTH IN SECTION 17-1-102 (7.3).

11 (j) "QUALIFIED FACILITY" MEANS:

12 (I) A CORRECTIONAL FACILITY INFIRMARY;

13 (II) THE SAN CARLOS CORRECTIONAL FACILITY; AND

14 (III) THE DENVER WOMEN'S CORRECTIONAL FACILITY.

15 (k) "QUALIFIED HEALTH-CARE PROVIDER" MEANS A LICENSED
16 PHYSICIAN, A LICENSED ADVANCED PRACTICE REGISTERED NURSE, OR A
17 LICENSED REGISTERED NURSE.

18 **SECTION 2.** In Colorado Revised Statutes, 17-1-113.9, **amend**
19 (1) as follows:

20 **17-1-113.9. Use of administrative segregation for state inmates**
21 **- reporting.** (1) Notwithstanding section 24-1-136 (11)(a)(I), on or
22 before January 1, 2012, and each January 1 thereafter, the executive
23 director shall provide a written report to the judiciary committees of the
24 senate and house of representatives, or any successor committees,
25 concerning the status of administrative segregation; reclassification
26 efforts for ~~offenders~~ INDIVIDUALS DIAGNOSED with ~~mental~~ BEHAVIORAL
27 health disorders or intellectual and developmental disabilities, including

1 duration of stay, reason for placement, and number and percentage
2 discharged; and any internal reform efforts since July 1, 2011. THE
3 REPORT MUST INCLUDE DATA CONCERNING THE PLACEMENT OF
4 INDIVIDUALS IN ALL SETTINGS WITH HEIGHTENED RESTRICTIONS,
5 INCLUDING THE TOTAL NUMBER OF PLACEMENTS IN EACH SETTING, THE
6 TOTAL NUMBER OF PLACEMENTS IN EACH SETTING INVOLVING AN
7 INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR
8 INTELLECTUAL OR DEVELOPMENTAL DISABILITY, THE AVERAGE DURATION
9 OF STAY OF AN INDIVIDUAL IN EACH SETTING, THE REASONS FOR
10 PLACEMENT IN EACH SETTING, AND THE TOTAL NUMBER OF INDIVIDUALS
11 DISCHARGED FROM EACH SETTING.

12 **SECTION 3. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.