

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0081.01 Shelby Ross x4510

HOUSE BILL 21-1251

HOUSE SPONSORSHIP

Caraveo and Herod,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPROPRIATE USE OF A CHEMICAL RESTRAINT UPON**
102 **A PERSON IN A NONHOSPITAL SETTING.**

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>.)

The bill requires an agency that uses a chemical restraint to ensure that a person administering ketamine, haloperidol, or any other medication that is severely dependent on the weight of an individual or may result in a severe or adverse reaction with improper dosage in a nonhospital setting does so when staff trained in the administration of such medication can monitor the vital signs of the individual and weigh

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

the individual to ensure accurate dosage.

Absent a justifiable emergency, a person shall not administer a chemical restraint in a nonhospital setting to subdue, sedate, or chemically incapacitate an individual for alleged or suspected criminal, delinquent, or suspicious conduct.

The bill prohibits a peace officer from using, requesting, causing, directing, or influencing the use of a chemical restraint upon another person.

The bill prohibits a peace officer from compelling, requesting, causing, directing, or influencing an emergency medical service provider (EMS provider) to administer a chemical restraint. An EMS provider shall confidentially report a peace officer's violation to the P.O.S.T. board within 10 days of the occurrence, and a peace officer shall not retaliate in any way against an EMS provider for reporting the incident. A peace officer shall not influence an EMS provider's medical decision or diagnosis, and an EMS provider shall not base its medical decision exclusively on information provided by a peace officer.

When a peace officer directs a person to assist the peace officer, the person is prohibited from administering a chemical restraint.

The bill requires a peace officer who witnesses another peace officer use a chemical restraint in pursuance of the peace officer's duties to report such use to the P.O.S.T. board. The report must be in writing and made within 10 days of the occurrence of the use of a chemical restraint. Any peace officer who fails to report use of a chemical restraint commits a class 1 misdemeanor.

The bill requires a peace officer to intervene, without regard for chain of command, to prevent or stop another peace officer from using a chemical restraint in pursuance of the other peace officer's duties. A peace officer who intervenes shall report the intervention to the peace officer's immediate supervisor. A member of a law enforcement agency shall not discipline or retaliate in any way against a peace officer for intervening. Any peace officer who fails to intervene commits a class 1 misdemeanor, and the officer's certification is subject to revocation.

The bill changes the structure of the emergency medical practice advisory council (advisory council) by adding an EMS provider certified or licensed at an advanced life support level, an anesthesiologist, a registered nurse or physician's assistant certified or licensed at a basic life support level, a clinical pharmacist, and a clinical psychiatrist. Members of the advisory council shall not have any conflicts of interest, and no more than 5 members of the advisory council may be members of, or have a direct affiliation with, the National Association of EMS Physicians.

The bill requires the advisory council to submit a report to the general assembly any time the advisory council advises or recommends authorizing the administration of any chemical restraints.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-20-104, **amend**
3 (1)(d); and **add** (1)(i) and (1)(j) as follows:

4 **26-20-104. General duties relating to use of restraint on**
5 **individuals.** (1) Notwithstanding the provisions of section 26-20-103, an
6 agency that uses restraint shall ensure that:

7 (d) A chemical restraint ~~shall be~~ IS given only on the order of a
8 physician or an advanced practice nurse with prescriptive authority who
9 has determined, either while present during the course of the emergency
10 justifying the use of the chemical restraint or after telephone consultation
11 with a registered nurse, licensed physician assistant, or other authorized
12 staff person who is present at the time and site of the emergency and who
13 has participated in the evaluation of the individual, that such form of
14 restraint is the least restrictive AND most appropriate alternative available
15 AND THAT ALL OTHER ALTERNATIVE DE-ESCALATION METHODS HAVE
16 FAILED. Nothing in this subsection (1) shall modify the requirements of
17 section 26-20-102 (2) or 26-20-103 (3).

18 (i) A PERSON SHALL ONLY ADMINISTER KETAMINE, HALOPERIDOL,
19 OR ANY OTHER MEDICATION THAT IS SEVERELY DEPENDENT ON THE
20 WEIGHT OF THE INDIVIDUAL OR MAY RESULT IN A SEVERE OR ADVERSE
21 REACTION WITH IMPROPER DOSAGE IN A NONHOSPITAL SETTING WHEN
22 STAFF TRAINED IN THE ADMINISTRATION OF SUCH MEDICATION CAN
23 MONITOR THE VITAL SIGNS OF THE INDIVIDUAL AND WEIGH THE
24 INDIVIDUAL TO ENSURE ACCURATE DOSAGE.

25 (j) ABSENT A JUSTIFIABLE EMERGENCY, A PERSON SHALL NOT
26 ADMINISTER A CHEMICAL RESTRAINT IN A NONHOSPITAL SETTING TO

1 SUBDUE, SEDATE, OR CHEMICALLY INCAPACITATE AN INDIVIDUAL TO
2 PUNISH OR FACILITATE THE PERSON'S ARREST, DETENTION, RESTRAINT, OR
3 TRANSPORT BY A LOCAL OR STATE LAW ENFORCEMENT AGENCY OR A
4 PEACE OFFICER FOR ALLEGED OR SUSPECTED CRIMINAL, DELINQUENT, OR
5 SUSPICIOUS CONDUCT. FOR THE PURPOSES OF THIS SUBSECTION (1)(j),
6 EXCITED DELIRIUM IS NOT A JUSTIFIABLE EMERGENCY.

7 **SECTION 2.** In Colorado Revised Statutes, **amend** 18-8-801 as
8 follows:

9 **18-8-801. Definitions.** As used in this part 8, unless the context
10 otherwise requires:

11 (1) ~~"Materially false statement" has the meaning set out in section~~
12 ~~18-8-501 (1).~~ "CHEMICAL RESTRAINT" HAS THE SAME MEANING AS SET
13 FORTH IN SECTION 26-2-102 (2).

14 (2) ~~"Peace officer" has the meaning set out in section 16-2.5-101,~~
15 ~~C.R.S.~~ "EMERGENCY MEDICAL SERVICE PROVIDER" HAS THE SAME
16 MEANING AS SET FORTH IN SECTION 25-3.5-103 (8).

17 (3) "MATERIALLY FALSE STATEMENT" HAS THE MEANING AS SET
18 FORTH IN SECTION 18-8-501 (1).

19 (4) "PEACE OFFICER" HAS THE MEANING AS SET FORTH IN SECTION
20 16-2.5-101.

21 **SECTION 3.** In Colorado Revised Statutes, **add** 18-8-805 as
22 follows:

23 **18-8-805. Prohibition on use of chemical restraint by peace**
24 **officer - duty to report - duty to intervene.** (1) A PEACE OFFICER SHALL
25 NOT USE, REQUEST, CAUSE, DIRECT, OR INFLUENCE THE USE OF A
26 CHEMICAL RESTRAINT UPON ANOTHER PERSON.

27 (2) (a) (I) A PEACE OFFICER SHALL NOT COMPEL, REQUEST, CAUSE,

1 DIRECT, OR INFLUENCE AN EMERGENCY MEDICAL SERVICE PROVIDER TO
2 ADMINISTER A CHEMICAL RESTRAINT.

3 (II) AN EMERGENCY MEDICAL SERVICE PROVIDER SHALL
4 CONFIDENTIALLY REPORT ANY VIOLATION OF THIS SUBSECTION (2)(a) TO
5 THE P.O.S.T. BOARD WITHIN TEN DAYS OF THE OCCURRENCE. AT A
6 MINIMUM, THE REPORT MUST INCLUDE THE DATE, TIME, AND PLACE OF THE
7 OCCURRENCE; THE IDENTITY, IF KNOWN, AND DESCRIPTION OF THE
8 PARTICIPANTS; AND A DESCRIPTION OF THE EVENTS AND THE CHEMICAL
9 RESTRAINT USED.

10 (III) A PEACE OFFICER SHALL NOT RETALIATE IN ANY WAY
11 AGAINST AN EMERGENCY MEDICAL SERVICE PROVIDER FOR REPORTING THE
12 INCIDENT PURSUANT TO THIS SUBSECTION (2).

13 (b) A PEACE OFFICER SHALL NOT INFLUENCE AN EMERGENCY
14 MEDICAL SERVICE PROVIDER'S MEDICAL DECISION OR DIAGNOSIS, AND AN
15 EMERGENCY MEDICAL SERVICE PROVIDER SHALL NOT BASE ITS MEDICAL
16 DECISION OR DIAGNOSIS EXCLUSIVELY ON INFORMATION PROVIDED BY A
17 PEACE OFFICER.

18 (3) A PERSON WHO IS DIRECTED BY A PEACE OFFICER TO ASSIST THE
19 PEACE OFFICER TO EFFECT AN ARREST, DETENTION, RESTRAINT,
20 TRANSPORT, OR PUNISHMENT; TO PREVENT AN ESCAPE FROM CUSTODY; OR
21 TO FACILITATE EASE AND CONVENIENCE IN LAW ENFORCEMENT
22 ENCOUNTERS SHALL NOT USE A CHEMICAL RESTRAINT TO CARRY OUT THE
23 PEACE OFFICER'S DIRECTION OR INFLUENCE.

24 (4) (a) A PEACE OFFICER WHO, IN PURSUANCE OF THE PEACE
25 OFFICER'S LAW ENFORCEMENT DUTIES, WITNESSES ANOTHER PEACE
26 OFFICER, IN PURSUANCE OF THE OTHER PEACE OFFICER'S LAW
27 ENFORCEMENT DUTIES, USE A CHEMICAL RESTRAINT ON ANOTHER PERSON

1 SHALL REPORT SUCH USE TO THE P.O.S.T. BOARD CREATED IN SECTION
2 24-31-302.

3 (b) AT A MINIMUM, THE REPORT REQUIRED BY THIS SUBSECTION (4)
4 MUST INCLUDE THE DATE, TIME, AND PLACE OF THE OCCURRENCE; THE
5 IDENTITY, IF KNOWN, AND DESCRIPTION OF THE PARTICIPANTS; AND A
6 DESCRIPTION OF THE EVENTS AND THE CHEMICAL RESTRAINT USED. A
7 COPY OF AN ARREST REPORT OR OTHER SIMILAR REPORT REQUIRED AS A
8 PART OF A PEACE OFFICER'S DUTIES CAN BE SUBSTITUTED FOR THE REPORT
9 REQUIRED BY THIS SUBSECTION (4), IF IT INCLUDES SUCH INFORMATION.
10 THE REPORT MUST BE IN WRITING AND MADE WITHIN TEN DAYS OF THE
11 OCCURRENCE OF THE USE OF A CHEMICAL RESTRAINT.

12 (c) ANY PEACE OFFICER WHO FAILS TO REPORT USE OF A CHEMICAL
13 RESTRAINT IN THE MANNER DESCRIBED IN THIS SUBSECTION (4) COMMITS
14 A CLASS 1 MISDEMEANOR.

15 (5)(a) A PEACE OFFICER SHALL INTERVENE, WITHOUT REGARD FOR
16 CHAIN OF COMMAND, TO PREVENT OR STOP ANOTHER PEACE OFFICER FROM
17 USING A CHEMICAL RESTRAINT IN PURSUANCE OF THE OTHER PEACE
18 OFFICER'S LAW ENFORCEMENT DUTIES TO EFFECT AN ARREST, DETENTION,
19 RESTRAINT, TRANSPORT, OR PUNISHMENT; TO PREVENT AN ESCAPE FROM
20 CUSTODY; OR TO FACILITATE EASE AND CONVENIENCE IN LAW
21 ENFORCEMENT ENCOUNTERS.

22 (b) (I) A PEACE OFFICER WHO INTERVENES AS REQUIRED BY
23 SUBSECTION (5)(a) OF THIS SECTION SHALL REPORT THE INTERVENTION TO
24 THE PEACE OFFICER'S IMMEDIATE SUPERVISOR.

25 (II) AT A MINIMUM, THE REPORT REQUIRED BY THIS SUBSECTION
26 (5)(b) MUST INCLUDE THE DATE, TIME, AND PLACE OF THE OCCURRENCE;
27 THE IDENTITY, IF KNOWN, AND DESCRIPTION OF THE PARTICIPANTS; AND A

1 DESCRIPTION OF THE INTERVENTION ACTIONS TAKEN. THE REPORT MUST
2 BE IN WRITING AND MADE WITHIN TEN DAYS OF THE OCCURRENCE OF THE
3 INTERVENTION AND MUST BE INCLUDED WITH ALL OTHER REPORTS OF THE
4 INCIDENT.

5 (c) A MEMBER OF A LAW ENFORCEMENT AGENCY SHALL NOT
6 DISCIPLINE OR RETALIATE IN ANY WAY AGAINST A PEACE OFFICER FOR
7 INTERVENING AS REQUIRED BY SUBSECTION (5)(a) OF THIS SECTION, FOR
8 REPORTING ANY OTHER VIOLATION OF THIS SECTION, OR FOR FAILING TO
9 FOLLOW WHAT THE PEACE OFFICER REASONABLY BELIEVES IS AN
10 UNCONSTITUTIONAL DIRECTIVE.

11 (d) ANY PEACE OFFICER WHO FAILS TO INTERVENE TO PREVENT
12 THE USE OF A CHEMICAL RESTRAINT AS DESCRIBED IN THIS SUBSECTION (5)
13 COMMITS A CLASS 1 MISDEMEANOR.

14 (e) WHEN AN ADMINISTRATIVE LAW JUDGE OR INTERNAL
15 INVESTIGATION FINDS THAT A PEACE OFFICER FAILED TO INTERVENE TO
16 PREVENT THE USE OF A CHEMICAL RESTRAINT, THE FINDING MUST BE
17 PRESENTED TO THE DISTRICT ATTORNEY SO THAT THE DISTRICT ATTORNEY
18 CAN DETERMINE WHETHER CHARGES SHOULD BE FILED PURSUANT TO
19 SUBSECTION (5)(d) OF THIS SECTION. HOWEVER, NOTHING IN THIS
20 SUBSECTION (5)(e) PROHIBITS OR IS INTENDED TO DISCOURAGE THE
21 DISTRICT ATTORNEY FROM CHARGING AN OFFICER WITH FAILURE TO
22 INTERVENE BEFORE THE CONCLUSION OF ANY INTERNAL INVESTIGATION.

23 (f) IN A CASE IN WHICH THE PROSECUTION CHARGES A PEACE
24 OFFICER WITH OFFENSES RELATED TO AND BASED UPON THE USE OF A
25 CHEMICAL RESTRAINT BUT DOES NOT FILE CHARGES AGAINST ANY OTHER
26 PEACE OFFICER OR OFFICERS WHO WERE AT THE SCENE DURING THE USE OF
27 A CHEMICAL RESTRAINT, THE DISTRICT ATTORNEY SHALL PREPARE A

1 WRITTEN REPORT EXPLAINING THE DISTRICT ATTORNEY'S BASIS FOR THE
2 DECISION NOT TO CHARGE ANY OTHER PEACE OFFICER WITH ANY CRIMINAL
3 CONDUCT AND SHALL PUBLICLY DISCLOSE THE REPORT; EXCEPT THAT IF
4 DISCLOSURE OF THE REPORT WOULD SUBSTANTIALLY INTERFERE WITH OR
5 JEOPARDIZE AN ONGOING CRIMINAL INVESTIGATION, THE DISTRICT
6 ATTORNEY MAY DELAY PUBLIC DISCLOSURE FOR UP TO FORTY-FIVE DAYS.
7 THE DISTRICT ATTORNEY SHALL POST THE WRITTEN REPORT ON ITS
8 WEBSITE OR, IF IT DOES NOT HAVE A WEBSITE, MAKE IT PUBLICLY
9 AVAILABLE.

10 (g) NOTHING IN THIS SUBSECTION (5) PROHIBITS OR DISCOURAGES
11 PROSECUTION OF ANY OTHER CRIMINAL OFFENSE RELATED TO UNLAWFUL
12 USE OF A CHEMICAL RESTRAINT, FAILURE TO INTERVENE, OR FAILURE TO
13 REPORT, INCLUDING A HIGHER CHARGE, IF SUPPORTED BY THE EVIDENCE.

14 (6) ANY PEACE OFFICER WHO KNOWINGLY MAKES A MATERIALLY
15 FALSE STATEMENT THAT THE OFFICER DOES NOT BELIEVE TO BE TRUE IN
16 ANY REPORT MADE PURSUANT TO SUBSECTION (4) OF THIS SECTION
17 COMMITS FALSE REPORTING TO AUTHORITIES PURSUANT TO SECTION
18 18-8-111 (1)(a)(III).

19 **SECTION 4.** In Colorado Revised Statutes, **amend** 24-31-904 as
20 follows:

21 **24-31-904. Peace officer certification discipline.**

22 (1)(a) Notwithstanding any provision of law, THE P.O.S.T. BOARD SHALL
23 PERMANENTLY REVOKE A PEACE OFFICER'S CERTIFICATION if: ~~any~~

24 (I) THE P.O.S.T.-CERTIFIED peace officer is convicted of or pleads
25 guilty or nolo contendere to a crime involving the unlawful use ~~or~~
26 ~~threatened use~~ of physical force OR a crime involving the failure to
27 intervene in the use of unlawful force ~~or is~~ AND THE INCIDENT RESULTED

1 IN SERIOUS BODILY INJURY OR DEATH TO ANOTHER PERSON;

2 (II) THE P.O.S.T.-CERTIFIED PEACE OFFICER IS found civilly liable
3 for the use of unlawful physical force, or is found civilly liable for failure
4 to intervene in the use of unlawful force ~~the P.O.S.T. board shall~~
5 ~~permanently revoke the peace officer's certification~~ AND THE INCIDENT
6 RESULTED IN SERIOUS BODILY INJURY OR DEATH TO ANOTHER PERSON; OR

7 (III) AN ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR
8 INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER FAILED TO
9 INTERVENE PURSUANT TO SECTION 18-8-805 (5) AND THE INCIDENT
10 RESULTED IN SERIOUS BODILY INJURY OR DEATH TO ANOTHER PERSON.

11 (b) The P.O.S.T. board shall not, under any circumstances,
12 reinstate the peace officer's certification or grant new certification to the
13 peace officer unless the peace officer is exonerated by a AN
14 ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR court. The P.O.S.T.
15 board shall record each ~~decertified~~ peace officer WHOSE CERTIFICATION
16 IS REVOKED PURSUANT TO THIS SECTION in the database created pursuant
17 to section 24-31-303 (1)(r).

18 (2) (a) NOTWITHSTANDING ANY PROVISION OF LAW, THE P.O.S.T.
19 BOARD SHALL REVOKE A PEACE OFFICER'S CERTIFICATION FOR AT LEAST
20 ONE YEAR IF AN ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR
21 INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER FAILED TO
22 INTERVENE PURSUANT TO SECTION 18-8-805 (5) AND THE INCIDENT DID
23 NOT RESULT IN SERIOUS BODILY INJURY OR DEATH TO ANOTHER PERSON.

24 (b) THE P.O.S.T. BOARD SHALL REINSTATE THE PEACE OFFICER'S
25 CERTIFICATION IF THE PEACE OFFICER IS EXONERATED BY AN
26 ADMINISTRATIVE LAW JUDGE, HEARING OFFICER, OR COURT.

27 **SECTION 5.** In Colorado Revised Statutes, 25-3.5-206, **amend**

1 (2)(a) introductory portion, (2)(a)(I), and (3)(a); and **add** (2)(a)(I.5) and
2 (2.5) as follows:

3 **25-3.5-206. Emergency medical practice advisory council -**
4 **creation - powers and duties - emergency medical service provider**
5 **scope of practice - definitions - rules - report.** (2) (a) The advisory
6 council consists of the following ~~eleven~~ TWELVE members:

7 (I) Eight voting members appointed by the governor as follows:

8 (A) ~~Two physicians~~ ONE PHYSICIAN licensed in good standing in
9 Colorado who ~~are~~ IS actively serving as AN emergency medical service
10 medical ~~directors and are~~ DIRECTOR AND IS practicing in rural or frontier
11 counties;

12 (B) Two physicians licensed in good standing in Colorado who
13 are actively serving as emergency medical service medical directors and
14 are practicing in urban counties;

15 (C) ~~One physician~~ ANESTHESIOLOGIST licensed in good standing
16 in Colorado who is ~~actively serving as an emergency medical service~~
17 ~~medical director in any area of the state~~ AN ACTIVE MEMBER OF THE
18 COLORADO SOCIETY OF ANESTHESIOLOGISTS;

19 (D) One emergency medical service provider certified or licensed
20 at an advanced life support level who is actively involved in the provision
21 of emergency medical services AND IS PRACTICING IN RURAL OR FRONTIER
22 COUNTIES AS PART OF A SEARCH AND RESCUE TEAM;

23 (E) ONE EMERGENCY MEDICAL SERVICE PROVIDER CERTIFIED OR
24 LICENSED AT AN ADVANCED LIFE SUPPORT LEVEL WHO IS ACTIVELY
25 INVOLVED IN THE PROVISION OF EMERGENCY MEDICAL SERVICES AND IS
26 PRACTICING IN URBAN COUNTIES;

27 ~~(E)~~ (F) One ~~emergency medical service provider~~ NURSE

1 PRACTITIONER OR PHYSICIAN'S ASSISTANT certified or licensed at a basic
2 life support level who is TRAINED AND actively involved in the provision
3 of emergency medical services; and

4 ~~(F)~~ (G) One ~~emergency medical service provider~~ CLINICAL
5 PHARMACIST certified or licensed at any level who is TRAINED AND
6 actively involved in the provision of emergency medical services AND
7 EMERGENCY PSYCHIATRIC CARE;

8 (I.5) ONE VOTING MEMBER WHO IS A CLINICAL PSYCHIATRIST
9 APPOINTED BY THE OFFICE OF BEHAVIORAL HEALTH IN THE DEPARTMENT
10 OF HUMAN SERVICES;

11 (2.5) (a) MEMBERS OF THE ADVISORY COUNCIL SHALL NOT HAVE
12 ANY CONFLICTS OF INTEREST IN THEIR EMPLOYMENT, MEMBERSHIPS, OR
13 AFFILIATIONS OR BE A CURRENT OR FORMER EMPLOYEE OF THE
14 DEPARTMENT.

15 (b) NO MORE THAN FIVE MEMBERS OF THE ADVISORY COUNCIL
16 MAY BE MEMBERS OF, OR HAVE DIRECT AFFILIATION WITH, THE NATIONAL
17 ASSOCIATION OF EMS PHYSICIANS.

18 (3) The advisory council shall provide general technical expertise
19 on matters related to the provision of patient care by emergency medical
20 service providers and shall advise or make recommendations to the
21 department in the following areas:

22 (a) The acts and medications that emergency medical service
23 providers at each level of certification or licensure are authorized to
24 perform or administer under the direction of a physician medical director.
25 THE ADVISORY COUNCIL SHALL SUBMIT A REPORT TO THE HOUSE OF
26 REPRESENTATIVES HEALTH AND INSURANCE COMMITTEE AND THE SENATE
27 HEALTH AND HUMAN SERVICES COMMITTEE, OR ANY SUCCESSOR

1 COMMITTEES, ANY TIME THE ADVISORY COUNCIL ADVISES OR
2 RECOMMENDS AUTHORIZING THE ADMINISTRATION OF ANY CHEMICAL
3 RESTRAINT, AS DEFINED IN SECTION 26-2-102 (2). THE REPORT MUST
4 INCLUDE THE ADVISORY COUNCIL'S REASONING FOR SUCH ADVISEMENT OR
5 RECOMMENDATION.

6 **SECTION 6. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety.