

CHAPTER 130

HUMAN SERVICES - SOCIAL SERVICES

HOUSE BILL 99-1090

BY REPRESENTATIVES Keller, Morrison, Alexander, Bacon, Chavez, Clarke, Coleman, Gagliardi, Gordon, Grossman, Mace, Saliman, S. Williams, and Windels;
also SENATORS Wham, Nichol, Pascoe, Reeves, and Rupert.

AN ACT

CONCERNING THE PROTECTION OF PERSONS FROM RESTRAINT.

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

SECTION 1. Title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 20
Protection of Persons from Restraint**

26-20-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "PROTECTION OF PERSONS FROM RESTRAINT ACT".

26-20-102. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) (a) "AGENCY" MEANS:

(I) ANY ONE OF THE PRINCIPAL DEPARTMENTS OF STATE GOVERNMENT CREATED IN ARTICLE 1 OF TITLE 24, C.R.S., OR ANY DIVISION, SECTION, UNIT, OFFICE, OR AGENCY WITHIN ONE OF SUCH PRINCIPAL DEPARTMENTS OF STATE GOVERNMENT, EXCEPT AS EXCLUDED IN PARAGRAPH (b) OF THIS SUBSECTION (1);

(II) ANY COUNTY, CITY AND COUNTY, MUNICIPALITY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE OR ANY DEPARTMENT, DIVISION, SECTION, UNIT, OFFICE, OR AGENCY OF SUCH COUNTY, CITY AND COUNTY, MUNICIPALITY, SCHOOL DISTRICT, OR OTHER POLITICAL SUBDIVISION OF THE STATE;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(III) ANY PUBLIC OR PRIVATE ENTITY THAT HAS ENTERED INTO A CONTRACT FOR SERVICES WITH AN ENTITY DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a);

(IV) ANY PUBLIC OR PRIVATE ENTITY LICENSED OR CERTIFIED BY ONE OF THE ENTITIES DESCRIBED IN SUBPARAGRAPH (I) OR (II) OF THIS PARAGRAPH (a).

(b) "AGENCY" DOES NOT INCLUDE:

(I) THE DEPARTMENT OF CORRECTIONS OR ANY PUBLIC OR PRIVATE ENTITY THAT HAS ENTERED INTO A CONTRACT FOR SERVICES WITH SUCH DEPARTMENT;

(II) ANY LAW ENFORCEMENT AGENCY OF THE STATE OR OF A POLITICAL SUBDIVISION OF THE STATE;

(III) A JUVENILE PROBATION DEPARTMENT OR DIVISION AUTHORIZED PURSUANT TO SECTION 19-2-204, C.R.S.;

(IV) ANY COUNTY DEPARTMENT OF SOCIAL SERVICES WHEN ENGAGED IN PERFORMANCE OF DUTIES PURSUANT TO PART 3 OF ARTICLE 3 OF TITLE 19, C.R.S.

(2) "CHEMICAL RESTRAINT" MEANS GIVING AN INDIVIDUAL MEDICATION INVOLUNTARILY FOR THE PURPOSE OF RESTRAINING THAT INDIVIDUAL; EXCEPT THAT "CHEMICAL RESTRAINT" DOES NOT INCLUDE THE INVOLUNTARY ADMINISTRATION OF MEDICATION PURSUANT TO SECTION 27-10-111 (4.5), C.R.S., OR ADMINISTRATION OF MEDICATION FOR VOLUNTARY OR LIFE-SAVING MEDICAL PROCEDURES.

(3) "EMERGENCY" MEANS A SERIOUS, PROBABLE, IMMINENT THREAT OF BODILY HARM TO SELF OR OTHERS WHERE THERE IS THE PRESENT ABILITY TO EFFECT SUCH BODILY HARM.

(4) "MECHANICAL RESTRAINT" MEANS A PHYSICAL DEVICE USED TO INVOLUNTARILY RESTRICT THE MOVEMENT OF AN INDIVIDUAL OR THE MOVEMENT OR NORMAL FUNCTION OF A PORTION OF HIS OR HER BODY.

(5) "PHYSICAL RESTRAINT" MEANS THE USE OF BODILY, PHYSICAL FORCE TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT; EXCEPT THAT "PHYSICAL RESTRAINT" DOES NOT INCLUDE THE HOLDING OF A CHILD BY ONE ADULT FOR THE PURPOSES OF CALMING OR COMFORTING THE CHILD.

(6) "RESTRAINT" MEANS ANY METHOD OR DEVICE USED TO INVOLUNTARILY LIMIT FREEDOM OF MOVEMENT, INCLUDING BUT NOT LIMITED TO BODILY PHYSICAL FORCE, MECHANICAL DEVICES, OR CHEMICALS. "RESTRAINT" INCLUDES A CHEMICAL RESTRAINT, A MECHANICAL RESTRAINT, A PHYSICAL RESTRAINT, AND SECLUSION. "RESTRAINT" DOES NOT INCLUDE:

(a) THE USE OF ANY FORM OF RESTRAINT IN A LICENSED OR CERTIFIED HOSPITAL WHEN SUCH USE:

(I) IS IN THE CONTEXT OF PROVIDING MEDICAL OR DENTAL SERVICES THAT ARE PROVIDED WITH THE CONSENT OF THE INDIVIDUAL OR THE INDIVIDUAL'S GUARDIAN;

AND

(II) IS IN COMPLIANCE WITH INDUSTRY STANDARDS ADOPTED BY A NATIONALLY RECOGNIZED ACCREDITING BODY OR THE CONDITIONS OF PARTICIPATION ADOPTED FOR FEDERAL MEDICARE AND MEDICAID PROGRAMS;

(b) THE USE OF PROTECTIVE DEVICES OR ADAPTIVE DEVICES FOR PROVIDING PHYSICAL SUPPORT, PREVENTION OF INJURY, OR VOLUNTARY OR LIFE-SAVING MEDICAL PROCEDURES;

(c) THE HOLDING OF AN INDIVIDUAL FOR LESS THAN FIVE MINUTES BY A STAFF PERSON FOR PROTECTION OF THE INDIVIDUAL OR OTHER PERSONS;

(d) PLACEMENT OF AN INPATIENT OR RESIDENT IN HIS OR HER ROOM FOR THE NIGHT; OR

(e) THE USE OF TIME-OUT AS MAY BE DEFINED BY WRITTEN POLICIES, RULES, OR PROCEDURES OF AN AGENCY.

(7) "SECLUSION" MEANS THE PLACEMENT OF A PERSON ALONE IN A ROOM FROM WHICH EGRESS IS INVOLUNTARILY PREVENTED.

26-20-103. Basis for use of restraint. (1) SUBJECT TO THE PROVISIONS OF THIS ARTICLE, AN AGENCY MAY ONLY USE RESTRAINT:

(a) IN CASES OF EMERGENCY; AND

(b) (I) AFTER THE FAILURE OF LESS RESTRICTIVE ALTERNATIVES; OR

(II) AFTER A DETERMINATION THAT SUCH ALTERNATIVES WOULD BE INAPPROPRIATE OR INEFFECTIVE UNDER THE CIRCUMSTANCES.

(2) AN AGENCY THAT USES RESTRAINT PURSUANT TO THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL USE SUCH RESTRAINT:

(a) FOR THE PURPOSE OF PREVENTING THE CONTINUATION OR RENEWAL OF AN EMERGENCY;

(b) FOR THE PERIOD OF TIME NECESSARY TO ACCOMPLISH ITS PURPOSE; AND

(c) IN THE CASE OF PHYSICAL RESTRAINT, USING NO MORE FORCE THAN IS NECESSARY TO LIMIT THE INDIVIDUAL'S FREEDOM OF MOVEMENT.

(3) IN ADDITION TO THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (1) OF THIS SECTION, A FACILITY, AS DEFINED IN SECTION 27-10-102 (4.5), C.R.S., THAT IS DESIGNATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES TO PROVIDE TREATMENT PURSUANT TO SECTION 27-10-105, 27-10-106, 27-10-107, OR 27-10-109, C.R.S., TO ANY MENTALLY ILL PERSON, AS DEFINED IN SECTION 27-10-102 (7), C.R.S., MAY USE SECLUSION TO RESTRAIN A MENTALLY ILL PERSON WHEN SUCH SECLUSION IS NECESSARY TO ELIMINATE A CONTINUOUS AND SERIOUS DISRUPTION OF THE TREATMENT ENVIRONMENT.

(4) (a) THE GENERAL ASSEMBLY RECOGNIZES THAT SKILLED NURSING AND NURSING CARE FACILITIES THAT PARTICIPATE IN FEDERAL MEDICAID PROGRAMS ARE SUBJECT TO FEDERAL STATUTES AND REGULATIONS CONCERNING THE USE OF RESTRAINT IN SUCH FACILITIES THAT AFFORD PROTECTIONS FROM RESTRAINT IN A MANNER CONSISTENT WITH THE PURPOSES AND POLICIES SET FORTH IN THIS ARTICLE.

(b) IF THE USE OF RESTRAINT IN SKILLED NURSING AND NURSING CARE FACILITIES LICENSED UNDER STATE LAW IS IN ACCORDANCE WITH THE FEDERAL STATUTES AND REGULATIONS GOVERNING THE MEDICARE PROGRAM SET FORTH IN 42 U.S.C. SEC. 1395i-3(c) AND 42 C.F.R. PART 483, SUBPART B AND THE MEDICAID PROGRAM SET FORTH IN 42 U.S.C. SEC. 1396r(c) AND 42 C.F.R. PART 483, SUBPART B AND WITH THE RULES OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT RELATING TO THE LICENSING OF THESE FACILITIES, THERE SHALL BE A CONCLUSIVE PRESUMPTION THAT SUCH USE OF RESTRAINT IS IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

(5) (a) THE GENERAL ASSEMBLY RECOGNIZES THAT ARTICLE 10.5 OF TITLE 27, C.R.S., AND THE RULES PROMULGATED PURSUANT TO THE AUTHORITY SET FORTH IN THAT ARTICLE, ADDRESS THE USE OF RESTRAINT ON A PERSON WITH A DEVELOPMENTAL DISABILITY.

(b) IF ANY PROVISION OF THIS ARTICLE CONCERNING THE USE OF RESTRAINT CONFLICTS WITH ANY PROVISION CONCERNING THE USE OF RESTRAINT STATED IN ARTICLE 10.5 OF TITLE 27, C.R.S., OR ANY REGULATION ADOPTED PURSUANT THERETO, THE PROVISION OF ARTICLE 10.5 OF TITLE 27, C.R.S., OR THE REGULATION ADOPTED PURSUANT THERETO SHALL PREVAIL.

(6) THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO ANY AGENCY WHILE ENGAGED IN TRANSPORTING A PERSON FROM ONE FACILITY OR LOCATION TO ANOTHER FACILITY OR LOCATION WHEN IT IS WITHIN THE SCOPE OF THAT AGENCY'S POWERS AND AUTHORITY TO EFFECT SUCH TRANSPORTATION.

26-20-104. Duties relating to use of restraint. (1) NOTWITHSTANDING THE PROVISIONS OF SECTION 26-20-103, AN AGENCY THAT USES RESTRAINT SHALL ENSURE THAT:

(a) AT LEAST EVERY FIFTEEN MINUTES, STAFF SHALL MONITOR ANY INDIVIDUAL HELD IN MECHANICAL RESTRAINTS TO ASSURE THAT THE INDIVIDUAL IS PROPERLY POSITIONED, THAT THE INDIVIDUAL'S BLOOD CIRCULATION IS NOT RESTRICTED, THAT THE INDIVIDUAL'S AIRWAY IS NOT OBSTRUCTED, AND THAT THE INDIVIDUAL'S OTHER PHYSICAL NEEDS ARE MET;

(b) NO PHYSICAL OR MECHANICAL RESTRAINT OF AN INDIVIDUAL SHALL PLACE EXCESS PRESSURE ON THE CHEST OR BACK OF THAT INDIVIDUAL OR INHIBIT OR IMPEDE THE INDIVIDUAL'S ABILITY TO BREATHE;

(c) DURING PHYSICAL RESTRAINT OF AN INDIVIDUAL, AN AGENT OR EMPLOYEE OF THE AGENCY SHALL CHECK TO ENSURE THAT THE BREATHING OF THE INDIVIDUAL IN SUCH PHYSICAL RESTRAINT IS NOT COMPROMISED;

(d) A CHEMICAL RESTRAINT SHALL BE GIVEN ONLY ON THE ORDER OF A PHYSICIAN WHO HAS DETERMINED, EITHER WHILE PRESENT DURING THE COURSE OF THE

EMERGENCY JUSTIFYING THE USE OF THE CHEMICAL RESTRAINT OR AFTER TELEPHONE CONSULTATION WITH A REGISTERED NURSE, CERTIFIED PHYSICIAN ASSISTANT, OR OTHER AUTHORIZED STAFF PERSON WHO IS PRESENT AT THE TIME AND SITE OF THE EMERGENCY AND WHO HAS PARTICIPATED IN THE EVALUATION OF THE INDIVIDUAL, THAT SUCH FORM OF RESTRAINT IS THE LEAST RESTRICTIVE, MOST APPROPRIATE ALTERNATIVE AVAILABLE;

(e) AN ORDER FOR A CHEMICAL RESTRAINT, ALONG WITH THE REASONS FOR ITS ISSUANCE, SHALL BE RECORDED IN WRITING AT THE TIME OF ITS ISSUANCE;

(f) AN ORDER FOR A CHEMICAL RESTRAINT SHALL BE SIGNED AT THE TIME OF ITS ISSUANCE BY SUCH PHYSICIAN IF PRESENT AT THE TIME OF THE EMERGENCY;

(g) AN ORDER FOR A CHEMICAL RESTRAINT, IF AUTHORIZED BY TELEPHONE, SHALL BE TRANSCRIBED AND SIGNED AT THE TIME OF ITS ISSUANCE BY AN INDIVIDUAL WITH THE AUTHORITY TO ACCEPT TELEPHONE MEDICATION ORDERS WHO IS PRESENT AT THE TIME OF THE EMERGENCY;

(h) STAFF TRAINED IN THE ADMINISTRATION OF MEDICATION SHALL MAKE NOTATIONS IN THE RECORD OF THE INDIVIDUAL AS TO THE EFFECT OF THE CHEMICAL RESTRAINT AND THE INDIVIDUAL'S RESPONSE TO THE CHEMICAL RESTRAINT.

(2) FOR INDIVIDUALS IN MECHANICAL RESTRAINTS, AGENCY STAFF SHALL PROVIDE RELIEF PERIODS, EXCEPT WHEN THE INDIVIDUAL IS SLEEPING, OF AT LEAST TEN MINUTES AS OFTEN AS EVERY TWO HOURS, SO LONG AS RELIEF FROM THE MECHANICAL RESTRAINT IS DETERMINED TO BE SAFE. DURING SUCH RELIEF PERIODS, THE STAFF SHALL ENSURE PROPER POSITIONING OF THE INDIVIDUAL AND PROVIDE MOVEMENT OF LIMBS, AS NECESSARY. IN ADDITION, DURING SUCH RELIEF PERIODS, STAFF SHALL PROVIDE ASSISTANCE FOR USE OF APPROPRIATE TOILETTING METHODS, AS NECESSARY. THE INDIVIDUAL'S DIGNITY AND SAFETY SHALL BE MAINTAINED DURING RELIEF PERIODS. STAFF SHALL NOTE IN THE RECORD OF THE INDIVIDUAL BEING RESTRAINED THE RELIEF PERIODS GRANTED.

(3) RELIEF PERIODS FROM SECLUSION SHALL BE PROVIDED FOR REASONABLE ACCESS TO TOILET FACILITIES.

(4) AN INDIVIDUAL IN PHYSICAL RESTRAINT SHALL BE RELEASED FROM SUCH RESTRAINT WITHIN FIFTEEN MINUTES AFTER THE INITIATION OF PHYSICAL RESTRAINT, EXCEPT WHEN PRECLUDED FOR SAFETY REASONS.

26-20-105. Staff training. (1) ALL AGENCIES SHALL ENSURE THAT STAFF UTILIZING RESTRAINT IN FACILITIES OR PROGRAMS ARE TRAINED IN THE APPROPRIATE USE OF RESTRAINT.

(2) ALL AGENCIES SHALL ENSURE THAT STAFF ARE TRAINED TO EXPLAIN, WHERE POSSIBLE, THE USE OF RESTRAINT TO THE INDIVIDUAL WHO IS TO BE RESTRAINED AND TO THE INDIVIDUAL'S FAMILY IF APPROPRIATE.

26-20-106. Documentation requirements. EACH AGENCY SHALL ENSURE THAT AN APPROPRIATE NOTATION OF THE USE OF RESTRAINT IS DOCUMENTED IN THE RECORD OF THE INDIVIDUAL RESTRAINED. EACH AGENCY THAT IS AUTHORIZED TO

PROMULGATE RULES OR ADOPT ORDINANCES SHALL PROMULGATE RULES OR ADOPT ORDINANCES APPLICABLE TO THE AGENCIES WITHIN THEIR RESPECTIVE JURISDICTIONS SPECIFYING THE DOCUMENTATION REQUIREMENTS FOR PURPOSES OF THIS SECTION.

26-20-107. Review of the use of restraint. EACH AGENCY SHALL ENSURE THAT A REVIEW PROCESS IS ESTABLISHED FOR THE APPROPRIATE USE OF RESTRAINT.

26-20-108. Rules. EACH AGENCY THAT IS AUTHORIZED TO PROMULGATE RULES OR ADOPT ORDINANCES SHALL PROMULGATE RULES OR ADOPT ORDINANCES APPLICABLE TO THE AGENCIES WITHIN THEIR RESPECTIVE JURISDICTIONS THAT ESTABLISH PROCEDURES FOR THE USE OF RESTRAINT CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. ANY AGENCY THAT HAS RULES OR ORDINANCES IN EXISTENCE ON THE EFFECTIVE DATE OF THIS ARTICLE IS NOT REQUIRED TO PROMULGATE ADDITIONAL RULES OR ADOPT ADDITIONAL ORDINANCES UNLESS THAT AGENCY'S EXISTING RULES OR ORDINANCES DO NOT MEET THE MINIMUM REQUIREMENTS OF THIS ARTICLE.

26-20-109. Limitations. (1) NOTHING IN THIS ARTICLE SHALL BE DEEMED TO FORM AN INDEPENDENT BASIS OF STATUTORY AUTHORITY FOR THE USE OF RESTRAINT.

(2) NOTHING IN THIS ARTICLE SHALL BE DEEMED TO AUTHORIZE AN AGENCY TO IMPLEMENT POLICIES, PROCEDURES, OR STANDARDS OR PROMULGATE RULES OR ADOPT ORDINANCES THAT WOULD LIMIT, DECREASE, OR ADVERSELY IMPACT ANY POLICIES, PROCEDURES, STANDARDS, RULES, OR ORDINANCES IN EFFECT ON THE EFFECTIVE DATE OF THIS ARTICLE THAT PROVIDED GREATER PROTECTION CONCERNING THE USE OF RESTRAINT THAN IS SET FORTH IN THIS ARTICLE.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 22, 1999