

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

3

HOUSE BILL 1520\*  
Committee Substitute Favorable 6/21/00  
Third Edition Engrossed 6/22/00

Short Title: Restraints in Facilities.

(Public)

Sponsors:

Referred to:

May 15, 2000

A BILL TO BE ENTITLED  
AN ACT PERTAINING TO THE USE OF RESTRAINTS AND SECLUSION IN  
CERTAIN FACILITIES, AND REQUIRING THE REPORTING OF CERTAIN  
DEATHS IN CERTAIN FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-60 reads as rewritten:

**"§ 122C-60. Use of physical restraints or seclusion.**

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to ~~himself~~the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(a1) A facility that employs physical restraint or seclusion of a client shall collect data on the use of the restraints and seclusion. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine

1 trends, and take corrective action where necessary. The facility shall make the data  
2 available to the Secretary upon request. Nothing in this subsection abrogates State or  
3 federal law or requirements pertaining to the confidentiality, privilege, or other  
4 prohibition against disclosure of information provided to the Secretary under this  
5 subsection. In reviewing data requested under this subsection, the Secretary shall adhere  
6 to State and federal requirements of confidentiality, privilege, and other prohibitions  
7 against disclosure and release applicable to the information received under this  
8 subsection.

9 (a2) Facilities shall implement policies and practices that emphasize the use of  
10 alternatives to physical restraint and seclusion. Physical restraint and seclusion may be  
11 employed only by staff who have been trained and have demonstrated competence in the  
12 proper use of and alternatives to these procedures. Facilities shall ensure that staff  
13 authorized to employ and terminate these procedures are retrained and have demonstrated  
14 competence at least annually.

15 (b) The Commission ~~may~~ shall adopt rules to implement this section. In adopting  
16 rules, the Commission shall take into consideration federal regulations and national  
17 accreditation standards. Rules adopted by the Commission shall include:

18 (1) Staff training and competence in:

- 19 a. The use of positive behavioral supports.
- 20 b. Communication strategies for defusing and deescalating  
21 potentially dangerous behavior.
- 22 c. Monitoring vital indicators.
- 23 d. Administration of CPR.
- 24 e. Debriefing with client and staff.
- 25 f. Methods for determining staff competence, including  
26 qualifications of trainers and training curricula.
- 27 g. Other areas to ensure the safe and appropriate use of restraints  
28 and seclusion.

29 (2) Other matters relating to the use of physical restraint or seclusion of  
30 clients necessary to ensure the safety of clients and others.

31 The Department may investigate complaints and inspect a facility at any time to  
32 ensure compliance with this section."

33 Section 2.(a) G.S. 131D-10.5 reads as rewritten:

34 **"§ 131D-10.5. Powers and duties of the Commission.**

35 In addition to other powers and duties prescribed by law, the Commission shall  
36 exercise the following powers and duties:

- 37 (1) Adopt, amend and repeal rules consistent with the laws of this State and  
38 the laws and regulations of the federal government to implement the  
39 provisions and purposes of this Article;
- 40 (2) Issue declaratory rulings as may be needed to implement the provisions  
41 and purposes of this Article;

- 1 (3) Adopt rules governing procedures to appeal Department decisions  
2 pursuant to this Article granting, denying, suspending or revoking  
3 licenses; and  
4 (4) Adopt criteria for waiver of licensing rules adopted pursuant to this  
5 Article.  
6 (5) Adopt rules on documenting the use of physical restraint in residential  
7 child-care facilities.  
8 (6) Adopt rules establishing personnel and training requirements of staff  
9 employed in residential child care facilities."

10 Section 2.(b) Article 1A of Chapter 131D of the General Statutes is amended  
11 by adding the following new section to read:

12 **"§ 131D-10.5A. Collection of data on use of restraints in residential child-care**  
13 **facilities.**

14 A residential child-care facility that employs physical restraint of a child shall collect  
15 data on the use of the restraint. The data shall reflect for each incidence, the type of  
16 procedure used, the length of time employed, alternatives considered or employed, and  
17 the effectiveness of the procedure or alternative employed. The facility shall analyze the  
18 data on at least a quarterly basis to monitor effectiveness, determine trends, and take  
19 corrective action where necessary. The facility shall make the data available to the  
20 Department upon request. Nothing in this subsection abrogates State or federal law or  
21 requirements pertaining to the confidentiality, privilege, or other prohibition against  
22 disclosure of information provided to the Department under this subsection. In reviewing  
23 data requested under this subsection, the Department shall adhere to State and federal  
24 requirements of confidentiality, privilege, and other prohibitions against disclosure and  
25 release applicable to the information received under this subsection."

26 Section 3.(a) Article 2 of Chapter 122C of the General Statutes is amended by  
27 adding the following new section to read:

28 **"§ 122C-31. Report required upon death of client.**

29 (a) A facility shall notify the Secretary immediately upon the death of any client of  
30 the facility that occurs within seven days of physical restraint or seclusion of the client,  
31 and shall notify the Secretary within three days of the death of any client of the facility  
32 resulting from violence, accident, suicide, or homicide.

33 (b) Upon receipt of notification from a facility in accordance with subsection (a) of  
34 this section, the Secretary shall notify the Governor's Advocacy Council for Persons With  
35 Disabilities that a person with a disability has died. The Secretary shall provide the  
36 Council access to the information about each death reported pursuant to subsection (a) of  
37 this section, including information resulting from any investigation of the death by the  
38 Department and from reports received from the Chief Medical Examiner pursuant to G.S.  
39 130A-385. The Council shall use the information in accordance with its powers and  
40 duties under G.S. 143B-403.1 and applicable federal law and regulations.

41 (c) If the death of a client of a facility occurs within seven days of the use of  
42 physical restraint or seclusion, then the Secretary shall initiate immediately an  
43 investigation of the death.

1       (d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the  
2 General Statutes shall comply with this section.

3       (e) Nothing in this section abrogates State or federal law or requirements  
4 pertaining to the confidentiality, privilege, or other prohibition against disclosure of  
5 information provided to the Secretary or the Council. In carrying out the requirements of  
6 this section, the Secretary and the Council shall adhere to State and federal requirements  
7 of confidentiality, privilege, and other prohibitions against disclosure and release  
8 applicable to the information received under this section. A facility or provider that  
9 makes available confidential information in accordance with this section and with State  
10 and federal law is not liable for the release of the information.

11       (f) The Secretary shall establish a standard reporting format for reporting deaths  
12 pursuant to this section and shall provide to facilities subject to this section a form for the  
13 facility's use in complying with this section."

14       Section 3.(b) Article 1 of Chapter 122C of the General Statutes is amended by  
15 adding the following new section to read:

16 **"§ 122C-5. Report on restraint and seclusion.**

17       The Secretary shall report annually on October 1 to the Legislative Study Commission  
18 on Mental Health, Developmental Disabilities, and Substance Abuse Services on the  
19 following for the immediately preceding fiscal year:

20       (1) The level of compliance of each facility with applicable State and  
21 federal laws, rules, and regulations governing the use of restraints and  
22 seclusion. The information shall indicate areas of highest and lowest  
23 levels of compliance.

24       (2) The total number of facilities that reported deaths under G.S. 122C-31,  
25 the number of deaths reported by each facility, the number of deaths  
26 investigated pursuant to G.S. 122C-31, and the number found by the  
27 investigation to be related to the use of restraint or seclusion."

28       Section 4. G.S. 130A-385 is amended by adding the following new subsection  
29 to read:

30       "(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of  
31 Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General  
32 Statutes, and the deceased was a client or resident of the facility or a recipient of facility  
33 services at the time of death, then the Chief Medical Examiner shall forward a copy of  
34 the medical examiner's report to the Secretary of Health and Human Services within 30  
35 days of receipt of the report from the medical examiner."

36       Section 5.(a) Article 1A of Chapter 131D of the General Statutes is amended  
37 by adding the following new section to read:

38 **"§ 131D-10.6B. Report of death.**

39       (a) A facility licensed under this Article shall notify the Department immediately  
40 upon the death of any resident of the facility that occurs within seven days of physical  
41 restraint of the resident, and shall notify the Department within three days of the death of  
42 any resident of the facility resulting from violence, accident, suicide, or homicide.

1       (b) Upon receipt of notification from a facility in accordance with subsection (a) of  
2 this section, the Department shall notify the Governor's Advocacy Council for Persons  
3 With Disabilities that a person with a disability has died. The Department shall provide  
4 the Council access to the information about each death reported to the Council pursuant  
5 to subsection (a) of this section, including information resulting from any investigation of  
6 the death by the Department, and from reports received from the Chief Medical Examiner  
7 pursuant to G.S. 130A-385. The Council shall use the information in accordance with its  
8 powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

9       (c) If the death of a resident of the facility occurs within seven days of the use of  
10 physical restraint, the Department shall initiate immediately an investigation of the death.

11       (d) Nothing in this section abrogates State or federal law or requirements  
12 pertaining to the confidentiality, privilege, or other prohibition against disclosure of  
13 information provided to the Department or the Council. In carrying out the requirements  
14 of this section, the Department and the Council shall adhere to State and federal  
15 requirements of confidentiality, privilege, and other prohibitions against disclosure and  
16 release applicable to the information received under this section. A facility or provider  
17 that makes available confidential information in accordance with this section and with  
18 State and federal law is not liable for the release of the information.

19       (e) The Secretary shall establish a standard reporting format for reporting deaths  
20 pursuant to this section and shall provide to facilities subject to this section a form for the  
21 facility's use in complying with this section."

22       Section 5.(b) G.S. 131D-10.6 is amended by adding the following new  
23 subdivision to read:

24       "(10) Report annually on October 1 to the Legislative Study Commission on  
25 Mental Health, Developmental Disabilities, and Substance Abuse  
26 Services the level of facility compliance with applicable State law  
27 governing the use of restraint and time-out in residential child-care  
28 facilities. The report shall also include the total number of facilities that  
29 reported deaths under this section, the number of deaths reported by  
30 each facility, the number of deaths investigated pursuant to this section,  
31 and the number found by the investigation to be related to the use of  
32 physical restraint or time-out."

33       Section 6.(a) Article 3 of Chapter 131D of the General Statutes is amended by  
34 adding the following new section to read:

35 **"§ 131D-34.1. Report of death of resident.**

36       (a) An adult care home shall notify the Department of Health and Human Services  
37 immediately upon the death of any resident that occurs in the adult care home or that  
38 occurs within 24 hours of the resident's transfer to a hospital if the death occurred within  
39 seven days of the adult care home's use of physical restraint or physical hold of the  
40 resident, and shall notify the Department of Health and Human Services within three days  
41 of the death of any resident of the adult care home resulting from violence, accident,  
42 suicide, or homicide.

1       (b) Upon receipt of notification from an adult care home in accordance with  
2 subsection (a) of this section, the Department of Health and Human Services shall notify  
3 the Governor's Advocacy Council for Persons With Disabilities that a person with a  
4 disability has died. The Department shall provide the Council access to the information  
5 about each death reported pursuant to subsection (a) of this section, including information  
6 resulting from any investigation of the death by the Department and from reports  
7 received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall  
8 use the information in accordance with its powers and duties under G.S. 143B-403.1 and  
9 applicable federal law and regulations.

10       (c) If the death of a resident of the adult care home occurs within seven days of the  
11 adult care home's use of physical restraint or physical hold, the Department shall initiate  
12 immediately an investigation of the death.

13       (d) Nothing in this section abrogates State or federal law or requirements  
14 pertaining to the confidentiality, privilege, or other prohibition against disclosure of  
15 information provided to the Department or the Council. In carrying out the requirements  
16 of this section, the Department and the Council shall adhere to State and federal  
17 requirements of confidentiality, privilege, and other prohibitions against disclosure and  
18 release applicable to the information received under this section. A facility or provider  
19 that makes available confidential information in accordance with this section and with  
20 State and federal law is not liable for the release of the information.

21       (e) The Secretary shall establish a standard reporting format for reporting deaths  
22 pursuant to this section and shall provide to facilities subject to this section a form for the  
23 facility's use in complying with this section."

24       Section 6.(b) Article 5 of Chapter 131D of the General Statutes is amended by  
25 adding the following new section to read:

26 **"§ 131D-42. Report on use of restraint.**

27       The Department shall report annually on October 1 to the Legislative Study  
28 Commission on Mental Health, Developmental Disabilities, and Substance Abuse  
29 Services the following for the immediately preceding fiscal year:

30       (1) The level of compliance of each adult care home with applicable State  
31 law and rules governing the use of physical restraint and physical hold  
32 of residents. The information shall indicate areas of highest and lowest  
33 levels of compliance.

34       (2) The total number of adult care homes that reported deaths under G.S.  
35 131D-34.1, the number of deaths reported by each facility, the number  
36 of deaths investigated pursuant to G.S. 131D-34.1, and the number  
37 found by the investigation to be related to the adult care home's use of  
38 physical restraint or physical hold."

39       Section 7. This act becomes effective January 1, 2001.