

HB5631



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5631

Introduced 2/9/2024, by Rep. Anne Stava-Murray

SYNOPSIS AS INTRODUCED:

405 ILCS 5/1-116.1 new

405 ILCS 5/2-108

from Ch. 91 1/2, par. 2-108

Amends the Mental Health and Developmental Disabilities Code. Prohibits the use of a lethal restraint as a therapeutic measure to prevent a recipient from causing physical harm to himself or physical abuse to others or for any other purpose. Defines "lethal restraint" as a restraint the use of which may lead to the death or severe injury of the person being restrained.

LRB103 35846 RLC 65931 b

A BILL FOR

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Section 2-108 and by
6 adding Section 1-116.1 as follows:

7 (405 ILCS 5/1-116.1 new)

8 Sec. 1-116.1. Lethal restraint. "Lethal restraint" means a
9 restraint, as defined in Section 1-125, the use of which may
10 lead to the death or severe injury of the person being
11 restrained.

12 (405 ILCS 5/2-108) (from Ch. 91 1/2, par. 2-108)

13 Sec. 2-108. Use of restraint; use of lethal restraint
14 prohibited. Restraint, other than lethal restraint, may be
15 used only as a therapeutic measure to prevent a recipient from
16 causing physical harm to himself or physical abuse to others.
17 Restraint, other than lethal restraint, may only be applied by
18 a person who has been trained in the application of the
19 particular type of restraint to be utilized. In no event shall
20 restraint be utilized to punish or discipline a recipient, nor
21 is restraint to be used as a convenience for the staff.

22 (a) Except as provided in this Section, restraint, other

1 than lethal restraint, shall be employed only upon the written
2 order of a physician, clinical psychologist, clinical social
3 worker, clinical professional counselor, advanced practice
4 psychiatric nurse, or registered nurse with supervisory
5 responsibilities. No restraint shall be ordered unless the
6 physician, clinical psychologist, clinical social worker,
7 clinical professional counselor, advanced practice psychiatric
8 nurse, or registered nurse with supervisory responsibilities,
9 after personally observing and examining the recipient, is
10 clinically satisfied that the use of restraint is justified to
11 prevent the recipient from causing physical harm to himself or
12 others. In no event may restraint continue for longer than 2
13 hours unless within that time period a nurse with supervisory
14 responsibilities, advanced practice psychiatric nurse, or a
15 physician confirms, in writing, following a personal
16 examination of the recipient, that the restraint does not pose
17 an undue risk to the recipient's health in light of the
18 recipient's physical or medical condition. The order shall
19 state the events leading up to the need for restraint and the
20 purposes for which restraint is employed. The order shall also
21 state the length of time restraint is to be employed and the
22 clinical justification for that length of time. No order for
23 restraint shall be valid for more than 16 hours. If further
24 restraint is required, a new order must be issued pursuant to
25 the requirements provided in this Section.

26 (b) In the event there is an emergency requiring the

1 immediate use of restraint, other than lethal restraint, ~~it~~
2 may be ordered temporarily by a qualified person only where a
3 physician, clinical psychologist, clinical social worker,
4 clinical professional counselor, advanced practice psychiatric
5 nurse, or registered nurse with supervisory responsibilities
6 is not immediately available. In that event, an order by a
7 nurse, clinical psychologist, clinical social worker, clinical
8 professional counselor, advanced practice psychiatric nurse,
9 or physician shall be obtained pursuant to the requirements of
10 this Section as quickly as possible, and the recipient shall
11 be examined by a physician or supervisory nurse within 2 hours
12 after the initial employment of the emergency restraint.
13 Whoever orders restraint in emergency situations shall
14 document its necessity and place that documentation in the
15 recipient's record.

16 (c) The person who orders restraint shall inform the
17 facility director or his designee in writing of the use of
18 restraint within 24 hours.

19 (d) The facility director shall review all restraint
20 orders daily and shall inquire into the reasons for the orders
21 for restraint by any person who routinely orders them.

22 (e) Restraint, other than lethal restraint, may be
23 employed during all or part of one 24 hour period, the period
24 commencing with the initial application of the restraint.
25 However, once restraint has been employed during one 24 hour
26 period, it shall not be used again on the same recipient during

1 the next 48 hours without the prior written authorization of
2 the facility director.

3 (f) Restraint, other than lethal restraint, shall be
4 employed in a humane and therapeutic manner and the person
5 being restrained shall be observed by a qualified person as
6 often as is clinically appropriate but in no event less than
7 once every 15 minutes. The qualified person shall maintain a
8 record of the observations. Specifically, unless there is an
9 immediate danger that the recipient will physically harm
10 himself or others, restraint shall be loosely applied to
11 permit freedom of movement. Further, the recipient shall be
12 permitted to have regular meals and toilet privileges free
13 from the restraint, except when freedom of action may result
14 in physical harm to the recipient or others.

15 (g) Every facility that employs restraint shall provide
16 training in the safe and humane application of each type of
17 restraint employed. The facility shall not authorize the use
18 of any type of restraint by an employee who has not received
19 training in the safe and humane application of that type of
20 restraint. Each facility in which restraint is used shall
21 maintain records detailing which employees have been trained
22 and are authorized to apply restraint, the date of the
23 training and the type of restraint that the employee was
24 trained to use.

25 (h) Whenever restraint is imposed upon any recipient whose
26 primary mode of communication is sign language, the recipient

1 shall be permitted to have his hands free from restraint for
2 brief periods each hour, except when freedom may result in
3 physical harm to the recipient or others.

4 (i) A recipient who is restrained may only be secluded at
5 the same time pursuant to an explicit written authorization as
6 provided in Section 2-109 of this Code. Whenever a recipient
7 is restrained, a member of the facility staff shall remain
8 with the recipient at all times unless the recipient has been
9 secluded. A recipient who is restrained and secluded shall be
10 observed by a qualified person as often as is clinically
11 appropriate but in no event less than every 15 minutes.

12 (j) Whenever restraint is used, the recipient shall be
13 advised of his right, pursuant to Sections 2-200 and 2-201 of
14 this Code, to have any person of his choosing, including the
15 Guardianship and Advocacy Commission or the agency designated
16 pursuant to the Protection and Advocacy for Persons with
17 Developmental Disabilities Act notified of the restraint. A
18 recipient who is under guardianship may request that any
19 person of his choosing be notified of the restraint whether or
20 not the guardian approves of the notice. Whenever the
21 Guardianship and Advocacy Commission is notified that a
22 recipient has been restrained, it shall contact that recipient
23 to determine the circumstances of the restraint and whether
24 further action is warranted.

25 (k) Lethal restraint may not be used as a therapeutic
26 measure to prevent a recipient from causing physical harm to

1 himself or physical abuse to others or for any other purpose.

2 (Source: P.A. 101-587, eff. 1-1-20.)