

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1086

Short Title: Restraints/Deaths in Facilities.

(Public)

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Sponsors: Senators Carpenter; and Phillips.

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Referred to: Health Care.

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April 15, 1999

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE USE OF RESTRAINTS AND REPORTING OF DEATHS IN CERTAIN FACILITIES FOR PERSONS WITH DISABILITIES, AND IN CHILD CARE FACILITIES, AND TO AUTHORIZE THE GOVERNOR'S ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES TO HAVE ACCESS TO INFORMATION ABOUT THESE DEATHS.

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 or chemical 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-treatment to ensure the physical safety of the client or others; and only upon the written order of a physician. The duration of the restraint or seclusion shall not be longer than two consecutive hours. Written orders for restraint or seclusion shall not be written as standing orders. Restraint or seclusion may be used in emergency situations until a physician's order may be reasonably obtained. In each instance, the least restrictive method of restraint or seclusion applicable to the particular situation shall be used, and the restraint or seclusion shall be removed or ended at the earliest possible time. Restraint and seclusion shall not be used simultaneously.

1 (a1) All instances of restraint or seclusion and the detailed reasons for such action  
2 shall be documented in the client's record. This documentation shall include all of the  
3 following information:

4 (1) The type of restraint or seclusion used.

5 (2) The time and duration of the restraint or seclusion.

6 (3) Less restrictive alternatives to the restraint or seclusion that were  
7 considered.

8 (4) Evidence of treatment planning to reduce the probability of incidents  
9 that would require the use of restraint or seclusion.

10 Each client who is restrained or secluded shall be observed frequently, and a written  
11 notation of the observation shall be made in the client's record.

12 (a2) Restraint or seclusion shall be employed only by staff that has received training  
13 on the proper use of restraint and seclusion, their alternatives, and techniques to identify  
14 and defuse potential emergency situations. This training shall occur before the staff  
15 member may employ restraint or seclusion and at least annually after the initial training.

16 (b) The Commission may adopt rules to implement this section."

17 Section 2. Article 1A of Chapter 131D of the General Statutes is amended by  
18 adding a new section to read:

19 "**§ 131D-10.5A. Prohibition of certain restraints.**

20 (a) Physical or chemical restraint or seclusion of a child shall be employed only  
21 when there is imminent danger of abuse or injury to the child or others, when substantial  
22 property damage is occurring, or when the restraint or seclusion is necessary as a measure  
23 of therapeutic treatment to ensure the physical safety of the child or others; and only upon  
24 the written order of a physician. The duration of the restraint or seclusion shall not be  
25 longer than two consecutive hours. Written orders for restraint or seclusion shall not be  
26 written as standing orders. Restraint or seclusion may be used in emergency situations  
27 until a physician's order may be reasonably obtained. In each instance, the least  
28 restrictive method of restraint or seclusion applicable to the particular situation shall be  
29 used, and the restraint or seclusion shall be removed or ended at the earliest possible  
30 time. Restraint and seclusion shall not be used simultaneously.

31 (b) All instances of restraint or seclusion and the detailed reasons for such action  
32 shall be documented in the child's record. This documentation shall include all of the  
33 following information:

34 (1) The type of restraint or seclusion used.

35 (2) The time and duration of the restraint or seclusion.

36 (3) Less restrictive alternatives to the restraint or seclusion that were  
37 considered.

38 (4) Evidence of treatment planning to reduce the probability of incidents  
39 that would require the use of restraint or seclusion.

40 Each child who is restrained or secluded shall be observed frequently, and a written  
41 notation of the observation shall be made in the child's record.

42 (c) Restraint or seclusion shall be employed only by staff that has received training  
43 on the proper use of restraint and seclusion, their alternatives, and techniques to identify

1 and defuse potential emergency situations. This training shall occur before the staff  
2 member may employ restraint or seclusion and at least annually after the initial training.

3 (d) The Commission may adopt rules to implement this section."

4 Section 3. Article 2 of Chapter 122C of the General Statutes is amended by  
5 adding the following new section to read:

6 "**§ 122C-31. Report required upon death of client.**

7 (a) A facility licensed under this Article shall notify the Secretary immediately  
8 upon the death of any client of the facility resulting from violence, poisoning, accident,  
9 suicide, homicide, restraint, seclusion, medication, or cardiovascular failure unrelated to  
10 the natural course of the individual's illness, occurring in the facility. The Secretary may  
11 impose a civil penalty not to exceed one thousand dollars (\$1,000) upon any facility that  
12 fails to notify the Secretary of the death and the circumstances surrounding the death  
13 known to the facility. The clear proceeds of the penalty shall be remitted to the State  
14 Treasurer for deposit in accordance with State law.

15 (b) In cases where a death covered under subsection (a) also falls under the  
16 requirements of Article 16 of Chapter 130A of the General Statutes, the Chief Medical  
17 Examiner shall forward a copy of the examiner's report of the investigation to the  
18 Secretary within 30 days.

19 (c) The Secretary shall provide access to reports of deaths the Secretary receives  
20 under this section to the Governor's Advocacy Council for Persons with Disabilities for  
21 its monitoring and investigation of deaths occurring in mental health facilities licensed  
22 under this Article."

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

25 "(f) If a death occurred in a facility licensed under Article 2 of Chapter 122C of the  
26 General Statutes, Article 1A of Chapter 131D of the General Statutes, Article 7 of  
27 Chapter 110 of the General Statutes, or licensed facility as defined in G.S. 131D-2(a)(6),  
28 and the deceased was a client or resident of the facility or a recipient of facility services  
29 at the time of death, then the Chief Medical Examiner shall forward a copy of the  
30 examiner's report to the Secretary of Health and Human Services."

31 Section 5. Article 1A of Chapter 131D of the General Statutes is amended by  
32 adding the following new section to read:

33 "**§ 131D-10.6B. Report of death.**

34 (a) A facility licensed under this Article shall notify the Secretary of Health and  
35 Human Services immediately upon the death of any resident of the facility resulting from  
36 violence, poisoning, accident, suicide, homicide, restraint, seclusion, medication, or  
37 cardiovascular failure unrelated to the natural course of the individual's illness, occurring  
38 in the facility. The Secretary may impose a civil penalty not to exceed one thousand  
39 dollars (\$1,000) upon any facility that fails to notify the Secretary of the death and the  
40 circumstances surrounding the death known to the facility. The clear proceeds of the  
41 penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

42 (b) In cases where a death covered under subsection (a) also falls under the  
43 requirements of Article 16 of Chapter 130A of the General Statutes, the Chief Medical

1 Examiner shall forward a copy of the examiner's report of the investigation to the  
2 Secretary within 30 days.

3 (c) The Secretary shall provide access to reports of deaths the Secretary receives  
4 under this section to the Governor's Advocacy Council for Persons with Disabilities for  
5 its monitoring and investigation of deaths occurring in a facility licensed under this  
6 Article."

7 Section 6. Article 3 of Chapter 131D of the General Statutes is amended by  
8 adding the following new section to read:

9 **"§ 131D-34.1. Report of death of resident.**

10 (a) A facility as defined under G.S. 131D-2(a)(6) shall notify the Secretary of  
11 Health and Human Services immediately upon the death of any resident of the facility  
12 resulting from violence, poisoning, accident, suicide, homicide, restraint, seclusion,  
13 medication, or cardiovascular failure unrelated to the natural course of the individual's  
14 illness, occurring in the facility. The Secretary may impose a civil penalty not to exceed  
15 one thousand dollars (\$1,000) upon any facility that fails to notify the Secretary of the  
16 death and the circumstances surrounding the death known to the facility. The clear  
17 proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance  
18 with State law.

19 (b) In cases where a death covered under subsection (a) also falls under the  
20 requirements of Article 16 of Chapter 130A of the General Statutes, the Chief Medical  
21 Examiner shall forward a copy of the examiner's report of the investigation to the  
22 Secretary within 30 days.

23 (c) The Secretary shall provide access to reports of deaths the Secretary receives  
24 under this section to the Governor's Advocacy Council for Persons with Disabilities for  
25 its monitoring and investigation of deaths occurring in a facility licensed under G.S.  
26 131D-2."

27 Section 7. G.S. 110-102.1 is amended by adding the following new subsections  
28 to read:

29 "(c) In cases where a death falls under the requirements of Article 16 of Chapter  
30 130A of the General Statutes, the Chief Medical Examiner shall forward a copy of the  
31 examiner's report of the investigation to the Secretary within 30 days.

32 (d) The Secretary shall provide access to reports of deaths the Secretary receives  
33 under this section to the Governor's Advocacy Council for Persons with Disabilities for  
34 its monitoring and investigation of deaths occurring in a facility licensed under this  
35 Article."

36 Section 8. G.S. 143B-403.1 is amended by adding the following new  
37 subdivision to read:

38 "There is hereby created the Governor's Advocacy Council for Persons with  
39 Disabilities of the Department of Administration. The Council shall have the following  
40 functions and duties:

41 ...

42 (4a) To have access to each notification by a facility of a death under G.S.  
43 122C-31, 130A-385, 131D-34.1, and 110-102.1. For purposes of its

1                    monitoring and investigation, the Council shall have access to reports of  
2                    deaths received by the Secretary, to the facility in which the death  
3                    occurred, to clients or residents of the facility, and to the deceased  
4                    person's records."

5                    Section 9. This act becomes effective October 1, 1999.