

HOUSE BILL No. 2532

By Committee on Judiciary

1-25

9 AN ACT concerning the use of restraints and seclusion; relating to the
10 care and treatment of mentally ill persons, persons with alcohol or
11 substance abuse and committed sexually violent predators; amending
12 K.S.A. 59-2977 and 59-29b77 and K.S.A. 2009 Supp. 59-29a22 and
13 repealing the existing sections.
14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 59-2977 is hereby amended to read as follows: 59-
17 2977. (a) Restraints or seclusion shall not be applied to a patient unless
18 it is determined by the head of the treatment facility or a physician or
19 psychologist to be necessary to prevent immediate substantial bodily in-
20 jury to the patient or others and that other alternative methods to prevent
21 such injury are not sufficient to accomplish this purpose. Restraint or
22 seclusion shall never be used as a punishment or for the convenience of
23 staff. The extent of the restraint or seclusion applied to the patient shall
24 be the least restrictive measure necessary to prevent such injury to the
25 patient or others, and the use of restraint or seclusion in a treatment
26 facility shall not exceed 3 hours without medical reevaluation, except that
27 such medical reevaluation shall not be required, unless necessary, be-
28 tween the hours of 12:00 midnight and 8:00 a.m. When restraints or
29 seclusion are applied, there shall be monitoring of the patient's condition
30 at a frequency determined by the treating physician or psychologist, which
31 shall be no less than once per each 15 minutes. The head of the treatment
32 facility or a physician or psychologist shall sign a statement explaining the
33 treatment necessity for the use of any restraint or seclusion and shall make
34 such statement a part of the permanent treatment record of the patient.

35 (b) The provisions of subsection (a) shall not prevent, ~~for a period~~
36 ~~not exceeding 2 hours without review and approval thereof by the head~~
37 ~~of the treatment facility or a physician or psychologist:~~

38 (1) Staff at the state security hospital from confining patients in their
39 rooms when it is considered necessary for security or proper institutional
40 management;

41 (2) ~~the use of such restraints as necessary for a patient who is likely~~
42 ~~to cause physical injury to self or others without the use of such restraints;~~
43 ~~(3) the use of restraints when needed primarily for examination or~~

1 treatment of a *physical illness or injury* or to insure the healing process;

2 ~~or~~

3 (3) *the quarantine of any patient to prevent the spread of a commu-*
4 *nicable disease; or*

5 (4) the use of seclusion as part of a treatment methodology that calls
6 for time out when the patient is refusing to participate in a treatment or
7 has become disruptive of a treatment process, *but such period of time*
8 *out shall last only so long as that particular treatment session lasts or*
9 *would have lasted.*

10 (c) “Restraints” means the application of any devices, other than hu-
11 man force alone, to any part of the body of the patient for the purpose
12 of preventing the patient from causing injury to self or others.

13 (d) “Seclusion” means the placement of a patient, alone, in a room,
14 where the patient’s freedom to leave is restricted and where the patient
15 is not under continuous observation.

16 Sec. 2. K.S.A. 2009 Supp. 59-29a22 is hereby amended to read as
17 follows: 59-29a22. (a) As used in this section:

18 (1) “Patient” means any individual:

19 (A) Who is receiving services for mental illness and who is admitted,
20 detained, committed, transferred or placed in the custody of the secretary
21 of social and rehabilitation services under the authority of K.S.A. 22-3219,
22 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and
23 76-1306, and amendments thereto.

24 (B) In the custody of the secretary of social and rehabilitation services
25 after being found a sexually violent predator pursuant to K.S.A. 59-29a01
26 et seq., and amendments thereto, including any sexually violent predator
27 placed on transitional release.

28 (2) “Restraints” means the application of any devices, other than hu-
29 man force alone, to any part of the body of the patient for the purpose
30 of preventing the patient from causing injury to self or others.

31 (3) “Seclusion” means the placement of a patient, alone, in a room,
32 where the patient’s freedom to leave is restricted and where the patient
33 is not under continuous observation.

34 (b) Each patient shall have the following rights:

35 (1) Upon admission or commitment, be informed orally and in writ-
36 ing of the patient’s rights under this section. Copies of this section shall
37 be posted conspicuously in each patient area, and shall be available to the
38 patient’s guardian and immediate family.

39 (2) The right to refuse to perform labor which is of financial benefit
40 to the facility in which the patient is receiving treatment or service. Priv-
41 ileges or release from the facility may not be conditioned upon the per-
42 formance of any labor which is regulated by this subsection. Tasks of a
43 personal housekeeping nature are not considered compensable labor. Pa-

- 1 tients may voluntarily engage in therapeutic labor which is of financial
2 benefit to the facility if such labor is compensated in accordance with a
3 plan approved by the department and if:
- 4 (A) The specific labor is an integrated part of the patient's treatment
5 plan approved as a therapeutic activity by the professional staff member
6 responsible for supervising the patient's treatment;
- 7 (B) the labor is supervised by a staff member who is qualified to
8 oversee the therapeutic aspects of the activity;
- 9 (C) the patient has given written informed consent to engage in such
10 labor and has been informed that such consent may be withdrawn at any
11 time; and
- 12 (D) the labor involved is evaluated for its appropriateness by the staff
13 of the facility at least once every 120 days.
- 14 (3) A right to receive prompt and adequate treatment, rehabilitation
15 and educational services appropriate for such patient's condition, within
16 the limits of available state and federal funds.
- 17 (4) Have the right to be informed of such patient's treatment and
18 care and to participate in the planning of such treatment and care.
- 19 (5) Have the following rights, under the following procedures, to re-
20 fuse medication and treatment:
- 21 (A) Have the right to refuse all medication and treatment except as
22 ordered by a court or in a situation in which the medication or treatment
23 is necessary to prevent serious physical harm to the patient or to others.
24 Except when medication or medical treatment has been ordered by the
25 court or is necessary to prevent serious physical harm to others as evi-
26 denced by a recent overt act, attempt or threat to do such harm, a patient
27 may refuse medications and medical treatment if the patient is a member
28 of a recognized religious organization and the religious tenets of such
29 organization prohibit such medications and treatment.
- 30 (B) Medication may not be used as punishment, for the convenience
31 of staff, as a substitute for a treatment program, or in quantities that
32 interfere with a patient's treatment program.
- 33 (C) Patients will have the right to have explained the nature of all
34 medications prescribed, the reason for the prescription and the most com-
35 mon side effects and, if requested, the nature of any other treatments
36 ordered.
- 37 (6) Except as provided in paragraph ~~(2)~~ (B), have a right to be free
38 from physical restraint and seclusion.
- 39 (A) Restraints or seclusion shall not be applied to a patient unless it
40 is determined by the superintendent of the treatment facility or a phy-
41 sician or licensed psychologist to be necessary to prevent immediate sub-
42 stantial bodily injury to the patient or others and that other alternative
43 methods to prevent such injury are not sufficient to accomplish this pur-

1 pose. Restraint or seclusion shall never be used as a punishment or for
2 the convenience of staff. The extent of the restraint or seclusion applied
3 to the patient shall be the least restrictive measure necessary to prevent
4 such injury to the patient or others, and the use of restraint or seclusion
5 in a treatment facility shall not exceed three hours without medical reev-
6 aluation. When restraints or seclusion are applied, there shall be moni-
7 toring of the patient's condition at a frequency determined by the treating
8 physician or licensed psychologist, which shall be no less than once per
9 each 15 minutes. The superintendent of the treatment facility or a phy-
10 sician or licensed psychologist shall sign a statement explaining the treat-
11 ment necessity for the use of any restraint or seclusion and shall make
12 such statement a part of the permanent treatment record of the patient.

13 (B) The provisions of ~~clause~~ *paragraph* (A) shall not prevent:

14 (i) The use of seclusion as part of a treatment methodology that calls
15 for time out when the patient is refusing to participate in a treatment or
16 has become disruptive of a treatment process.

17 (ii) Patients may be restrained for security reasons during transport
18 to or from the patient's building, including transport to another treatment
19 facility. Any patient committed or transferred to a hospital or other health
20 care facility for medical care may be isolated for security reasons within
21 locked facilities in the hospital.

22 (iii) Patients may be locked or restricted in such patient's room during
23 the night shift, if such patient resides in a unit in which each room is
24 equipped with a toilet and sink or if the patients who do not have toilets
25 in the rooms shall be given an opportunity to use a toilet at least once
26 every hour, or more frequently if medically indicated.

27 (iv) Patients may be locked in such patient's room for a period of time
28 no longer than one hour during each change of shift by staff to permit
29 staff review of patient needs.

30 (v) Patients may also be locked in such patient's room on a unit-wide
31 or facility-wide basis as an emergency measure as needed for security
32 purposes to deal with an escape or attempted escape, the discovery of a
33 dangerous weapon in the unit or facility or the receipt of reliable infor-
34 mation that a dangerous weapon is in the unit or facility, or to prevent or
35 control a riot or the taking of a hostage. A unit-wide or facility-wide emer-
36 gency isolation order may only be authorized by the superintendent of
37 the facility where the order is applicable or the superintendent's designee.
38 A unit-wide or facility-wide emergency isolation order shall be approved
39 within one hour after it is authorized by the superintendent or the su-
40 perintendent's designee. An emergency order for unit-wide or facility-
41 wide isolation may only be in effect for the period of time needed to
42 preserve order while dealing with the situation and may not be used as a
43 substitute for adequate staffing. During a period of unit-wide or facility-

1 wide isolation, the status of each patient shall be reviewed every 30
2 minutes to ensure the safety and comfort of the patient, and each patient
3 who is locked in a room without a toilet shall be given an opportunity to
4 use a toilet at least once every hour, or more frequently if medically
5 indicated. The facility shall have a written policy covering the use of iso-
6 lation that ensures that the dignity of the individual is protected, that the
7 safety of the individual is secured, and that there is regular, frequent
8 monitoring by trained staff to care for bodily needs as may be required.

9 (vi) Individual patients who are referred by the court or correctional
10 facilities for criminal evaluations may be placed in administrative con-
11 finement for security reasons and to maintain proper institutional man-
12 agement when treatment cannot be addressed through routine psychiatric
13 methods. Administrative confinement of individuals shall be limited to
14 only patients that demonstrate or threaten substantial injury to other pa-
15 tients or staff and when there are no clinical interventions available that
16 will be effective to maintain a safe and therapeutic environment for both
17 patients and staff. Administrative confinement shall not be used for any
18 patient who is actively psychotic or likely to be psychologically harmed.
19 The status of each patient shall be reviewed every 15 minutes to ensure
20 the safety and comfort of the patient. The patient shall be afforded all
21 patient rights including being offered a minimum of one hour of super-
22 vised opportunity for personal hygiene, exercise and to meet other per-
23 sonal needs.

24 (vii) *The quarantine of any patient to prevent the spread of a com-*
25 *municable disease.*

26 (7) The right not to be subject to such procedures as psychosurgery,
27 electroshock therapy, experimental medication, aversion therapy or haz-
28 ardous treatment procedures without the written consent of the patient
29 or the written consent of a parent or legal guardian, if such patient is a
30 minor or has a legal guardian provided that the guardian has obtained
31 authority to consent to such from the court which has venue over the
32 guardianship following a hearing held for that purpose.

33 (8) The right to individual religious worship within the facility if the
34 patient desires such an opportunity. The provisions for worship shall be
35 available to all patients on a nondiscriminatory basis. No individual may
36 be coerced into engaging in any religious activities.

37 (9) A right to a humane psychological and physical environment
38 within the hospital facilities. All facilities shall be designed to afford pa-
39 tients with comfort and safety, to promote dignity and ensure privacy.
40 Facilities shall also be designed to make a positive contribution to the
41 effective attainment of the treatment goals of the hospital.

42 (10) The right to confidentiality of all treatment records, and as per-
43 mitted by other applicable state or federal laws, have the right to inspect

1 and to receive a copy of such records.

2 (11) Except as otherwise provided, have a right to not be filmed or
3 taped, unless the patient signs an informed and voluntary consent that
4 specifically authorizes a named individual or group to film or tape the
5 patient for a particular purpose or project during a specified time period.
6 The patient may specify in such consent periods during which, or situa-
7 tions in which, the patient may not be filmed or taped. If a patient is
8 legally incompetent, such consent shall be granted on behalf of the patient
9 by the patient's guardian. A patient may be filmed or taped for security
10 purposes without the patient's consent.

11 (12) The right to be informed in writing upon or at a reasonable time
12 after admission, of any liability that the patient or any of the patient's
13 relatives may have for the cost of the patient's care and treatment and of
14 the right to receive information about charges for care and treatment
15 services.

16 (13) The right to be treated with respect and recognition of the pa-
17 tient's dignity and individuality by all employees of the treatment facility.

18 (14) Patients have an unrestricted right to send sealed mail and re-
19 ceive sealed mail to or from legal counsel, the courts, the secretary of
20 social and rehabilitation services, the superintendent of the treatment
21 facility, the agency designated as the developmental disabilities protection
22 and advocacy agency pursuant to P.L. 94-103, as amended, private phy-
23 sicians and licensed psychologists, and have reasonable access to letter-
24 writing materials.

25 (15) The right as specified under clause (A) to send and receive sealed
26 mail, subject to the limitations specified under clause (B):

27 (A) A patient shall also have a right to send sealed mail and receive
28 sealed mail to or from other persons, subject to physical examination in
29 the patient's presence if there is reason to believe that such communi-
30 cation contains contraband materials or objects that threaten the security
31 of patients or staff. The officers and staff of a facility may not read any
32 mail covered by this clause.

33 (B) The above rights to send and receive sealed and confidential mail
34 are subject to the following limitations:

35 (i) An officer or employee of the facility at which the patient is placed
36 may delay delivery of the mail to the patient for a reasonable period of
37 time to verify whether the person named as the sender actually sent the
38 mail; may open the mail and inspect it for contraband outside the pres-
39 ence of the patient; or may, if the officer or staff member cannot deter-
40 mine whether the mail contains contraband, return the mail to the sender
41 along with notice of the facility mail policy.

42 (ii) The superintendent of the facility or the superintendent's desig-
43 nee may, in accordance with the standards and the procedure under sub-

1 section (c) for denying a right for cause, authorize a member of the facility
2 treatment staff to read the mail, if the superintendent or the superinten-
3 dent's designee has reason to believe that the mail could pose a threat to
4 security at the facility or seriously interfere with the treatment, rights, or
5 safety of the patient or others.

6 (iii) Residents may be restricted in receiving in the mail items
7 deemed to be pornographic, offensive or which is deemed to jeopardize
8 their individual treatment or that of others.

9 (16) Reasonable access to a telephone to make and receive telephone
10 calls within reasonable limits.

11 (17) Be permitted to use and wear such patient's own clothing and
12 personal possessions, including toilet articles, or be furnished with an
13 adequate allowance of clothes if none are available. Provision shall be
14 made to launder the patient's clothing.

15 (18) Be provided a reasonable amount of individual secure storage
16 space for private use.

17 (19) Reasonable protection of privacy in such matters as toileting and
18 bathing.

19 (20) Be permitted to see a reasonable number of visitors who do not
20 pose a threat to the security or therapeutic climate of other patients or
21 the facility.

22 (21) The right to present grievances under the procedures estab-
23 lished by each facility on the patient's own behalf or that of others to the
24 staff or superintendent of the treatment facility without justifiable fear of
25 reprisal and to communicate, subject to paragraph (14), with public of-
26 ficials or with any other person without justifiable fear of reprisal.

27 (22) The right to spend such patient's money as such patient chooses,
28 except to the extent that authority over the money is held by another,
29 including the parent of a minor, a court-appointed guardian of the pa-
30 tient's estate or a representative payee. A treatment facility may, as a part
31 of its security procedures, use a patient trust account in lieu of currency
32 that is held by a patient and may establish reasonable policies governing
33 patient account transactions.

34 (c) A patient's rights guaranteed under subsections (b)(15) to (b)(21)
35 may be denied for cause after review by the superintendent of the facility
36 or the superintendent's designee, and may be denied when medically or
37 therapeutically contraindicated as documented by the patient's physician
38 or licensed psychologist in the patient's treatment record. The individual
39 shall be informed in writing of the grounds for withdrawal of the right
40 and shall have the opportunity for a review of the withdrawal of the right
41 in an informal hearing before the superintendent of the facility or the
42 superintendent's designee. There shall be documentation of the grounds
43 for withdrawal of rights in the patient's treatment record. After an infor-

1 mal hearing is held, a patient or such patient's representative may petition
 2 for review of the denial of any right under this subsection through the
 3 use of the grievance procedure provided in subsection (d).

4 (d) The department of social and rehabilitation services shall establish
 5 procedures to assure protection of patients' rights guaranteed under this
 6 section.

7 (e) No person may intentionally retaliate or discriminate against any
 8 patient or employee for contacting or providing information to any state
 9 official or to an employee of any state protection and advocacy agency,
 10 or for initiating, participating in, or testifying in a grievance procedure or
 11 in an action for any remedy authorized under this section.

12 (f) This section shall be a part of and supplemental to article 29a of
 13 chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

14 Sec. 3. K.S.A. 59-29b77 is hereby amended to read as follows: 59-
 15 29b77. (a) Restraints or seclusion shall not be applied to a patient unless
 16 it is determined by the head of the treatment facility or a physician or
 17 psychologist to be necessary to prevent immediate substantial bodily in-
 18 jury to the patient or others and that other alternative methods to prevent
 19 such injury are not sufficient to accomplish this purpose. Restraint or
 20 seclusion shall never be used as a punishment or for the convenience of
 21 staff. The extent of the restraint or seclusion applied to the patient shall
 22 be the least restrictive measure necessary to prevent such injury to the
 23 patient or others, and the use of restraint or seclusion in a treatment
 24 facility shall not exceed 3 hours without medical reevaluation, except that
 25 such medical reevaluation shall not be required, unless necessary, be-
 26 tween the hours of 12:00 midnight and 8:00 a.m. When restraints or
 27 seclusion are applied, there shall be monitoring of the patient's condition
 28 at a frequency determined by the treating physician or psychologist, which
 29 shall be no less than once per each 15 minutes. The head of the treatment
 30 facility or a physician or psychologist shall sign a statement explaining the
 31 treatment necessity for the use of any restraint or seclusion and shall make
 32 such statement a part of the permanent treatment record of the patient.

33 (b) The provisions of subsection (a) shall not prevent, ~~for a period~~
 34 ~~not exceeding 2 hours without review and approval thereof by the head~~
 35 ~~of the treatment facility or a physician or psychologist:~~

36 ~~(1) The use of such restraints as necessary for a patient who is likely~~
 37 ~~to cause physical injury to self or others without the use of such restraints;~~

38 ~~—(2) (1) The use of restraints when needed primarily for examination~~
 39 ~~or treatment of a physical illness or injury or to insure the healing process;~~

40 ~~or~~

41 (2) *the quarantine of any patient to prevent the spread of a commu-*
 42 *nicable disease; or*

43 (3) the use of seclusion as part of a treatment methodology that calls

1 for time out when the patient is refusing to participate in a treatment or
2 has become disruptive of a treatment process, *but such period of time*
3 *out shall last only so long as that particular treatment session lasts or*
4 *would have lasted.*

5 (c) “Restraints” means the application of any devices, other than hu-
6 man force alone, to any part of the body of the patient for the purpose
7 of preventing the patient from causing injury to self or others.

8 (d) “Seclusion” means the placement of a patient, alone, in a room,
9 where the patient’s freedom to leave is restricted and where the patient
10 is not under continuous observation.

11 Sec. 4. K.S.A. 59-2977 and 59-29b77 and K.S.A. 2009 Supp. 59-
12 29a22 are hereby repealed.

13 Sec. 5. This act shall take effect and be in force from and after its
14 publication in the statute book.