



28 interviewed by a mental health therapist acting in his professional capacity.

29 ~~[(2)]~~ (3) "Confidential communication" means information, including information  
30 obtained by the mental health therapist's examination of the client or patient, which is:

31 (a) (i) transmitted between the client or patient and a mental health therapist in the  
32 course of that relationship; or

33 (ii) transmitted among the client or patient, the mental health therapist, and individuals  
34 who are participating in the diagnosis or treatment under the direction of the mental health  
35 therapist, including members of the client's or patient's family; and

36 (b) made in confidence, for the diagnosis or treatment of the client or patient by the  
37 mental health therapist, and by a means not intended to be disclosed to third persons other than  
38 those individuals:

39 (i) present to further the interest of the client or patient in the consultation,  
40 examination, or interview;

41 (ii) reasonably necessary for the transmission of the communications; or

42 (iii) participating in the diagnosis and treatment of the client or patient under the  
43 direction of the mental health therapist.

44 (4) "Emergency" means a situation in which it is immediately necessary to restrain or  
45 seclude a person to prevent imminent probable death or substantial bodily harm because the  
46 person is attempting to commit suicide or bodily harm to self or harm to others and preventive  
47 techniques have proven ineffective at diffusing the potential for injury.

48 ~~[(3)]~~ (5) "Hypnosis" means, regarding individuals exempted from licensure under this  
49 chapter, a process by which one individual induces or assists another individual into a hypnotic  
50 state without the use of drugs or other substances and for the purpose of increasing motivation  
51 or to assist the individual to alter lifestyles or habits.

52 ~~[(4)]~~ (6) "Individual" means a natural person.

53 (7) "Mechanical restraint" means the use of a mechanical device to involuntarily  
54 restrict the free movement of the whole or a portion of an individual's body in order to control  
55 physical activity.

56 ~~[(5)]~~ (8) "Mental health therapist" means an individual licensed under this title as:

57 (a) a physician and surgeon, or osteopathic physician engaged in the practice of mental  
58 health therapy;

59 (b) an advanced practice registered nurse, specializing in psychiatric mental health  
60 nursing;

61 (c) a psychologist qualified to engage in the practice of mental health therapy;

62 (d) a clinical social worker;

63 (e) a certified social worker;

64 (f) a marriage and family therapist; or

65 (g) a professional counselor.

66 [~~(6)~~] (9) "Mental illness" means a mental or emotional condition defined in an  
67 approved diagnostic and statistical manual for mental disorders generally recognized in the  
68 professions of mental health therapy listed under Subsection [~~(5)~~] (8).

69 (10) "Physical restraint" means the application of a restraint to the whole or a  
70 significant portion of an individual's body in order to control the physical activity of another  
71 person to prevent physical harm to self or others but excludes escorting a person from one  
72 place to another without undue force.

73 [~~(7)~~] (11) "Practice of mental health therapy" means treatment or prevention of mental  
74 illness, including:

75 (a) conducting a professional evaluation of an individual's condition of mental health,  
76 mental illness, or emotional disorder consistent with standards generally recognized in the  
77 professions of mental health therapy listed under Subsection [~~(5)~~] (8);

78 (b) establishing a diagnosis in accordance with established written standards generally  
79 recognized in the professions of mental health therapy listed under Subsection [~~(5)~~] (8);

80 (c) prescribing a plan for the prevention or treatment of a condition of mental illness or  
81 emotional disorder; and

82 (d) engaging in the conduct of professional intervention, including psychotherapy by  
83 the application of established methods and procedures generally recognized in the professions  
84 of mental health therapy listed under Subsection [~~(5)~~] (8).

85 (12) "Protective devices" means restraints used to prevent involuntary self injury or to  
86 permit wounds to heal.

87 (13) "Seclusion" means placing an individual alone for any period of time in a  
88 hazard-free room or any other area in which direct observation can be maintained and from  
89 which egress is prevented.

90           ~~[(8)]~~ (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-60-109.

91           ~~[(9)]~~ (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-60-110,  
92 and may be further defined by division rule.

93           Section 2. Section **58-60-117** is enacted to read:

94           **58-60-117. Permissible uses of restraint.**

95           Chemical restraint, physical restraint, mechanical restraint, or seclusion may only be  
96 used to protect and promote the right of an individual to be free from physical or mental abuse  
97 and corporal punishment. Restraints may not be imposed for the purpose of punishment, as a  
98 substitute for effective treatment or rehabilitation, or for the convenience of staff or due to the  
99 lack of adequate staff.

100          Section 3. Section **58-60-118** is enacted to read:

101          **58-60-118. Implementation.**

102          (1) Chemical restraint, physical restraint, mechanical restraint, or seclusion may only  
103 be used as a last resort and only after other less restrictive alternative strategies have failed.

104          (2) Chemical restraint, physical restraint, mechanical restraint, or seclusion may only  
105 be imposed in situations which meet the definition of emergency.

106          (3) Documentation must specify the behaviors which constituted the emergency, the  
107 alternatives attempted, and the individuals response to the alternative attempted.

108          (4) When use of chemical restraint, physical restraint, mechanical restraint, or  
109 seclusion is determined to be appropriate, it must be removed or ended at the earliest possible  
110 time.

111          (5) Only upon an order by a physician shall chemical restraint, physical restraint,  
112 mechanical restraint, or seclusion be applied. The order by a physician must specify the date,  
113 time, and duration of the chemical restraint, physical restraint, mechanical restraint, or  
114 seclusion.

115          Section 4. Section **58-60-119** is enacted to read:

116          **58-60-119. Limitations and regulations.**

117          (1) The maximum length of time for a mechanical restraint may not exceed two hours  
118 for adults, adolescents, and children ages nine to 18, and one hour for children under the age of  
119 nine, unless continuation is authorized by a physician.

120          (2) If a physician orders the restraint to continue, the total time for restraint may not

121 exceed four hours for adults and two hours for children.

122 (3) Water and bathroom privileges must be offered at least every two hours during  
123 seclusion or during the application of a mechanical restraint.

124 (4) Continuous observation of individuals placed in physical or mechanical restraint  
125 must occur. This includes the monitoring of vital signs and breathing.

126 (5) Individuals placed in seclusion or who have been administered a chemical restraint  
127 be continuously monitored.

128 (6) If chemical restraint, physical restraint, mechanical restraint, or seclusion is  
129 administered more than twice in a 30-day period, a consultation with a clinician who is not part  
130 of the treatment team is required.

131 (7) The concurrent use of chemical restraint and seclusion or mechanical restraint must  
132 be clinically justified and documented.

133 (8) Every death or serious physical injury which occurs during or within 48 hours of  
134 chemical restraint, physical restraint, mechanical restraint, or seclusion must be reported to law  
135 enforcement and to the Department of Health.

136 Section 5. Section **58-60-120** is enacted to read:

137 **58-60-120. Use of protective devices.**

138 (1) The use of protective devices may be used to prevent self injury but must be  
139 reviewed by the treating physician.

140 (2) Protective devices may not be used as a substitute for appropriate nursing  
141 rehabilitative care.

142 Section 6. Section **58-60-121** is enacted to read:

143 **58-60-121. Reports.**

144 Data relating to the administration of physical restraint, mechanical restraint, or  
145 seclusion shall be collected by the Department of Health on a quarterly and annual basis to be  
146 analyzed, with an annual summary report to be submitted to the governor and the presiding  
147 officer of each house of the Legislature. The report shall:

148 (1) include the number of patients who received chemical restraint, physical restraint,  
149 mechanical restraint, or seclusion;

150 (2) include the age, sex, and race of the persons receiving chemical restraint, physical  
151 restraint, mechanical restraint, or seclusion;

- 152           (3) include autopsy findings if death followed within 14 days after the administration  
153 of the chemical restraint, physical restraint, mechanical restraint, or seclusion;  
154           (4) include the medical funding source for the individual; and  
155           (5) exclude information that can be used directly or indirectly to identify an individual.
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**Legislative Review Note**  
**as of 11-4-02 3:30 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**