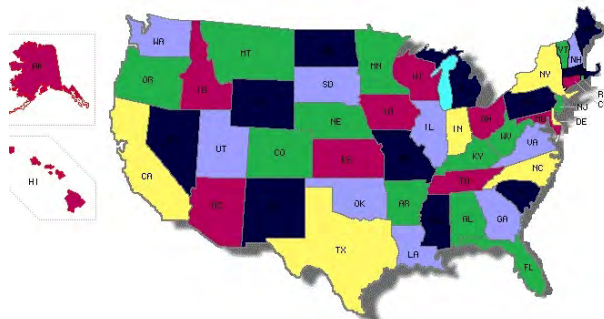


How Safe Is The Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



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March 22, 2015

Updated Guide to State Restraint and Seclusion Laws, Regulations, Rules, and Policies in effect as of March 18, 2015.

The brief executive summary at the beginning provides a quick bullet point overview of the information. The bibliography at the end shows the status of all state seclusion and restraint policies. The next update is planned for Fall 2015.

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Published by The Autism National Committee (AutCom). This report and updates are available on the AutCom webpage, www.autcom.org, free of charge. The link is <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf>



Important Introductory Information (March 22, 2015)

About the Report. This report was revised in 2015 to discuss new state restraint and seclusion statutes, regulations, rules, and policies and includes all laws in effect as of March 18, 2015. Earlier versions were published in 2012, 2013, and 2014. The report presents research analyzing and comparing state approaches, and discusses the impact that various state law requirements have. For parents who simply want to quickly look up their own state law or policy, *My State's Seclusion & Restraint Laws* (<http://www.autcom.org/pdf/MyStateRestraintSeclusionLaws.pdf>) briefly summarizes the major features of each state's laws, but it does not include all the state provisions and requirements described in this report.

Important Technical Details (Read this!). (1) I use 51 "states" to include the District of Columbia. I did not have territorial materials. (2) For brevity, the term "laws" refers to statutes and regulations, which are legally binding. This distinguishes them from nonbinding policies and guidelines. (3) **The report breaks out whether a state's restraint and seclusion rules apply to all children or only those with disabilities.** States marked with a superscripted d (^d) have seclusion and restraint rules applicable to students with disabilities (students in special education). States marked with a superscripted m (^m) have a mix of disability-only and all-children laws. States without symbols have laws applicable to all children. (4) I wanted to avoid a blizzard of footnotes in the body. The state restraint and seclusion laws, policies, and materials I used are in the bibliography. (5) The information in the maps and charts is also in the text. The report seeks to maximize access by people of all abilities. Some need text, some need visuals. Technology was limited; there is no funding underwriting this work.

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About the Author. Jessica is the mother of a child with autism and an attorney. She has served as the Congressional Affairs Coordinator for the Autism National Committee (www.autcom.org). AutCom has worked for over 25 years to eradicate the use of abusive interventions upon people with autism and other disabilities. She served as Chair of the Board of Directors of the Council of Parent Attorneys and Advocates (COPAA) in 2007-08, and on the Board of Directors from 2004-2009. She was a principal coordinator of COPAA's Congressional Affairs program in 2004-2009. She is the author of [UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES](#) (COPAA 2009), which describes over 180 cases in which students were subjected to restraint and seclusion. This report, HOW SAFE IS THE SCHOOLHOUSE?, was authored entirely by Jessica Butler and represents only her views and work. It is not a statement on behalf of AutCom or any entity, organization, or person. **You can email Jessica at jessica@jnba.net. The current report is available free of charge on AutCom's webpage, www.autcom.org, and no one should charge you money for a copy.** Information from HOW SAFE IS THE SCHOOLHOUSE? has been featured in various media reports, including [ABC News](#); [NBC Connecticut](#); [National Public Radio](#); the [Washington Post](#); [ProPublica](#) (public interest investigative journalism); the [Minneapolis Star-Tribune](#); [USA Today](#); and Teaching Tolerance Magazine (Southern Poverty Law Center).

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Note: In prior editions, a state-by-state summary followed the maps and charts. This has been replaced by My State's Seclusion & Restraint Laws

(<http://www.autcom.org/pdf/MyStateRestraintSeclusionLaws.pdf>), which briefly summarizes the major features of each state's laws. It is updated once each summer. It is not intended as an in-depth discussion.

EXECUTIVE SUMMARY (March 2015)

Seclusion and restraint are highly dangerous interventions that have led to death, injury, and trauma in children. The GAO collected at least 20 stories of children who died in restraint, and other children have died and been injured in seclusion. Neither practice should be allowed absent an emergency posing a serious danger to physical safety. Even then, they should be used only if less restrictive measures would not work. All parents should be promptly notified when such practices are used. The most dangerous practices should be forbidden entirely. All states should collect data and appropriately train staff. But instead of a federal law providing these protections to America's 55 million school children, there is a patchwork of state laws, regulations, nonbinding guidelines, and even utter silence covering the country. Congressional bills have been introduced by Congressman George Miller and Senator Tom Harkin. Currently, however, the issue has been left to the states to manage. This report examines state restraint and seclusion laws and policies.

AN OVERVIEW OF STATE LAWS

- **This report uses 51 “states” to include the District of Columbia.** The term “law” includes statutes and regulations, as they have the binding force of law. Both must be obeyed. It does not include nonbinding policies which are not legally enforceable, and often consist of suggestions or factors for school districts to consider.
- **22 states have laws providing meaningful protections against restraint and seclusion for all children; 34, for children with disabilities.** This means that 29 states lack such laws for all children; 17, lack them for children with disabilities. Even these states offer varying protections, with important safeguards present in some states and missing in others. A few states have laws protecting in some significant way against one procedure but not the other. A few states have weak laws (*e.g.*, Nebraska’s regulation simply instructs school districts to adopt any policy they choose and imposes no requirements whatsoever). A few others have nonbinding, suggested guidelines that have no legal force and that are easily changed, requiring neither legislative vote nor state agency notice and comment process.
- **Only 16 states by law require that an emergency threatening physical danger exist before restraint can be used for all children; 20, for children with disabilities.** Many states have no laws or laws with loopholes that allow restraint to be used with little limitation. Because restraint is so dangerous, it should be used only when necessary to protect physical safety.
- There are 35 states that in their laws or guidance would define seclusion as a room a child cannot exit (door is locked, or blocked by furniture, equipment, child-proofing, staff, etc.). **There are 14 states that protect all children from non-emergency seclusion; 20 protect children with disabilities.** By law, only 2 states ban all seclusion for all children; 5, for children with disabilities. The remainder have statutes and regulations limiting seclusion

to emergencies threatening physical harm. But, many states have loopholes in their laws that undermine them and leave children unprotected.

- **Restraints that impede breathing and threaten life are forbidden by law in only 22 states for all children; 29 states, for children with disabilities.** These laws may be phrased as prohibiting life-threatening restraints, restraints that impair breathing, or prone restraints.
- Mechanical restraints include chairs and other devices that children are locked into; duct tape, bungee cords, ties, and rope used to restrain children; and other devices. Only 19 states ban mechanical restraint for all children; 23 for students with disabilities. Only 19 states ban dangerous chemical restraints for all children. Children locked and tied into mechanical restraints and confined in seclusion rooms at particularly grave risk.
- Children confined in closets and other isolation rooms and spaces unobserved have been killed, injured, and traumatized. But only 17 states require staff to continuously watch all students in seclusion; 27, students with disabilities. At Atlanta teen died in seclusion while being checked on occasionally in 2007; an Indiana child attempted suicide while being monitored occasionally in 2011.
- Certain requirements ensure that seclusion and restraint are used only as last resorts and only as long as an emergency lasts. Far too often, staff skip over less restrictive measures and move directly to restraint and seclusion. They may use them after any emergency ends, sometimes for hours. Other students must remain in seclusion or restraint until they can sit perfectly still or do other tasks unrelated to an emergency. Children with significant disabilities may be unable to respond to such commands and yet pose no threat of danger. Only 18 states by law require that less restrictive and harmful methods either fail or be deemed ineffective before restraint are used on all children; 24, children with disabilities. These numbers are 17 and 22 for seclusion respectively. Moreover, only 18 states by law require restraint and/or seclusion to end for all children when the emergency ends; 23, for children with disabilities.
- **In 23 states, schools must by law notify all parents of both restraint and seclusion; in 35, parents of students with disabilities. But many states still do not require notification or timely notification.** There are 34 states that do not require parents to be notified within 24 hours when restraint and seclusion are used on all students, 25 states, when used on students with disabilities. It is important to notify parents promptly, so they can seek medical care for injuries (hidden or obvious) and trauma. But the majority of states with laws or nonbinding guidance about parent notification favor notification on the same day or within 1 day. This indicates broad support for such requirements. A “Parental Notification Laws at a Glance” chart is on p.38.
- Data collection is very important. In its 2009 report, the GAO found that state data collection varied significantly. Use of restraint and seclusion appears fairly significant. The 2011-12 Civil Rights Data Collection documented their use on over 110,000 students, with

not all districts apparently reporting. Yet, only 15 states collect even minimal data for all students; 22 for students with disabilities. More states require data keeping at the state, local, or school level, indicating that keeping such records is not burdensome. Data gives schools benchmarks to reduce use of restraint and seclusion. It also enables public oversight and sunshine to prevent abuse of the practices.

NUMEROUS STATES ADOPTED OR OVERHAULED LAWS IN WAKE OF CONGRESSIONAL BILLS

- In December 2009, Congressman George Miller introduced the first national restraint/seclusion bill. At the time, 9 states had laws providing meaningful protections from both seclusion and restraint for all children; 21 for children with disabilities. Today, 29 states have meaningful protection for all students; 34, for students with disabilities. In 2011, Senator Harkin introduced his first restraint and seclusion bill, which is similar in many ways to the House bill, but also incorporated new safeguards. Together, the Congressional bills have had a substantial impact, causing states to adopt and strengthen laws. States have incorporated a number of their features to varying degrees. Still, in many states, critical protections are still missing. State action is not a substitute for national action, but weak national action can weaken state action. The House bill was reintroduced in 2011, 2013, and 2015 (by Congressmen Bobby Scott and Don Beyer); the Senate bill, in 2014.

SOME IMPORTANT SAMPLE STATE PROVISIONS

- The report concludes with some examples of important state law protections for children, several of which were contained in Senator Harkin's bills. One provision ensures that children are able to communicate that they cannot breathe or are experiencing medical distress. Many of the states that adopted laws after Senator Harkin's first bill was introduced have included this requirement. The GAO identified 20 students who died in restraint or seclusion; at least 4 of whom verbally told staff that they could not breathe. Many children cannot speak and rely on sign language or augmentative devices to communicate; others do not speak English.
- There are several other protections in the Harkin bills that states also include in their laws. Several states prohibit using more force than necessary is used during restraint or seclusion, decreasing the danger to students and staff. States require schools to refrain from using restraint/seclusion when it is medically or psychologically contraindicated. At least one state prohibits retaliation against those who report restraint and seclusion. Several states prohibit use when medically and psychologically contraindicated. Finally, states require in-person monitoring of children in physical restraint.

How Safe Is The Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies

March 22, 2015

Note: Before using the report, please read the paragraph “Important Technical Details” on page i. It explains the codes and abbreviations, and copyright protections. The term “laws” includes both statutes and regulations as both have the full force of law and are mandatory and must be obeyed. I use 51 “states” to include the District of Columbia.

I. INTRODUCTION

A. Background

It has been almost 2 decades since the *Hartford Courant*’s major investigative series about restraint and seclusion. Last year, *National Public Radio* and its investigative reporting affiliate *ProPublica* did a more recent investigative project. In that time, a number of states have enacted laws to protect children, and a number have failed to do so. Today, as in 1998, students can move across a river or down a highway and lose their protections by crossing a state boundary. Of course, having a single weak law for all of America will not protect children either. This report, *How Safe Is the Schoolhouse*, analyzes those state restraint and seclusion laws and policies.

In 1998, the *Hartford Courant* published its examination of deaths and injuries from restraint and seclusion. Its stories included a 12 year old boy with disabilities who died face down in restraint at a residential school after a dispute over a teddy bear.¹ Over the next 17 years, students continued to be killed, hurt, and traumatized by restraint and seclusion, as documented by the Government Accountability Office (GAO) in 2009,² Congressional hearings in 2009 and 2012, and a wealth of media reports and investigations.³ In 2011-12, restraint and seclusion were used on at least 110,000 children in school, according to school district reports.⁴ Every week brings another media story or report.

¹ Eric Weiss, et al., *11 Months, 23 Dead, Series: Deadly Restraint*, HARTFORD COURANT, Oct. 11, 1998.

² UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS, SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5-8 (2009).

³ News reports range from the large national media to state and even smaller local publications. See Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASHINGTON POST, Jan. 19, 2015; Joseph Shapiro, *National Data Confirm Cases of Restraint and Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014; Heather Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA, June 19, 2014; John Schuppe, *Outcries Prompt Many States to Reconsider Seclusion of Students*, NBC CONNECTICUT, Nov. 19, 2013; Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Brian Ross, Angela M. Hill and Matthew Mosk, *Death at School: Child Restraints Spark Controversy*, ABC WORLD NEWS TONIGHT, Broadcast Nov. 29, 2012; *Locked Away Series*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Aug. 5-7, 2012; Rachel Dove-Baldwin, *Parents Concerned about In-School Abuse*, WILLIAMSON (WV) DAILY NEWS, Oct. 6, 2012.

⁴ Department of Education Office for Civil Rights, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE (March 2014) [hereinafter CRDC 2011-12 Report]. Because not all districts tracked or reported the information in 2011-12, they may be represented by zeroes in the collection. The reported collection was likely the tip of the iceberg.

The GAO documented such stories as those of a 7-year-old girl who died after being restrained face down, kindergarteners tied to chairs with duct tape who suffered broken bones and bloody noses, and a young teen who hung himself while alone in a seclusion room, his teacher sitting outside. Most incidents involved children with disabilities.⁵

At House Congressional hearings, two mothers told the stories of their abused children. A young teen was suffocated in prone restraint by a special-education teacher twice his side. He said “I can’t breathe.” He was told that if he could speak, he could breathe, his foster mother testified. A 7 year old girl with Asperger’s syndrome was injured by repeated restraint. In the final incident, the staff member grabbed her wrists and forced them between her shoulder blades, lifting the child and driving her head-first into the ground. The school did not inform the parents of the head trauma, which would have warned them to watch for a concussion.⁶ At Senate hearings, a third mother testified that her son was secluded “scores of times,” restrained in basket holds and by multiple staff grabbing his arms, wrists, and legs. He moved to a program that used comprehensive positive supports and interventions instead, emerging as an honor roll student.⁷



A mountain of evidence of seclusion and restraint’s dangers has accumulated over the years, including the impact on both children and staff.⁸ The National Disability Rights Network (NDRN) in 2009 catalogued the use of abusive interventions against children in over 2/3 of states,⁹ and state protection and advocacy agencies have also published reports.¹⁰ For the Council of Parent Attorneys and Advocates (COPAA), this author documented 185 episodes in which aversive

⁵ UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, SECLUSIONS AND RESTRAINTS, SELECTED CASES OF DEATH AND ABUSE AT PUBLIC AND PRIVATE SCHOOLS AND TREATMENT CENTERS 5-8 (2009).

⁶ *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearings before the House Comm. on Education and Labor*, 111th Congress (2009) [hereinafter *House Hearings*] 16-17 (testimony of Toni Price), 11-13 (testimony of Ann Gaydos).

⁷ *Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students, Hearings before the Senate Comm. on Health, Education, Labor, and Pensions*, 112th Congress (2012) (testimony of Debbie Jackson).

⁸ See H.R. REP. NO. 111-417, PREVENTING HARMFUL RESTRAINT AND SECLUSION IN SCHOOLS ACT 11-14 (2009).

⁹ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009).

¹⁰ Examples include DISABILITY LAW CENTER OF VIRGINIA, RESTRAINT IN VIRGINIA’S PUBLIC SCHOOLS: INVESTIGATIVE STUDY OF POLICIES AND PROCEDURES TO PROTECT STUDENTS (2014); DISABILITY RIGHTS OREGON, KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON’S SCHOOLS (2011); ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009); DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007). Several other Protection and Advocacy agencies also wrote outstanding, highly useful reports.

techniques were used, often on young children.¹¹ In 2005, TASH and the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APRAIS) published *In the Name of Treatment*.¹² The Council for Exceptional Children's Council for Children with Behavioral Disorders has described the "wide variety of injuries and deaths [that] have occurred while students are in seclusion environments including suicide, electrocution, and self injury due to cutting, pounding, and head banging"¹³ and the "widespread" use of restraint in educational and other environments.¹⁴

More recently, the Connecticut Office of the Child Advocate reported in 2015 about more than 1,300 incidents of injury during restraint or seclusion, with more than 2 dozen labeled serious injuries.¹⁵ In 2011-12, the most current Civil Rights Data Collection demonstrated disproportionate use of the practices upon children with disabilities and children with disabilities who are of color. Students with disabilities comprised 12% of the 2011-12 student population, but 75% of those in the collection physically restrained and 58% of those secluded. Nondisabled students represent 25% of those restrained and 42% of those secluded. African-American students made up 19% of students with disabilities under IDEA, but 36% of those subjected to mechanical restraint.¹⁶

A few states have also published data on race. Connecticut, which publishes one of the most substantial state data collections, reported that African-American students were 24.3% of those restrained or secluded, but 15.8% of students covered by IDEA. (Connecticut law counts restraint and seclusion of children with disabilities and those who are referred for an IDEA evaluation.) Minnesota's 2012 data showed that in 2012, African-American students were 12% of the population in special education, but 37% of students subjected to prone restraint, 35% of those subjected to physical restraint, and 34% of those secluded.¹⁷ These states are to be commended for their data work and for demonstrating a great value on sunshine and public awareness.

Congressional bills providing comprehensive protections for all students nationwide have been introduced, but have not passed. In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee) and Congresswoman Cathy McMorris Rodgers introduced the

¹¹ JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Council of Parent Attorneys & Advocates 2009).

¹² TASH AND THE ALLIANCE TO PREVENT RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION, *IN THE NAME OF TREATMENT: A PARENT'S GUIDE TO PROTECTING YOUR CHILD FROM THE USE OF RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION* (2005).

¹³ Council for Children with Behavioral Disorders, Council for Exceptional Children, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

¹⁴ Council for Children with Behavioral Disorders, Council for Exceptional Children, *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009).

¹⁵ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* (Office of the Child Advocate Feb. 2015).

¹⁶ CRDC 2011-12 Report at 1.

¹⁷ Conn. Dept. of Ed., *Annual Report on the Use of Physical Restraint and Seclusion in Connecticut, 2012-13* (2014); Minn. Dept. of Educ., *The Use of Prone Restraint in Minnesota Schools: January 2012 through December 2012* (Feb. 2013). Because the laws in both states apply only to students with disabilities, it would have been impossible to determine whether restraint and seclusion are disproportionately used upon students with disabilities.

first national bill to protect children from restraint, seclusion, and other aversives.¹⁸ The bill passed the House but did not become law. Similar versions of the Keeping All Students Safe Act was reintroduced by Senator Tom Harkin (Chair, Health, Education, Labor and Pensions Committee) and Congressman George Miller in each succeeding session of Congress (2010-12 and 2013-14).¹⁹ The 2014 bills garnered 70 cosponsors together, but did not become law. In February 2014, Congressman Don Beyer introduced the Keeping All Students Safe Act in the House, a bill that was virtually identical to Congressman Miller's bill with Congressman Bobby Scott (Ranking Member, House Education and Workforce Committee) as primary original cosponsor. In the same month, as Congress debated the Elementary and Secondary Education Act, Congressman Scott introduced a Minority Substitute bill that included the Keeping All Students Safe Act.²⁰ The House and Senate used hearings to shine a light on the issues in 2012²¹ and 2009.²²

As Congress has not acted, the issue has been left to the states. A patchwork quilt of laws, regulations, voluntary guidance, and complete silence covers the nation. The quilt has many holes, and parents are often unaware of the laws--and their loopholes. This report concentrates on the states because state law presently controls the issue. But state activities are no substitute for federal action. A decision by their parents to move across a state border should not cause a child to lose his/her protections from these dangerous practices.

How Safe is the Schoolhouse has three purposes. First, it examines and describes the current state statutes and regulations (laws) about seclusion/restraint. **In this report, the term "laws" includes statutes and regulations, both of which are legally binding and have the full force and effect of law.**²³ The term does not include state guidance or voluntary policies, as they have no legal effect. This report discusses protections for all children and those only for children with disabilities--an expansion from the original 2012 focus on disability. Second, the report analyzes the impact of the national Congressional efforts on states that have enacted or strengthened their laws since 2009. Third, the report explores particular state requirements which provide important protections.

¹⁸ H.R. 4247 (111th Congress, introduced 2009).

¹⁹ H.R. 1381 (112th Congress, introduced 2011); H.R. 1893 (113th Congress, introduced 2013); S. 2020 (112th Congress, introduced 2012); S. 2036 (113th Congress, introduced 2014).

²⁰ H.R. 927 (114th Congress, introduced 2015); Amendment in the Nature of a Substitute for the Student Success Act (ESEA Revision), H. Amdt. 66 to H.R. 5, Title IX, Subtitle C (114th Congress, introduced Feb. 27, 2015).

²¹ *Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students, Hearings before the Senate Comm. on Health, Education, Labor, and Pensions*, 112th Congress (2012) [hereinafter *Senate Hearings*]. The Senate hearings are discussed in greater detail throughout the report.

²² *House Hearings* (passim).

²³ Validly promulgated regulations have the force of law and are binding and mandatory just as statutes are. See, e.g., *United States v. Mead Corp.*, 533 U.S. 218 (2001) (quoting *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)).

B. State Changes in 2014 and early 2015

Prior editions of this report were published in 2012, 2013, and early 2014. In 2014, Alaska and Hawaii enacted new statutes creating comprehensive safeguards against restraint and seclusion. New Hampshire added seclusion to its existing statute protecting all children comprehensively from restraint. Massachusetts substantially revised its regulations, closing several broad loopholes that had existed, such as allowing parents to waive the right to notice. Indiana and Delaware enacted regulations which, in part, strengthened their policy schemes. Virginia empowered its Commission on Youth to study restraint and seclusion, which resulted in a comprehensive bill that was signed by the Governor on March 16, 2015. The Virginia law directs the Virginia Department of Education to write comprehensive regulations in accord with certain standards. Until those regulations are promulgated, Virginia has no protections for students. Ohio removed an exemption from its law for charter schools.²⁴ Bills and proposed regulations are pending in a number of states. Unfortunately, despite the hard work of families, professionals, and school staff, several bills died in state legislatures, including in Mississippi, Rhode Island, and Arizona in 2014, and New Mexico in 2015.

²⁴ This exemption existed only because Ohio's general charter school law barred the state from imposing many regulations on charter schools. Thus, the restraint and seclusion regulation did not apply to those schools until the state passed a law specifically allowing this. Some members of the public mistakenly think that Ohio had written a specific exemption into its restraint/seclusion law for charter schools. This is not true.

Patchwork Of State Laws Means Weak Protections In Many States

II. PATCHWORK OF STATE LAWS CREATE WEAK PROTECTIONS IN MANY STATES

A. Meaningful Protections in Law

As of March 18, 2015, only 22 states had meaningful protections in their statutes and regulations protecting all children from both restraint and seclusion: Alabama, Alaska (2014), Colorado, Georgia, Hawaii (2014), Illinois, Indiana, Iowa, Kansas,²⁵ Kentucky, Maryland, Massachusetts, Maine, New Hampshire (2014), North Carolina, Ohio, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. These statutes and regulations have the force of law and must be obeyed. Thus, this report uses the term “laws” to refer to them.²⁶

Only 22 state laws meaningfully protect all children from both restraint and seclusion; only 35 provide similar protection for children with disabilities alone.

In March 2015, Virginia adopted a statute that directs the Virginia Department of Education to write regulations incorporating comprehensive protections. Until those regulations are promulgated, Virginia lacks meaningful protections for students.²⁷ Once regulations are promulgated, Virginia is expected to provide meaningful protections.

In addition, 2 states have statutes or regulations providing some safeguards for all children and more comprehensive ones only for children with disabilities. New York has one regulation for all children and another applicable only to children with disabilities. Washington has some minimal restraint protections for all children and some more restraint and seclusion substantial protections for children with disabilities.

America should protect all children from restraint/seclusion. These dangerous techniques can hurt any child. The most recent data indicates that 25% of students restrained, and 42% of those in seclusion confinement do not have disabilities. Many states take special care to protect children with disabilities because they have historically been subjected to these practices and

²⁵ As stated in the text accompanying notes 56-57, the author has deep concerns about the Kansas regulation and whether it provides meaningful protections. Further investigation will be undertaken. If the Kansas regulation is not implemented or enforced (but only requires districts to have policies on paper), or if it is misunderstood or interpreted to allow restraint and seclusion under a wide variety of circumstances, this would raise concerns that the regulation is not a meaningful protection.

²⁶ The designation of “meaningful” is made based only on the statute or regulation wording. If a state only requires school districts to have a policy, but does not require its implementation, this would undercut the protections and render them non-meaningful. The same is true if the state allows school personnel to interpret the statute in a manner contrary to its ordinary meaning. This report is an analysis of the laws and policies as they exist on paper. A state should rely on the observations and knowledge of parents and professionals in the state regarding how, and whether, a law is implemented and adequately enforced. Please see text accompanying notes 56-57, below.

²⁷ Virginia Acts of the General Assembly, Chap. 142 (2015 session).

disproportionately suffered death, injury, and trauma. They comprise the vast majority of students restrained and secluded according to the most recent data. Children with disabilities may not be able to talk, cognitively process, or effectively communicate what happened to them, making the dangers greater.²⁸

Practices are used upon children with disabilities and children of color disproportionately.

Recent data has also shown a disproportionate impact upon students of color, and in particular, African-American children with disabilities.²⁹ In addition, the media has reported about the use of restraint and seclusion upon children who are African-American, Asian, Latino, Native Hawaiian, White, and of all races. Some examples are set out in the footnote.³⁰

²⁸ The disproportionate impact upon children with disabilities is readily apparent from the many articles and reports documenting harm to students with disabilities, including reports almost every month in the news media. The GAO reported that almost all of the hundreds of reports it received had involved students with disabilities. GAO REPORT at 5. As one commentator has observed, “[There is a] special danger and injustice inherent in the use of restraints on people with disabilities: they are used repeatedly as standard procedure, and the people on whom they are used have no right or power to end these abusive relationships.” Pat Amos, *What Restraints Teach*, TASH CONNECTIONS, Nov. 1999.

²⁹ SEE CRDC, DISCUSSED ABOVE IN SECTION I.A (INTRODUCTION, BACKGROUND).

³⁰ Angela Greenwood, [Mother Claims Special Needs Daughter was Caged in Fresno Classroom](#), YOURCENTRALVALLEY.COM (KSEE24 TV), Nov. 12, 2014; Jacob Pucci, [Inside Syracuse School’s Illegal Timeout Room](#): Kid, 9, Sent to ‘Elevator Machine Room’, SYRACUSE.COM (SYRACUSE POST-STANDARD PUBLISHER), Oct. 2, 2014 with link to applicable police report; Kemberly Richardson, [Video Shows Special-Needs Student Restrained in Bronx School](#), EYEWITNESS NEWS ABC 7, Sept. 30, 2014; Ken Kalthoff, [Mansfield ISD Scream Room Draws Federal Lawsuit](#), NBCDFW5, Aug. 29, 2014; Joseph Shapiro, [National Data Confirm Cases of Restraint And Seclusion](#) in Public Schools, NATIONAL PUBLIC RADIO, June 18, 2014; Heather Vogell, Violent and Legal: [The Shocking Ways School Kids are Being Pinned Down](#), Isolated Against Their Will, PROPUBLICA, June 19, 2014; Alia Wong, [Hawaii Lawmakers Mull Clearer Rules for Schools with Uncontrollable Kids](#), HONOLULU CIVIL BEAT, Feb. 20, 2014; Kevin Keen, [Tucson Student: Teacher Taped Me to a Chair](#), KGUN9 (Ariz.), Aug. 20, 2013; Joel Moreno, Mom: [School Used Isolation Room to Punish Special Needs Child](#), KOMO News Network, Apr. 23, 2013; Rich Rodriguez, [Student Tied To Classroom Chair; Teacher Accused](#), KMPH Fox-26 (Fresno), Jan. 31, 2013; Camilla Mortensen, [Use of Seclusion Rooms at 4J Challenged](#), Eugene Weekly, Dec. 20, 2012 ; Greg Toppo, [Restraint Can Dispirit and Hurt Special-Ed Students](#), USA TODAY, May 18, 2009.

For children with disabilities, 34 states by law require schools to provide some meaningful protections against both restraint and seclusion.³¹ They are

Alabama, Alaska (2014), California^d, Colorado, Connecticut^d, Florida^d, Georgia, Hawaii (2014), Illinois, Indiana, Iowa, Kansas,³² Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Montana^d, Nevada^d, New Hampshire, New York^m, North Carolina, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Texas^d, Vermont, Washington^m, West Virginia, Wisconsin, and Wyoming. Of these, many adopted their laws after the first Congressional

bill was introduced by Congressman Miller in December 2009. Many states seem to have based their laws on the bills introduced by Congressman George Miller and Tom Harkin, with a slight bias for the older Miller bill. Although Virginia passed a law in 2015, it only directs the State Education Agency to promulgate regulations and will not be counted here until those regulations are adopted.

34 states provide some meaningful protections by law from restraint & seclusion for children with disabilities.

Some states have more protections than others states.³³ Some states have statutes; others have regulations; and some have both.³⁴ In many states, regulations are more easily changed than statutes, requiring only a state Department of Education comment and approval process. Statutes require a majority vote in two legislative houses and a governor's approval. (In some states, legislative committees do review regulations.) Accordingly, weaker national seclusion/restraint proposals have the potential to weaken state seclusion and restraint rules, and stronger national proposals, to strengthen them. Even the states with safeguards offer varying degrees of protections. Some protect children more from one practice than another.³⁵

Florida came close to being included in the “weak” group, and ranks at the bottom of states with

³¹ The 2012 and 2013 editions of the report counted states with safeguards only against either restraint or seclusion as providing meaningful protections. This was corrected in the 2014 report. Because such states have no protection against the other dangerous procedure, it is inaccurate to count them as having meaningful protections in general. Indeed, it has the potential to give a misleading impression about the state's laws. For this reason, such states have been moved to a new category for states with meaningful protection against one practice but not the other. New Hampshire was originally in this category, providing protection against restraint but not seclusion for all students. But in 2014, it extended its legal protections to seclusion.

³² See text accompanying notes 56-57, below.

³³ To provide meaningful protection, a state must fall in one of two categories. One, it provides multiple protections against restraint and/or seclusion for students. Two, it has few protections but strictly limits the technique to emergency threats of physical harm. This designation does not necessarily mean that a state's laws provide sufficient protection, as the report explains.

³⁴ These 7 states have statutes alone: Alaska (2014), Florida^d, Hawaii (2014), Louisiana^d, North Carolina, Nevada^d, and Wisconsin. These 14 states have both statutes and regulations: California^d, Connecticut^d, Delaware (2013 statute, 2014 regulations), Illinois, Indiana (2013 statute, 2014 regulations), Maine, Maryland, Minnesota^d, New Hampshire^m (2014 amended statute for restraint and seclusion, additional 2014 regulations^d for seclusion), Oregon, Tennessee^d, Texas^d, Washington, and Wyoming. Finally, these 14 states have only regulations: Alabama, Colorado, Georgia, Iowa, Kansas, Kentucky, Massachusetts, Montana^d, New York^m, Ohio, Pennsylvania^d, Rhode Island, Vermont, and West Virginia. When its process is complete, Virginia will have both a statute and regulation; until regulations are adopted, it has no binding protections actually applied to children.

³⁵ For example, Illinois limits restraint to threats of physical harm but permits seclusion more broadly.

meaningful protection. Florida was classified as having meaningful protections because it has strong data collection provisions, monitors schools for compliance with the law and publishes monitoring reports, requires parental notification, bans restraint that interferes with breathing, and has other features in its law. Florida's law requires schools to report why each restraint incident involved a threat of serious bodily injury. Yet, the statute does not explicitly limit restraint and seclusion to such emergencies, a significant problem. Efforts to amend Florida's law to impose such a restriction have failed.³⁶

Finally, a "meaningful" designation by this author is not enough for a state to protect students from dangerous restraint and seclusion. Policy schemes that are not enforced and that do not provide strong, independent mechanisms for parents to bring complaints or enforce the law are problematic. Similarly, a state law that requires districts to adopt policies but does not require them to implement or enforce the policies to protect children, is likely not an effective law. Sometimes, a seemingly strong regulation may be interpreted in such a way as to undermine it. Intentional or unintentional loopholes also have the potential to turn what appear to be meaningful protections into hollow ones. When these kinds of activities occur, children are at risk of physical and psychological harm from continued restraint and seclusion. The author of this report lacks the resources to study whether each state law is implemented, how each is implemented, and whether there are sufficient enforcement mechanisms. Nor is she able to ascertain whether each is interpreted in a manner that weakens or strengthens protections for children. These issues are impossible to catalogue, and local practitioners and families are likely the most knowledgeable about these issues.

Laws that are weakly enforced and monitored, or that do not require school districts to actually implement protections for children, are of very questionable effectiveness.

B. Legal Protection from One but Not the Other

There are 3 states that provide meaningful protections in law from one practice but not the other, Arkansas, Arizona, and Delaware. Arkansas' comprehensive regulations protect children with disabilities from seclusion. There is no state law limiting restraint. In 2013, Arkansas passed a law directing the State Education Agency to report about resources school districts need to reduce restraint through positive behavioral interventions and other activities. Nonetheless, the new statute went no further and imposed no requirements limiting restraint. In 2014, Arkansas adopted nonbinding recommended guidelines about restraint.

Arizona in 2013 adopted a statute permitting seclusion for threats of physical harm or in other situations with parental consent. Arizona does not regulate restraint. In 2014, it published a document listing excerpts from other materials about best practices in restraint and seclusion. Bills have been introduced in Arizona in the last few legislatures to regulate restraint, but none

³⁶ Florida H. 291 and S. 1370 were 2013 bills that would have limited seclusion/restraint to such emergencies; they died in committee.

have passed yet.

In 2013, Delaware adopted comprehensive protections for all students from physical restraint. The law bans seclusion and mechanical restraint, but permits the state Department of Education to waive these bans on a student-by-student basis with compelling justification. There are no limits on what constitutes a compelling justification and no restrictions on the circumstances under mechanical restraint and seclusion could be used (e.g., punishment, behavioral compliance, behaviors addressable through less restrictive measures, etc.). Too often, these kinds of exceptions can become doors more open than intended. If Delaware by law had limited its seclusion waivers to emergencies threatening physical harm, it would have been included in the meaningful law category.

c. Weak Protections in Law

As of March 18, 2015, there were 5 states with laws providing such limited, weak protections that they are not even remotely akin to those providing meaningful protection. Some do not even protect children, but simply authorize conduct. They include Michigan (statute permits “reasonable physical force” to prevent threats of physical harm or destruction of property, obtain a weapon, or maintain order, restraint is not otherwise limited), Missouri (bans solitary locked seclusion unless awaiting law enforcement), Nebraska (2012 regulation requires LEAs to adopt restraint and seclusion policies, without imposing any requirements whatsoever), Utah^d (regulation requires parental notice, minimal statute requires IEP teams to consider—but not necessarily use—extensive nonbinding guidance), and Washington, D.C. (prohibits “unreasonable” restraint). Five of these states, Washington, D.C., Michigan, Missouri, Nebraska, and Utah, also have much more extensive nonbinding guidelines, likely because their laws are so weak. Alaska and Hawaii had been in this category in the 2014 edition of this report (which brought the total to 7), but they passed laws with comprehensive protections in 2014.³⁷

D. Non-Binding Guidance (No Legal Effect)

As of March 18, 2015, 9 states had voluntary guidelines or policies that impose no mandatory legal obligation. Of these, Oklahoma^d and Utah^d apply their policies only to children with disabilities. New Mexico’s^m seclusion principles applies to all children; its restraint principles, to children with disabilities. Another 6 apply to all children: Michigan, Missouri, Nebraska, South

³⁷ North Dakota has a law that applies only to people with developmental disabilities in schools and other facilities. It limits restraint and seclusion to incidents of physical harm, provides for administrator review, and otherwise, has very few protections. Because this law applies only to students with developmental disabilities, it is not included in the count in this report. In states that collect data, students with other disabilities, including mental health issues, comprise a significant number of those restrained or secluded. Fla. Dept. of Educ., *Restraint Incidents by District, Seclusion Incidents by District*, Aug. 1, 2013– Apr. 30, 2014 (45-66% of students subjected to practices had emotional and behavioral disabilities); Conn. Dept. of Ed., *ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION IN CONNECTICUT, 2012-13 at 10* (2014) (substantial proportion of students restrained and secluded had emotional disabilities or other health impairments, including ADD/ADHD); Tenn. Dept. of Educ., *Student Support, Special Educ., Data Services & Supports, 2012-13 Isolation and Restraint Data* (same).

Carolina, Virginia, and Washington, D.C.³⁸ (As stated, Virginia in March 2015 passed a statute requiring comprehensive protections in regulations, but students will not have protections until those regulations are adopted. Accordingly, the only policy in place is the 2009 Virginia Department of Education’s voluntary, suggested guidance.)

Virtually all of these documents state that they are entirely voluntary and suggestive, *e.g.*, Arkansas (2014) (“this advisory document to provide guidelines and recommendations”); Missouri (a “model policy”); and Nebraska (“provide[s] information and guidance for Nebraska School districts”). In most of these states, students lack separate mandatory legal protection, other than the handful of weak protections described above. Nonetheless, these guidelines represent a State’s opinion that seclusion and restraint are dangerous techniques and that their use should be sharply restricted. They are useful as advocacy documents but do not represent actual protections for children.

Guidelines, model principles, and memoranda are not statutes or regulations.³⁹ They are largely recommendations, not mandatory requirements with the force of law. They provide very little protection—if any. They are very easily changed, requiring only approval by the state Department of Education, rather than a formal legislative or rulemaking process. Guidelines have done so little to protect children that several states have replaced them with mandatory statutes and regulations over the last five years: Alaska (2014), Indiana, Kansas, Kentucky, Louisiana, Ohio, Virginia (2015), Vermont, and Wisconsin. Utah is currently considering proposed comprehensive regulations.⁴⁰

Nonbinding policies have so failed to protect students that 9 states have replaced theirs with mandatory statutes & regulations in the last 5 years.

Experiences with such suggested policies are illuminating. In 2006, following the death of two children in restraint, Michigan adopted a nonbinding state policy recommending that school boards adopt guidelines. After a 2009 statewide survey, Michigan Protection and Advocacy Service (MPAS) concluded that “children remain at risk” and recommended legislation instead. MPAS found that “while some intermediate school districts (ISDs) have tried to apply the voluntary Board policy, most have not.” It further determined that “the Michigan Department of

³⁸ Washington, D.C. uses seemingly mandatory rather than “permissive” language in its documents (e.g. mechanical restraints “are not authorized” in Washington, D.C.) Nevertheless, the policy is not a binding statute or regulation with the force of law. Indeed, a proposed regulation is pending in Washington, D.C. Like any other guidance, this policy may be more easily changed, and need not go through a regulatory or legislative process. State practice determines whether the State will ensure that its policy is followed and whether there are any repercussions for employees or districts that fail to adhere to it.

³⁹ At times, some seem to have viewed such guidelines as the equivalent of statute and regulation. This is likely due to confusion about one proposed Congressional bill, which would have required states to adopt “policies” incorporating the statutory requirements. But States could not eliminate or change the federal requirements; it would be mandatory for schools to follow them. Thus, these mandatory “policies” would differ markedly from the kind of nonbinding guidance currently in place. Such nonbinding guidance documents should not be recognized or treated as statute, regulations, or the mandatory state policies under the proposed bill.

⁴⁰ Utah State Bd. of Educ. Minutes, Nov. 6-7, 2014 (proposed regulation in public comment period).

Education has not taken steps necessary to make the voluntary Board policy binding upon school districts or even to learn whether or not the policy is being used anywhere.” Indeed, MPAS had received seclusion and restraint stories in 32 of the state’s counties, indicating that the nonbinding guidelines did not provide the protection children needed.⁴¹

Similarly, Wisconsin advocacy agencies found in 2009 that the state’s then-existing restraint/seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. Restraint and seclusion continued to hurt and traumatize Wisconsin students. The directives were without the “the force of law” and were not sufficiently enforced. Wisconsin enacted a new statute in March 2012, replacing the nonbinding directives with mandatory law.⁴²

Kentucky adopted a regulation in 2013. Between 2000 and 2013, Kentucky had only voluntary seclusion guidelines. Kentucky Protection & Advocacy investigated over 80 allegations of restraint or seclusion misuse in Kentucky between 2007 and 2012, with many more incidents reported but not investigated.⁴³

Virginia has had nonbinding guidelines for many years, but no mandatory legal requirements. A number of districts adopted a Virginia School Board Association recommended policy, the Virginia Commission on Youth and the Virginia Disability Law Center found. This policy gave school districts 15 days to notify students; allowed restraint and seclusion for a broad array of circumstances when no one was in danger; and provided that if restraint was in a child’s written individualized educational program, it would not be considered a restraint and the child would not receive protections. It differed substantially from the Virginia Department of Education’s own suggested guidelines.⁴⁴ In November 2014, Virginia’s Commission on Youth recommended that the state adopt mandatory regulations; in March 2015, the Governor approved a statute that will require those regulations.

E. States with Neither Laws nor Voluntary Policies

There are 5 states which lack both laws and voluntary principles, despite efforts in 3 to take action. They are Idaho, Mississippi, North Dakota, New Jersey, and South Dakota.⁴⁵ Arizona was

⁴¹ MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5 (2009).

⁴² DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN (2009); 2012 WISC. LAWS 146 (Mar. 19, 2012; previously Senate Bill 353).

⁴³ KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS (2012).

⁴⁴ VIRGINIA SCHOOL BOARD ASSOCIATION POLICY MANUAL, Section JM (2012). For more analysis, see Leah Mills, Virginia Commission on Youth, USE OF RESTRAINT AND SECLUSION BY SCHOOL (Oct. 20, 2014) (VSBA policy used by 78% of all school districts and 89% of those with policies); Disability Law Center of Virginia, SECLUSION AND RESTRAINT IN VIRGINIA’S PUBLIC SCHOOLS: INVESTIGATIVE STUDY OF POLICIES AND PROCEDURES TO PROTECT STUDENTS (August 2014).

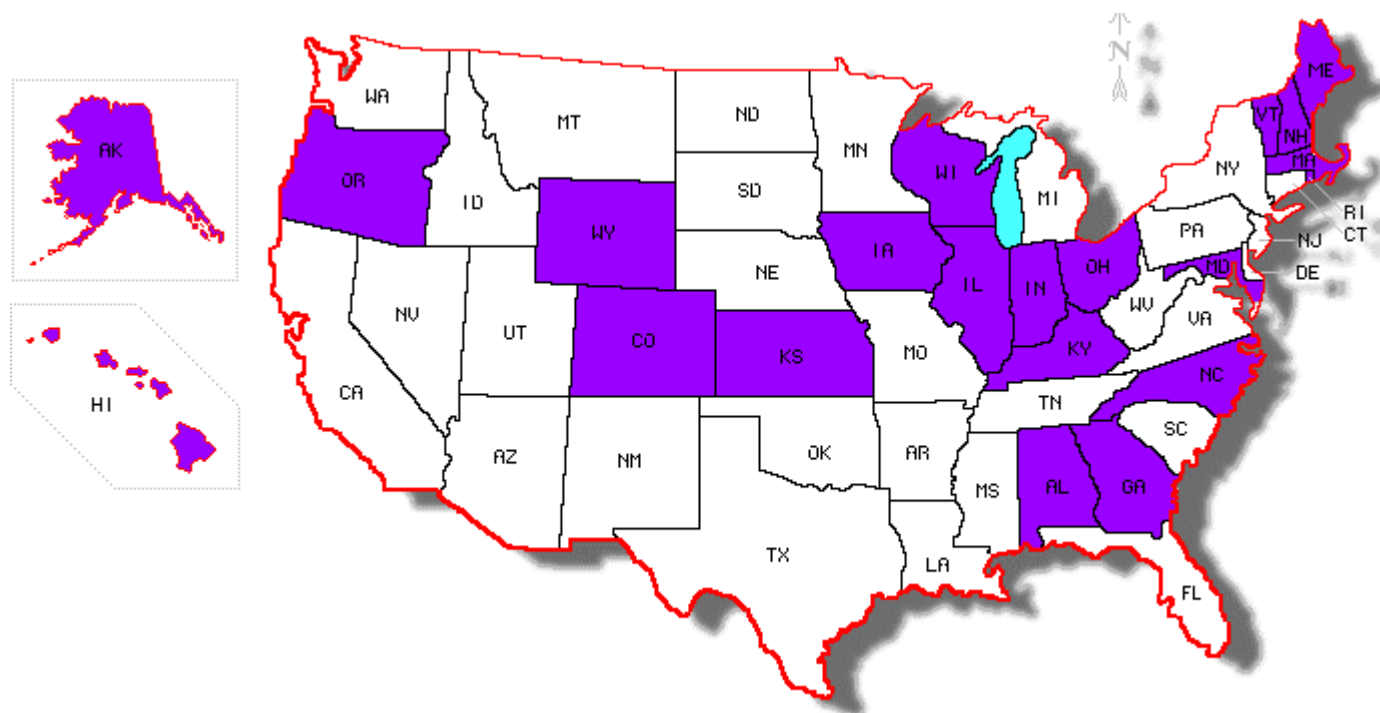
⁴⁵ In 2014, Mississippi considered a proposed bill, the Mississippi Student Safety Act, which passed the Senate but did not pass the House. As of the date of publication, it has not been reintroduced. Idaho deferred any decision

one of these states; it adopted some degree of seclusion protection in 2013 but still has no restraint protections.⁴⁶ North Dakota's legislature is currently considering bill ordering a study of restraint and seclusion, as Virginia's legislature did as part of its process of adopting a law.

on regulations in December 2010. In New Jersey, "Matthew's Law" has been considered each legislative session, but has not passed. In 2014, additional bills were introduced regarding the use of restraint and seclusion in schools.

⁴⁶ Prior to adopting the 2013 statute, Arizona had not taken action. An Arizona task force had drafted recommendations in 2009 but the State did not act upon them or put them forward as suggested state guidelines. Districts were not required to adopt the guidelines or take any actions on restraint/seclusion.

States with Meaningful Protections by Law for All Children (March 18, 2015)



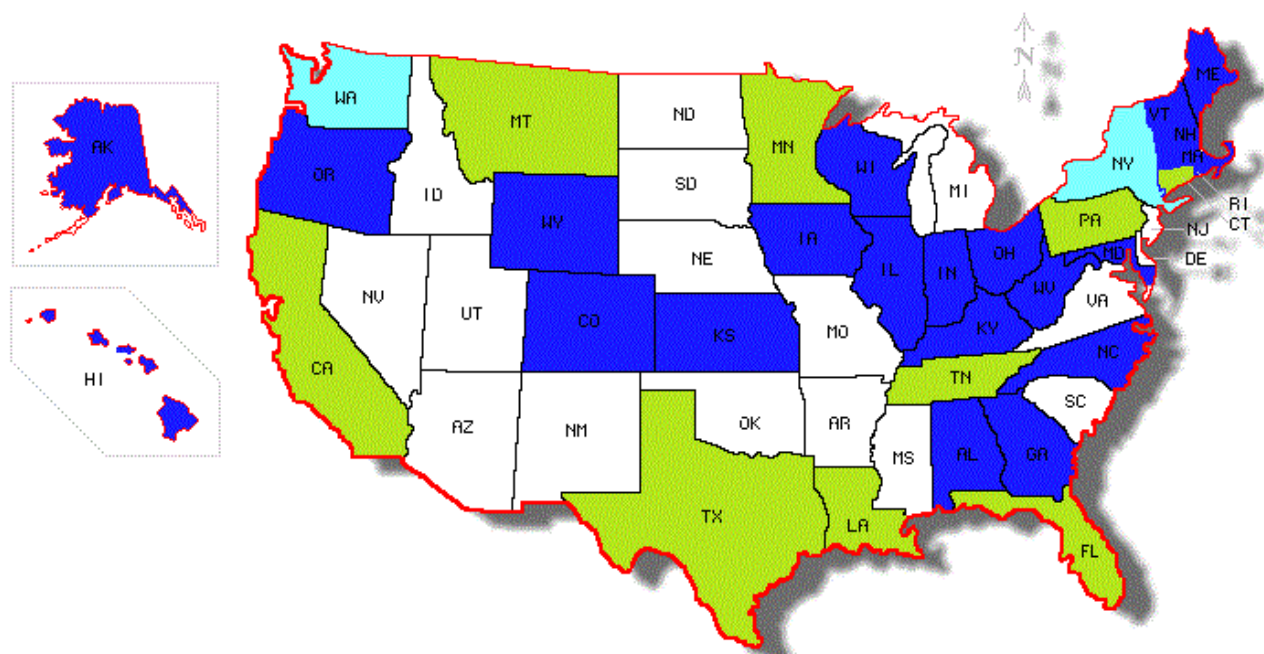
Purple: Meaningful protection in law (statute or regulation) against restraint and seclusion for all children.

White: State does not have meaningful protections in law against restraint/seclusion for all children. Virginia is not included. Its March 2015 statute required regulations to protect children, but these have not been adopted.

KS: see discussion in text limiting designation of meaningful due to concerns raised by Kansas watchdogs.

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**States with Meaningful Protections by Law from
Both Restraint and Seclusion for Children with Disabilities (March 18, 2015)**



Blue (dark): States with meaningful protections in law for all children from both restraint and seclusion

Green (medium): States with meaningful protections in law for children with disabilities only from both restraint and seclusion

Cyan (light): State has mixed scheme, with some protections for all children, other protections only for children with disabilities. WA and NY are the two states shown in Cyan.

VA is not included. Its March 2015 statute required regulations to protect children, but these have not been adopted.

KS: see discussion in text limiting designation of meaningful due to concerns raised by Kansas watchdogs.

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Does State Law Provide Meaningful Protections and Who Does It Cover? (March 18, 2015)

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	All Students	Students w/Disabilities	Other
AK	Meaningful Law (2014)	<i>Included in All Children's Law</i>	
AL	Meaningful Law	<i>Included in All Children's Law</i>	
AR			Meaningful Law Applicable to Only Seclusion. Nonbinding recommended Guidance for Restraint (Not Law; easily changed by state).
AZ			Weak Law, requiring parental notice; permitting seclusion for any reason with parent consent or in physical danger emergency; no limitations on restraint.
CA		Meaningful Law	
CO	Meaningful Law	<i>Included in All Children's Law</i>	
CT		Meaningful Law	
DC			Weak Reg (bans "unreasonable restraint"). D11 <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
DE	Meaningful Law	<i>Included in All Children's Law</i>	
FL		Meaningful Law	
GA	Meaningful Law	<i>Included in All Children's Law</i>	
HI	Meaningful Law (2014)	<i>Included in All Children's Law</i>	
IA	Meaningful Law	<i>Included in All Children's Law</i>	
ID			Nothing
IL	Meaningful Law	<i>Included in All Children's Law</i>	
IN	Meaningful Law	<i>Included in All Children's Law</i>	
KS	Meaningful Law (But see note 46-47 and accompanying text for more information and clarification on what this means and what it does not)	<i>Included in All Children's Law</i>	

	All Students	Students w/Disabilities	Other
KY	Meaningful Law	<i>Included in All Children's Law</i>	
LA		Meaningful Law	
MA	Meaningful Law	<i>Included in All Children's Law</i>	
MD	Meaningful Law	<i>Included in All Children's Law</i>	
ME	Meaningful Law	<i>Included in All Children's Law</i>	
MI			Weak Law (restraint only, purpose for which force may be used). <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MN		Meaningful Law	
MO			Weak Law (unlocked, unattended seclusion while awaiting law enforcement). <i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
MS			Nothing
MT		Meaningful Law	
NC	Meaningful Law	<i>Included in All Children's Law</i>	
ND			Extremely limited law for students with developmental disabilities only applicable to schools and other institutions
NE			<i>Weak regulation requires LEAs to adopt a policy, but does not require anything in it. Nonbinding Guidance (Not Law; easily changed by state)</i>
NH	Meaningful Statute (restraint & seclusion; 2014)	<i>Included in All Children's Law</i>	
NJ			Nothing
NV		Meaningful Law	
NY	some protections for all children, but not as full as those for children with disabilities	Meaningful Law	
OH	Meaningful Law	<i>Included in All Children's Law</i>	

	All Students	Students w/Disabilities	Other
OK			<i>Nonbinding Guidance (Not Law; easily changed by state)</i>
OR	Meaningful Law	<i>Included in All Children's Law</i>	
PA		Meaningful Law	
RI	Meaningful Law	<i>Included in All Children's Law</i>	
SC			<i>All-Students Nonbinding Guidance (Not Law; easily changed by state)</i>
SD			Nothing
TN		Meaningful Law	
TX		Meaningful Law	
UT			<i>Nonbinding Guidance (Not Law; easily changed by state). Weak law requires reference to guidelines. Another law requires parental notice.</i>
VA			<i>Currently Nonbinding Guidance. Virginia in March 2015 passed a statute requiring comprehensive protections in regulations, but students will not have protections until those regulations are adopted.</i>
VT	Meaningful Law	<i>Included in All Children's Law</i>	
WA	Some protections for all children, but not as full as those for children with disabilities. Amended in 2013.	Meaningful Law	
WI	Meaningful Law	<i>Included in All Children's Law</i>	
WV	Meaningful Law	<i>Included in All Children's Law</i>	
WY	Meaningful Law	<i>Included in All Children's Law</i>	

Restraint and Seclusion As Emergency Interventions When Physical Safety is Imminently Threatened

III. RESTRAINT & SECLUSION AS EMERGENCY INTERVENTIONS WHEN PHYSICAL SAFETY IS IMMINENTLY THREATENED

Seclusion and restraint are risky, emergency interventions that should be employed only when necessary to protect individuals from severe physical danger. This section of the report analyzes whether states limit physical restraint and seclusion to emergencies, or allow them under other circumstances when there is no threat of serious physical harm.

A. Restricting Restraint to Emergencies

Of the 51 states, 16 by law limit restraint of all children to threats of physical danger; 20, for children with disabilities, as discussed below. This means 36 states permit restraint of all children when absolutely no one is in danger (32 states, for children with disabilities).

Restraint has been used for failing to do schoolwork, being unable to pay attention due to disability issues, pushing items off desks, getting out of a seat; sharpening too many pencils, taking off shoes, staff convenience, punishment, and similar activities.⁴⁷

Restraint should only be used in rare emergencies where it is necessary to protect people from serious physical danger because it is so very harmful. The GAO documented at least 20 cases of children who died from restraint.⁴⁸ In 2012, a teenager with disabilities, [died in physical restraint](#) in a private school in New York after refusing to leave a basketball court.⁴⁹ The GAO also reported on elementary school children placed in strangleholds, tethered to ropes, and restrained for long periods of time. Bungee cords and duct tape were used to fasten children to furniture. One preschooler was strapped into a miniature electric chair replica. Children endured broken limbs, bloody noses, bruises, and post-traumatic stress syndrome as a result of the restraints.⁵⁰

The GAO found at least 20 children died in restraint and many others were injured. Such a dangerous practice should be limited to emergencies threatening serious physical harm.

⁴⁷ See GAO REPORT at 22-25; Kevin Keen, *Tucson Student: Teacher Taped Me to a Chair*, KGUN9 (Ariz.) (Aug. 20, 2013); Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Sandra Chapman, *13 Investigates: Duct Tape Incident Prompts Call for Change in State Law*, WTHR (IND.), Feb. 7, 2013; Zac Taylor, *Mason Principal Sued Over Alleged Abuse*, CHARLESTON GAZETTE, Apr. 13, 2012.; JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009) (passim); NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009) (passim).

⁴⁸ GAO REPORT at 8.

⁴⁹ Brian Ross, Angela M. Hill and Matthew Mosk, *Parents Protest Dangerous Discipline for Autistic, Disabled Kids*, ABC NEWS, Nov. 29, 2012 (web article accompanying television broadcast); *Mom Sues School Over Special-Needs Son's Death*, ABC NEWS, Dec. 6, 2012; Shawn Cohen and Lee Higgins, *Corey Foster's Mom Sues Leake & Watts in His Death*, JOURNAL NEWS (LOHUD.COM), Dec. 6, 2012.

⁵⁰ GAO REPORT at 1, 8, 10-12.

An earlier National Disability Rights Network report found that students were strapped into chairs, restrained on the floor by multiple adults, held in arm locks and handcuffs, and restrained in other unsafe ways, with some incidents resulting in death, broken bones, and other injuries. The media has also reported on the dangers of restraint. The Minneapolis Star Tribune reported in 2013 about the restraint of a boy with autism that interfered with his breathing and of a 10 year old who was restrained face down for nearly an hour for having a tantrum over a puzzle.⁵¹

1. Restraint Only For Emergencies Threatening Physical Danger

Only 16 states by law protect all children from the use of restraint except for immediate threats of physical danger.⁵² They are Alabama, Alaska (2014), Colorado, Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Massachusetts (2014), New Hampshire (serious physical harm), Ohio, Oregon (serious physical harm), Rhode Island (serious physical harm), Vermont, and Wisconsin.

The remaining 35 do not provide all children with this protection: Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, New Jersey, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wyoming, and Washington, D.C.

Restraint is limited to emergencies imminently threatening physical harm for all children in 16 states, children with disabilities, 20 states. Other states allow it when no one is in physical danger.

Only 20 states by law limit restraint of children with disabilities to emergencies involving an immediate risk of physical harm or serious physical harm. There are 15 that require physical harm: Alaska (2014), Alabama, Colorado, Connecticut^d, Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Ohio, Pennsylvania^d, Tennessee^d, Vermont, and Wisconsin. Another 5 explicitly require serious or substantial physical harm, Louisiana^d, Massachusetts (2014), New Hampshire, Oregon, and Rhode Island. Out of an abundance of caution, Florida was removed from this category in the January 2014 edition of this report. At best, it has an implicit requirement that physical harm occur because it requires a report after each incident identifying the threat of serious physical harm. But the law does not explicitly require such a threat to exist before restraint or seclusion are used, and is silent about the grounds for using the procedures. More information is set out in the footnote below explaining this decision, including communications with the state Department of Education and a description of some of its materials.⁵³

⁵¹ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013.

⁵² For purposes of this report, physical harm and bodily harm, injury, danger, and safety are used synonymously.

⁵³ Florida's 2011 statute, FLA. STAT. 1003.573, requires schools to explain in their incident reports why there was an imminent risk of serious harm if restraint/seclusion are used. But the statute itself does not actually limit the reasons for which restraint and seclusion can be used and does not restrict their use to emergencies threatening bodily harm. Earlier versions of this report analyzed the incident reporting requirement as a potential implicit

New Hampshire includes property destruction that could create an imminent risk of serious bodily harm as a basis for restraint.

In 2013, Kansas approved a regulation that appears to limit restraint and seclusion to threats of physical danger. It limits restraint and seclusion to situations in which “a student presents an immediate danger to self or others.” Danger is ordinarily defined as meaning the possibility of being “hurt or killed,” and “a person or thing that is likely to cause injury, pain, harm, or loss.”⁵⁴ For this reason, Kansas was classified in this report as limiting restraint and seclusion to incidents of physical danger. Similarly, Kansas regulation included within the permitted uses of restraint and seclusion “violent action that is destructive of property.” Because the term violent ordinarily means physical injury and harm,⁵⁵ the author again classified this as requiring a threat of physical danger to use restraint and seclusion.

But Kansas watchdogs have expressed concern that restraint and seclusion are not limited to threats of physical danger in reality, but are used for things like tantrums and other actions that do not present a threat of physical harm. In other words, the term “danger” is not given its ordinary meaning by Kansas schools. If restraint and seclusion are used when there is no threat of physical harm, then Kansas law does not limit restraint and seclusion to such situations.⁵⁶

Importantly, readers cannot use *How Safe is the Schoolhouse* in isolation; they must pay attention to what parents and professionals observe occurring. No one tool is sufficient for evaluating the use of restraint and seclusion in a state. The words of a statute or regulation

physical harm requirement. The earlier versions also observed that school staff could conclude that there was not a risk of harm standard because the statute was silent. After reviewing more materials, the author has concluded that the incident reporting requirement is not enough to conclusively state that Florida restricts restraint and seclusion to emergencies threatening physical harm. Florida itself appears to view the statute in this manner. For example, the State’s overview of the new law did not discuss at all the circumstances under which restraint or seclusion could be used or prohibited (other than describing the ban on restraints compromising breathing), FLA. DEPT. OF EDUC., WHAT A DIFFERENCE A DAY MAKES! RESTRAINT AND SECLUSION DOCUMENTING, REPORTING, AND MONITORING (Sept. 14, 2011), www.fldoe.org/ese/ppt/amm/11rsdrm.ppt. Florida monitors school districts for statutory compliance. Its monitoring reports do not describe a standard for using restraint/seclusion. While the monitoring teams point out other deficiencies at the schools, they do not discuss whether restraint and seclusion are used only for threats of physical danger. Moreover, when asked about the standard, the State’s Chief of the Bureau of Exceptional Education and Student Services declined to add clarification, only pointing the author to the wording in the statute itself. On the other hand, Florida’s October 2011 Technical Assistance Paper limits restraint and seclusion to emergencies threatening serious physical harm, ostensibly based on the incident report requirement. Florida Dept. of Educ., TECHNICAL ASSISTANCE PAPER: GUIDELINES FOR THE USE, DOCUMENTATION, REPORTING, AND MONITORING OF RESTRAINT AND SECLUSION WITH STUDENTS WITH DISABILITIES, DPS 2011-165 (Oct. 14, 2011). This is the only indication that the state has considered using such a standard. Hence, out of an abundance of caution, Florida has been removed from this category, and is no longer treated as a state requiring physical injury to use restraint/seclusion in this report. The report discussion makes clear the need for states to be explicit about the danger standards they use.

⁵⁴ Merriam Webster Dictionary Online (2015). Black’s Law Dictionary defines the equivalent term, “imminent danger” as meaning “defining ‘imminent danger’ as ‘such an appearance of threatened and impending injury as would put a reasonable and prudent man to his instant defense.’” *Morgan v. Dept. of Fin. & Prof. Regulation*, 871 N.E.2d 178 (Ill. App. Ct. 2007) (quoting Black’s Law Dictionary).

⁵⁵ Merriam Webster Dictionary Online (2015).

⁵⁶ Communication from Rocky Nichols, Disability Rights Center of Kansas, March 2, 2015.

alone do not necessarily mean that a child will be safe. Statutes and regulations are words that exist on paper (and electronically). Actions matter as much as these words. Unclear laws and unenforced laws can lead to misuse of restraint and seclusion, and harm to children. Staff may not understand language or what was considered clear may be subject to misinterpretation. School staff or district leadership may read a regulation as permitting conduct that it does not. Staff may follow instructions or suggestions from another person or a leader who does not understand the law, or even a person seeking to exploit a loophole or give the law an unrealistic construction. Sometimes, some people ignore a law. Observations of these kinds of practices can indicate that a state may need to strengthen or change a law; strengthen or implement enforcement; increase and improve training; and provide formal state interpretations, among other things. States regularly review and tighten their laws, as demonstrated by the revisions of statutes and regulations in Tennessee, New Hampshire, Massachusetts, and Oregon in recent years. Finally, this author is without the ability to verify whether statutes and regulations are properly implemented or enforced in a state. These kinds of issues are best observed and determined by families and professionals in the state.⁵⁷

2. Restraint Permitted in Non-Emergencies

Many states with statutes and regulations allow restraint even when no one is in danger of physical harm. These laws may be explicit or may or may contain subtle loopholes that undermine the law.

There are 9 states with laws explicitly allowing restraint in non-emergencies that apply to all children; 16 to children with disabilities. Nevada^d, Texas^d, and West Virginia authorize restraint for threats of physical harm or serious destruction of property. Another 5 states explicitly allow restraint for threats of physical harm, destruction of property, or educational disruption: Iowa, Michigan, Montana^d, New York (this provision applicable to all children), and Washington^d. North Carolina by statute allows restraint of all children for threats of physical harm, property destruction, educational disruption, or for any reason at all as stated in the child's Individualized Education Program (IEP) or Behavioral Intervention Plan (BIP). Restraint may occur when a child tears a book, throws a toy, has a tantrum, gets out of his/her seat, doesn't follow instructions, or for other manifestations of

In many states, children can be restrained for tearing a book, throwing a toy, having a tantrum, disobeying instructions, getting up and moving around, and other manifestations of the child's disability.

⁵⁷ Kansas watchdogs indicated concern that the state law may only require school districts to have a policy containing the provisions, but not that they actually implement the protections for children. Watchdogs also expressed concern that the state may not enforce the regulations by requiring actual protections for children and by addressing alleged violations through an independent enforcement mechanism. If this is true, it would be problematic and undercut the seeming strength of the Kansas regulation. This concern was expressed regarding multiple parts of the Kansas regulation. Communication from Rocky Nichols, Executive Director, Disability Rights Center of Kansas, February 7, 2015.

a child's disability. This is a very dangerous proposition because restraint is so dangerous. Property destruction, educational disruption, disobey instructions, and the like are appropriately handled through comprehensive positive behavioral supports, de-escalation, conflict resolution, and other adjustments.⁵⁸

A number of states have loopholes that cause seemingly-strong laws to allow restraint when there is no emergency. Maryland by regulation allows restraint for threats of serious physical harm or as stated in a child's Behavioral Intervention Plan or Individualized Education Program (IEP).⁵⁹ Maine and Massachusetts (2014) recently eliminated similar regulatory provisions that allowed restraint for any reason if written into the child's IEP. These kinds of rules appear superficially strong, but the loophole lets schools use restraint for almost any reason.

California's^d statute and regulations appear to contain a significant potential loophole. The law is worded to permit "emergency interventions" in the event of a spontaneous, unpredictable event posing an imminent threat of serious physical harm. But the law does not define the term "emergency intervention" or limit restraint and seclusion to emergency situations. Thus, when a child is restrained because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and the law's protections likely do not apply, according to Disability Rights California.⁶⁰ Still, California's Department of Education suggested in a 2014 FAQ that restraint and seclusion are emergency interventions and cannot be used in non-emergencies.⁶¹

Minnesota^d may have a similar problem with the 2012 rewrite of its statute, depending on how the courts and the state Department of Education interpret the law. Minnesota redefined "physical holding" as a physical restraint used "in order to protect" someone from physical injury. The statute itself then applies only to physical holding. One could argue that the use of physical restraint for other purposes is not a physical holding and thus may be outside the statute's reach.⁶² It appears, however, that the drafters likely meant to limit all physical restraint to threats of physical injury. In 2013, Minnesota further clarified its statute to state that physical holding and seclusion can occur only in an emergency threatening physical harm, and defined those emergencies to exclude such behaviors as failing to stay on task or hiding under a table, or ignoring staff instructions when no one is in danger. It appears from these revisions that the legislature intended to limit the use of restraint to imminent threats of physical danger, but the

⁵⁸ As a state law limiting restraint to emergencies threatening physical harm would include property destruction posing such a threat, it should not be necessary to separately allow restraint for property destruction. The latter is a very wide category that could encompass all kinds of activities that do not pose an imminent risk of physical harm. See REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS 20 (Nebraska Dept. of Educ. 2010). More information on positive supports and how they reduce restraint and seclusion can be found under "Less Restrictive Measures Must Fail" below.

⁵⁹ For children with disabilities, the BIP is often part of the IEP.

⁶⁰ See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

⁶¹ FAQs for LEAs Behavioral Intervention, Behavior Emergency Interventions, Question 6 (June 12, 2014).

⁶² Compare MINN. STAT. § 125A.0941-42 (revised by Senate Bill S.F. 1917, signed Apr. 3, 2012) with 2009 c 96 art 3 s 11 (statute as originally enacted in 2009).

problem noted above still exists. Because of these issues, this section of the Minnesota law is not a good model for other states drafting legislation or regulations.

Kentucky, adopted its regulation in February 2013. Restraint is seemingly restricted to threats of physical harm but is also allowed “as permitted under KRS . . . 503.110.” This statutory provision establishes a defense to a crime for a teacher or other person entrusted with care of a minor or “mentally disabled person” under two circumstances. First, he/she believed force was “necessary to promote the welfare” of a minor or “mentally disabled person” or to maintain reasonable discipline in class. Second, the force used was not known or intended to cause risk of death, serious physical injury, extreme pain, extreme mental distress, or disfigurement. This loophole appears to eliminate the physical harm restriction, permitting restraint for non-dangerous activities in the guise of “discipline” and child “welfare” when staff is charged with a crime.⁶³ It is not entirely clear what is meant. It could be a reaffirmation of the criminal defense created by statute.⁶⁴ But it could also mean that staff members can use restraint to maintain class discipline, regardless of whether anyone is at risk of harm. This would undercut the regulation entirely. Criminal defenses exist because crimes can result in loss of liberty, fines, and other penalties. They should not be repurposed as general exceptions for limiting the use of restraint and/or seclusion in schools.

As previously noted, there is concern that Kansas only requires school districts to have adopted policies that state students will be protected, but does not require that these districts actually implement or follow the policies. Merely having them on paper is enough, watchdogs claim.

Finally, Washington has very limited and highly confusing regulations around this issue. First, Washington statute forbids certain restraints, such as shaking a young child, throwing a child, impeding a child’s breathing, or another act likely to cause bodily harm to a child. Second, for children with disabilities, Washington has other regulations that permit restraint under certain circumstances and that provide some protections. But these regulations apply only to “aversive interventions,” meaning restraint used to modify “undesirable” behaviors. These behaviors could encompass manifestations of a child’s disability (hand flapping, a tic, inability to sit still and pay attention; inability to quickly assimilate and follow directions, etc.) or other actions that threaten no one. Third, Washington’s regulations explicitly do not apply to restraint when it is used to control unpredicted spontaneous behaviors that threaten “serious harm” to a person, “serious harm to property,” or serious educational disruption. Thus, in these 3 situations, the limits in the regulations and other protections, such as parental notice, do not seem to apply. The regulation and statute are very confusing and likely contribute to misuse of restraint and

⁶³ KY. REV. STAT. §§ 503.020, 503.110, 503.120; see also §§ 532.060 and 534.030 (prison terms and fines); 500.070 (burden of proof). The regulation also states that restraint is permitted under two laws creating a criminal defense when force is used in self-defense or defense of others. But this appears implicit in Kentucky’s limiting restraint to threats of physical danger. For this reason, the inclusion of these criminal provisions, 503.050 and 503.070, is of less concern.

⁶⁴ This criminal defense is arguably not appropriate in 2014, given the extensive research and evidence for positive supports to maintain discipline. The GAO documented stories of children who were died after being restrained for being “uncooperative,” “disruptive,” and refusing to remain seated. GAO REPORT at 10-11. Still, no regulation can alter a criminal defense created by statute.

seclusion.

3. States Without Any Legal Limits on Restraint

There are 17 states with no protections in statute or regulation for children with disabilities; 27, for all children. First, 10 states protect students with disabilities, but not students without: California^d, Connecticut^d, Louisiana^d, Montana^d, Minnesota^d, Nevada^d, Pennsylvania^d, Tennessee^d, Texas^d, Washington^d. Since students without disabilities comprise 25% of those restrained according to the most recent national data, this is of great concern.

Second, 9 states have voluntary guidance, 5 of which urge, but do not require, that restraint be limited to physical danger: Arkansas (2014), Nebraska, Oklahoma^d (serious physical harm), South Carolina, Virginia, and Washington, D.C. As previously noted, Virginia adopted a statute in March 2015 that requires comprehensive regulations to protect children, but these have not been adopted, leaving only the nonbinding policy in place.

The remaining 3 states with nonbinding policies are more permissive: Utah's current guidance recommends permitting restraint for serious property damage; New Mexico's^d, destruction of property; and Missouri's, destruction of property or as stated in the IEP, 504 plan, or behavioral plan. All of these recommended policies lack the force of law and simply indicate what a state urges. Finally, there are 9 states without any laws or even nonbinding guidance limiting the reasons for using restraint: Arizona, Florida,⁶⁵ Idaho, Mississippi, North Dakota, New Jersey, South Dakota, and Wyoming. Their laws are largely or entirely silent.

⁶⁵ Florida's law is explained in footnote 45 and the accompanying text.

Is Restraint Limited to Immediate Emergency Threats to Physical Safety By Law? (March 18, 2015)

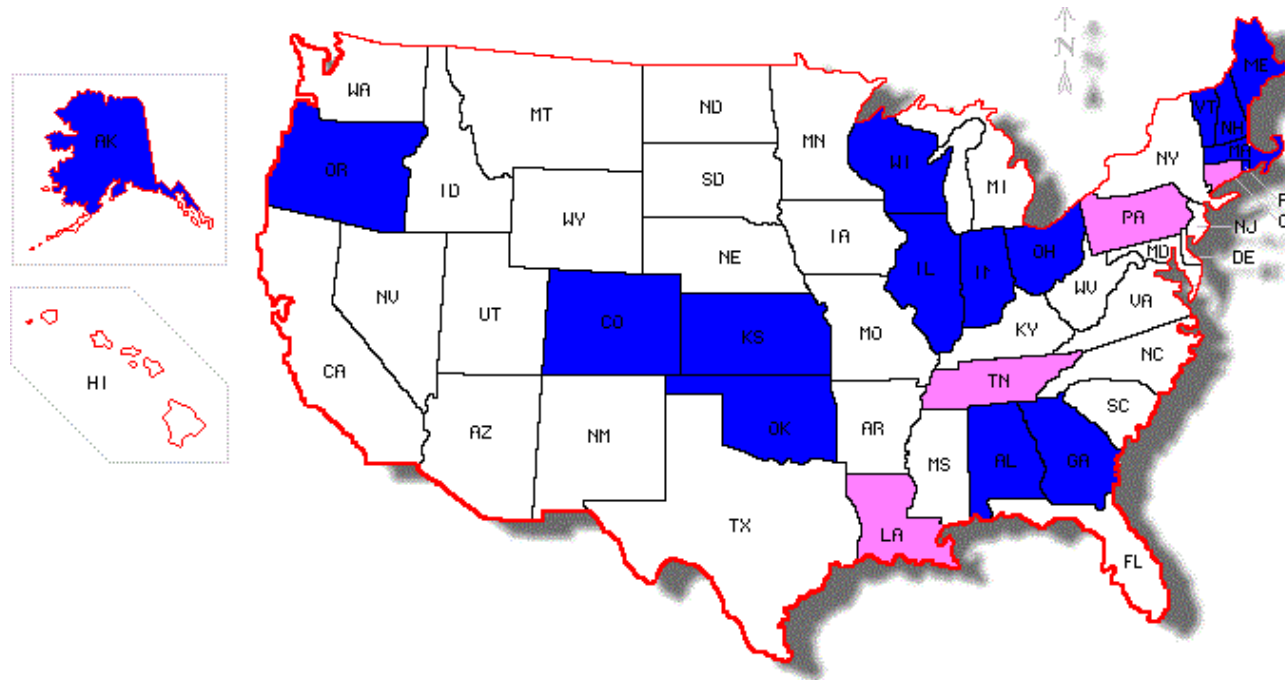
Please see page i for instructions about copying and/or sharing.
D means Children with Disabilities Only; ALL Means All Children.

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educ. Disruption	Other, including allowing restraint as per IEP or BIP
AK	ALL					
AL	ALL					
AR						
AZ						No law limits use
CA						D- (CA permits use of restraint in non-emergencies with little limitation due to law's wording)
CO	ALL					
CT	D					
DE	ALL					
DC	<i>Voluntary Guidance - Not law - Can Change</i>					
FL						statute silent, incident reports refer to physical harm
GA	ALL					
HI			ALL			
IA					ALL	
ID						No law limits use
IL	ALL					
IN	ALL					

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educ. Disruption	Other, including allowing restraint as per IEP or BIP
KS	ALL (but see notes 56-57 & accompanying text re concerns that KS does not apply Physical Harm standard)					
KY						ALL - see report; certain defenses apply in criminal context
LA	D					
MA	ALL					
MD		ALL				
ME	ALL					
MI					ALL	
MN						D - see report; possible unintended loophole
MO						<i>Voluntary Guidance - Not law - Can Change</i>
MS						No law limits use
MT					D	
NC						ALL; permits for any reason if in IEP/BIP, even if no danger, as well as phys. harm, prop. destruc., and educ. disrupt.
ND						No law limits use
NE	<i>Voluntary Guidance - Not law - Can Change</i>					No law limits use

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educ. Disruption	Other, including allowing restraint as per IEP or BIP
NH	ALL					
NJ						No law limits use
NM				<i>D only - Voluntary Guidance - Not law - Can Change</i>		No law limits use
NV			D			
NY					ALL	
OH	ALL					
OK	<i>Voluntary Guidance - Not law - Can Change</i>					No law limits use
OR	ALL					
PA	D					
RI	ALL					
SC	<i>Voluntary Guidance - Not law - Can Change</i>					No law limits use
SD						No law limits use
TN	D					
TX			D			
UT			<i>Voluntary Guidance - Not law - Can Change</i>			No law limits use
VA	<i>Voluntary Guidance currently;</i>					2015 Virginia statute directs state to write regulations limiting restraint and seclusion to threats of serious physical harm. Regulations have not been adopted yet.
VT	ALL					
WA					D	
WI	ALL					
WV			ALL			
WY						No law limits use

**States Limiting Restraint to Emergency Threats of Physical Harm:
Only 16 States (All Children) and 20 states (Children with Disabilities) (March 18, 2015)**



Blue (dark): state limits restraint to emergency threats of physical danger for all children.

Pink (lighter): state limits restraint to emergency threats of physical danger for children with disabilities.

Of these states, LA [d], MA, NH, OR, and RI apply a serious physical danger/harm standard; the others apply a physical danger/harm standard. VA will use this standard once regulations are adopted; but under the form of its March 2015 statute, students will not have protections until they are adopted.

KS: see discussion in text. Evidence indicates that Kansas may not prevent non-emergency restraint due to interpreting the words “danger” and “violent” in a non-common manner and other issues with Kansas’ regulatory scheme.

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B. Is Seclusion Banned or Limited to Physical Safety Emergencies?

1. Why Limit Seclusion to Emergencies?

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. In 2004, a young Atlanta teen hung himself in a seclusion room, dying as school staff were outside the room.⁶⁶ In 2011, the National Disability Rights Network alleged that an Indiana child was repeatedly secluded and denied access to the restroom. He was secluded again--not because he was a danger--but because he was forced to urinate on the floor when in seclusion the prior day. Unobserved in the room, he allegedly attempted suicide by hanging.⁶⁷ A Minnesota child who "acted out" in her class was put in seclusion where she severed a finger, according to a 2013 Minneapolis Star Tribune report.⁶⁸ A Kentucky child locked in a closet-sized room dug through the walls far enough to reach the dry wall in 2014.⁶⁹ A Virginia 10 year old with autism suffered broken hand and foot bones when forced into a seclusion room.⁷⁰

Children have been secluded in locked closets and unlocked rooms they cannot exit when furniture, equipment, or staff block the doors. Frequently, seclusion is used for non-emergencies and continues long after any emergency has ended. A New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.⁷¹ A 2015 report from the Connecticut Child Advocate report told the stories of children secluded for not doing work and one, for repeatedly insisting he had won a board game he had lost.⁷²

Children have died, been injured, and traumatized by seclusion. Children have been secluded for slouching, hand-waving, not cleaning up, and disliking class baking activities--things that put no one in physical danger.

In Kentucky, one child was secluded in a closet because he did not put things away fast enough; another, because staff believed she would not do well with the classroom activity of baking

⁶⁶ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

⁶⁷ NATIONAL DISABILITY RIGHTS NETWORK, *SCHOOL IS NOT SUPPOSED TO HURT* (2012) at 11.

⁶⁸ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013.

⁶⁹ *Mother Claims Autistic Son 'Clawed, Scratched Through Drywall' After Staff Forced Him into Small Room*, WAVE3 News, Sept. 3, 2014.

⁷⁰ Joseph Shapiro, *National Data Confirm Cases of Restraint And Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014; Heather Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA, June 19, 2014.

⁷¹ GAO REPORT at 13.

⁷² Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* 12 (Office of the Child Advocate Feb. 2015).

cookies.⁷³ In Ohio, an investigation found that only 4 of 42 incidents of isolation at a Youngstown school involved any threats of physical danger. One Ohio child was secluded for turning off music; another, for pouting.⁷⁴ In 2014, a Syracuse boy with ADHD was confined in a poorly ventilated, barren concrete closet-sized room for “acting out,” causing him to vomit. The room locked only from the outside.⁷⁵

At an Iowa juvenile home that provided residential and educational services, teens were secluded 47,171 times over a one-year span in 2012-13, according to a *Des Moines Register* investigation. Internal emails revealed concerns that the home relied “too heavily” on seclusion, creating “significant risks for youth and staff, including serious injury or death.” Not all of the doors were technically locked, but students could not leave the rooms and the doors were shut all day, rendering the rooms effectively locked. Rooms lacked interior door knobs, according to investigations by the newspaper and Disability Rights Iowa.⁷⁶

There are numerous reports of children confined in closets and seclusion rooms being denied food, water, and the restroom.⁷⁷ Students have been forcibly restrained and dragged into seclusion rooms.⁷⁸ A 2013 investigation by Alaska Disability Law Center (P&A) found that 60 students at a single elementary school were secluded for almost 42 cumulative school days.⁷⁹ In Texas in 2014, a mother alleged that four staffers “manhandled” her 7 year old child to put him into a seclusion room, where the unlocked door was held shut so that he could not exit. After repeatedly being put in the room, the child regressed this year after having no problems in the

60 students at an Alaska elementary school were secluded for almost 42 cumulative school days, Alaska Disability Law Center reported.

⁷³ KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

⁷⁴ Molly Bloom and Jennifer Smith Richards, *Education: Isolation Chambers*, STATE IMPACT OHIO & COLUMBUS DISPATCH, August 5, 2012.

⁷⁵ Paul Riede, *Two Administrators, Teaching Assistant at Syracuse School Put on Leave after Discipline Complaint*, SYRACUSE.COM (SYRACUSE POST-STANDARD), June 24, 2014; Jacob Pucci, *Inside Syracuse School's Illegal Timeout Room: Kid, 9, Sent to 'Elevator Machine Room'*, SYRACUSE.COM, Oct. 2, 2014.

⁷⁶ The Iowa information resulted from DES MOINES REGISTER and Disability Rights Iowa investigations, both reported in a REGISTER investigative series. Clark Kauffman, DES MOINES REGISTER, *Youths Isolated and 'Forgotten' at the Iowa Juvenile Home*, July 21, 2013; *Branstad, Union Clash Over Blame for Use of Isolation at Juvenile Home*, Aug. 6, 2013; *In a Year, Youths Spent Over 47,000 Hours in Seclusion Units*, Sept. 21, 2013; *Isolation Cell Use on Rise Again at Juvenile Home*, Dec. 11, 2013. The students were denied educational services in violation of the Individuals with Disabilities Education Act. *Juvenile Home Broke Federal Education Law, State Agency Rules*, Dec. 21, 2013.

⁷⁷ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012 (child allegedly spent hours in seclusion room where he had contact with his own urine and developed an infection); *CN v. Willmar Pub. School*, 591 F.3d 624 (8th Cir.2010) (child denied access to restroom); *SCHOOL IS NOT SUPPOSED TO HURT* (2009) at 15-20; CCBd, *Position Summary on the Use of Seclusion in School Settings* at 236.

⁷⁸ *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); *Boy Tells Lawmakers He Was Forced into 'Seclusion Room'*, KATU (Oregon), Oct. 30, 2013; Disability Law Center of Alaska, *NO TIME FOR LEARNING* 4 (Aug. 2013).

⁷⁹ Disability Law Center of Alaska, *NO TIME FOR LEARNING* 4 (Aug. 2013).

last school district he attended.⁸⁰

The seclusion analysis in this report first examines how states define seclusion and then how they regulate or limit it. Most define seclusion as placing a child in a room or space from which the child is not capable of exiting. The room may be locked, or the door may be blocked by furniture or other mechanisms. Some states respond to seclusion's harms by banning it; others by limiting it to emergencies where someone's physical safety is in imminent danger of harm. But many states permit seclusion when no one is in danger, despite the great risk.

2. Seclusion Defined (What Is Seclusion?)

Different states define seclusion differently, leading to differences in the degree of protection students receive. **As of March 18, 2015, 35 states would define seclusion (or isolation) as a room or space in which a child is involuntarily confined and physically prevented from exiting, usually because the door or exit is locked or blocked**

in some manner (e.g., furniture or equipment blocking the door, staff keeping it shut, or even inexpensive or improvised child proofing). Such a definition is included in the statute or regulations of 28 states:

Alaska (2014), Colorado, Connecticut^d, Delaware, Georgia, Hawaii (2014), Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maine (2012 update to rule), Maryland, Massachusetts (2014), Minnesota^d, Montana^d, New Hampshire, Nevada^d, North Carolina (and also including a room a child cannot leave due to physical or mental incapacity), Ohio, Oregon, Rhode Island (if without access to staff), Tennessee^d,

Vermont, Wisconsin, Washington, and Wyoming (definition of "isolation"). Another 7 states have a similar definition in nonbinding guidance: Michigan, Missouri, Nebraska, Oklahoma^d, South Carolina (if child alone), Virginia, and Washington, D.C. Virginia's 2015 statute requires such a definition in its forthcoming regulations because such a definition is used in the documents it incorporates.

35 states define seclusion as a space in which a child is involuntarily confined and physically unable to exit, whether the door is locked or blocked by furniture, equipment, staff, cheap childproofing, etc.

Across America, children have been put in rooms blocked by equipment, wooden barricades, or by staff holding the door shut.⁸¹ Furniture has been reconfigured to build barriers and seclude

⁸⁰ Ken Kalthoff, *Strong Reaction to Reports of Mansfield School Discipline Room*, NBCDFW.COM, Apr. 16, 2014; Scott Friedman, *NBC 5 Investigation Reveals Mansfield ISD Schools Used "Recovery Rooms" Hundreds of Times for Troubled Children*, NBCDFW.COM, Nov. 3, 2014.

⁸¹ E.g., Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASHINGTON POST, Jan. 19, 2015 (desk blocked door shut, trapping 7 year old inside room); Ken Kalthoff, *Strong Reaction to Reports of Mansfield School Discipline Room*, NBCDFW.COM, Apr. 16, 2014 (door held shut); Joel Moreno, *Mom: School Used 'Isolation Room' to Punish Special-Needs Child*, KOMO NEWS, Apr. 23, 2013 (wooden barricade blocked door to prevent young children from leaving); Decision on IDEA Complaint No. 13-002, Northland Pines School Dist., Wisconsin Dept. of Public Instruction, March 11, 2013 (door held shut); GAO REPORT at 13 (door held shut; child's hands blistered as he tried to escape); NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009)

children. A Hawaii preschooler with Down Syndrome was trapped in a space behind two bookcases for 90 minutes a day because she was noisy at nap time.⁸² A California child with developmental delays who could not speak was placed in a makeshift seclusion space with two child gates locking her in, one on top of the other, creating a cage-like area.⁸³

Two states by statute or regulation define seclusion only as locking a child in a room: Alabama and Florida. Arizona's 2013 statute defines it as confinement alone in an enclosed space.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting—whether by lock or other blocking or obstruction—as this is the majority view in America by far. From a child's point of view, a room she is locked into and a room she cannot leave because equipment blocks the door are the same.⁸⁴

3. States Banning or Restricting Seclusion Generally

There are 13 states with laws banning or restricting seclusion in some way without regard to why seclusion is used.

First, 5 states ban all seclusion for children with disabilities, Georgia, Hawaii (2014), Nevada^d, Pennsylvania^d, and Texas^d. Georgia and Hawaii ban it for all children. Given the perils of seclusion, a ban is an important protection for children. Massachusetts adopted a new regulation in 2014 that appears to ban seclusion. But it is actually murky, and could permit isolated confinement of children. It makes an exception for “time out,” which is the use of a room for calming. But Massachusetts does not forbid schools from locking or blocking the doors of time out rooms, enabling students to be placed in what would otherwise be a seclusion room to calm down. This could effectively mean that children who are upset and crying or shouting are secluded, even though

2 state law ban all seclusion for all children; 5 ban it for children with disabilities. Some states ban locked doors, but not doors blocked closed by furniture or staff.

(numerous examples throughout of doors held shut or blocked by equipment or furniture); DISABILITY RIGHTS CALIFORNIA, *RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE* (June 2007) at 12 (classroom table with aide sitting on it blocked door; child believed hallway was locked.)

⁸² Alia Wong, *Hawaii Lawmakers Mull Clearer Rules for Schools with Uncontrollable Kids*, HONOLULU CIVIL BEAT, Feb. 20, 2014.

⁸³ Angela Greenwood, *Mother Claims Special Needs Daughter was Caged in Fresno Classroom*, YOURCENTRALVALLEY.COM (KSEE24), Nov. 12, 2014.

⁸⁴ Rooms from which children are prevented from exiting are termed “seclusion” in this report even if called something else by the state (e.g., “confinement,” “isolation,” or “quiet room”). Some schools even use the term “time out” to mean forced isolation in a seclusion room from which a child cannot exit, *see* Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007. These differ from legitimate “time out” spaces which can involve placing a child in a room to calm down that he/she is capable of leaving, usually with staff present and supervising. Thus, this report focuses on the room's function, rather than its label. Wyoming bans “locked seclusion,” while permitting limited use of “isolation,” an unlocked space from which a child cannot exit. As Wyoming's isolation is defined as most states and this report define seclusion, it is treated as seclusion, unless otherwise stated. If it would make a difference, the report treats Wyoming's locked seclusion and isolation differently.

they threaten no one. The new regulation does require staff to be with the child or immediately available, a significant improvement from the prior regulation that simply required “access” to staff. It also requires the room to be appropriate for calming, suggesting that closets, rooms with barren concrete walls, and separate tiny cells are forbidden.

Second, 6 states by law prohibit all or most forms of locked seclusion for all children, and 9 do so for children with disabilities: Alabama, Arkansas^d, Maine, Montana^d (except in certain residential treatment facilities), New Mexico (fire code violation), New York^d, Ohio, Wisconsin, and Wyoming. In addition, 2 states, Washington, D.C., and Michigan, urge eliminating locks in their voluntary guidance. All of these states unfortunately would still allow seclusion by blocking or obstructing the doors. Such rooms are as hazardous as those with formal locks.⁸⁵

Perhaps in their own categories are Kentucky and Oregon, which have hybrid laws. Last year, Oregon banned free-standing seclusion cells or booths, while permitting students to be secluded in rooms that are part of a school building if there is an imminent threat of serious physical harm. Kentucky adopted a regulation banning seclusion when doors are locked or obstructed. The regulation ostensibly allows other forms of seclusion. Seclusion is defined as some type of involuntary confinement of a child alone in a room he/she cannot exit. Together, these provisions permit only a small subset of seclusion activities, such as a placing a child with a disability who cannot walk in a room with an open door and without the devices he needs to move. But doing so almost certainly violates the child’s other rights, including the right to be free of discrimination.

In 2013, Delaware banned seclusion unless the state Department of Education granted a child-specific waiver. Delaware is to be commended for its intent in trying to ban much seclusion, but these kinds of doors often open much wider than intended. The law imposes no limits on the department’s granting of waivers, other than requiring a “compelling justification.” It does not, for example, limit seclusion under waivers to threats of serious physical harm where less restrictive measures would fail to resolve the issue or require it to end when the emergency ends. Delaware had slightly over 133,000 public school students in 2013-14.⁸⁶ If only 1% of them are subjected to waivers, it means that approximately 1,330 children could be secluded for potentially any reason; 0.5%, 665 students. The author uses 1% and 0.5% only as examples; there is no number or limit in Delaware law.

A final group of 7 states allow locked seclusion only if the lock can automatically open, either

⁸⁵ California was excluded from this group. California’s law forbids locked seclusion in emergencies unless the state has otherwise licensed a facility to use locked rooms. But, due to a wording loophole, California’s law is silent about locked seclusion for non-emergencies (i.e., predictable events threatening serious physical harm or events that do not threaten serious physical harm). See note 60 and accompanying text. In the 2012 edition of this report, this current footnote (54) excluding California was included. Due to a typographic error, California was also counted among the states forbidding locked seclusion. This error has been corrected in the 2013-14 reports, so that only 8 states, not 9, are in this category.

⁸⁶ State of Delaware, School Profiles, <http://profiles.doe.k12.de.us/SchoolProfiles/State/Account.aspx>. The number of children who could be affected by the waivers is likely somewhat larger, since this count does not include those children placed in private school at public expense under IDEA.

through an emergency alarm system or when a person stops holding the lock: Connecticut^d, Illinois, Iowa, Florida^d (fire code referenced), New Hampshire, Minnesota^d, and South Carolina (fire code referenced). The remaining states do not by law limit seclusion use as a general matter, either by banning it, banning locked seclusion (but not “blocked” seclusion), or by requiring locks to conform to fire codes. As discussed below, however, some of these states restrict seclusion to emergencies threatening physical danger.

Locked and blocked doors are very dangerous in fires, tornados, earthquakes, and similar events. Fires in places with blocked exits or other exit problems have led to death and injury across America, inside and outside of schools.⁸⁷ Tornados and earthquakes also present hazards nationwide; and can occur without warning.⁸⁸ Fire codes were created and improved because of the danger when people have difficulty exiting a building. Most fire and building codes require a “a continuous and unobstructed path” of “egress travel from any occupied portion of a building.”⁸⁹ Codes may also require sprinkler devices and the use of certain less flammable building materials to ensure that rooms are safe. Seclusion rooms also risk trapping a child if the school is locked down due to an emergency, as New Hampshire’s new law recognizes. Some seclusion regulations may contravene vital rules of fire safety and fire codes. For example, Connecticut requires doors to open within 2 minutes, a very long time in a fire or other emergency.⁹⁰ Of course, doors that automatically open in emergencies do not eliminate the significant physical dangers when seclusion is used, or its psychological effects. Students can still be injured, traumatized, and die. “Safe” seclusion can still be still dangerous seclusion.

But most seclusion laws and guidelines are silent about fire, safety, and building codes. Hence, unknowledgeable parents and staff may believe students can be put in locked or blocked

⁸⁷ E.g., *Triangle Shirtwaist Factory Fire Victims Remembered*, NY1 NEWS, Mar. 25, 2014; John LaPlace & Ed Anderson, *29 Killed in Quarter Blaze*, NEW ORLEANS TIMES-PICAYUNE, June 25, 1973 (Upstairs Lounge Fire); Bernie Augustine, *The Station Nightclub Fire 10 Years Later*, NY DAILY NEWS, Feb. 21, 1983; *Tragedy at Our Lady of Angels School*, Chicago Tribune, 1958.

⁸⁸ *Earthquake Fast Facts*, Federal Emerg. Mgt. Agency, <https://www.fema.gov/earthquake/earthquake-fast-facts>; American Red Cross, *Earthquake Preparedness* (45 five states and territories in the United States are at moderate to very high risk of earthquakes); Roger Edwards, NATIONAL WEATHER SERVICE, STORM PREDICTION CENTER, <http://www.spc.noaa.gov/faq/tornado/safety.html>; Bob Downing, *Brunswick Tornado Reminds not all Ohio Twisters Will Come with Weather Warnings*, AKRON BEACON JOURNAL, Ohio.com, June 25, 2014 (26% of U.S. tornados between 2000 and 2004 struck without warning). Tornados have destroyed schools. See Kelly Eckerman, *Schools Shift Strategies in Severe Weather Safety*, KMBC.COM, Mar. 3, 2015.

⁸⁹ Ronald Green, MEANS OF EGRESS, THE CODE CORNER, RLGA Technical Services, No. 10, May 2005. Such codes include the International Fire Code and International Building Code of the International Code Council, adopted in all states and the District of Columbia at the state or jurisdiction level, and the National Fire Protection Association Life Safety Code 101, adopted by many jurisdictions nationwide. International Code Council, INTERNATIONAL FIRE CODE AND INTERNATIONAL BUILDING CODE; National Fire Protection Association, LIFE SAFETY CODE 101. Some school fire safety policies will mention these requirements. E.g., School Dist. of Phila., *Policy and Procedures, Fire Safety* (promulgated Apr. 1997 and available on website through 2015) (“The City Fire Prevention Code, Fo608.3, requires that during the period of occupancy of a school facility, no exit door is to be locked, bolted, or otherwise fastened which prevents the door from being opened from the inside by the use of the panic release device.”)

⁹⁰ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 24 (Office of the Child Advocate Feb. 2015).

rooms.⁹¹ Moreover, if the codes are not enforced, or if parents cannot easily seek enforcement, the codes provide little protection.

4. Preventing Use of Seclusion in Non-Emergencies

Some states respond to the hazards of seclusion by banning it except when necessary to prevent an imminent threat of physical danger to a person (called an emergency below).

Only 14 states by statute or regulation protect all children from non-emergency use of seclusion. Georgia and Hawaii forbid all seclusion.

Another 12 states forbid seclusion except when there is a threat of physical danger: Alaska (2014), Colorado, Indiana, Kansas, Kentucky, Maine, New Hampshire (2014), Ohio, Oregon, Vermont, Wisconsin, and Wyoming. Virginia adopted a statute in March 2015 that would regulations limiting seclusion to emergencies threatening serious physical harm. Until the regulations are adopted, Virginia lacks this mandatory requirement.

14 states protect all children from non-emergency seclusion. 20 states protect children with disabilities. The rest allow seclusion even if no one is at risk of harm.

Delaware and Massachusetts (2014) are not included in the 14 states. Delaware's 2013 law bans seclusion but permits the state department of education to grant child-specific waivers. The only requirement is that compelling justification exist. Had Delaware limited waivers to seclusion to emergencies threatening physical danger, it would have been counted in this category. Massachusetts (2014) appears to permit the use of rooms with locked or blocked doors for purposes of calming a child without regard to whether there is physical danger, as discussed in the prior section.

There are 20 state laws that ban non-emergency seclusion for students with disabilities. Of these, 5 ban all forms of seclusion (Georgia, Hawaii (2014), Nevada^d, Pennsylvania^d, and Texas^d) and 15 restrict seclusion to threats of imminent physical danger: Alaska (2014), Colorado, Indiana, Kansas, Kentucky, Louisiana^d ("substantial" physical harm), Maine, Minnesota^d, New Hampshire (2014), Ohio, Oregon ("serious" physical harm), Tennessee^d, Vermont, Wisconsin, and Wyoming. Minnesota was the most recent state to join this group, prohibiting seclusion for property destruction. The states of Delaware, Massachusetts, and Virginia are not included in the 20 states for the reasons stated above.

Kansas was included because its law appeared to permit seclusion only if there is a threat of imminent physical danger, including "violent action that is destructive of property." As explained

⁹¹ For an excellent discussion of the effect that fire, building, and other safety codes may have on seclusion rooms, see SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2012). A building with more than five seclusion rooms may be considered a jail in South Carolina. In addition to the states with laws on this issue, Nebraska and Indiana also suggest that doors automatically unlock in their voluntary models, but do not require it. Kansas had included this provision in its old guidance but not in the regulation that replaced it.

above, the common meaning of “danger” and “violent” includes a threat of injury or physical peril. But Kansas watchdogs have raised concerns that Kansas schools interpret “danger” to include activities that do not threaten anyone’s safety, such as tantrums. They have also expressed concern that Kansas does not enforce its statute or require districts to implement the requirements, and only requires that they adopted the policies. If this is true, then Kansas law does not adequately protect students and does not limit seclusion to threats of imminent physical danger. For more information, see notes 56-57 and accompanying text.⁹² As previously stated in that section of the report, the manner in which states, school districts, and staff implement, enforce, and interpret language in a statute or regulation can determine whether seclusion is actually limited to threats of physical harm. The observations of families and professionals in the state are important to consider in determining these issues.

Out of an abundance of caution, Florida was removed from this category in January 2014. At most, Florida^d may have implicitly intended to forbid seclusion absent physical harm, as it requires that incident reports identify a threat of physical harm. But the law does not explicitly require such a threat to exist before seclusion is employed. This is discussed in more detail in footnote 53 and the accompanying text.

Accordingly, 37 states allow non-emergency seclusion of all children, and 31 states allow it of children with disabilities. In these states, children may be exposed to dangerous seclusion even when no one’s safety is at risk. The next two sections examine these states.

5. Seclusion Allowed for Non-Emergencies

Time out in a space a child can physically leave may be appropriate for disruptive behavior, property destruction, calming down, and similar reasons. Such quiet spaces in which a child can relax and have supports may be very helpful for calming. But dangerous isolation in a room where the door is locked or blocked is not appropriate. Unfortunately, many states permit seclusion for these reasons either explicitly in their state laws or by having no laws.

In 17 states, there are statutes/regulations allowing non-emergency seclusion either explicitly or through a loophole that undercuts the state’s laws. They are Alabama, Arizona, Arkansas^d, California^d, Connecticut^d, Delaware, Illinois, Iowa, Maryland, Massachusetts, Missouri, Montana^d, New Mexico, New York^d, North Carolina, Rhode Island, and West Virginia. New Hampshire was one of these states until 2014, when it enacted legislation restricting seclusion to emergencies for all children.

Of these 17 states, 7 explicitly permit non-emergency seclusion. There are 5 allowing it for threats of physical harm, destruction of property, or educational disruption: Arkansas^d (but limiting seclusion to severe occurrences), Iowa, Montana^d, New York^d, and Illinois.⁹³ North

⁹² Kansas’ prior voluntary guidance would have supported using seclusion as stated in a child’s BIP/IEP and considered it a behavior modification technique. These provisions were not included in the current Kansas regulation.

⁹³ Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of

Carolina permits seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP (for any reason). Arizona lets schools use allows seclusion for any reason with parental consent. Numerous parents nationwide have given consent who did not fully understand what they were agreeing to. They later found their child injured or traumatized by seclusion.⁹⁴

Of the 17 states, 12 laws apply to all children. The other 6 apply only to children with disabilities, meaning that those states do not limit at all seclusion for children without disabilities.

Another 10 state laws contain loopholes permitting non-emergency seclusion.

California^d has such a loophole. Its law explicitly bans seclusion in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. But California does not limit the use of seclusion in non-emergencies. Hence, seclusion used because behavior is predictable or because it does not threaten serious physical harm is non-emergency use, and outside the state’s strong legal protections.⁹⁵

In several states, loopholes allow schools to seclude students. Some allow seclusion if staff somehow supervises the child (even from a distance); others allow seclusion for any reason if included in an IEP.

There are 6 states that forbid seclusion if the door locks but place no limits on the reasons students can be put in rooms where the door is blocked or obstructed with furniture, equipment, staff, child proofing etc.: Alabama, Arkansas^d, Missouri (forbidding locked solitary seclusion except when awaiting law enforcement personnel); Montana^d (but also allowing locked seclusion in certain residential treatment facilities), New Mexico (fire code violation for door to lock), and New York^d.

West Virginia forbids seclusion only when children are “unsupervised” and otherwise does not restrict “supervised” seclusion. As supervised is undefined, it could mean intermittently checking the room or simply being within hearing distance—procedures that appear to have been factors in injuries and deaths, as explained in the monitoring section below. Rhode Island’s regulation contains at least two conflicting provisions, both of which allow unregulated seclusion. One section prohibits seclusion unless the child is observed and the seclusion is documented as part of the child’s Behavior Intervention Plan. This leaves seclusion unregulated in all other circumstances, and also allows seclusion to be written into a child’s educational plan for any reason. Another section prohibits confining a child alone in a room unless a child has “access” to

property likely would be included under the latter.

⁹⁴ Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE at 4 and Appendix.

⁹⁵ See CAL. ED. CODE §§ 56520-56525; CAL. CODE REGS. tit. 5 §3052; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012).

school staff. Because access is undefined, it could mean that a child can be secluded as long as staff down the hall or within shouting or calling distance.

New Hampshire and Massachusetts previously had similar loopholes, but they changed their laws in 2014. New Hampshire now has no such loophole. Massachusetts' situation is more nuanced, and appears to allow what would be understood as seclusion for the purpose of calming a child, as previously discussed. The 2014 regulation is a significant improvement over the prior one, however. Delaware bans seclusion for most students but permits it under child-specific waivers, without restricting the waivers to threats of physical danger.

Washington's^d 2013 regulations do not appear to regulate isolation at all when it is used for an unpredictable episode presenting a risk of serious physical harm; of serious property destruction; or of serious educational disruption. Washington's regulation appears to apply only to seclusion used to modify "undesirable" behaviors. This broad term can encompass manifestations of a child's disability (hand flapping, a tic, inability to sit still and pay attention; inability to quickly understand and follow directions, etc.) or other actions that threaten no one. Seclusion can be used for these non-threatening purposes when it is included in the child's aversive intervention plan as part of the IEP.

Two states, Connecticut^d and Maryland, by law permit seclusion for threats of physical harm or as stated in the IEP/BIP. The IEP/BIP loophole grants schools freedom to use seclusion for non-emergencies, and may encourage them to include seclusion in IEPs to avoid answering questions about whether there was an emergency. These loopholes can have dramatic consequences, as was apparent in Connecticut^d in January 2012. One school district superintendent appeared to suggest that seclusion rooms were regular requirements in IEPs for children with disabilities: "There are no provisions for the use of seclusion time out for students that do not have an IEP," according to a statement issued Wednesday. . . . 'Unless you have an IEP this is not part of your daily [plan],' he {the Superintendent} said. 'The rooms have been used very infrequently for students without an IEP, but generally they try to find another location for the students.'" At the time, the district did not appear to even realize that it should reduce seclusion room use or eliminate the IEP loophole. Rather, the district proposed that the rooms "be moved to out-of-the-way locations so their use in the future is not disruptive to other students."⁹⁶

In 2015, the Connecticut Child Advocate shared a number of stories. One student who refused to say hello was placed in seclusion pursuant to his IEP. His IEP specified that he could be secluded for non-compliance several times a day. Another child had difficulty regulating his behavior and tried to kick and hit others or threaten them. There was no evidence that an FBA was conducted or that the school used a preventative intervention plan that would have stopped these

⁹⁶ Shawn R. Beals, *Angry Parents, Scared Students Seek Answers About Farm Hill School 'Scream Rooms,'* HARTFORD COURANT, Jan. 12, 2012. (Square bracketed material in original; curly bracketed material added.) The following year, the school superintendent told NBC that the staff had been "completely retrained" and school policies, reevaluated. Sabina Kuriakose, *School Learns Lessons After "Scream Room" Investigation*, NBC CONNECTICUT, Nov. 19, 2013.

challenging behaviors and actually taught him appropriate behavior.⁹⁷

If non-emergency seclusion was banned, staff would be extremely unlikely to see seclusion as an appropriate intervention or to think that the solution to seclusion is to move the seclusion rooms so others are not disturbed by their use. For example, Cyndi Pitonyak, a Virginia educator, testified to Congress that in her district, children with disabilities are included in regular education like other children, and made part of the fabric of the school. In this environment, restraint and seclusion are seen by teachers as “shocking” in classroom daily life.⁹⁸

6. States Lacking Any Legal Protections from Seclusion

There are states with no meaningful protections from any kind of seclusion for all children. Some states have voluntary policies that are not legally mandatory. There are 6 states that urge limiting seclusion to threats of physical danger for students with disabilities; 4, all children: Michigan, Nebraska, South Carolina, Virginia, Washington, D.C., and Oklahoma^d. Nonbinding guidelines in Utah^d suggest a physical harm or serious destruction of property standard. As previously noted, Virginia adopted a statute in March 2015 that requires comprehensive regulations to protect children, but these have not been adopted, leaving only the nonbinding policy in place.

Missouri forbids solitary locked confinement unless awaiting law enforcement personnel, but its law is silent on other forms of seclusion (*e.g.*, seclusion in a room where the door is blocked or obstructed). In these situations, Missouri has nonbinding, voluntary guidelines recommending that seclusion be allowed for threats of physical harm, destruction of property, or as stated in the IEP (for any reason). Finally, New Mexico’s non-binding guidelines endorse use of seclusion as a behavior modification technique. (New Mexico appears here and in the “loopholes” section above because its fire code bans seclusion in locked rooms, but not seclusion in rooms with doors blocked closed.)

Another 5 states have nothing: Idaho, Mississippi, New Jersey, North Dakota, and South Dakota. In addition, 10 states that protect students with disabilities offer no protections for those without disabilities in the same schoolhouse: California^d, Connecticut^d, Florida^d, Louisiana^d, Minnesota^d, Nevada^d, New York^d, Pennsylvania^d, Tennessee^d, and Texas^d. Since students without disabilities comprise 42% of those secluded according to the most recent national data, this is of great concern.

⁹⁷ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* (Office of the Child Advocate Feb. 2015).

⁹⁸ *Senate Hearings*, available at <http://v.gd/1SDyOX> (testimony of Cyndi Pitonyak).

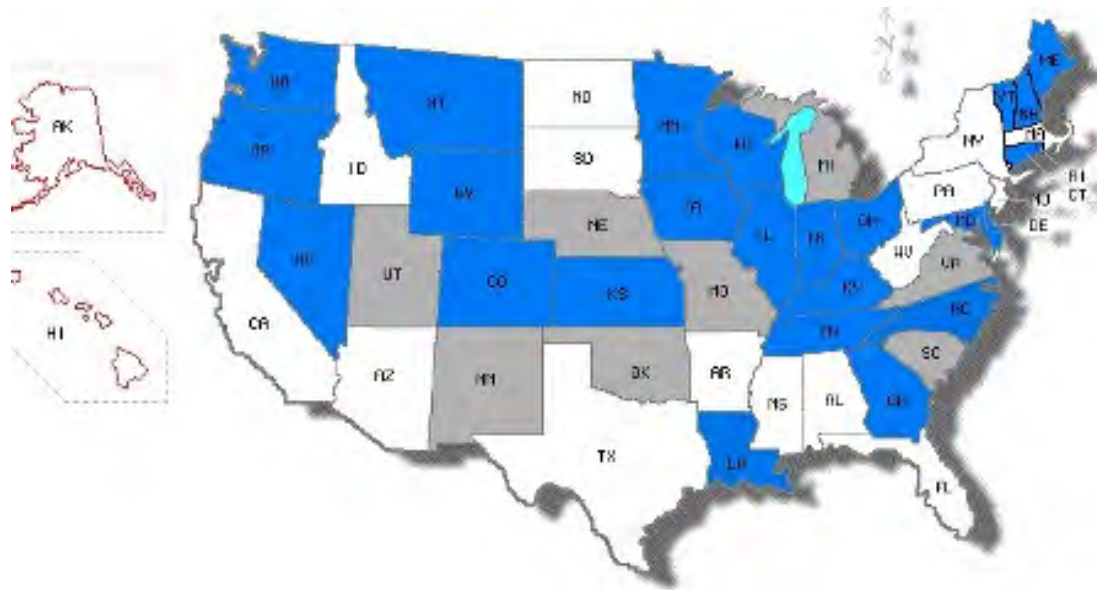
How is Seclusion Defined, and Is It Banned? (March 18, 2015)

Please see page i for instructions about copying and/or sharing. Please do not remove my name and email address from the charts. D means Children with Disabilities Only; ALL Means All Children.

	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans All Rooms from which egress is prevented (e.g. locked, blocked by furniture, etc.)	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion in Seclusion Law or Policy (This chart does not discuss fire codes)
AK	ALL			
AL			ALL	ALL
AR				D
AZ	AZ defines seclusion as confinement alone in an enclosed space			
CA			D	D (except certain licensed facilities)
CO	ALL			
CT	D			
DE	ALL			
DC	<i>Voluntary Guidance - Not law - Can Change</i>			
FL			D	
GA	ALL	Total Ban		
HI	ALL	Total Ban		
IA	ALL			
ID				
IL	ALL			
IN	ALL			
KS	ALL			
KY	ALL	ALL		
LA	D			
MA	ALL	<i>(Exception for rooms with locked doors or those blocked closed if used to calm a child (2014))</i>		
MD	ALL (if alone)			
ME	ALL			ALL
MI	<i>Voluntary Guidance - Not law - Can Change</i>			
MN	D			
MO	<i>Voluntary Guidance - Not law - Can Change</i>			

	Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.)	State Bans All Rooms from which egress is prevented (e.g. locked, blocked by furniture, etc.)	Seclusion Means Locked Room Only	State Bans Only Locked Seclusion in Seclusion Law or Policy (This chart does not discuss fire codes)
MS				
MT	D			D (except certain residential facilities)
NC	ALL			
ND				
NE	<i>Voluntary Guidance - Not law - Can Change</i>			
NH	D			
NJ				
NM	<i>Voluntary Guidance - Not law - Can Change</i>			ALL
NV	D	D-Total Ban		
NY				D
OH	ALL			ALL
OK	<i>Voluntary Guidance - Not law - Can Change</i>			
OR	ALL			
PA		D-Total Ban		
RI	ALL (if child unobserved and without access to staff)			
SC	<i>Voluntary Guidance - Not law - Can Change</i>			
SD				
TN	D			
TX	D (if alone in room)	D-Total Ban		
UT	<i>Voluntary Guidance - Not law - Can Change</i>			
VA	<i>Voluntary Guidance - Not law - Can Change. 2015 statute will require future regulations to use this definition.</i>			
VT	ALL			
WA	D			
WI	ALL			ALL
WV	ALL (if child is unsupervised)			
WY	ALL (called "isolation" in WY)			ALL

35 States Would Define Seclusion as Rooms/Spaces Child Cannot Exit (March 18,2015)



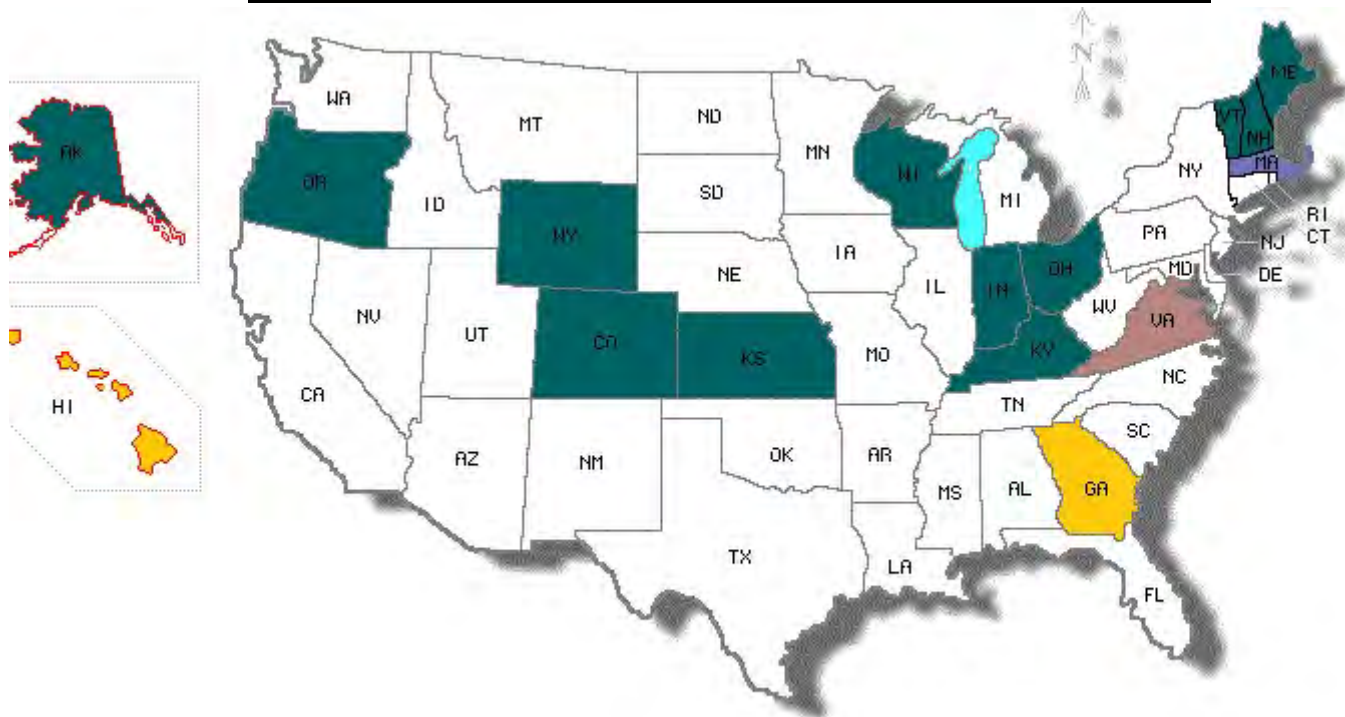
Blue (darker): By law, seclusion is defined as rooms/spaces child prevented from exiting

Grey (lighter): By voluntary principles/guidance, state suggests defining seclusion as rooms/spaces child is prevented from exiting

Please see text for discussion of MA and VA.

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States that Ban Seclusion or Limit it to Physical Danger Emergencies for All Children (March 18, 2015)



Green (darker): By law, seclusion is limited to emergency threats of physical danger for all children.

Yellow (lighter): By law, seclusion is banned for all children. On this map, this is Georgia and Hawaii.

Lavender (medium): Massachusetts: see discussion in text.

Tan: VA adopted a statute in March 2015 that will limit seclusion to physical danger emergencies, but it requires the adoption of regulations to take effect and protect students.

KS: see discussion in text. Evidence indicates that Kansas may not prevent non-emergency seclusion due to interpreting the words “danger” and “violent” in non-common manner and other issues with Kansas’ regulatory scheme.

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A map of the United States with states color-coded by region. The West (WA, OR, ID, MT, WY, UT, AZ, NM, CA) is green. The Midwest (ND, SD, NE, KS, MN, WI, IL, IN, OH, MI) is light green. The South (TX, OK, AR, MS, AL, GA, FL, SC, NC, VA, WV, MD, DE, NJ, RI, CT) is yellow. The Northeast (PA, NY, VT, NH, ME) is dark blue. Insets show Alaska (AK) and Hawaii (HI). A north arrow is in the top right.

KS: see discussion in text. Evidence indicates that Kansas may not prevent non-emergency seclusion due to interpreting the words “danger” and “violent” in non-common manner and other issues.

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C. Practices Should Be Used Only During Emergencies

Several states allow restraint or seclusion only during emergencies, either requiring them to be used as a last resort and/or requiring them to end when the emergency ends. Both of these approaches have been incorporated in the Congressional bills proposed by Tom Harkin in the Senate and by George Miller, Bobby Scott, and Don Beyer in the House. (In states that ban all seclusion, these two requirements are still relevant for restraint.) In addition, some states explicitly forbid using restraint/seclusion for discipline or punishment, a position mirrored in the federal bills.

1. Less Restrictive Measures Must Fail

Less Restrictive Measures Reduce Difficult Behaviors. Staff must use less restrictive methods if they would prevent the risk of physical danger instead of restraint and seclusion. Restraint and seclusion expose children to danger, escalate difficult behaviors, and create a cycle of violence. But research shows that positive interventions, conflict resolution, and de-escalation resolve difficult situations and help prevent and reduce seclusion and restraint.⁹⁹ Still, too often, schools reach for restraint and seclusion rather than less restrictive methods.

Seventh grade student Jared Harrison was secluded repeatedly for hours in a small cell in first grade. He explained to Oregon's KATU-TV:

You have two adults dragging you into a room and locking the door behind you and you're just a little kid and you don't know what's going on...You're not going to be calm. And I know no one else in the room was calm. They were all freaking out because their friend's being locked in a room. It didn't help the situation at all. It made it worse – much worse than it would've been if I had just sat in a timeout chair for five minutes.¹⁰⁰

Other children have been subjected to restraint or seclusion multiple times. In 2014, NBC-DFW reported that a 7 year old Texas child was secluded 21 times in a school year.¹⁰¹ A ten year old

⁹⁹ KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005). See also H.R. REP. NO. 111–417 at 20–21. There is also anecdotal evidence. According to a 2015 news story, first-grader Alex Campbell was put into isolated confinement for tearing paper, running around, and banging on the door. He was so fearful that he could not sleep at night because he did not want to wake up the next day. Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASHINGTON POST, Jan. 19, 2015. Alex moved to a school that implemented positive behavioral supports and he is doing very well, getting all As, his father reported. Bill Sizemore, *Panel OKs Regulation of Seclusion, Restraint in Va. Schools*, WHSV- Channel 3, whsv.com, Jan. 19, 2015. In an earlier Utah case, a child was restrained for smearing fecal matter and banging his head. A functional behavioral assessment found that if he could receive hugs and other forms of physical contact, he would not seek out restraint by injuring himself.

Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

¹⁰⁰ *Boy Tells Lawmakers He Was Forced into 'Seclusion Room'*, KATU (Oregon), Oct. 30, 2013 (child testified about multiple incidents, including one in 1st grade for hours).

¹⁰¹ Ken Kalthoff, *Strong Reaction to Reports of Mansfield School Discipline Room*, NBCDFW.COM, Apr. 16, 2014

Virginia student with autism was forced into a seclusion room so roughly that his hand and foot bones were broken. His family has since moved to Maryland, where the school has used “research-based interventions” to virtually extinguish his aggression, his mother, Heather Luke, testified to the Virginia General Assembly.¹⁰²

Daniel Crimmins, Director, Center for Leadership in Disability at Georgia State University, testified to the U.S. Senate that through positive supports and interventions, de-escalation, conflict management, and other positive strategies, “the use of dangerous and dehumanizing seclusion and restraint techniques can be virtually eliminated.” Behaviors that could result in restraint are “quite predictable,” and can be avoided when staff performs functional assessments and understands what triggers them. This knowledge enables properly trained staff to use de-escalation techniques to prevent most incidents from becoming dangerous, thus eliminating the need for restrictive procedures.¹⁰³

At the same Senate Hearings, Cyndi Pitonyak, Coordinator of Positive Behavior Interventions and Supports for Montgomery County, Virginia Public Schools testified the district has kept its schools safe for 20 years by limiting restraint/seclusion to rare emergencies. Instead, the district uses “easily accessible, evidence-based practices that prevent disruption and crises as much as possible” and which busy school professionals can easily use. Children with the most significant behavioral needs are not segregated in special education schools but included fully in regular classes, with peer models. Students have comprehensive positive behavioral support plans based on functional behavioral assessments. Teams meet weekly to ensure that behavioral supports are effective. In this inclusive district, adults see the use of restraint and seclusion as “shocking” in the day to day life of the classroom. The less restrictive measures work. In 2012, 86% of the district’s students with individual positive behavioral support plans made “very significant” behavioral advances. On average, their targeted problem behaviors declined by 81%, and their crisis level behaviors fell by 78%. “Aside from the typical scrapes that occur between children in any public school setting, students with PBS plans injured no adults or children.”¹⁰⁴

In Montgomery, VA schools, implementing evidence-based preventative programs cut crisis-level behaviors by 78%. Restraint and seclusion are rare. There were no injuries of school staff by students with preventative plans.

Similarly, the Centennial School in Lehigh, Pennsylvania implemented a school-wide positive behavioral support program in 1998, according to Director Michael George. In 1997-98, there

(21 times in a year).

¹⁰² Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASHINGTON POST, Jan. 19, 2015.

¹⁰³ *Senate Hearings* (testimony of Daniel Crimmins).

¹⁰⁴ *Senate Hearings*, available at <http://v.gd/1SDyOX> (testimony of Cyndi Pitonyak). The 2012 Senate Hearings have not yet been published. Prepared statements and live testimony video are available at this URL.

were 1,064 incidents of restraint (often intensive, dangerous basket holds and prone restraint). The two seclusion rooms were continually occupied. Suspension, police involvement, and emergency hospitalization levels were high, as were staff expenses. After 6 months of the positive behavioral support program, the number of physical restraints fell by 69% to 327. There were no restraints in the final 20 days of the year at Centennial. Time in seclusion fell by 77%, and the two time-out rooms became a school store and supply closet. In 2012, there were only 3 very brief uses of physical restraints. The school employed 29% fewer personnel, no longer needing extra staff to manage restraint and seclusion—thus cutting costs. Compared to 1998, suspension was down by 88% and truancy, by 50%.¹⁰⁵

The Centennial School in Pennsylvania used less restrictive methods to end seclusion and reduce restraint incidents from 1,064 to 3. Seclusion was virtually eliminated. Costs fell by 29% without the staff needed for restraint and seclusion.

Similar results have occurred in mental health treatment centers. Virginia Treatment Center for Children is a hospital that switched to Collaborative Problem Solving to deescalate and prevent challenging situations. As of 2009, VTC was seclusion and restraint free, and workers' compensation claims dropped from \$530,000 to \$15,000, according to testimony to the COY from Dr. Bela Sood, Professor, Psychiatry and Pediatrics, VCUHS. If a hospital program can have such success, so can a school, which confronts much less difficult situations.¹⁰⁶ Indeed, evidence shows that when hospitals and other residential programs cut their restraint and seclusion use and turned their resources to training and using preventative methods, they achieved substantial cost reductions from decreasing staff turnover, staff injuries, worker's compensation, and other similar expenses.¹⁰⁷

When the Texas Department of Juvenile Justice implemented a strong positive behavioral support program in its secured schools, disciplinary referrals fell substantially; average daily attendance and academic performance increased; and physical and mechanical restraint incidents fell to their lowest level in 4 years, according to a 2012 report.¹⁰⁸ Again, this strongly supports the use of positive behavioral intervention and conflict resolution programs in public schools.

The Connecticut Office of the Child Advocate concluded in 2015, "Reducing restraint and seclusion requires that all children benefit from skilled instruction, with attention not only to

¹⁰⁵ *Senate Hearings* (testimony of Michael George).

¹⁰⁶ Statement of Dr. Aradhana Bela Sood, Child Mental Health Policy Professor, Psychiatry and Pediatrics, Statement for Commission on Youth Seclusion and Restraints in Schools to Virginia Commission on Youth, 2014.

¹⁰⁷ Janice LaBel for the Substance Abuse and Mental Health Services Admin., *THE BUSINESS CASE FOR PREVENTING AND REDUCING RESTRAINT AND SECLUSION USE* (2011).

¹⁰⁸ Texas Juvenile Justice Dept., *EFFECTIVENESS OF POSITIVE BEHAV. SUPP., REPORT TO TEXAS LEGISLATURE*, 2012.

academics but also to social-emotional learning and positive behavioral supports.”¹⁰⁹

¹⁰⁹ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION (Office of the Child Advocate Feb. 2015).

State Laws. There are 18 states with laws that allow restraint only as a last resort when less restrictive measures fail or would be ineffective for all children; 24, for children with disabilities. They are

Alabama, Alaska (2014), California^d, Colorado, Delaware, Georgia, Hawaii (2014), Indiana, Iowa, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, New Hampshire (2014), New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Vermont, Wisconsin, and Connecticut^d (restraint only, less restrictive methods need not fail to use seclusion when permitted in the IEP).¹¹⁰

18 states by law require staff to first try less dangerous methods before restraint/seclusion are used on any child. More do for children with disabilities.

There are 17 states that similarly make seclusion a last resort for all children, 22, for children with disabilities.

Connecticut does not limit seclusion to being a last resort if it is included in the child's IEP, and Delaware does not impose such a limitation on seclusion permitted under a waiver.¹¹¹

Washington requires less restrictive measures to be tried first when seclusion or restraint are used as behavioral interventions, but not when they are used if there is a risk of physical harm, property destruction, or educational disruption.¹¹² Thus, even if a child would desist from a loud tantrum or trying to hit another child through de-escalation and preventative techniques, perhaps a break and walk around the building or time out in a sensory room with staff,¹¹³ the school does not have to use these practices in Washington. Instead, staff can go directly to dangerous restraint and seclusion, reinforcing the cycle of violence.

Of the remaining states without mandatory requirements, 6 recommend less restrictive practices be tried first in their voluntary guidance for all children, and 8, for children with disabilities: Arkansas (restraint 2014), Michigan, Missouri, New Mexico (restraint only)^d, Oklahoma^d, South Carolina, Utah^d, Virginia, and Washington, D.C. Virginia's new regulations that will replace its guidelines under a March 2015 statute must include this provision under the standards the statute incorporated. Students will not have this protection until that happens.

¹¹⁰ Due to a typographic error, Kansas was listed in this category in the 2014 report. It has been removed.

¹¹¹ Washington and Montana are excluded from these totals. In Washington^d, restraint and seclusion employed as "aversive interventions" to deter "undesirable behaviors," should be used only as last resorts. But when they are used to prevent serious physical harm, property destruction, and disruption, they are not considered aversive interventions and the requirement does not apply. Consequently, Washington State is not counted among the states with a less-restrictive measures requirement. Montana requires less restrictive methods to have been tried, but not necessarily to have been ineffective.

¹¹² Washington's regulations permit restraint and seclusion broadly when there is a serious risk of significant physical harm, property destruction, or educational disruption. The regulations also permit restraint as a behavioral intervention, and seclusion as a behavioral intervention when written into the child's plan by the IEP team. WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135. Another regulatory section permits such behavior-related aversive interventions to be added to IEPs only as a last resort. § 392-172A-03110.

¹¹³ For a discussion of sensory rooms and the role they can play in reducing challenging behaviors, see Green Hills (IA) Area Education Agency, *Position Paper: Developing a Sensory Room* (undated); Jodi Weigand, *South Butler Primary School opens sensory room to Help Students Refocus*, triblive.com (PITTSBURGH TRIBUNE REVIEW), Nov. 16, 2014.

2. Procedure Must End When the Emergency Ends

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These risky, harmful procedures must end when any emergency ends. Instead, children have allegedly been ordered to sit totally still for several minutes, show a happy face, stand in a corner, be quiet without profanity or yelling, writing apology letters or thought sheets, or other similar tasks to end seclusion and restraint.¹¹⁴ Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks under pressure or when upset. Such requirements have no relation to safety.

A seven year old was killed in prone restraint in a Wisconsin therapeutic day school. She was subjected to seclusion under rules requiring her to sit perfectly still in a chair with hands folded on her lap for 15 minutes or else another 15 minutes would be added on. “Expectations of total body control are not realistic for almost any seven-year-old child, much less one with ADHD and oppositional defiant disorder among her multiple disabilities,” concluded Disability Rights Wisconsin. She was put into prone restraint when she did not sit in the chair in the proper position, and was killed.¹¹⁵

There are multiple reports of hours-long and extended episodes of seclusion¹¹⁶ and restraint.¹¹⁷ Connecticut collects some of the best data in the country, for which it is to be highly commended. The Office of the Child Advocate found that in 2013-14, more than 1,700 incidents

¹¹⁴ Decision on IDEA Complaint No. 13-002, Northland Pines School Dist., Wisconsin Dept. of Public Instruction, March 11, 2013; Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son “In a Box,”* Fox6Now (Milwaukee), May 15, 2012; Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

¹¹⁵ Disability Rights Wisconsin, A TRAGIC RESULT OF A FAILURE TO ACT: THE DEATH OF ANGELIKA ARNDT (2008).

¹¹⁶ *House Hearings 11-14* (testimony of Ann Gaydos) (child secluded for hours, and later restrained for playing with tooth in seclusion room; another child isolated all day for 19 successive school days); Scott Friedman, *NBC 5 Investigation Reveals Mansfield ISD Schools Used “Recovery Rooms” Hundreds of Times for Troubled Children*, NBCDFW5.Com, Nov.3, 2014 (school policy to place students in seclusion for the remainder of day or even next day); Clark Kauffman, *Register Investigation: Isolation Cell Use on Rise Again at Juvenile Home*, DES MOINES REGISTER, Dec. 11, 2013 (documenting incidents of seclusion, including one that lasted for 111 hours, according to Disability Rights Iowa); Elizabeth Ulrich, *When Special-Ed Teachers Seclude and Restrain Students, the State Says No One Needs to Know*, NASHVILLE SCENE, Jan. 24, 2008 (Tennessee child secluded for up to 3 hours); Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009 (child who later killed himself in a seclusion room was secluded for 15 hours over 2 school days; and at other times for over 6 hours for being argumentative or not accepting feedback); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT III* (2012) (passim) (incidents include child who attempted suicide after 4 hours in seclusion); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); J. BUTLER, *UNSAFE IN THE SCHOOLHOUSE* (2009) (passim).

¹¹⁷ GAO Report at 1, 2, 6, 7; Disability Rights Oregon, *KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON’S SCHOOLS* (2011) at 5 (documenting restraints over 2 hours); ALABAMA DISABILITIES ADVOCACY PROGRAM, *SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS* (June 2009) at 2 (child tied to chair for 2.5 hours); Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOXVILLE NEWS SENTINEL, Sept. 12, 2008 (9 year old, 51 pound child with autism physically restrained by two adults in seclusion room for 3-4 hours); Pamela Brown, *Montgomery County Schools Restraint Policy Examined*, WJLA (D.C.), Aug. 30, 2012 (40 lb child with Down Syndrome restrained for 45 minutes by 4 adults for throwing bowl of pasta and attempting to hit his head; State ultimately found the restraint too lengthy and unnecessary).

of restraint and seclusion exceeded 40 minutes, including 716 that persisted for more than an hour. More than 140 children were secluded or restrained over 50 times.¹¹⁸

By statute or regulation, 18 states require restraint to end for all children when there is no longer an emergency, and 23, for children with

disabilities: Alaska (2014), Alabama, California^d, Colorado, Delaware (2013), Georgia, Hawaii (2014), Illinois (restraint only), Indiana (2014),¹¹⁹ Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, New Hampshire (2010 and 2014), Nevada^d, Ohio (seclusion only), Oregon, Rhode Island, Texas^d,¹²⁰ Vermont, Wisconsin, and West Virginia.¹²¹ For seclusion, Delaware is excluded because it bans seclusion but permits it for students without this requirement when the state grants a waiver.

The practices must end when there is no longer an emergency in 18 states (all children) ; 23 (for children with disabilities). Children have been secluded and restrained for hours and even the majority of the day.

There are 6 states that **explicitly** allow restraint or seclusion to continue even if there is no longer an emergency: Connecticut^d (seclusion must end when child is “compose[d]” or 1 hour, or as stated in IEP); Maryland (seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm); Iowa (restraint for “reasonable and necessary” period; seclusion for “reasonable” period); Illinois (seclusion ends 30 minutes after behavior resulting in seclusion has ended); and Montana^d (duration set in IEP/BIP). New Hampshire recently eliminated a similar loophole it had for seclusion. These types of limits are inappropriate, given the risks posed by seclusion and restraint. Maryland’s durational limit differs from the others in that it sets a hard deadline of 30 minutes under all circumstances. Maryland is to be lauded for this, but the standard may raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint or seclusion because he/she is not yet calm. Nonetheless, its rule appears designed to protect the child, by ensuring that staff members promptly end restraint or seclusion.

The majority of states, however, have no legal requirements relating to ending seclusion or restraint. There are 6 states with mere nonbinding policies suggesting that the practices end when the emergency ends: Arkansas (2014), Missouri, Nebraska, Oklahoma^d, South Carolina, and Washington, D.C. Such guidance lacks the force of law. There are 17 states that are wholly

¹¹⁸ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 5 (Office of the Child Advocate Feb. 2015).

¹¹⁹ While Indiana’s 2013 statute provided that the practices must end when the emergency ends or within a “short time” its new 2014 regulation is different, requiring them to end when the emergency ends “and” within a short time period. Thus, Indiana is counted among these states.

¹²⁰ Although Texas requires only that restraint end when the emergency ends, it effectively imposes this requirement on seclusion. Texas permits seclusion only while awaiting the arrival of law enforcement and only for emergencies involving students who have weapons and threaten bodily harm to someone a person. Once law enforcement personnel arrive, the emergency has ended.

¹²¹ Due to a typographic error, Kansas was listed in this category in the 2014 report. It has been removed.

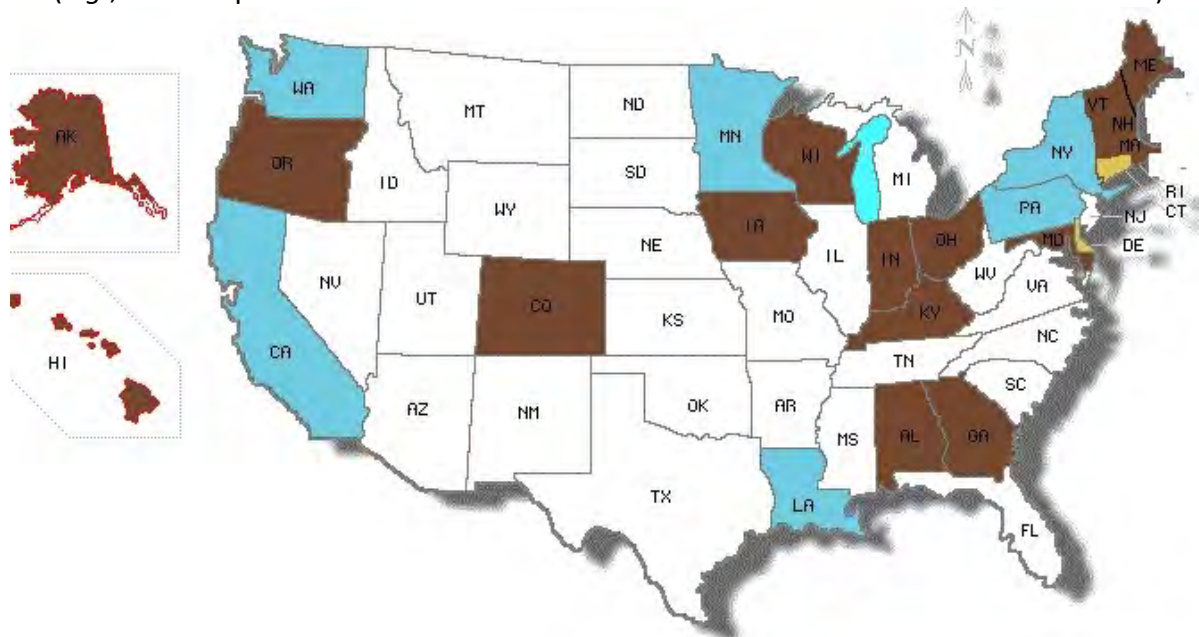
silent: Arizona, Delaware, Florida, Idaho, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wyoming. These states offer no protections by law nor recommend any through voluntary guidelines. When Virginia replaces its guidelines with new regulations pursuant to a March 2015 statute, they must include this provision under the standards the statute incorporates. Students will not have this protection until that happens.

3. Forbidding Use for Punishment and Discipline

At least 24 states have statutes/regulations stating affirmatively that seclusion/restraint cannot be used to discipline or punish children. They include Alaska (2014), Alabama, California^d, Colorado, Connecticut^d, Georgia, Hawaii (2014), Illinois, Iowa, Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, New Hampshire, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, West Virginia, and Wyoming. Some also explicitly state that the practices are not a substitute for educational programming. Other states forbid using seclusion and restraint for discipline or punishment by limiting them to threats of physical harm or banning seclusion entirely. Virginia's new regulations that will be promulgated under a March 2015 statute must include this provision under the standards the statute incorporated. Students will not have this protection until that happens.

Restraint & Seclusion Cannot be Used if Less Restrictive Interventions Would Resolve the Issue (March 18, 2015)

(e.g., state requires less restrictive interventions to fail or be deemed ineffective first)



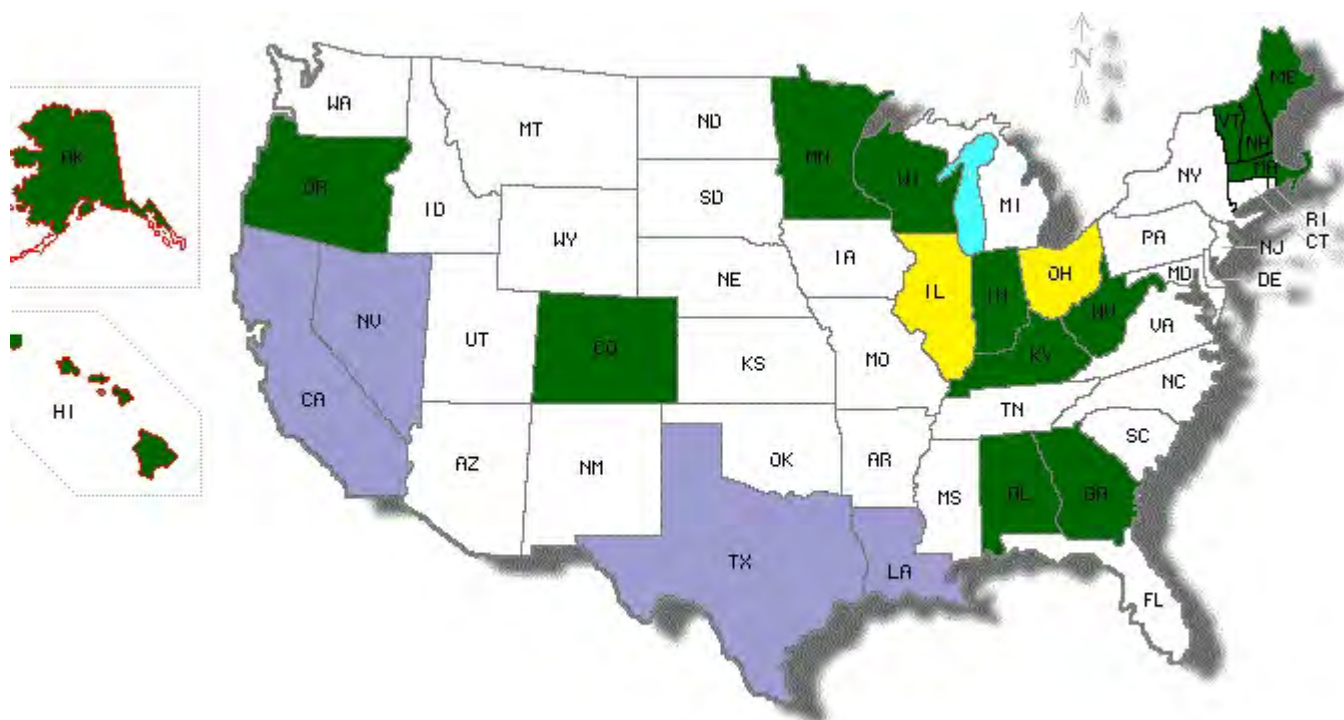
Brown (Dark): By law, less restrictive methods must fail or be deemed ineffective before S/R are used (all children). Virginia currently does not have such a requirement, but once regulations are written under the new statute's requirements, it should.

Light Blue (Medium): By law, less restrictive methods must fail/be deemed ineffective before S/R are used (children w/disabilities only).

Yellow (Lightest): CT and DE require less restrictive methods to fail or be deemed ineffective before restraint is used. But in CT, seclusion can be used even if less restrictive methods have not failed or been deemed ineffective. In DE, seclusion is banned unless a waiver is given. The law does not impose this requirement on seclusion under the waivers.

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By Law, the Intervention Must End When the Emergency Ends (March 18, 2015)



Green (Darker): By law, S/R must stop when the emergency ends for children with disabilities only.

Purple/Lavender (Medium): By law, S/R must stop when the emergency ends for all children.

Yellow (Lightest): IL requires restraint to end when the emergency ends, but permits seclusion to last for a longer time period. OH requires seclusion to end when the emergency ends but has no such language applicable to restraint.

VA does not have such a requirement. When regulations are adopted under the new March 2015 statute, they should include such a requirement, based on the standards the statute imposes.

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Other Limits on Restraint and Seclusion

IV. OTHER LIMITS ON RESTRAINT AND SECLUSION

This section of the report analyzes other important limits on restraint and seclusion. These include bans on certain particularly dangerous restraints; monitoring children in seclusion rooms (when seclusion is permitted); minimum room condition requirements; and similar practices.

A. Banning Certain Restraints

States increasingly prohibit three types of restraints due to their especially grave risks: those that restrict breathing or threaten life, mechanical restraints, and chemical restraints.

1. Restraints that Restrict Breathing and Threaten Life

Restraints that impede breathing and threaten life are beyond question highly dangerous and have no redeeming value whatsoever. A teenage Jonathan Carey was killed by suffocation after a school aide sat on top of him in a van for being disruptive. The aide and driver of the van stopped at a game store and an employee's house while he lay unconscious in the back seat. After a small 14-year, Cedric Napoleon, would not stay in his seat, a 230-pound teacher put him into prone restraint and lay on top of him, killing him. When he said that he could not breathe, his teacher replied that if he could talk, he could breathe, according to his mother's Congressional testimony. As Cedric's mother testified, "I want to make sure this doesn't happen to anyone else's child. It is awful the way Cedric died. He was a good kid. This should have never happened. The morning Cedric died, as he was boarding the bus, he turned around and got a beaming smile on his face, and said to me 'you know I love you, ma.'" ¹²²

Restraints that impede breathing and threaten life are beyond question highly dangerous and have no redeeming value whatsoever.

Laws that forbid these most dangerous restraints may be phrased as bans on "life-threatening restraints," restraints that impair "breathing," or "prone restraints." They are largely the same in their effect. But the laws that ban life-threatening restraints and those that impair breathing extend to a wider group of restraints, including restraints where a child's face is covered, even if not in a prone position. Nonetheless, some states appear to interpret these two terms as permitting some kind of prone restraint, despite its extreme risk.

Prone restraint is highly dangerous. A child in prone restraint is pinned in a prone, face-down position. Prone restraint causes suffocation, by compressing the child's ribs so the chest cavity cannot expand, and pushing the abdominal organs up so they restrict the diaphragm and reduce the room for lung expansion. To breathe, the lungs must expand. A child who is agitated and

¹²² GAO REPORT at 10-11; House Hearings 16-17 (testimony of Toni Price); see also Greg Toppo, *Restraint Can Dispirit and Hurt Special-Ed Students*, USA TODAY, May 18, 2009.

struggling needs more oxygen. Staff may also add additional force, such as weight on the child's back or thorax, making it harder to breathe. Prone restraint can result in cardiac arrhythmia, respiratory arrest, positional asphyxiation, and agitated delirium.¹²³ In a study of patients who died during restraint, asphyxiation was the cause of death in 40% of cases, including through the use of prone restraint and placing a soft object over the patient's nose and mouth during restraint.¹²⁴ For an outstanding, thorough discussion of the dangers of prone restraint and the applicable evidence, please see the Massachusetts Disability Law Center document cited in the prior footnote.

Despite the evidence, only 22 states have statutes or regulations banning the use of life-threatening restraints on all children; 29, on children with disabilities, as of March 18, 2015. These states break down into three groups as follows.

First, 3 states ban prone restraint alone: Georgia, Oregon, and Pennsylvania^d. They are silent about other restraints that can impede breathing.

Second, 19 states ban all restraints that obstruct breathing or threaten life for all children; 23, for children with disabilities. The states with explicit bans are: Alaska (2014), Alabama, Colorado, Connecticut^d, Delaware, Florida^d, Hawaii (2014), Iowa, Kansas,¹²⁵ Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, New Hampshire, Rhode Island, Tennessee^d, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

Third, Texas^d, Indiana, and Ohio use implicit bans, forbidding either restraints that harm children or restraints that deprive the child of basic needs—which breathing is.

Although Virginia does not currently prohibit the use of restraints that impede breathing, the standards applied by the March 2015 statute will require regulations that prohibit their use. But until the regulations are adopted, students have no such protection.

Of these states, 9 specifically ban both restraints that impair breathing generally and prone

Only 22 states have laws forbidding prone restraint or restraints that impede breathing for all children; 29 for children with disabilities.

¹²³ DISABILITY LAW CENTER, COMMENTS OF THE DISABILITY LAW CENTER SUPPORTING A PROPOSED BAN BY DESE AND EEC OF PRONE RESTRAINTS 7-9 (2014); DISABILITY RIGHTS CALIFORNIA, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION 17-18 (2002); see also NDRN, SCHOOL IS NOT SUPPOSED TO HURT at 13 (2009) ("Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.")

¹²⁴ JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS, PREVENTING RESTRAINT DEATHS, SENTINEL EVENT ALERT, Nov. 18, 1988. While this was a study of medical patients, prone restraint has the same effect on any person, regardless of location.

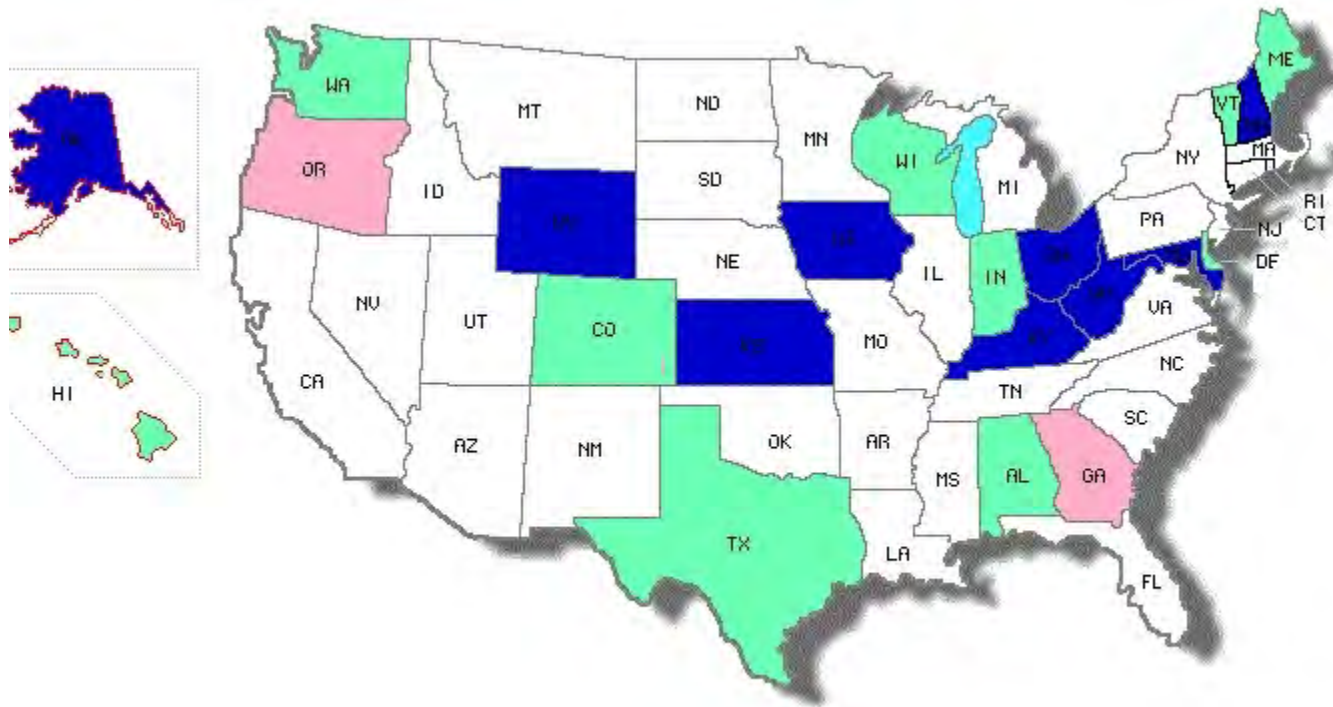
¹²⁵ Kansas watchdogs have expressed concern that Kansas does not actually forbid life-threatening restraint, but only requires school districts to have policies on the books. It is alleged that Kansas does not require implementation of those policies or ensure that they are enforced. If true, this would undercut severely claims that Kansas bans restraint that impedes breathing. This would be very dangerous. See notes 56-57 and accompanying text for more information regarding the Kansas situation.

restraint specifically: Alaska (2014), Iowa, Kansas, Kentucky, Maryland, New Hampshire, Ohio, West Virginia, and Wyoming. (Alaska, Maryland and New Hampshire do not ban prone restraint by name, but ban the actions that make up prone restraint.) In addition, 3 states do not ban--but regulate--prone restraint: Massachusetts, Vermont, and Minnesota^d. Massachusetts strengthened its regulations in 2014, but still permits prone restraint. Massachusetts law appears to give more protection to middle class parents with easier access to advocacy resources and medical doctors and psychologists. Lower-income parents with far fewer resources will likely find it more difficult to assemble the evidence and medical reports necessary to achieve protection.

A Minnesota^d statute allows prone restraint through 2015 by staff trained in its use, as long as the school first reviews “any known medical or psychological limitations that contraindicate the use of prone restraints.” The school must also keep a list of trained staff and the training they received. The same law prohibits restraints that threaten the ability to breathe or that restrict “a child’s ability to communicate distress, places pressure or weight on a child’s head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or result[] in straddling a child’s torso.” The state Department of Education must publish data quarterly on the use of prone restraint and plan for ending prone restraint.

Voluntary guidance urges preventing these highly dangerous restraints in 7 states for students with disabilities, 6 states for all children: Arkansas (2014), Missouri, Nebraska, New Mexico^d, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These voluntary principles are not equivalent to mandatory statutes or regulations, but they do reflect the state’s views that such restraints should be banned.

**All Children: States Banning Prone Restraint or
Those that Impair Breathing or Threaten Life (March 18, 2015)**



Green (medium): Law bans all restraints that impair breathing.

Pink (light): Law bans prone restraint only. These states are GA and OR.

Blue (dark): Law bans both.

TX, IN, and OH have implicit laws, banning restraints that harm child or deprive child of basic necessities, which includes breathing. OH also has an explicit ban on prone restraint.

VA will join these states once regulations are promulgated, as its new statute requires that regulations forbid restraints that impede breathing. Until then, VA has no protection for students.

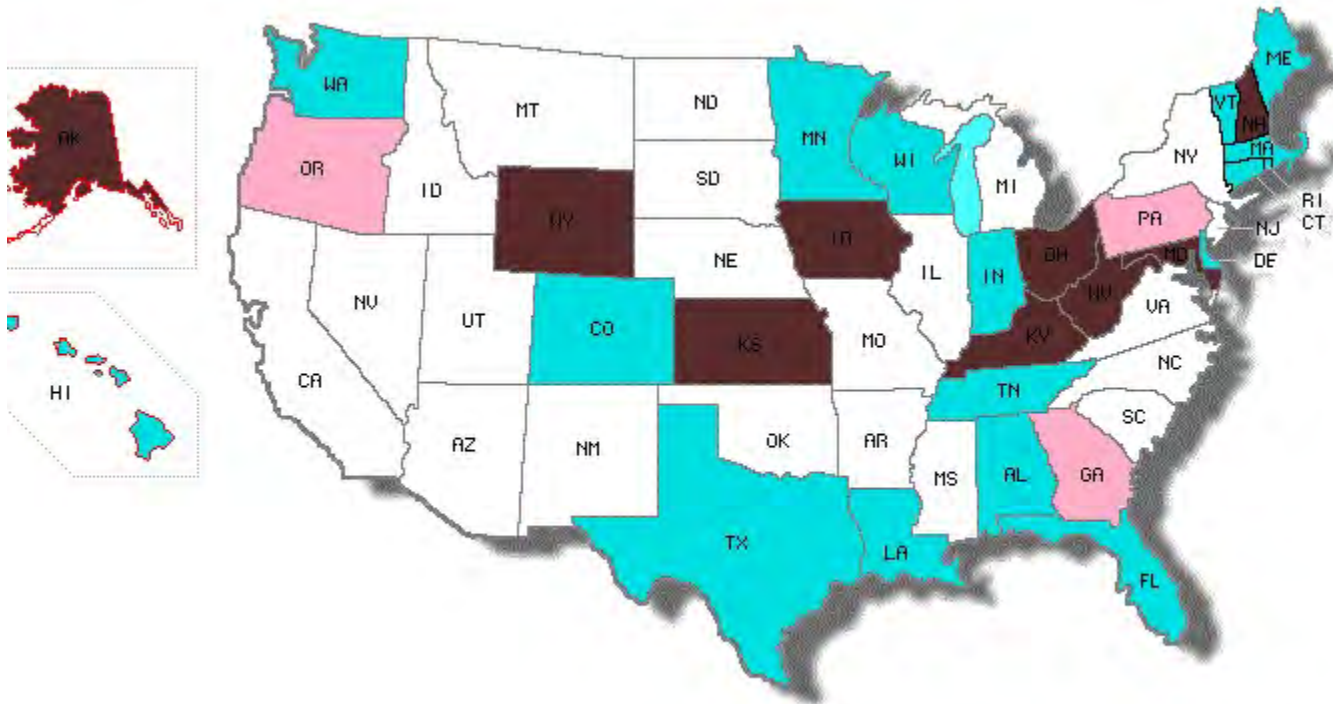
MA and VT ban restraint that impedes breathing, but only regulate prone restraint (which does impede breathing).

KS: See discussion in text regarding concerns of Kansas watchdogs regarding this requirement.

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Children with Disabilities: States Banning Prone Restraint or Those that Impair Breathing or Threaten Life (March 18, 2015)



Brown (Dark): Law bans all restraints that impair breathing.

Pink (Light): Law bans prone restraint only.

Aqua Blue (Medium): Law bans both.

Some laws ban the use of these dangerous practices on all children, thus including children with disabilities.

VA will join these states when its regulations are adopted. The form of its March 2015 statute prevents protections from taking place until regulations are adopted, but the standards in the statute will include this protection.

KS: see discussion in text regarding concerns of Kansas watchdogs regarding this requirement.

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2. Mechanical & Chemical Restraint

Media reports that children were bound with duct-tape and other mechanical restraints are a frequent occurrence. In 2013, Shaylyn Searcy, an 8-year old Indiana girl with Down Syndrome, returned home with her shoes duct-taped so tightly that she could not walk and her ankles were bruised, according to news reports.¹²⁶ In 2014, a Fresno child was tied to a chair repeatedly over four days because he would not remain seated. “It’s child abuse and bullying. . . he was scared of her. He was so scared that he couldn’t even tell me,” said Rosanna Salinas, his aunt and legal guardian.¹²⁷ A Tucson girl with Attention Deficit Hyperactivity Disorder was taped to a chair for getting up too many times to sharpen a pencil.¹²⁸

In Fresno, Rosina Salinas’ nephew was tied to a chair repeatedly for not remaining seated. In Indiana, the shoes of a young girl were Down Syndrome were taped so tightly she could not walk. A California child was strapped into a wheelchair that was inverted.

Mechanical restraints include duct tape, straps, bungee cords, and ropes used to tie children to furniture or to tie body parts together; chairs and furniture that children are locked into; devices that restrain arms, legs, torsos and other body parts; weighted materials; and similar mechanisms. They are hazardous, as the GAO and numerous organizations have found. Special therapy chairs intended to help children with certain physical disabilities sit have been misused as restraints because children can effectively be locked in with belts and trays. A California child was strapped into a wheelchair and it was inverted. He was helpless to free himself.¹²⁹ A Connecticut child’s IEP stated that he could be restrained in a therapy chair with straps and belts “as needed.” The chair is used for children with physical disabilities who need assistance sitting—not for restraint. “The child’s IEP does not indicate that he is diagnosed with any physical challenges or that there is a medical need for such a restraint,” the Connecticut Child Advocate explained.¹³⁰ Even for children with physical disabilities who may use such chairs for appropriate purposes, overuse or abuse of a therapy chair is wrong and dangerous. For example, if a child with physical disabilities was tearing up

¹²⁶ Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl’s Feet Duct-Taped*, INDIANAPOLIS STAR, Feb. 6, 2013 (citing HOW SAFE IS THE SCHOOLHOUSE). The media routinely reports that children have been duct-taped. See, e.g., *Police: Lakeland Teacher Duct Taped Student’s Hands Together*, WFLA NEWS CHANNEL 8 (Lakeland, FL), July 8, 2014; Warren Kulo, *Ocean Springs Teacher Disciplined for Duct-Taping Student’s Mouth Shut*, MISSISSIPPI PRESS NEWS, Oct. 23, 2013; Lindsay Kastner, *Teacher Duct-Taped Judson ISD Student to Chair*, MY SAN ANTONIO (San Antonio Express website), June 5, 2013 (duct tape allegedly used to bind student’s ankles and hands and attach child to chair for being rambunctious); Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011 (teacher charged with duct-taping child to chair and other acts pled guilty to false imprisonment).

¹²⁷ Rich Rodriguez, *Student Tied To Classroom Chair; Teacher Accused*, KMPH Fox-26 (Fresno), Jan. 31, 2013; Justin Willis, *5th Grade Teacher Accused of Tying Student to a Chair*, NBC Latino, Feb. 1, 2013.

¹²⁸ KEVIN KEEN, *Tucson Student: Teacher Taped Me to a Chair*, KGUN9 (ARIZ.), AUG. 20, 2013.

¹²⁹ See SCHOOL IS NOT SUPPOSED TO HURT (2009) at 21-26; GAO Report (passim); see also *D.K. v. Solano Off. of Educ.*, 667 F. Supp. 2d 1184 (E.D. Cal. 2009) (student strapped into inverted wheelchair).

¹³⁰ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* 15-16 (Office of the Child Advocate Feb. 2015).

paper or having a tantrum, it is inappropriate to confine him into a therapy chair with straps and/or locking tray, even if he used such a chair for therapeutic purposes at other times.

Children have been left in mechanical restraints for long periods of time, exacerbating the harm. In Georgia, a middle-schooler with multiple disabilities was strapped into a potty chair and a therapy chair locked in a darkened room by his teacher, only to be discovered by another teacher. He suffered physical and psychological harm and regressed in his education. Another child was repeatedly strapped to a therapy chair and confined alone in a room for several hours a day.¹³¹ In Pennsylvania, a teacher allegedly strapped children with bungee cords into therapy chairs, punishing and abusing them.¹³²

Statutes and regulations ban mechanical restraint of any child in 19 states; 23 states, for children with

disabilities. The states with bans are: Alabama, Alaska (2014), Colorado (but allowing use by armed security guards), Georgia, Hawaii (2014), Indiana (2014), Illinois, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts (2014), Montana^d, New Hampshire, Ohio, Oregon, Pennsylvania^d, Tennessee^d, Vermont, Wyoming, West Virginia, and Wisconsin. Generally, these states have exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility, as the Congressional bills do. Virginia's March 2015 statute requires regulations to be promulgated before students are protected. These future regulations should include a prohibition on these restraints under the standards used in the statute.

19 states ban mechanical restraints for all children. These include locking children into chairs and other devices; and duct-taping and tying them up or to furniture. 19 also ban dangerous chemical restraints for all children.

Hence, 32 states do not by law ban mechanical restraints for all children; 28, for children with disabilities. Of these, 4 have some specific provisions regarding mechanical restraint. Maryland is fairly strict, forbidding mechanical restraint except in very few schools with hospital accreditation. Delaware forbids mechanical restraint unless authorized by waiver from the state department of education. As with seclusion, the only limit on the waiver is that it be for "compelling justification." There are no restrictions otherwise on how or why mechanical restraints can be used, or on the number of students for whom waivers can be granted. Nevada^d permits mechanical restraint with a physician's order, as long as staff loosen the restraints every 15 minutes to determine whether the child will stop injuring himself. (This implies that Nevada only allows the restraints to prevent self-injury.) Washington^d bans schools from binding limbs to each other or an object, but permits even this with parental consent if stated in a child's IEP.

Among the states without mandatory laws, 6 have voluntary guidelines suggesting that mechanical restraints not be used: Arkansas (2014), Nebraska, New Mexico^d, Oklahoma^d, South

¹³¹ *A.W. v. Fulton Co. Sch. Dist.*, Docket No. OSAH-DOE-SE-1135718-60 (Georgia State Administrative Hearing Feb. 1, 2012).

¹³² *Vicky M. v. Northeastern Educational Intermed. Unit 19*, No. 06-01898 (M.D. Pa. May 15, 2007).

Carolina, and Washington, D.C.

Chemical restraints can kill and injure.¹³³ The Hartford Courant documented their dangers in its 1989 series,¹³⁴ and those dangers remain today. **There are 19 states prohibiting chemical restraints in their statutes and regulations, all applicable to all children:** Alabama, Alaska (2014), Colorado, Delaware, Georgia, Hawaii (2014), Illinois, Indiana (2014), Iowa, Kansas, Kentucky, Maine, Massachusetts (2014), New Hampshire, Ohio, Oregon, Rhode Island, and Vermont, and Wisconsin (2012, change from nonbinding guidance that advised allowing them with medical oversight). These laws apply to all children. Virginia's March 2015 statute requires regulations to be promulgated before students are protected. These future regulations should include a prohibition on these restraints under the standards used in the statute.

Another 2 have loopholes that undermine any restrictions: Connecticut^d (bans chemical restraints unless otherwise stated in IEP, but permitting it in IEP for any reason), and Tennessee^d (permitted with parental consent and physician instructions). These pose the same risks of danger as similar laws on mechanical restraint, and the loopholes allow them to be used freely. The remaining states have no laws restricting their use. There are 4 that advise in suggested guidance that they not be used: Arkansas (2014), Missouri, Nebraska, and Washington, D.C.

For comparison, the Congressional bills introduced by Senator Harkin(2011 and 2014), Congressman Miller (2009, 2011, 2013), and Congressmen Beyer and Scott (2014) ban mechanical and chemical restraints. The bills include exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility.

3. Mechanical Restraints Magnify Seclusion Harm

Seclusion's risks grow if a state allows mechanical restraint. Children may be locked or strapped into chairs or other devices, and left for hours in rooms and closets, hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom. She flipped the chair over on herself and was hanging by the restraints. She also urinated on herself.¹³⁵ A Massachusetts preschooler was allegedly strapped into a therapy chair, and left alone in a closed, darkened closet as he cried--until another teacher rescued him.¹³⁶ CNN has documented the story of another child who was strapped into a chair and placed in isolation. Another special education teacher found him and reported the situation.¹³⁷

¹³³ Chemical restraints include drugs that restrict the child's ability to move or control his behavior which were not prescribed by a physical as a standard treatment for the child's condition and or that are not administered as prescribed (e.g., a much larger dose is given).

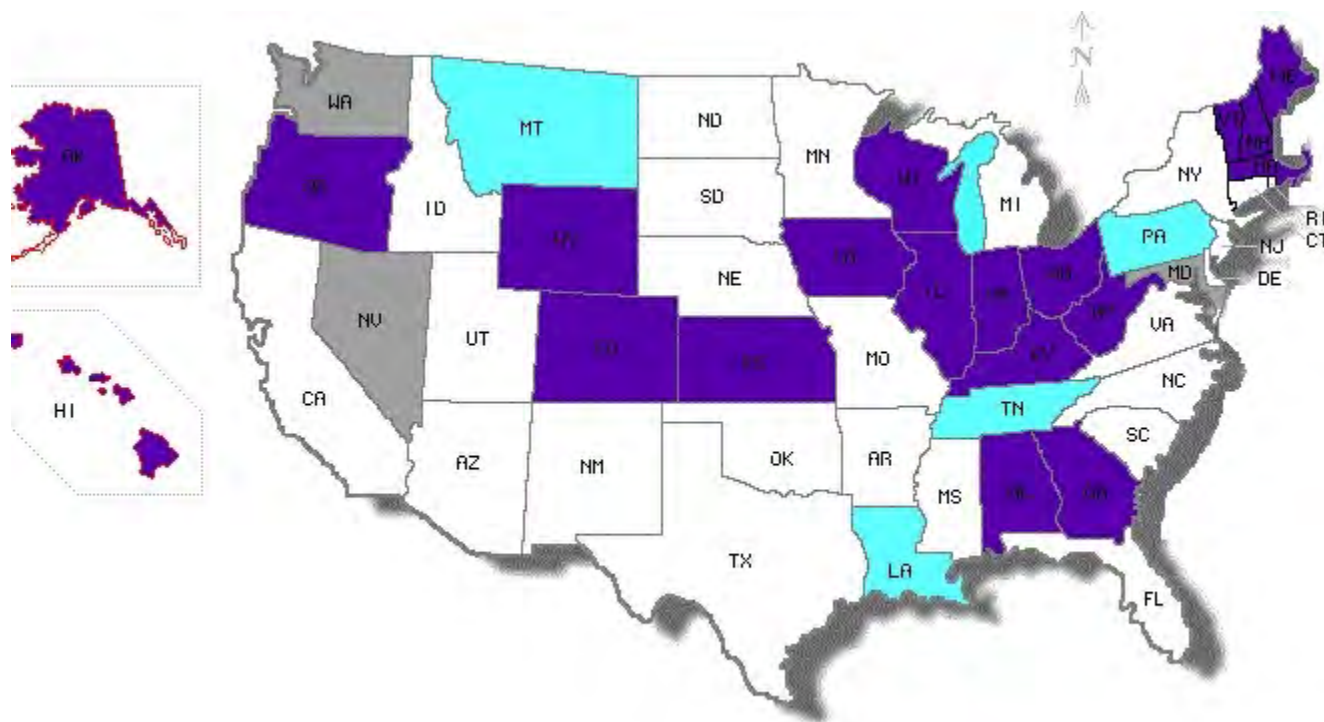
¹³⁴ Eric Weiss et al., *Hundreds of The Nation's Most Vulnerable Have Been Killed by the System Intended to Care for Them*, HARTFORD COURANT, Oct. 11, 1998.

¹³⁵ ALABAMA DISABILITIES ADVOC. PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

¹³⁶ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

¹³⁷ Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 and accompanying blog story.

**Mechanical Restraints Are Banned or Restricted By Law
(March 18, 2015)**



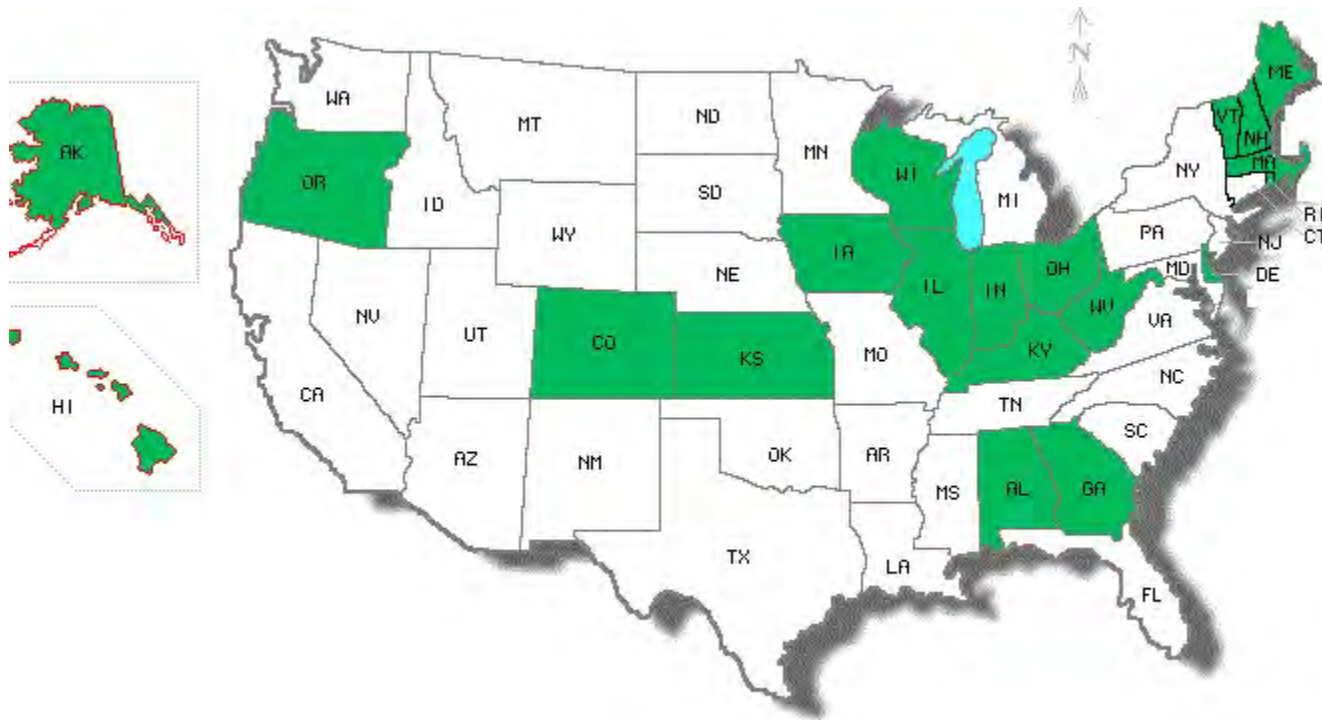
Purple: By law, mechanical restraint is prohibited for all children. VA will join the states banning mechanical restraint of all children once its regulations are promulgated, due to requirements in its March 2015 statute. Due to the wording of that statute, the protections will not apply until March 2015.

Aqua Blue: By law, mechanical restraint is banned for children with disabilities only.

Gray: By law, mechanical restraint may be used but with restrictions. MD (banned except for certain schools with hospital accreditation); NV (permitted with a physician's order, but requires loosening every 15 minutes); and WA (forbids only binding of limbs to object or each other, and permits this if included in IEP with parent consent).

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States Prohibiting Chemical Restraint (March 18, 2015)



Green: Chemical restraint is prohibited by law. Each of these statutes and regulations apply to all children.

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B. Seclusion Requirements

1. Continuous Visual Observation of Seclusion

Several states with laws restricting seclusion require that children be monitored. Monitoring can range from continuously watching the child to simply being capable of seeing inside the room or checking the unobserved room occasionally. These last two are quite dangerous. In 2004, 13-year-old Jonathan King killed himself in a seclusion room, a teacher sitting outside listening to him.¹³⁸ In January 2011, an Indiana student attempted suicide in a seclusion room where he was not observed, the National Disability Rights Network alleged. He previously had been placed in the room and forbidden to use the bathroom, causing him to urinate on himself, and then secluded for another day for having relieved himself.¹³⁹ Other children confined unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized. As previously noted, the Council for Children with Behavioral Disorders observed that injuries and deaths in seclusion have occurred as a result of suicide, electrocution, and “self injury due to cutting, pounding, and head banging.”¹⁴⁰

Children in seclusion who were not continually observed have died or been harmed between staff checks. 34 states lack laws requiring staff to continually watch children in seclusion (24 lack them for children with disabilities).

There are 17 states that protect all children from unobserved seclusion by statute or regulation; 27, children with disabilities. Seclusion is banned in 5 states for children with disabilities, and 2 states for all children: Georgia, Hawaii (2014), Nevada^d, Pennsylvania^d, and Texas^d). Of those permitting seclusion, only 15 by law require continuous direct observation of all children in seclusion rooms; 22 states, of children with disabilities: Alabama, Alaska (2014), Arkansas^d, Delaware (if State grants waiver to permit seclusion, monitoring required), Hawaii (2014), Illinois, Indiana (2014), Iowa, Kentucky, Louisiana^d, Maryland, Maine, Minnesota^d, Montana^d, New York^d, Oregon, Rhode Island, Tennessee^d, Vermont, Wisconsin, Wyoming (“isolation” rooms), and Washington^d. Virginia’s March 2015 statute requires regulations to be promulgated before students are protected. These future regulations should require continuous visual observation under the standards used in the statute.

Massachusetts bans most forms of seclusion, but allows what it calls time-out for purposes of calming in rooms where the door may be locked or blocked by furniture, equipment, etc. If a student is in this form of time-out, staff must be with the child or immediately accessible. This is a change from the old rules that could have allowed staff to be done the hall or within shouting

¹³⁸ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

¹³⁹ NATIONAL DISABILITY RIGHTS NETWORK, *SCHOOL IS NOT SUPPOSED TO HURT* 11 (2012).

¹⁴⁰ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

distance. (Massachusetts would be among the more protective states if it forbade locked and blocked doors on these rooms, as previously stated.)

Accordingly, 34 states lack laws requiring continuous observation of all students in seclusion; 24 states lack them for children with disabilities. Some of these implement limited forms of monitoring which are undermined by loopholes. Others have no laws about monitoring or observation.

Several state laws require some monitoring, but loopholes in them allow students to go unobserved. Laws in 3 states let staff monitor the room occasionally but do not require continuous visual observation of all children: Colorado (“reasonably monitored”); Ohio (“constant supervision by staff” and the ability to observe the student) and North Carolina (require staff to be “able to see and hear the student at all times”). Another 2 states permit occasional monitoring of children with disabilities and nothing for children without disabilities: California^d (“adequate” supervision for unlocked seclusion) and Connecticut^d (IEP team determines frequency of monitoring if seclusion in IEP). Requiring staff to be capable of seeing the child at all times is not the same as requiring that staff actually watch the child.

Other states lack laws that require any monitoring for students placed in seclusion isolation. There are 4 that encourage continuous visual monitoring in recommended policies: Michigan, Oklahoma^d, South Carolina, and Washington, D.C. Another 2 advocate for the *ability* to see the student at all times: Missouri, and Nebraska. These guidelines do not have the force of law and are subject to change. In addition, 11 states say nothing about monitoring children in seclusion: Arizona, Florida, Idaho, Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Utah, Virginia, and West Virginia. (Virginia should be adopting monitoring requirements in future regulations under its new statute, as described above.) Finally, children without disabilities may be secluded without being watched in those states with disability-only laws. This is of concern as the most recent data indicated that 42% of students secluded do not have disabilities.

But continual visual monitoring alone will not resolve the dangers of seclusion. It is very easy in our technological age to leave a child in concrete block room a room for hours, monitored only by a cheap camera device or even smartphone. Monitoring does not resolve all of the problems with seclusion. It does not ensure that parents are informed or that seclusion is only used in an emergency, that positive behavioral supports were tried and failed before seclusion was used, or that seclusion will end when the emergency ends. Some advocates have tried to define seclusion to exclude students who are monitored continuously. But this means that there will be no protections for students who are monitored. A child could be put into monitored seclusion for dropping a candy wrapper on the floor or having a tantrum. No parents would be informed; no records kept. They could be left in seclusion as long as staff wanted. Rather than changing the definition of seclusion, states should do as other states have done: define seclusion appropriately and then require continuous visual monitoring if the state permits seclusion.

Alex Campbell, 9 years old, described the experience of seclusion while being monitored:

Today I'm here to share my feelings about the crises room. Two years ago my principal put me in the crises room. When I was in the crises room I was lonely. I was also mad at the principal and the behavior specialist. He never said why I went into the room. Sometimes I felt like I went into the room for not doing anything at all. All he ever said to me was (quote) "Your going into the crises room." He also said, (quote) "I'm not going to tell your parents any of this and I don't want you to ether". Not only would he leave me in the room, he would also pull a spare desk and put it in front of the door. I could see him sitting in the desk from inside the door window. I know I was in there alone anywhere from 30 minutes to almost two hours. The room was about the size of a small walk in closet[.] I never wanted to go back to school. I never told my parents about going into the room because [t]he principal said he would put me into the room for the hole next day. After about the 6th or 7th I went there, I finely [finally] told my parents. I begged them not to go back to school. The thought of going into that room scared me. I do NOT want other kids to experience the mean teachers, behavior specialist, and principals that I have experienced.¹⁴¹

A 9 year old described the experience of being confined in seclusion room for up to 2 hours, while being monitored by principal. The school did not inform his parents of the seclusion.

Alex was secluded for tearing paper, running around, and banging on the door, not for putting anyone at risk of danger.¹⁴²

2. Minimum Room Condition Requirements

Students have been secluded in small, darkened closets or boxes, or injured by furniture they can overturn or other dangerous items. Others have been denied food, water, and bathroom access. In some cases, children have removed their clothing to be able to urinate in the room or urinated

¹⁴¹ Alex Campbell, TESTIMONY TO GENERAL ASSEMBLY OF VIRGINIA, Feb. 8, 2015 (words as received from parent of child author except for bracketed material).

¹⁴² Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASHINGTON POST, Feb. 8, 2015.

on themselves.¹⁴³ In 2012, there were several news reports of students secluded in locked boxes or free-standing cells.¹⁴⁴ Such boxes likely do not comply with state fire and building codes.¹⁴⁵

Some states have eliminated this problem by banning all seclusion. Oregon has banned free-standing seclusion cells. Other states regulate seclusion room conditions by statute and regulation. States are more likely to impose requirements for lighting (18 states) and ventilation (16 states) than access to essential bathroom facilities (7 states). Some state law room requirements are below:

Room must be lit (18 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, New Hampshire (2014), New York^d, North Carolina, Ohio, Tennessee^d, Vermont, Washington^d, West Virginia, and Wyoming.

Heating/cooling/ adequate ventilation (16 states by law): Arkansas^d, Colorado, Iowa, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, New Hampshire (2014), New York^d, North Carolina, Ohio, Tennessee^d, Vermont, Washington, and Wyoming.

Free of dangerous furniture, objects, and conditions (16 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, New Hampshire (2014), New York^d, North Carolina, Tennessee^d, Vermont, Wisconsin, and Wyoming.

Room size requirements (12 states by law): Arkansas^d, Colorado, Iowa, Louisiana^d, Maryland, Minnesota^d, Ohio, New Hampshire (2014), New York^d, Tennessee^d, and Wyoming impose overall requirements. Oregon forbids the use of free-standing seclusion cells, which are often very tiny.

Bathroom access (7 states by law): Iowa, Maryland (hard 30 minute limit on seclusion), Minnesota^d, New York^d (denial is a forbidden aversive), North Carolina (same); Wisconsin, and Washington^d (forbidden aversive to deny child “common hygiene care.”)

Seclusion room conditions are often unregulated. Only 7 states require bathroom access for children in seclusion rooms; 18 require rooms to be lit; 16 require adequate heating/cooling.

¹⁴³ See generally Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012; NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009); JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE (2009); DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN (2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009). See also footnotes 81 and 85 above and accompanying text.

¹⁴⁴ *Boy Tells Lawmakers He Was Forced into “Seclusion Room”*, KATU (Oregon), Oct. 30, 2013; *Parents Angry Over School District’s Use of “Isolation Booth,”* KOMO NEWS (WASHINGTON), Nov. 29, 2012; Stephen Davis and Bryan Polcy, *Mom Says School Put Her Autistic Son “In a Box,”* Fox6Now (Wisconsin), May 15, 2012; Carey Pena, *Elementary School Faces Lawsuit Over Padded Seclusion Room*, AZFAMILY.COM (KTVK-3TV, Arizona), Sept. 19, 2012.

¹⁴⁵ See SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (Aug. 20, 2012).

Access to water and food when normally served (2 states by law): Minnesota^d and Wisconsin.

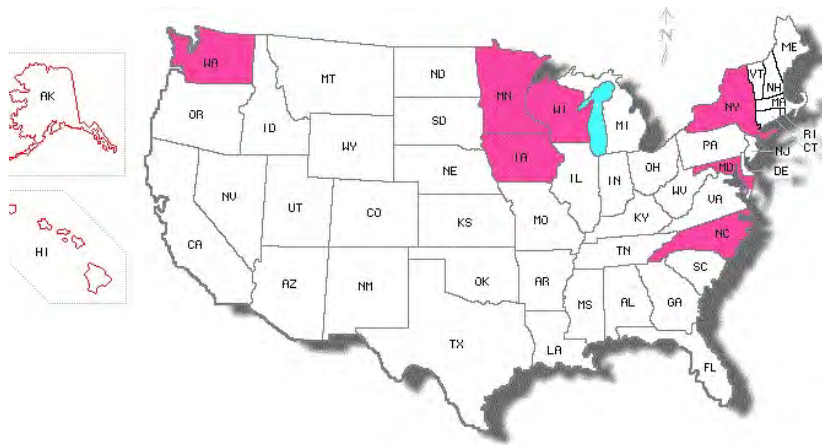
Such requirements are not necessary in the states that ban all seclusion.

Explicit compliance with fire codes: Arkansas, Florida, Kentucky, Minnesota, New York, Tennessee, and Vermont are among the states explicitly requiring compliance with fire, safety, and building codes in their restraint/seclusion laws. Minnesota requires obtaining a written statement that a room is in compliance from local authorities. South Carolina explains the application of its state fire and building codes in its voluntary guidance document; these parts of the document are not voluntary. No one should ever assume that a school or other building is exempt from a state fire, building, or safety code—or that those codes permit rooms with locked or obstructed doors.¹⁴⁶ Educators and parents should always refer to those codes, in addition to their state restraint/seclusion laws and policies. See also Section III.B.3. above for a fuller discussion of fire and building code issues.

Room conditions are also suggested in the nonbinding guidance in Michigan, and South Carolina. While Kansas' 2007 voluntary policy included such provisions, its 2013 regulation does not.

It is important to note that room condition requirements do not ensure seclusion rooms are safe. A well-lit and heated or ventilated room is still a room in which a child can break a finger, sprain an ankle, become repeatedly bruised, suffer severe trauma, or attempt suicide. A child can be highly traumatized, and their learning can be impaired. The room requirements, however, ensure that seclusion rooms meet some very basic thresholds and children are not in icy or overly hot rooms, boxes, unlit closets, cells without functional sprinkler systems, able to use the bathroom, etc.

¹⁴⁶ See notes 87-90 above and accompanying text for a discussion of fire and other codes.



Only 7 States Require Bathroom Access For Students in Seclusion Isolation



Only 16 States Set Rules Regarding Adequate Ventilation, Heating, or Cooling in Isolation Rooms



Only 16 States Require Rooms To Be Free of Unsafe Objects and Furniture



Only 18 States Forbid Seclusion in Dark, Unlit Rooms

Parental Notice, Awareness of Seclusion/ Restraint, And Related Issues

V. PARENTAL NOTICE, AWARENESS OF RESTRAINT, AND RELATED ISSUES

Very important requirements relate to disclosure and discussion of seclusion and restraint. These include the school's obligation to notify parents that a child was restrained or secluded; collecting data and making it available to the public; debriefings to reduce seclusion and restraint use; and training requirements.

A. Informing Parents of Restraint and Seclusion

Parents must be promptly informed when their children are restrained or secluded, so they can watch for injuries and trauma, and seek appropriate medical care. Notification also enables them to work with staff to prevent further incidents and to ensure appropriate positive behavioral supports and de-escalation methods are in place, as they can share information about the child at home and school.¹⁴⁷

Yet, too often parents are kept unaware of the incidents. Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door shut. He missed 8 full days of school over a 2-week period. He was also repeatedly restrained and subjected to aversive interventions, including denial of 40% of his meals. His parents knew none of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.¹⁴⁸

An Oregon first grader spent hours in seclusion and endured repeated restraint of which his parents were unaware. He became so upset that he broke his glasses, banged his head against the wall, and bit his hand until it bled.¹⁴⁹ Another Oregon child was repeatedly confined for up to two hours a day in a seclusion cell with an opening through which he was observed. His mother discovered the practices only when she arrived at school early to find two teachers restraining him by sitting on him as he screamed.¹⁵⁰ Phyllis Musumeci discovered that her son, Christian, was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his removal from school. His parents found out a year later, when they requested school logs (those for one year were reported missing).¹⁵¹ While the school kept some logs that his parents could access, many states do not require logs, leaving parents unable to determine whether their child was restrained or secluded.

¹⁴⁷ See *above* text accompanying notes 102-109 for a discussion of highly successful positive supports in schools and the value of identifying and managing triggers in preventing use of restraint and seclusion.

¹⁴⁸ *House Hearings*, 60-61.

¹⁴⁹ DISABILITY RIGHTS OREGON, *KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON'S SCHOOLS 4* (2011).

¹⁵⁰ Camila Mortensen, *Use of Seclusion Rooms at 4J Challenged*, *EugeneWeekly.com*, Dec. 20, 2012.

¹⁵¹ *Gradebook: A Weekend Interview with Phyllis Musumeci*, *TAMPA BAY TIMES*, Jan. 24, 2009.

Other parents have reported learning of restraint and abuse only after finding bruises and other injuries to their children's bodies.¹⁵² At least two families felt they needed to hide tape recorders on their children to find out the full extent of abuse of nonverbal children.¹⁵³ One parent videotaped her son each morning to determine the extent of injuries from restraint when he returned from school, according to a 2014 ProPublica report.¹⁵⁴ Even when notices are sent to parents, they may not be able to read them if they cannot read the language, as happened with one Oregon family.¹⁵⁵

This section of the report examines state parental notification requirements.

Parental Notification Laws At a Glance (March 18, 2015)

	All Children	Children with Disabilities
Must notify parents of both seclusion and restraint by law, statute or regulation. (Total of all rows below.)	23 states	35 states
Must notify on the same day event occurs	11	16
Must notify within 1 calendar day/24 hours	6	10
Same day and 1 calendar day/24 hour notice combined together (Subtotal of above two rows.)	17	26
Must act to notify within 1 school or business day (allows school holidays and weekends to delay notice)	3	4
Must act to notify within 2 school days	2	2
Longer notification period	1	3
No Parental Notification Provision	28	16
Do Not Require Notice Within 24 Hours	34	25

Of these states, 4 require 24 hour notification unless the IEP sets another deadline or another loophole applies to extend the deadline. In addition, Arizona requires notification for seclusion but none for restraint. Arizona was not included in the table above, for this reason. Still, the general national trend is toward notification within the same day/24 hour continuum. When

¹⁵² See, e.g., KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012); Alan Judd, *An Expensive Fight over a Boy with Autism*, ATLANTA J. CONSTITUTION, Sept. 26, 2011.

¹⁵³ Alan Judd, *An Expensive Fight over a Boy with Autism*, ATLANTA J. CONSTITUTION, Sept. 26, 2011 (S.F. case); *H.H. v. Moffett*, 335 Fed. Appx. 306 (4th Cir. 2009) (unpublished).

¹⁵⁴ Heather Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA, June 19, 2014.

¹⁵⁵ DISABILITY RIGHTS OREGON, above note 11, at 4.

state voluntary guidelines are added as indicating what states would *advocate* for, 33 states favor notifying parents within 1 calendar day or less, and 37, within 1 school day or less.

The state notice requirements break down as follows.

As of March 18, 2015, only 23 states require that parents of all children be notified if restraint or seclusion are used: Alabama, Alaska (2014), Colorado, Delaware (2014 regulations), Georgia, Hawaii (2014), Illinois, Indiana (2014 regulations; 2013 statute), Iowa, Kansas,¹⁵⁶ Kentucky, Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts (2014 regulations strengthened notice provisions), New Hampshire (2014), North Carolina (but not requiring notification under many circumstances, as noted below), Ohio, Oregon, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. This leaves 28 states that do not mandate notification.

Virginia's March 2015 statute requires regulations to be promulgated before students have protection. These future regulations will mandate parental notification under the standards used in the statute.

For students with disabilities, 35 states by law require schools to tell parents when their child was restrained or secluded: Alaska (2014), Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii (2014), Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire (2014), New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

Almost all state laws adopted after Congress and the media intensified their restraint and seclusion focus in 2009 require parental notification on the same day, within 24 hours, or within 1 school day. The exception is Kansas (2 school days).

The next section discussed various deadlines for notification. **In the lists, laws applicable to all children come before those applicable only to children with disabilities for ease of use. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/24 hour notification, followed by a more extensive written report to parents.**

1. Parental Notification Same Day/Next Day

A 24 hour notification period is very important because parents need to provide prompt medical care and other attention. Concussions, hidden internal injuries or bleeding, medical issues, and psychological trauma need to be identified immediately. Parents will want to address the use of restraint and seclusion with the school and work together on preventative methods. Schools cannot rely on children to adequately communicate what occurred, due to limited verbal or cognitive skills, their youth, the trauma they endured, and fear of informing on adult staff.

¹⁵⁶ See notes 56-57 and accompanying text, above, regarding Kansas and concerns expressed by state watchdogs regarding actually requiring school districts to apply the rules.

Calendar day notice is important. A “business day” or “school day” standard can delay notification over weekends and lengthy school holidays—unsafe given the dangers involved here.

States with same-day or 24 hour/next day notification are as follows. Some states require actual notice by the deadline; others require good faith, reasonable efforts.

Same Day Notification of Both Restraint and Seclusion: This is the rule in 11 states for all children, and 16 states for children of disabilities: Alaska (2014), Colorado[†], Hawaii (2014), Iowa[†] (attempted), Indiana (same day or as soon as practicable), Maine, New Hampshire[†], Ohio[†], Oregon[†], Vermont[†] (documented attempt), West Virginia[†] (“good faith”), Connecticut^{†d} (attempted; longer deadline applicable if seclusion in IEP), Florida^{†d}, Minnesota^{†d}, Tennessee^d (“reasonable efforts”), Texas^{†d} (“good faith effort”).

24 Hour or 1 Calendar Day Notification of Both Restraint and Seclusion: This is the rule in 6 states for all children and 10 states for children with disabilities: Delaware (same day preferred, 24 hour deadline, but IEP team can set longer deadline; 2014 regulations), Illinois, Kentucky, Maryland (unless otherwise stated in IEP/BIP), Massachusetts (“reasonable efforts;” 2014 regulations), Wyoming (unless parent agrees otherwise), Louisiana^{†d}, Montana^d (“as soon as possible,” but within 24 hours”), and Utah^d, and Washington^d (2013 statute; reasonable efforts).

Virginia’s March 2015 statute requires regulations to be promulgated before students have protection. These future regulations should require same day notification based on the documents and standards referred to in the new statute.

Delaware is worthy of a separate note. Its new 2014 regulations require schools to attempt notification on the same day, but complete it within 24 hours for physical restraint and for mechanical restraint and seclusion (if a state waiver is granted to permit the latter two). These seem strong. But if restraint is included in a child’s IEP or 504 plan, the IEP or 504 team determines when and how parents are notified, a troublesome loophole.

This means that 34 states do not require notification within 24 hours for all children, 25 for children with disabilities.

2. States with Longer or Ambiguous Notice Periods

A smaller number of states either give schools more time to inform parents or have ambiguous notification periods. Of these, 3 apply only to children with disabilities, meaning that parents of children without disabilities have no notification rights.

1 School or Business Day: This is the rule in 3 states for all children; 4, for children with disabilities: Alabama, Georgia, Wisconsin, and California^d.

2 School or Business Days: This is the rule in 2 states for all children. Rhode Island requires notices as soon as possible, but no later than 2 days. Kansas allots 2 school days.

Longer: There are 3 states with substantially longer deadlines. These periods make little sense in an era of frequent, easy communication, especially in light of the physical and emotional harm caused by restraint and seclusion. Pennsylvania^d sets no deadline, but requires an IEP meeting within 10 days, effectively making this (or the notice of the IEP meeting) the outer deadline. New York^d sets no specific deadline. North Carolina has a 2-4 business day notification period, but only for those situations in which notification is required in the statute. Written follow up must occur within the next 30 days. There are many situations for which notification is not required, as discussed below, making North Carolina's statute very troublesome and weak when it comes to parental notice.

3. Notification of One Practice But Not the Other

Arizona requires notification of seclusion, but does not require parents to ever be told of restraint. This is deeply troublesome, given the dangers restraint poses. (New Hampshire previously treated seclusion in this way, but in 2014 enlarged its law to cover both seclusion and restraint.)

4. Detailed Written Follow-Up after Quick Notice

There are 15 states that require more detailed written follow-up for all children; 20, for children with disabilities: Alaska (2014), Colorado, Delaware (2014 regulations), Hawaii (2014), Illinois, Indiana (2014 regulations), Iowa, Kentucky, Maine, Massachusetts, New Hampshire, Ohio, Oregon, Vermont, West Virginia, Connecticut^d, Florida^d, Louisiana^d, Texas^d, and Washington^d. Other states mandate written communication only if verbal or electronic communication on the first day fails, including Kentucky and Minnesota^d.

Some state laws require that supplemental written notification be sent within 24 hours of the use of restraint/seclusion. This is a good practice given mail delays. They include Florida^d, Hawaii (2014), Illinois, Kentucky, Louisiana^d, Ohio, Oregon, Texas^d, and Vermont. Other state laws allow the written report to be sent a few days later. These include Colorado (written report within 5 days), Connecticut^d (2 school/business days), Delaware (72 hours), Iowa (3 days); Maine (7 days); Massachusetts (3 school days); New Hampshire (up to 7 days allowed); Washington (as soon as practical, but no later than 5 business days), West Virginia (1 school day). In Indiana, written notification must be sent as soon as practicable, and Alaska (2014) does not set a deadline.

In many of these states, the written notification must contain additional useful information that can help prevent future incidents of restraint and seclusion and help parents understand what happened to their child. This information may not be required in the initial immediate notification, which may explain why the written notice follows oral notice in a few days. For example, Colorado's written notification requires a detailed description of the incident and the type and duration of the restraint or seclusion; the behavioral antecedents leading up to the event; efforts made to de-escalate and use other alternatives; any injuries; and the names of the staff involved. Other states have similar requirements.

5. States Without Notification Requirements

Hence, 28 states lack laws requiring notification of both restraint and seclusion use for parents of all children, and 16, for parents of children with disabilities. The states without laws requiring schools to tell parents of all children of both restraint and seclusion are: Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Idaho, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Washington. As noted above, Virginia's future regulations once promulgated should include a parental notification provision because of the standards incorporated in its March 2015 statute. The regulations must be enacted before Virginia students have this protection.

The states that do not mandate parental notification of both restraint and seclusion for children with disabilities are: Arizona, Arkansas, District of Columbia, Idaho, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, and Virginia. The vast majority of these states have no restraint/seclusion law at all, although two restrict seclusion but not restraint. As explained above, Virginia's future regulations once promulgated should include a parental notification provision.

Some states without statutes or regulations have suggested guidelines. These indicate what a state supports and advocates for. Of the states without statutes and regulations, 8 recommend notification policies. Of these, 6 suggest notice on the same school day: Michigan, Missouri[†], Nebraska[†], Oklahoma^d, South Carolina[†], and Washington, D.C.[†] (The states with the daggers also suggest a fuller written notice afterwards.) In addition, Nevada urges notification within one calendar day. Virginia currently advises the school/school district to set a time period. Evidence indicates that a number of districts use a Virginia School Board Association (private organization) set of guidelines allowing up to 15 business days to notify the family, and not even suggesting notice if restraint is included in the child's IEP.¹⁵⁷ Once Virginia's future regulations are promulgated, they should contain a same day notification provision based on the standards incorporated in its March 2015 statute.

6. Loopholes that Undermine Notification

Of the states that ostensibly require notice in 24 hours or less, several have sizeable loopholes. Maryland allows the IEP team to set another deadline. Delaware (2014 regulations) allows the IEP team to do so for physical restraint.

Wyoming allows parents to agree to a different deadline. California's law does not apply to non-emergency use of restraint and seclusion. Massachusetts previously allowed schools ask parents to waive the right to notice. Connecticut^d leaves all decisions about notification up to the IEP

¹⁵⁷ See note 44, above, and accompanying text.

team when seclusion is included in the IEP. This provision was deleted in 2014, a very significant improvement.

North Carolina has much longer timelines than these states, and then has several exceptions that can result in parents not being informed of the use of restraint or seclusion. Schools need not inform parents if there are no observable injuries (concussions often aren't observed, and certain forms of restraint leave no physical mark¹⁵⁸); if certain restraints are used in accord with the statute; and if seclusion lasts for less than the time period in the child's behavioral plan (setting long time periods may mean parents never find out these practices were used).

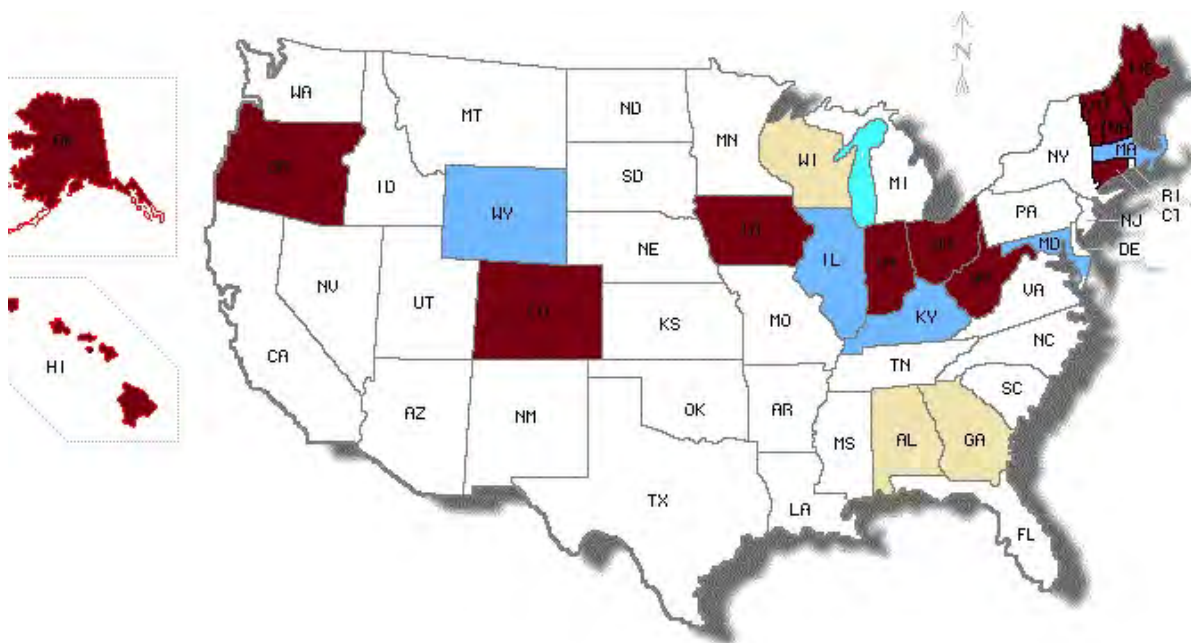
Some states let the IEP team decide if the parents are told their child was restrained or secluded. Many uneducated parents may not understand what they are giving up by agreeing to longer notice or giving up notification after each incident.

These types of loopholes are highly risky and unsafe. For example, Connecticut^d requires that schools take steps to notify parents on the same day if the child is restrained or placed in seclusion, followed by a detailed written incident report within 2 days. But if seclusion is in the child's IEP, the IEP team decides when and how notification will occur. This distinction is important. In 2011-12, 78% of Connecticut seclusion incidents involved students with seclusion in their IEPs.¹⁵⁹ If the IEP team agrees that the parent will not receive notice or notice of only certain incidents, the parents may not learn at all of the use of seclusion.

¹⁵⁸ Brian Wilson and Adam Tamburin, *Nashville Principal Resigns after Spanking Two 6-year Olds*, THE TENNESSEAN, Nov. 7, 2013 (use of pressure point pinch restraint that left no mark on young children.)

¹⁵⁹ Conn. State Dept. of Educ., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND Seclusion, SCHOOL YEAR 2011-12.

**All Children: States by Law Requiring Schools to Take Steps to Inform Parent on
Same Day, within 24 hours/1 Calendar Day, or within 1 School Day (March 18, 2015)**



Yellow (lightest): Law requires parent notification within 1 school day or business day for all children (AL, GA, WI).

Blue (medium): Law requires school to take steps to inform parents within 24 hours or within 1 calendar day for all children.

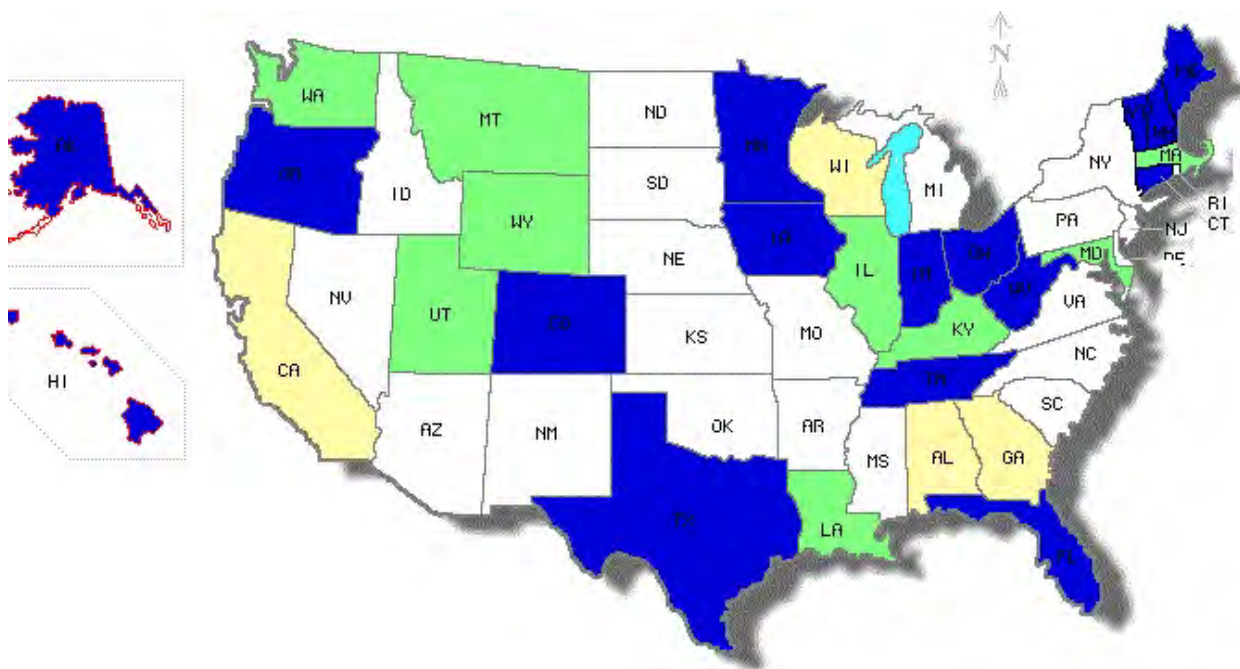
Brown (dark): Law requires school to take steps to inform parent on same day for all children.

Virginia will join these states once its regulations are promulgated in accord with the March 2015 statute.

Please see text for loopholes in these notification requirements that substantially undermine them in some states.

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Children with Disabilities: State Laws Requiring Schools Take Steps to Inform Parent on Same Day, within 24 hours/1 Calendar Day, or within 1 School Day (March 18, 2015)



Yellow (lightest): Law requires school to inform parents within 1 school day or business day for children with disabilities (AL, CA, GA, WI).

Green (medium): Law requires school to take steps to inform parents within 24 hours or within 1 calendar day for children with disabilities.

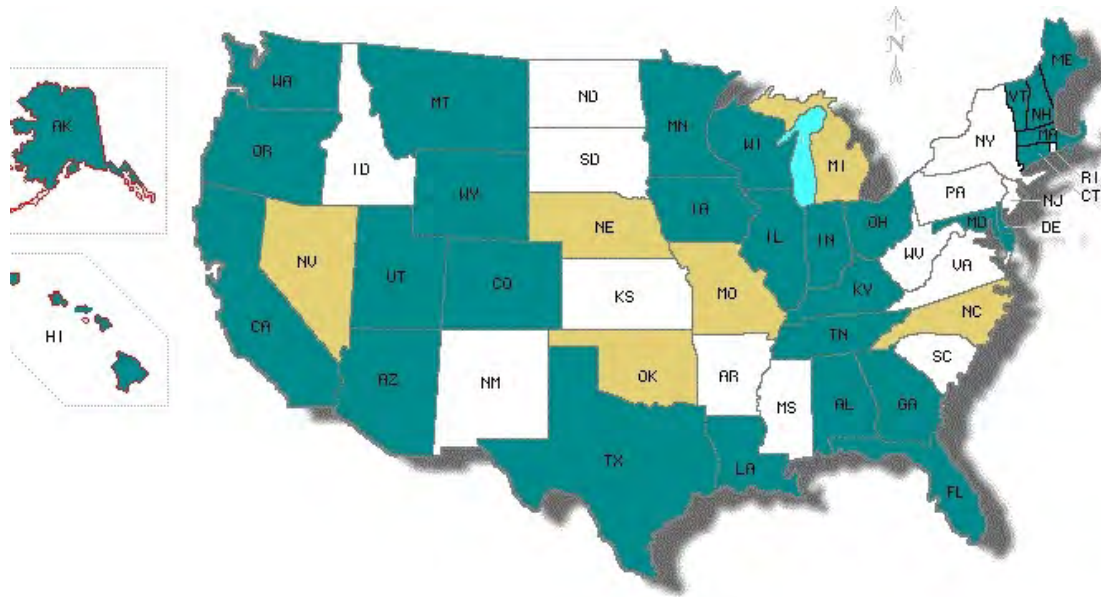
Blue(dark): Law requires school to take steps to inform parent on same day for children with disabilities.

Virginia will join these states once its regulations are promulgated in accord with the March 2015 statute.

Please see text for loopholes in these notification requirements that substantially undermine them in some states.

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**Majority of States Urge Informing Parents on the Same Day, Within 24 Hours, or 1 School Day
(By Law or Nonbinding Suggested Guidance) (March 18, 2015)**



This is the majority view in states that have statutes/regulations, or nonbinding guidance on parental notification.

Green (dark): Law requires school to take steps to inform parents within 1 school day or less.

Yellow (lighter): Nonbinding policy suggests notifying parents within 1 school day or less.

Virginia will join these states once its regulations are promulgated.

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B. Debriefing

A debriefing is a meeting held after restraint or seclusion are used determine what caused the event, how it could be avoided, and to plan for and implement positive and preventative supports. Debriefings have been described as “critical”¹⁶⁰ for reducing and eliminating restraint and seclusion.¹⁶¹ They are one of the six core strategies identified for decreasing the use of seclusion and restraint by the National Association of State Mental Health Program Directors (NASMHPD).¹⁶² Staff, parents, and students may attend. In some situations, parents may wish to exercise caution, particularly if they have concerns about staff confronting the child, rather than working collaboratively to prevent future incidents. Children may also fear being present with the adults or may experience trauma related to the restraint or seclusion incident.

Debriefings are mandated by law for all children in 13 states; for children with disabilities, in 20. The states are: Alaska (2014), Alabama, Colorado, Indiana (2014 regulations), Maine, Maryland, Massachusetts, New Hampshire (2014), Oregon, Rhode Island, Vermont, Wisconsin, Wyoming, California^d, Connecticut^d, Louisiana^d, Minnesota^d, Nevada^d, Pennsylvania^d, and Washington^d. Kentucky’s 2013 regulations permit a debriefing if requested by parent or student.

Accordingly, many states do not require debriefings after the use of restraint or seclusion. There are 7 states that suggest a debriefing in nonbinding guidelines: Michigan, Missouri, Nebraska, Ohio, Oklahoma^d, South Carolina (seclusion only), and Washington, D.C. While Ohio’s January 2013 nonbinding guidance included the debriefing, its mandatory April 2013 regulations do not.

For comparison, the bills introduced by Senator Tom Harkin in 2011 and 2014 included a debriefing, where educators and family discuss what led up to the event and the function of the child’s behavior, and then plan for positive behavioral interventions to prevent further use of restraint.

¹⁶⁰ Psychiatric Facilities Interim Final Rule, 66 FED. REG. at 7152.

¹⁶¹ *Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Interim Final Rule*, 66 FED. REG. 7148, 7152 (Jan. 22, 2001). A systematic debriefing process also counters implementation drift—the tendency to go back to prior patterns of routinely using seclusion/restraint as a response. BethAnn Glew, *Reducing The Use Of Seclusion And Restraint In Segregated Special Education School Settings Through Implementation Of The Collaborative Problem Solving Model* (2012) (unpublished dissertation, Duquesne University).

¹⁶² KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (The National Association of State Mental Health Program Directors 2005).

C. Data Collection and Sunshine

1. Need for Data Collection

The need for clear, consistent data collection nationwide is clear. In its 2009 report, the GAO described only six states that collected data: California^d, Connecticut^d, Kansas^d, Pennsylvania^d, Texas^d, and Rhode Island. Five years later, the Still, the two CRDC collections in 2008-09 and 2011-12 were the first national counts of restraint and seclusion use. Restraint and seclusion have been used in special education for almost 40 years, according to leading professors.¹⁶³

Data collections show that over 110,000 students were subjected to restraint or seclusion in 2011-12. Practices were used disproportionately upon all students with disabilities, and upon African-American students with disabilities.

the 2011-12 Civil Rights Data Collection was released. It documented that at least 110,000 students were subjected to restraint or seclusion, and that the practices were disproportionate use upon all students with disabilities. Students with disabilities comprised 12% of all students but 75% of those physically restrained and 58% of those secluded. Moreover, certain restraints were disproportionately used upon African-American students with disabilities.¹⁶⁴ In-depth data analysis by ProPublica also showed the extent of restraint and seclusion use.¹⁶⁵

Despite these seemingly high numbers, many very large school districts, such as New York City, Chicago, and Los Angeles reported no incidents of restraint and seclusion.¹⁶⁶ It is not known whether they did not employ the practices or whether they did not collect data, National Public Radio reported.¹⁶⁷ Prince William County Public Schools in Virginia (over 81,000 students in 88 schools) reported no use of restraint or seclusion,¹⁶⁸ although reports demonstrate that the practices were used consistently upon students in the 2011-12 timeframe.¹⁶⁹ But the 2011-12

¹⁶³ Joseph Ryan, Reece Peterson, George Tetreault, Emily van der Hagen, *Reducing the Use of Seclusion and Restraint in a Day School Program* 203 (2007).

¹⁶⁴ CRDC 2011-12 Report 9-10.

¹⁶⁵ Heather Vogell, *Violent and Legal: The Shocking Ways School Kids are Being Pinned Down, Isolated Against Their Will*, PROPUBLICA, June 19, 2014.

¹⁶⁶ Among the districts reporting no uses of restraint or seclusion were: New York City; Los Angeles; Chicago; Philadelphia; Denver; Fairfax and Norfolk, Virginia; Baltimore, Maryland; Atlanta and Gwinnett Co., Georgia; Charlotte-Mecklenburg and Wake Co., North Carolina; Memphis, Tennessee; Jefferson Co., Colorado; Jefferson Co., Kentucky; Davis, Utah. Some large districts reported numbers, but they appeared quite low (e.g., DeKalb Co., Georgia; Houston; Dallas). Civil Rights Data Collection, Detailed Data Tables (2011-12).

¹⁶⁷ Joseph Shapiro, *National Data Confirm Cases of Restraint and Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014.

¹⁶⁸ Civil Rights Data Collection, District Search, Prince William County Public Schools I.D. No. 5103130 (2011-12).

¹⁶⁹ Donna St. George, *Prince William Schools Restrain, Seclude Disabled Kids Frequently, Inquiry Finds*, WASHINGTON POST, Aug 6. 2014 (restraint and seclusion used upon 40% of population in one school and 33 students at another that were the subject of an investigation).

data collection provided additional evidence of the use of these practices. The prior CRDC collection in 2008-09 was much less complete, and documented 40,000 incidents of restraint.¹⁷⁰

The national CRDC reports are almost certainly the tip of the iceberg, particularly when compared to known state numbers. Connecticut recorded almost 19,000 incidents of restraint and 18,000 incidents of seclusion for 2011-12, in response to a new data collection law. Connecticut is small, and is the 31st largest state in student enrollment,¹⁷¹ indicating that numbers in bigger states are likely to be greater. Maine's data analysis of 2012-13 showed 3,752 incidents of restraint, and 1,400 incidents of seclusion, even though one-third of the districts failed to report.¹⁷² Texas and California reported 33,000 instances alone in 2007-08.¹⁷³

2. Data Reporting to the State Education Agency (SEA)

State efforts indicate that data collections can readily occur. **As of March 18, 2015, 15 states require an annual data collection for all children; 22, for children with disabilities:** Alaska (2014), Alabama, California^d (but only for emergency interventions, not those used in non-emergencies), Connecticut^d (2012 amendment), Delaware, Florida^d (monthly and annually), Hawaii (2014), Indiana, Kansas, Kentucky, Louisiana^d, Maine (2012), Massachusetts (2014 regulation requires more complete data collection than in past when there were large loopholes), North Carolina, New Hampshire (2014 applicable to restraint and seclusion), Nevada^d,¹⁷⁴ Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, and Wyoming. Pennsylvania does not require a state collection, but requires that data be made available to the SEA when it monitors an LEA. Of these, several states added this requirement after 2009, when Congressman George Miller first proposed the requirement. Data collection and reporting requirements were included in the Congressional bills proposed by Senator Tom Harkin (2011 and 2014), Congressman George Miller (2009, 2011, and 2013), and Congressmen Bobby Scott and Don Beyer (2015).

Virginia is expected to join the state data collection states when its regulations are promulgated, under standards made applicable by its March 2015 statute.

Michigan recommends data collection in nonbinding guidance. Such suggested policies are subject to change, as they are not statutes or regulations. For example, in 2003, Vermont began collecting seclusion/restraint data. Yet, since the state law did not require it, Vermont stopped doing so a few years later.

¹⁷⁰ The Transformed Civil Rights Data Collection 5 (March 2012).

¹⁷¹ Nat'l Ctr. for Educ. Statistics, Table 203.20, Enrollment in Public Elementary and Secondary Schools, by Region, State, and Jurisdiction: Selected Years, Fall 1990 Through Fall 2023.

¹⁷² Christopher Cousins, *Data from Schools Show Widespread Use of Restraint and Seclusion, but Validity of Numbers Debated*, BANGOR DAILY NEWS, Sept. 26, 2013.

¹⁷³ GAO REPORT at 5, 7. The list was not intended to be complete.

¹⁷⁴ Nevada collects restraint data. It bans seclusion of students with disabilities. As it requires data about violations of the law, it encompasses seclusion.

Even the mandatory state data requirements are not as robust as the data requirements in the bills introduced by Senator Harkin, Congressman Miller, Congressman Scott, and Congressman Don Beyer. The Congressional bills required data to be broken down by subgroup (disability, race, etc.) and by LEA. Such data collection would better inform decision-making, and make public practices that have long been hidden from public view. Still, the sharp increase in state data collection requirements since the first Congressional bill was introduced in 2009 indicates that states favor reporting and that such collections can readily be gathered.

Data collection and sunshine make a real difference, as seen in the case of Florida, which began requiring data collection in 2010. The CRDC submissions for the Florida districts appeared far more complete than for most other states. In 2011-12, Florida recorded 9,751 restraint and 4,245 seclusion episodes in 2011-12.¹⁷⁵

The mandatory data reporting caused Pasco, Florida schools to focus on how frequently seclusion was utilized and to move to end its use as 28 other Florida districts did, the Tampa Bay Times reported. The District's Director of Student Support Services explained, "Based on more recent research, and people being able to articulate the trauma they have experienced, we don't feel it's in the best interest of children. . . . We thought there were no other choices before." A Special Education Supervisor echoed these sentiments, "The law helped us understand what our practices were. . . . We had to take ownership of it, and we have to take action to make things better."¹⁷⁶

In 2010, Florida passed a data collection and sunshine law. The data reporting and publication appears to have caused districts to reduce and eliminate seclusion use.

State data collection is important. When data is not automatically collected and made public, it can be costly and difficult for the public to obtain. The Iowa Department of Human Services attempted to charge the *Des Moines Register* \$31,776 before compiling data on the number of hours children at a juvenile home spent in seclusion. The *Register* refused to pay. Eventually, the Department provided the data for free to the *Register*, Iowa's largest daily circulation newspaper. It showed that the youths spent 47,171 hours in seclusion. The Department claimed that it cost \$5,119 to compile this data and that on another separate state-run facility. The costs included combining different kinds of computer files, eliminating identification labels, and creating and proofing a database--costs which would be eliminated in a regular state-wide data collection system.

The Iowa experience also illustrates the importance of data collection and monitoring. Soon after a Disability Rights Iowa investigation of the juvenile facility began, the number of hours spent in seclusion fell precipitously, from 5,202 hours in October 2012 to 549 hours in July 2013. The total number of seclusion hours fell 89% from September 2012 to September 2013. The home removed the doors from 4 of its 6 isolation rooms, and changed its policies. Since it is not

¹⁷⁵ Sarah Gonzalez and John O'Connor, *Florida Keeps Two Sets of Seclusion Data -- and Why Neither May Tell the Full Story*, STATE IMPACT/NPR, Aug. 14, 2012.

¹⁷⁶ Jeffrey Solocheck, *Pasco Schools Aim to End Use of Seclusion Rooms*, TAMPA BAY TIMES, Aug. 31, 2014.

possible to investigate every school or facility for misuse of restraint and seclusion, data collection and public reporting are vital forms of oversight.¹⁷⁷

3. Data Reporting to the School or LEA

Some states mandate data collection at lower levels, indicating that data could readily be sent to the state level. **By law, data is reported to the LEA or school board in 13 states, 8 of which apply the rules to all children:** Alabama, Florida^d, Illinois (2014 regulations), Kansas,¹⁷⁸ Maine, North Carolina, Nevada^d, Oregon, Tennessee^d, Texas^d, Vermont (certain circumstances), Wisconsin, and Washington^d.

Some states keep data at the school level, including, but not limited to, Arkansas (seclusion only), California^d, Colorado, Connecticut^d, Florida^d, Iowa, Kansas, Ohio, Nevada^d, Rhode Island, and Tennessee^d. There are 16 states that require an incident report to be put in the child's school file after each use of restraint/seclusion for all children, and 25 that require it for children with disabilities: Alaska, California^d, Colorado, Connecticut^d, Florida^d, Georgia (but not seclusion as it is banned), Illinois, Iowa, Kentucky, Louisiana^d, Maryland, Massachusetts, Maine, Minnesota^d, New Hampshire, New York^d (for restraint or aversives only), North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada^d, Rhode Island, Texas^d, Vermont, Washington^d, Wisconsin, and Wyoming.

In addition, a few states have voluntary guidelines which seek data at lower levels. Nebraska and South Carolina urge that data be reported to the LEA or school board. There are 6 states that recommend putting an incident report in the child's file: Michigan, Nebraska, Oklahoma^d, South Carolina, Virginia, and Washington, D.C.

The fact that states complete these kinds of reports indicates that they could readily provide information through a computerized system to the state. There are indications that not all school districts properly report data, however. There are also indications that not all states or districts collect it appropriately, likely resulting in under-reporting.¹⁷⁹

¹⁷⁷ Clark Kauffman, *Register Investigation: In a Year, Youths Spent Over 47,000 Hours in Seclusion Units*, DES MOINES REGISTER, Sept. 21, 2013.

¹⁷⁸ See notes 56-57 and accompanying text, above, regarding Kansas.

¹⁷⁹ Jordan Fenster, *Connecticut Education Department Data Shows 18,000 Instances of Restraint or Seclusion in 2009-10*, NEW HAVEN REGISTER, Jan. 26, 2012.

D. Training and Related Matters

A number of the deaths and injuries described in the GAO report involved poorly trained or untrained staff.¹⁸⁰ Disability Rights California documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year-old child down the hall by his wrists.¹⁸¹ In Ohio, untrained school staff utilized life-threatening prone restraint—which was banned by Executive Order years ago—and seclusion rooms to punish students for being noncompliant or disrespectful, according to a 2012 Ohio Legal Rights Service investigation. Some parents thought their children were getting therapy when they were being put in seclusion, according to the report.¹⁸² A Massachusetts teacher who missed her training session strapped a preschooler into a chair from which he could not escape and confined him in a darkened room. Another teacher found and rescued him.¹⁸³

Although the GAO found that untrained staff were involved in many injuries, no states require the full, in-depth training proposed in the Congressional bills.

There are 27 states with seclusion and restraint laws that require some kind of staff training, although many are fairly minimal. Training requirements vary widely. Therefore, this report does not attempt to catalogue all of them, but only to highlight some of the more significant elements. It is likely that certain training provisions are included in other laws, such as positive behavioral support laws. It would be very difficult to obtain and include all such laws here. Therefore, this report focuses only on the training requirements within seclusion/restraint laws.

For comparison, the bills introduced in Congress by Senator Tom Harkin (2011 and 2014), Congressman George Miller (2009, 2011, and 2013), and Congressmen Bobby Scott and Don Beyer (2014) required training in the following: (1) evidence-based techniques “shown to be effective” in preventing the use of the practices and in keeping personnel and students safe; (2) positive behavioral interventions, behavioral antecedents, functional behavioral assessments, and de-escalation; (3) first aid and cardiopulmonary resuscitation; and (4) State seclusion/restraint policies and procedures. Certification and periodic re-training are also required. No state laws include all of these requirements; most require much less. Only Oregon, Wyoming, Alaska, and Hawaii refer to evidence-based techniques at all, and only for certain requirements. All four of these states enacted or upgraded their laws after the first Congressional bill was introduced.

¹⁸⁰ See H.R. REP. NO. 111–417 at 18.

¹⁸¹ DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIF. SCHOOLS: A FAILING GRADE (June 2007).

¹⁸² Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

¹⁸³ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

Training in conflict de-escalation and prevention of seclusion/restraint (21 state laws, all children; 26, children with disabilities): Alaska (2014), Alabama, Colorado, Connecticut^d, Delaware (2014), Georgia, Hawaii (2014), Illinois, Indiana, Kansas,¹⁸⁴ Kentucky, Maryland, Massachusetts, Maine, Minnesota^d, North Carolina, Nevada^d, Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, Vermont, Wisconsin, West Virginia, and Wyoming.

Training in positive behavioral support training as part of seclusion/restraint laws (13 state laws, all children; 19, children with disabilities): Alaska (2014), Alabama, California^d, Delaware (2014), Georgia, Hawaii (2014), Indiana, Iowa, Kansas, Kentucky, Minnesota^d, Montana^d (requiring person trained in positive interventions on IEP team), North Carolina, Nevada^d, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, and Wyoming.

Training in safe and appropriate use of seclusion/restraint (17 state laws, all children; 23, children with disabilities): Alaska (2014), Alabama (restraint only), Colorado, Connecticut^d, Georgia (restraint only), Hawaii (2014), Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maine, Maryland, Minnesota^d, New Hampshire, New York^d, North Carolina, Oregon, Rhode Island, Tennessee^d, Texas^d, Vermont, and West Virginia.

Explicit mandate for training related to first aid, signs of medical distress, cardiopulmonary resuscitation or similar issues (7 state laws, all children; 9, children with disabilities): Alaska (2014), Connecticut^d, Illinois, Maine, Maryland, Massachusetts, Minnesota^d, Rhode Island (part of in-depth training for certain key staff), and Vermont. Some states may implicitly address this through training in “safe use” of the techniques. Nevertheless, when procedures as dangerous as restraint and seclusion are sanctioned, laws should explicitly require basic medical and health training.

Training in dangers of seclusion/restraint (7 state laws, all children; 9, children with disabilities): Colorado, Connecticut^d, Illinois, Iowa, Maryland, Massachusetts, Minnesota^d, Rhode Island, and Vermont.

Training in state, LEA, and school policies and procedures (8 state laws, all children; 10, children with disabilities): Alaska (2014), Iowa (school only), New Hampshire (2014), Kentucky, Massachusetts (school only), Maryland, New York^d, Rhode Island (school only), Tennessee^d (if funding is available for training), and Wyoming (school only).

Certification, proof of proficiency, or periodic re-training required (9 states, all children): Colorado (retrain every two years), Hawaii (2014), Iowa (periodic retraining), Illinois (retrain every 2 years), Indiana (2014) (recurrent training in accord with plan adopted by each school), Maine (certification), Maryland (proficiency required for special school-wide resource staff), Rhode Island (special school-wide resources staff), and Wyoming (certification).

¹⁸⁴ See notes 56-57 and accompanying text, above, regarding Kansas.

Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. Voluntary guidance in 5 states suggests training in conflict de-escalation and prevention of seclusion/restraint: Missouri, Nebraska, Oklahoma^d, South Carolina, and Virginia. Training in safe and appropriate use of seclusion and restraint is urged in 6 states: Missouri, Nebraska, Oklahoma^d, South Carolina, Virginia, and Washington, D.C. Training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues is suggested in 4 states: Washington, D.C., Oklahoma,^d South Carolina, and Virginia. Training in the dangers of seclusion/restraint is incorporated in 3 states' recommendations: Oklahoma^d, South Carolina, and Virginia.

When Virginia promulgates its new regulations, they will include training requirements in accord with the materials referenced in the state's March 2015 statute. Until those regulations are promulgated, there are no mandatory training requirements state-wide.

Changes in Restraint/Seclusion Law:
(a) Impact of Congressional Bills
on State Action and
(b) Other Provisions that Advance
Stronger Safeguards for Children

VI. CHANGES IN RESTRAINT/SECLUSION LAW

A. IMPACT OF CONGRESSIONAL BILLS ON STATE ACTION

The Congressional bills have had a significant impact, causing states to adopt and strengthen restraint/seclusion laws. In December 2009, when Congressman George Miller introduced the first national restraint and seclusion bill, there were only 9 states that provided meaningful protections against both restraint and seclusion for all children; 21, for children with disabilities; and 3 with mixed protections (some for all children; more for children with disabilities). In late 2011, Senator Tom Harkin introduced the first Senate restraint and seclusion bill. Both Congressional leaders reintroduced similar legislation in the following Congress in 2013 and 2014 respectively. Today, there are 22 states with some meaningful protections against both seclusion and restraint for all children, and 35 that protect children with disabilities.

Before the first Congressional bill was introduced, 9 states gave all children meaningful protections from restraint and seclusion. Today, 22 do.

Legislation that is largely identical to Congressman Miller's bill was reintroduced in the House by Congressman Don Beyer (H.R. 927) and Congressman Bobby Scott, Ranking Member, House Education and Workforce Committee (H. Amdt. 66 to H.R. 5, Proposed Minority Substitute for Student Success Act, revising the Elementary and Secondary Education Act).

Many of the states that took action after 2009 incorporated aspects of the Congressional bills. Unique aspects of the 2011 Harkin bill quickly appeared in statutes and regulations adopted in 2012 and 2013. This is not to say that state laws are substitutes for a federal law. Many state laws are limited and do not adequately protect children from restraint and seclusion. In some states, enforcement and implementation may be limited due to limitations on the state's ability to enforce regulations. Other states are still unable or unwilling to adopt or strengthen state laws or regulations.

This section of the report examines state law adoption of some features of the two Congressional bills. These states are referred to below as "post-Congress states" because they took action after Congressman Miller introduced the first national bill in 2009. There are 22 states that have taken significant action incorporating features of the Miller and Harkin bills. There are 15

22 states have adopted new laws or overhauled old ones to adopt important safeguards in the Congressional bills, although a number are limited.

that adopted new statutes or regulations: Alaska, Alabama, Delaware, Florida^d, Hawaii, Indiana, Georgia, Kansas, Kentucky, Louisiana^d, Ohio, Vermont, Wisconsin, West Virginia, and Wyoming;

and 7 that substantially strengthened theirs: Maine, Minnesota (2013 substantial changes), Massachusetts (2014) New Hampshire (2012 and 2014), Oregon, Tennessee^d, and Washington^d. Minnesota^d and Connecticut^d also revised certain statutory provisions in 2012, and Washington adopted a parental notification provision in 2013, but these states did not overhaul their laws at that time. Still, Connecticut is of note because it adopted a mandatory data collection requirement, a feature of the Congressional bills. Connecticut's requirement has been highly productive, and it would be tremendously helpful and substantially improve knowledge for other states to adopt similar requirements.

In many categories below, the post-Congress states comprise the majority of states with the protection in their laws. Clearly, strong national proposals do impact states. Weaker national proposals could induce states to do far less. Since many states have acted by regulation, they can more easily change their rules than if they had to pass a bill through the legislature and governor.

Of the post-Congress states, 15 ban the use of physical restraint on children with disabilities except in emergencies threatening physical danger, 12, all children. Both Congressional bills would prohibit restraint except in the event of certain physical safety emergencies. Similarly, 15 of the post-Congress states prohibit non-emergency seclusion for children with disabilities; 13, for all children. (Two of these ban seclusion for all children.) These new states comprise the majority of states that ban non-emergency seclusion.

Mechanical and chemical restraints are banned by 18 of the post-Congress states.¹⁸⁵ These make up the majority of states banning either restraint, again demonstrating the Congressional bills' effect. In addition, all 17 states that adopted or substantially revised laws since 2009 have banned restraints that restrict breathing or prone restraint, with 14 applying their laws to all children. All of these provisions have been in the Harkin, Miller, Scott, and Beyer bills.

The Congressional bills would limit the restrictive practices to last resort measures when less restrictive ones would fail for students with disabilities, and would require their use to end when the emergency ended. The post-Congress states make up nearly half of the states with each provision.

The post-Congress states also largely mimicked the Congressional bills on parental notification, with 17 requiring same day or 24 hour parental notification for all children, and 26, children with disabilities. Three more post-Congress states require 1 school day notice. Only Kansas has

¹⁸⁵ As noted above, Delaware bans seclusion and mechanical restraints except for those children for whom the provision is waived on a child-by-child basis by the state Department of Education. There are no limits on the waiver, other than the requirement that there be compelling justifications. Each 1% of public school children in Delaware who receive waivers amount to 1,310 children who could be subjected to the procedures.

adopted a 2-school day standard, and even this is closer to the Congressional standards than provisions in some states allowing over a week for notification.

Finally, the Miller and Harkin bills would require a robust and effective data collection. Of the recent actors, 17 require some state-level data collection, making up the majority of states that do this. The Miller and Harkin bills would mandate a fuller, more effective data collection to better enable informed decision-making and put sunshine on practices long hidden from view, so as to further prevent use of these dangerous procedures.

The Harkin bill introduced a debriefing, an element quickly adopted in Wisconsin and Maine in 2012, and Kansas, Kentucky, and Washington in 2013. The Harkin bill also proposed forbidding restraints that prevent children from communicating (e.g., letting an adult know they could not breathe), a feature adopted by Minnesota^d, Massachusetts (2014), Kansas, Kentucky, Ohio and Delaware. These are a majority of the states that began their process after the first Harkin bill was introduced.

The Miller/Scott/Beyer versions of the bill would direct personnel to provide in-person face-to-face monitoring of children in seclusion, and allows other continuous direct visual monitoring of the student (i.e. from outside the room) only if this is unsafe. But only Vermont copied both elements of this provision. By contrast, 11 require continuous visual monitoring (the most common monitoring requirement in states that have them). In addition, 2 require staff to be “able” to see and hear the student at all times (but not actually to do so at all times); 1 requires continuous supervision; 2 leave it up to the school district; and 1 is silent. (Because the Harkin bill banned seclusion, it did not reference this requirement.)

No state has adopted all of the Miller or Harkin bills’ training components, and some states simply leave training details to the school district, as described in the prior section.

This analysis should not be read as suggesting that state laws are effective substitutes for a national bill that would protect all American children. Even the states that took action after the Congressional bills were introduced did not adopt all features of the Congressional bills, and some weakened features before adopting them. Florida’s and Arizona’s statutes are among the weakest of those adopted in the last four years. They included the fewest features of either Congressional bill.

Finally, State nonbinding guidance is no substitute for binding legal protections when the safety of children is at stake. The same is true of any laws that are largely aspirational in nature, requiring states or districts to write policies of their choosing, or even to adopt nonbinding guidelines with specific requirements in them. There is a vast difference between mandating notice to parents within 24 hours so they can watch for concussions and other medical consequences, and allowing states or districts to pick any deadline or requirements for parental

notice that they like, as Nebraska does. The same is true for requiring districts to forbid non-emergency use of the practices and letting districts choose the circumstances under which they may be used.

Until there is a federal law, the protection a child receives is still randomly decided by where his parents live, just as it was in December 2009. A child can move a few miles from Memphis, Tennessee to northern Mississippi or from Philadelphia to a New Jersey suburb, and lose her protections entirely. A child who had strong protections in Portland, Oregon can move across the river to Vancouver and have weak ones.

The danger in leaving choices up to the states is apparent from the situation in Connecticut^d. In January 2012, the media reported the existence of “scream rooms” (seclusion rooms) in one district, where parents alleged children were left alone for long periods of time so that they screamed and cried. One news article referred to blood in a room. School officials responded that the rooms were employed regularly only with children with disabilities who had seclusion in their IEPs. When other parents complained of the noise, they simply offered to move the rooms so the noise would be less distracting.¹⁸⁶ They said nothing about eliminating the rooms or using evidence-based known preventative methods instead. Nor did officials seem to question what they appeared to describe as routine use of the rooms for children with disabilities. The recent report from the Office of the Connecticut Child Advocate included stories of children secluded for not properly greeting people, for claiming to have won a board game the child lost, and for swinging a coat at other people.

Connecticut implemented stronger data collection in 2012, and found that in the 2011-12 school year, restraint was used in 13,755 incidents state-wide; seclusion, 23,308 incidents, nearly 1.7 times as many. Of these seclusion incidents, 18,147 occurred because seclusion was in an IEP. Connecticut’s overly lenient law may have resulted in these higher numbers, because it allows seclusion to be used for any reason as long as it is in an IEP. This creates incentives to add it. Connecticut also leaves many decisions about seclusion up to the IEP team—including whether and why seclusion can be used; monitoring children in the room; room safety issues (heating, cooling, unsafe conditions, etc.), and how (or whether) to notify parents.¹⁸⁷ By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail, and has a 24 hour notification provision. Restraint cannot simply be added to an IEP for any reason.

¹⁸⁶ See, e.g., Julie Stagis, *Middletown: “Scream Rooms” Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 12, 2012; Kathleen Magen, *Experts Call ‘Scream Rooms’ Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 12, 2012; Lauren Petty, *Parents Protest “Scream Rooms” In Schools*, NBC CONNECTICUT, Jan. 11, 2012.

¹⁸⁷ See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

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B. Additional Provisions That Advance Greater Safeguards For Children

The earlier sections of this report compared the ways in which different states treat certain elements of seclusion and restraint laws. It was not intended as a comprehensive analysis of all potential elements of a law. A number of other important protections are included in state laws, as described below. Many of these are included in the bills introduced by Senator Tom Harkin in 2012 and 2014, and states acting more recently appear to have based them on the Harkin bill.

1. Ensuring Children in Restraint/Seclusion Can Communicate

Children must be able to communicate that they are having trouble breathing or are in other medical distress. The GAO documented at least four cases in which verbal children who died in restraint told staff that they could not breathe.¹⁸⁸ Yet, many children cannot speak or have difficulty doing so. According to a Gallaudet University survey of 37,500 deaf and hard of hearing students, 40% used sign language as their primary method of communication in school.¹⁸⁹ Many children with autism and intellectual disabilities also have communications impairments; a number are unable to speak and others have other communications impairments. Some popular estimates report that up to 25% of children with autism cannot speak. Children with other disabilities, including physical ones, may be unable to speak and effectively communicate. These, and other children, may use augmentative communication devices (such as computerized devices) or use sign language. Children who speak and understand languages other than English need staff who can understand their language if they experience medical distress.

¹⁸⁸ GAO REPORT at 14, 16-17, 26, 29.

¹⁸⁹ GALLAUDET RESEARCH INSTITUTE , REGIONAL AND NATIONAL SUMMARY REPORT OF DATA FROM THE 2009-10 ANNUAL SURVEY OF DEAF AND HARD OF HEARING CHILDREN AND YOUTH 11 (2011).

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Under Senator Harkin's bills, restraint could not interfere with the student's ability to communicate in the student's primary language or mode of communication.

Several states have similar provisions. Some examples include:

- Colorado: "No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating." (Colorado defines restraint to include seclusion.)
- Iowa: "If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others."
- Maryland: "In applying physical restraint, school personnel may not . . . '(ii) Place a student in any other position that will...restrict a student's ability to communicate distress.'"
- Minnesota (2012): Forbids "physical holding that...restricts or impairs a child's ability to communicate distress . . ."
- Kansas: LEAs shall adopt "policies and procedures [that] shall prohibit the following . . . or any physical restraint that impacts a student's primary mode of communication."
- Delaware: Physical restraints shall "not interfere with the student's ability to communicate in the student's primary language or mode of communication."

Several state laws recognize the harm of restraining children in ways that prevent them from communicating danger. The GAO documented 4 verbal children who told staff they could not breathe and later died.

Massachusetts in 2014 and Ohio in 2013 are among the states that have adopted similar protections. Hawaii in 2014 forbade the use of mechanical devices that impede a child's primary mode of communication. This appears to forbid taking away a child's speaking device.

2. Force Limited to That Necessary to Prevent Threatened Injury

As noted above, the GAO, national media, and numerous reports have documented the significant number of children killed and injured by restraint. Injuries include broken limbs, severe sprains, bloody noses, and other injuries.

Often the degree of force applied is much greater than any threatened injury. In one Tennessee case, two adults allegedly lay on top of a 51 pound, 9-year-old boy with autism.¹⁹⁰ Three grown adults subjected a kindergartner in Virginia to a form of restraint that could suffocate him.¹⁹¹

The force used should be limited to that necessary to prevent injury. Children should not suffer under more forceful restraints that can cause broken limbs, injuries, and trauma.

The bills introduced by Senator Harkin provided that staff should use only the amount of force necessary to protect the student or others from the threatened injury. This provision is a primary requirement to show that one was acting in self-defense or defense of others under general tort law.¹⁹² If holding a child by the arm and taking away scissors is sufficient, the school should not use a more forceful, hazardous restraint.

Several states have incorporated this basic principle into their restraint and seclusion laws. Four examples of states which incorporate this provision are:

- Rhode Island: "Limitations on the Use of Restraints. Physical restraint/crisis intervention in a public education program shall be limited to the use of such reasonable force as necessary to protect a student or another member of the school community from assault or imminent, serious, physical harm."
- Texas: "Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency."
- Nevada: "The use of force in the application of physical restraint does not exceed the force that is reasonable and necessary under the circumstances precipitating

¹⁹⁰ Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

¹⁹¹ Bill Sizemore, *Panel OKs Regulation of Seclusion, Restraint in Va. Schools*, WHSV- Channel 3, whsv.com, Jan. 19, 2015.

¹⁹² William R. Buckley and Cathy J. Okrent, *TORTS AND PERSONAL INJURY LAW, THIRD EDITION* (Thomson 2004) (For self defense, "the force cannot be greater than what is reasonably necessary to dispel the attacking force. This is called reasonable force.")

the use of physical restraint.”

- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”
- Kentucky: “When implementing a physical restraint, school personnel shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.”
- Delaware: “Personnel use only the amount of force necessary to protect the student or others from the threatened harm.”

The necessary force limitation has also been adopted in Massachusetts, Maryland, and other states.

3. Medical and Psychological Contraindications

Restraint and seclusion are harmful for all children. But for some children, health, medical, and psychological conditions mean that they would cause even more damage. Senator Harkin’s bill barred restraints that are contraindicated due to the student’s disability, health care needs, or medical or psychiatric condition. Several states have similar provisions, with new actors appearing to base them on the Harkin bill. Some examples include:

- Georgia: “physical restraint is prohibited in Georgia public schools and educational programs . . . when the use of the intervention would be contraindicated due to the student’s psychiatric, medical, or physical conditions as described in the student’s educational records.”
- Vermont: Physical restraint may only be used “In a manner that is safe, proportionate to and sensitive to the student’s: (i.) Severity of behavior; (ii.) Chronological and developmental age; (iii.) Physical size; (iv.) Gender; (v.) Ability to communicate; (vi.) Cognitive ability; and (vii.) Known physical, medical, psychiatric condition, and personal history, including any history of physical, emotional or sexual abuse or trauma.”
- Louisiana: “A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.”

Restraint and Seclusion should not be used when it would be medically or psychologically harmful.

- Kentucky: “School personnel shall not impose the following on any student. . . Physical restraint if they know that physical restraint is contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.”

Massachusetts: “Physical restraint shall not be used. . . .(b) When the student cannot be safely restrained because it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting.”

States with similar provisions include Delaware, New Hampshire, and others.

4. Anti-Retaliation Clause

Many incidents of restraint and seclusion are reported by teachers and staff. In doing so, some may risk their jobs. Other incidents are reported by parents, children, and advocates. All could have faced retaliation.

In Georgia, a teacher who informed administrators of another teacher’s abuse of students with disabilities, including abusive restraint and seclusion, as reported by CNN. “[The teacher’s] colleagues discouraged her from reporting what she’d seen. They told me ‘I could say something to the higher-ups but nothing would ever get done.’” None of the children had the ability to tell their parents they were being abused.¹⁹³ In Pennsylvania, aides alleged that a special education teacher had engaged in repeated abuse of children with disabilities, including using aversives, bungee cords, duct tape and other restraints. They allegedly feared reporting those episodes because of an alleged code of silence among school staff. It was claimed that one detective commented, “[W]e’ve done internal affairs investigations for police departments, and people talk about the blue wall, that cops don’t testify against each other. I have never - never done an investigation where people covered for each other and people didn’t want to get involved like this case.”¹⁹⁴ The aides’ eventual report led to the teachers’ removal from the classroom. Other episodes of restraint and seclusion reported by staff and others are described in the footnote.¹⁹⁵

**Anti-Retaliation
clauses are important.**

¹⁹³ Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 (teacher informed administrators of another teacher’s abuse).

¹⁹⁴ *Vicky M. v. Northeastern Educ. Intermed. Unit 19*, 486 F. Supp. 2d 437 (2007) ; 689 F. Supp. 2d 721 (2009).

¹⁹⁵ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009 (second teacher freed child from restraint in locked, darkened room); Katie Mulvaney, *Block Island Officials Defend Room in School Basement*, RHODE ISLAND PROVIDENCE J., June 14, 2008 (individual who disclosed existence of locked seclusion room by DVD feared retribution and requested anonymity); Jessica Butler,

Nevada includes a non-retaliation provision in its statute: “Retaliation for reporting violation prohibited. An officer, administrator or employee of a public school shall not retaliate against any person for having: (1) Reported a violation of [the seclusion/restraint statute], inclusive; or (2) Provided information regarding a violation of [the statute], inclusive, by a public school or a member of the staff of the public school.”

For comparison, Senator Harkin’s bills likewise prohibited retaliation, using language similar to that in Nevada.

5. Providing Parents with Restraint and Seclusion Policies

As members of the school community, and the adults responsible for their children’s care, parents should receive copies of all school policies. These help parents know in advance what can happen to their children, their rights and responsibilities, and the limitations on using restraint and seclusion. They also alert parents to the use of restraint and seclusion in schools, so parents can be equal partners with school districts. Senator Harkin’s bill required schools to provide their policies to parents. Among the states with statutes or regulations requiring policies to be shared with parents are Alabama, Alaska, Georgia, Illinois, Indiana, Massachusetts, Minnesota, Kentucky, Maryland, New Hampshire, Ohio, Vermont, and Washington^d.

Providing policies to parents helps improve knowledge and safety.

6. Monitoring While Physical Restraint Is Used

The dangers of physical restraint and the potential for death and injury are so well-known that continuous visual monitoring of students is vital. A child whose face is not observed is a child who can suffer death or significant injury. The Harkin Senate bills required staff during physical restraint to “engage in continuous face-to-face monitoring of the student.” The Miller/Scott/Beyer House bills required the same. If doing so would significantly endanger staff safety, then staff would be required to maintain continuous direct visual contact under the House bills. Several

Close monitoring of children in physical restraint is vital for ensuring safety.

UNSAFE IN THE SCHOOLHOUSE (Appendix). In one case, staff members reported a Georgia special education teacher and paraprofessional who duct-taped a teen with autism to a chair and restrained a blind teen under a desk. The teacher who committed the offenses pled guilty to false imprisonment. The paraprofessional involved in the events was not prosecuted in exchange for offering testimony against the teacher that led to the guilty plea. The prosecutor explained, “[P]eople without a voice have been heard from. They’ve been protected.” Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011.

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states have laws requiring monitoring of students in restraint, with some having adopted the Congressional paradigms. Some examples include:

- Alaska: staff must “continuously monitor [] the student in face-to-face contact or, if face-to-face contact is unsafe, by continuous direct visual contact with the student.”
- Vermont: students in restraint must be “monitored face-to-face,” and if safety is compromised, staff must be “in direct visual contact” with the student.
- Indiana: “careful and continuous” visual monitoring to “ensure safety.” Louisiana, Massachusetts, Maine, Minnesota, and Oregon are also among the other states requiring continuous monitoring of students subjected to physical restraint to prevent medical distress.

VII. CONCLUSION

It has been more than 5 years since the first national restraint/seclusion bill was introduced. While progress has been made, children are still not protected from non-emergency restraint and seclusion in all states, or even a majority. In many states, dangerous mechanical and chemical restraints, and those that impede breathing can still be used. All states do not mandate prompt parental notice. Each week brings additional media reports of restraint and seclusion. American schools have advanced from where they were when the *Hartford Courant* focused national attention on restraint and seclusion in 1998. But we have far to go to conquer “the last frontier” of protecting children from restraint and seclusion, to paraphrase Senator Harkin.¹⁹⁶ When children get on the school bus, their parents deserve to know they will come home safe, regardless of where they choose to live.

¹⁹⁶ Congressional Record, Vol. 160, p. S1003, Feb. 24, 2014 (statement of Senator Tom Harkin).

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**BIBLIOGRAPHY OF STATE MATERIALS
AND SUMMARY OF STATE LAWS, REGULATIONS AND POLICIES
ABOUT RESTRAINT AND SECLUSION
(EFFECTIVE MARCH 18, 2015)**

This report has focused on state restraint and seclusion laws and policies in force and applicable to children in elementary and secondary schools. Statutes and regulations were given priority since they are legally binding and have the force of law. The following were excluded from consideration: proposed bills, regulations, and guidance that were never enacted; nonbinding guidance applicable only to limited groups of children (*e.g.* children with certain disabilities or in certain kinds of classrooms); and laws applicable only to private schools and institutions but not to public elementary and secondary schools. If a state previously had a nonbinding policy and later adopted a statute or regulation, priority was given to the statutes and regulations because they are legally binding and create mandatory protections.¹⁹⁷

ARIZONA. ARIZONA REV. STAT. § 15-843 (as amended by H.B. 2476, April 3, 2013). Prior to 2013, Arizona only had a limited statute that created a one-time task force to propose restraint/seclusion guidelines for school districts and charter schools to consider, but that did not require them or the state Department of Education to take action. ARIZ. S.B. 1197 (CH. LAW 62) (JULY 10, 2009).

ALABAMA. Alabama adopted a new regulation providing meaningful protections in 2011. ALA. ADMIN. CODE r. 2903-1-02(1)(f) (2011). Alabama previously considered a proposed policy, but did not adopt it once the Miller bill was introduced.

ALASKA. LAWS OF ALASKA, 2014, CHAPTER NO. 14.33, ENROLLED H.B. 210 (2014). This statute replaced very weak Alaska regulations, previously codified at ALASKA ADMIN. CODE tit. 4, §§ 07.010 to 07.900, and 2013 voluntary guidelines. State of Alaska Dept. of Educ. & Early Devel., SPECIAL EDUCATION HANDBOOK, 145-146 (2013).

ARKANSAS. Arkansas has meaningful protections against seclusion, but is silent on restraint. ARKANSAS SPECIAL EDUC. PROC. REQUIREMENTS & PROGRAM STANDARDS § 20.00. In 2013, it adopted a statute requesting that the Department of Education report about the resources school districts needed to reduce restraint use. ARK. CODE. ANN. § 6-18-516 (2013). Arkansas has also adopted a nonbinding suggested policy regarding use of restraint, Arkansas Department of Education,

¹⁹⁷ In addition, searches were performed of the statutes, administrative regulations, and state Department of Education websites for Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. No materials in force were found.

ADVISORY GUIDELINES FOR THE USE OF STUDENT RESTRAINTS IN PUBLIC SCHOOL OR EDUCATIONAL SETTINGS
(2014).

CALIFORNIA. California has meaningful protections against seclusion and restraint in statute and regulation. CAL. EDUC. CODE §§ 56520-56525 (as amended by A.B. 86, July 7, 2013); CAL. CODE REGS. tit. 4, § 3052.

COLORADO. Colorado has meaningful protections against seclusion and restraint in regulation. COLO. CODE REGS. tit. 1, §§ 301-45.

CONNECTICUT. Connecticut has meaningful protections against seclusion and restraint in statute and regulation. CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11. In July 2012, Connecticut adopted Public Act No. 12-88, amending 46a-153 to require data collection.

DELAWARE. DEL. CODE TIT. 14, § 4122F (June 26, 2013 statute); DEL. EDUC. ADMIN. CODE tit. 14 §610 (2014 regulations). Delaware previously had a limited set of very weak regulations regarding using restraint and seclusion upon students with autism in emergencies. It did not protect other children with or without disabilities or protect students in non-emergencies. DEL. EDUC. ADMIN. CODE tit. 13 §929: 2.0.

DISTRICT OF COLUMBIA. Washington, D.C. has very limited, weak regulations regarding the use of unreasonable restraint. 5E D.C. MUN. REGS. §2403.5. In 2011, it adopted nonbinding guidelines regarding restraint and seclusion that are fuller and more complete, but not the equivalent of law and regulation. District of Columbia Public Schools, DCPS PHYSICAL RESTRAINT AND SECLUSION POLICY (2011). As of May 2, 2013, the state was considering proposed regulations. Office of State Superintendent of Educ., PROPOSED RULEMAKING OF STANDARDS FOR STUDENT CODE OF CONDUCT AND DISCIPLINE, NEW CHAPTER 25. The public comment period closed in 2012 and no further action has been taken yet. Regulations were previously considered in 2010 and 2009 but never adopted.

FLORIDA. In 2010 and 2011, Florida adopted substantive protections against seclusion and restraint by statute. FLA. STAT. §1003.573. Florida had issued nonbinding guidance under the 2010 statute, but portions of it may no longer be applicable in light of the 2011 statute. In 2011, Florida issued guidance about the documentation requirements under the new 2011 statute. FLA. DEPT. OF EDUC., TECHNICAL ASSISTANCE PAPER: GUIDELINES FOR THE USE, DOCUMENTATION, REPORTING, AND MONITORING OF RESTRAINT AND SECLUSION WITH STUDENTS WITH DISABILITIES, No. 2011-165 (October 14, 2011).

GEORGIA. In 2010, Georgia adopted meaningful protections against seclusion and restraint by regulation. GA. COMP. R. & REGS. r. 160-5-1-.35. More information about the binding regulation

is contained in GEORGIA DEPT. OF EDUC., GUIDANCE FOR STATE BOARD OF EDUCATION RULE 160-5-1-.35 SECLUSION AND RESTRAINT FOR ALL STUDENTS, Apr. 20, 2012.

HAWAII. HAWAII REVISED STATUTES 0302A (2014), H.B. 1796 (2014). Hawaii previously had a limited statute and a board of education policy, both of which provide very weak protections. HAW. REV. STAT. § 302A-1141; BOARD OF EDUCATION POLICY NO. 4201.

IDAHO. Idaho does not have any statute, regulation, or guidance specific to schools and restraint/seclusion. It considered a proposed regulation, IDAHO DEPT. OF EDUC., PROPOSED RULE IDAPA 08.02.03.160-161 SAFE AND SUPPORTIVE SCHOOLS (Aug. 2010), but in December 2010 reported that no action would be taken. Idaho Dept. of Educ., *Special Education Newsletter 2* (Dec. 2010). Idaho has reported that it was working to redraft the proposed rule based on the Department of Education's 2012 Restraint and Seclusion Resource Document. IDAHO STATE DEPT. OF EDUC., IDAHO PART B ANNUAL PERFORMANCE REPORT, FFY 2011 (May 15, 2013).

ILLINOIS. Illinois has meaningful protections against seclusion and restraint in statute and regulation. 105 ILL. COMP. STAT. § 5/10-20.33; ILL. ADMIN. CODE tit. 23, § 1.285; ILL. ADMIN. CODE tit. 23, § 1.280 (regulations regarding data and policy distribution); 105 ILL. COMP. STAT. § 5/10-20.14 (regarding distribution of policies to parents).

INDIANA. INDIANA CODE § 20-20-40 (Apr. 30, 2013); Indiana Administrative Code, Title 513 (2014) (regulations); Indiana Commission on Restraint and Seclusion in Schools, Model Plan (Aug. 2013).. This new statute contains certain requirements, and leaves others to the discretion of the school districts. The law also created a commission to write regulations (forthcoming) and a model plan for school districts, INDIANA COMMISSION ON SECLUSION AND RESTRAINT IN SCHOOLS, MODEL SECLUSION AND RESTRAINT PLAN (Aug. 1, 2013). Prior to this, Indiana only had nonbinding guidance adopted in 2009. INDIANA DEPT. OF EDUC., POLICY GUIDANCE FOR USE OF SECLUSION AND RESTRAINT IN SCHOOLS (2009).

IOWA. Iowa has meaningful protections against seclusion and restraint in regulation. IOWA ADMIN. CODE r. 103.1 - 103.6.

KANSAS. On February 13, 2013, the Kansas Board of Education adopted new Regulations. They were published in the Kansas Register on April 4, 2013, and became effective on April 19, 2013. KANSAS DEPT. OF EDUC., EMERGENCY SAFETY INTERVENTIONS, K.A.R. 91-42-1, 91-42-2 (adopted February 13, 2013); 32 KANSAS REGISTER No. 4 at 318 (Apr. 14, 2013). Kansas previously had nonbinding, voluntary guidance. KANSAS STATE DEPT. OF EDUC., KANSAS SECLUSION AND RESTRAINT GUIDELINES: GUIDANCE DOCUMENT (2007).

KENTUCKY. On February 1, 2013, comprehensive restraint/seclusion regulations became effective. 704 KY ADMIN. REGS. 7:160. There is nonbinding guidance explaining the regulation,

KENTUCKY DEPT. OF ED., GUIDANCE FOR 704 KAR 7:160 USE OF PHYSICAL RESTRAINT AND SECLUSION IN PUBLIC SCHOOLS (Feb. 5, 2013). Kentucky previously had nonbinding seclusion principles. KENTUCKY DEPT. OF EDUC., EFFECTIVE USE OF TIME-OUT (2000).

LOUISIANA. Louisiana has meaningful protections against seclusion and restraint in statute adopted in 2011. LA. REV. STAT. ANN. §17:416.21; LA. ADMIN. CODE TIT. 28, § 542. (In 2010, Louisiana had adopted a statute that only authorized the state to write nonbinding guidelines. In 2011, the new statute with specific mandates replaced the old one.)

MAINE. Maine has meaningful protections against seclusion and restraint in statute and regulation adopted in April 2012, as modified in April 2013. The regulations are at CODE ME. R. § 05-071, Chapter 33, and are up to date. Maine's legislature took action in 2012 and 2013. In April 2012, it modified the regulations, Committee Amendment, C-A H820 to L.D. 1838 (April 2012). In April, 2013, Maine enacted a new statute, Resolve Chapter 8 (adopted April 15, 2013; formerly bill LD 243). The new statute limited restraint and seclusion to situations where a student's behavior presents "a risk" of injury or harm, rather than an "imminent" risk as in the prior regulation. Imminent risk had been defined as likely to occur "at any moment," a relatively strict standard. The new statute also defined physical restraint to exclude brief contact to break up a fight. Because of complaints that staff misunderstood the law, the new statute requires annual information to be provided to staff. Maine also has nonbinding guidance explaining its regulations, MAINE DEPT. OF EDUC., RULE CHAPTER 33 RULE GOVERNING PHYSICAL RESTRAINT AND SECLUSION, NON-REGULATORY GUIDANCE (Aug. 2013).

MARYLAND. Maryland has meaningful protections against in statute and regulation. MD. CODE. EDUC. §§ 7-1101 TO 7-1104; MD. REGS. CODE tit. 13A, §13A.08.04.01-.06. Maryland also has nonbinding guidance explaining the regulations, MARYLAND STATE DEPT. OF EDUC., TECHNICAL ASSISTANCE BULLETIN 18: USE OF EXCLUSION, RESTRAINT AND SECLUSION (Sept. 2012).

MASSACHUSETTS. In December 2014, Massachusetts substantially revised its restraint and seclusion regulations, 603 CODE OF MASS. REGS. §§ 46.00 - 46.07.

MICHIGAN. Michigan has a very weak, limited provision regarding restraint in its statutes and a fuller treatment of restraint and seclusion in non-binding guidance. MICH. COMP. LAWS § 380.1312; MICHIGAN STATE BD. OF EDUC., SUPPORTING STUDENT BEHAVIOR: STANDARDS FOR THE EMERGENCY USE OF SECLUSION AND RESTRAINT (2006). A comprehensive bill introduced a few years ago died and it has not been reintroduced.

MINNESOTA. Minnesota has meaningful protections against seclusion and restraint in statute and regulation. These statutes are specifically applicable to restraint and seclusion in school, and were amended in 2009, 2011, 2012, and 2013 (HF 630). MINN. STAT. § 125A.0941, 125A.0941, 125A.0942; MINN. R. 3523.2710(4)(F).

MISSISSIPPI. Mississippi does not have any statute, regulation, or guidance specific to schools and restraint/seclusion.

MISSOURI. Missouri has a very limited statute regarding seclusion and nonbinding guidance that gives fuller recommendations for treatment of restraint and seclusion. MO. REV. STAT. § 160.263; MISSOURI DEPT. OF ELEM. AND SEC. EDUC., MODEL POLICY ON SECLUSION AND RESTRAINT (2010).

MONTANA. Montana has meaningful protections against seclusion and restraint in regulation. MONT. ADMIN. R. 10.16.3346 (amended 2010). Montana published guidance, *Aversive Treatment Procedures*, in 2001. This guidance remains applicable other than the parental notification provisions, according to the Montana Department of Education.

NEBRASKA. In 2012, Nebraska adopted very weak regulations requiring each school system to adopt some kind of policy regarding restraint and seclusion (without specifying any requirements). NEBRASKA ADMIN. CODE, tit. 92, Rule 10, § 011.01E (adopted 2012). Nebraska also has nonbinding guidelines written in 2010. REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS, A TECHNICAL ASSISTANCE DOCUMENT (Nebraska Dept. of Educ. 2010).

NEVADA. Nevada has meaningful protections against seclusion and restraint in statute. NEVADA REV. STAT. §§ 388.521 - 388.5317.

NEW HAMPSHIRE. New Hampshire has meaningful protections against restraint in statute for all children, and against seclusion for children with disabilities in regulation. N.H. REV. STAT. ANN. §§ 126-U:1- 126-U:13 (Amended 2014, S.B. 396); N.H. RULES FOR THE EDUC. OF CHILDREN WITH DISABILITIES, §§ 1102.01, 1113.04 - 1113.07 (Amended 2014). In 2014, New Hampshire made its laws applicable to seclusion, as well as restraint.

NEW JERSEY. New Jersey lacks a statute, regulation, or guidance specific to schools and restraint/seclusion. A bill, Matthews Law, has failed in each legislative session.

NEW MEXICO. New Mexico has nonbinding, suggested guidance in the form of memoranda from its Special Education Office. NEW MEXICO PUBLIC EDUCATION DEPARTMENT, USE OF PHYSICAL RESTRAINT AS A BEHAVIORAL INTERVENTION FOR STUDENTS WITH DISABILITIES MEMORANDUM (2006); NEW MEXICO PUBLIC EDUCATION DEPARTMENT, POLICY ON THE USE OF TIME OUT ROOMS AS A BEHAVIORAL INTERVENTION (2003).

NEW YORK. New York has meaningful protections against seclusion and restraint in regulation. NY COMP. CODES R. & REGS. tit. 8, §§ 19.5, 200.22.

NORTH CAROLINA. North Carolina has meaningful protections against seclusion and restraint in three different statutory provisions. N.C. GEN. STAT. §§ 115C-391.1 (main restraint/seclusion statute); 115C-47(45); 115C-105.47.

NORTH DAKOTA. North Dakota does not have any statute, regulation, or guidance specific to schools and restraint/seclusion for all children or even all children with disabilities. North Dakota has a very limited law applicable only to people with developmental disabilities in schools and other facilities. It limits restraint and seclusion to incidents of physical harm, provides for administrator review, and otherwise, has very few protections. N.D. CENT. CODE §§ 25-01.2-09, 25-1.2-10. Because this law applies only to students with developmental disabilities, and does not protect other students with disabilities, it is not included in the count in this report. See discussion in text. North Dakota's legislature is currently considering a study of the state's practices. North Dakota Senate Concurrent Resolution No. 4018 (64th Legislative Assembly, introduced 2015). This was a process Virginia used as a predecessor for adopting a bill.

OHIO. Ohio has a regulation, nonbinding policy, and administrative order. OHIO ADMIN CODE § 3301-35-15 (comprehensive restraint/seclusion regulation adopted April 9, 2013); OHIO ADMIN CODE 3301-35-06; OHIO DEPT. OF EDUC., STATE BD. OF EDUC., POLICY ON POSITIVE BEHAVIOR INTERVENTIONS AND SUPPORT, AND RESTRAINT AND SECLUSION (2013); OHIO EXEC. ORDER NO. 2009-13S (AUG. 3, 2009). The regulations and policy update the Executive Order. In 2014, the law was made applicable to charter schools. AMEND. SUB. H. B. NO. 178 (2014). The previous exemption for charters existed due to loopholes in other parts of Ohio law; this loophole was closed with the 2014 law.

OKLAHOMA. Oklahoma has nonbinding guidance. OKLAHOMA STATE DEPT. OF EDUC., POLICIES AND PROCEDURES FOR SPECIAL EDUC. IN OKLA., PAPERWORK TECHNICAL ASSISTANCE GUIDE (2010) (Documentation of Physical Restraint, Documentation of Seclusion).

OREGON. Oregon has meaningful protections against seclusion and restraint in statute. OR. REV. STAT. § 339.250 (Aug. 2011; 2011 OREGON LAWS CHAP. 665). New regulations were promulgated in 2012, OR. ADMIN. R. 581-021-0019 (2012). The 2011 statute superseded Oregon's previous regulations from 2007. In 2013, Oregon made three statutory changes to its law, banning free-standing seclusion cells; created a state-level complaint process; and eliminating a 2017 sunset provision in its earlier-adopted statute. 2013 OREGON LAWS CHAPS. 30, 130, 650. Oregon has drafted proposed regulations under the new statutes but has not finally promulgated them. See State Bd. of Ed, Admin. Rule Summary (Oct. 7, 2013).

PENNSYLVANIA. Pennsylvania has meaningful protections against seclusion and restraint in regulation. 22 PA. CODE § 14.133.

RHODE ISLAND. Rhode Island has meaningful protections against seclusion and restraint in regulations. RHODE ISLAND BD. OF REGENTS FOR ELEM. & SEC. EDUC., PHYSICAL RESTRAINT REGULATIONS (2002).

SOUTH CAROLINA. South Carolina has nonbinding guidance. SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2011).

SOUTH DAKOTA. South Dakota does not have any statute, regulation, or guidance specific to schools and restraint/seclusion.

TENNESSEE. Tennessee has meaningful protections against seclusion and restraint in statute. TENN. CODE. §§ 49-10-1301 to 49-10-1307 (2011). There are also brief regulations, TENN. COMP. R. & REGS. 0520-01-09-.23 (2012). The new statute superseded the prior statute and regulations under it.

TEXAS. Texas has meaningful protections against seclusion and restraint in statute and regulations. TEX. EDUC. CODE § 37.0021; 19 TEX. ADMIN. CODE § 89.1053. In 2011, Texas made its data collection requirements applicable to school resource officers and certain other peace officers. 2011 TEXAS ACTS CHAP. 691 (former H.B. 359; approved by Governor June 17, 2011).

UTAH. Utah has a limited statute, instructing schools to consider the state's full nonbinding guidance. Schools need not follow it; they need only consider it. Utah also has a regulation requiring parental notification. UTAH CODE §53A-11-805; UTAH STATE BOARD OF EDUCATION SPECIAL EDUCATION RULES § III.I.1.b.(5); UTAH STATE OFFICE OF EDUC., SPECIAL EDUCATION LEAST RESTRICTIVE BEHAVIOR INTERVENTIONS (2008).

VERMONT. Vermont has meaningful protections against seclusion and restraint in regulations. VERMONT STATE BD. OF EDUC., RULE 4500 (State Rules for the Use of Restraint & Seclusion in School effective Aug. 2011). By statute, Vermont has exempted school resource officers from these regulations, 16 V.S.A. § 1167 (May 2012).

VIRGINIA. Virginia has nonbinding guidance. VIRGINIA DEPT. OF EDUC., GUIDELINES FOR THE DEVELOPMENT OF POLICIES AND PROCEDURES FOR MANAGING STUDENT BEHAVIORS IN EMERGENCY SITUATIONS IN VIRGINIA PUBLIC SCHOOLS (2009). In March 2015, the Governor signed into law a bill providing comprehensive restraint and seclusion protections. ACTS OF VIRGINIA, Chapter 142 (2015 Session). But by its terms, it will not take effect until regulations are promulgated. In 2013, Virginia had passed a statute requiring the State Commission on Youth to study restraint and seclusion. H.B. 1106 (2013). After analysis and review, the Commission recommended that Virginia adopt a statute and regulations. Virginia Commission on Youth, Report to the General Assembly, STUDY OF SECLUSION AND RESTRAINT IN SCHOOLS: RECOMMENDATIONS (2014).

WASHINGTON. Washington has meaningful protections against seclusion and restraint in regulations. WASH. ADMIN. CODE §§ 392-172A-03120 to 392-172A-03135. It also has a “last resort” requirement for “aversives” (including seclusion and restraint) in WASH. ADMIN. CODE § 392-172A-03110. By statute, Washington forbids certain restraints, such as those that impede breathing or cause bodily harm greater than transient pain. REVISED CODE OF WASHINGTON 9A.16.100. In addition, Washington enacted a parental notification statute in 2013, 2013 WASH. LAWS CHAP. 202. It also amended its regulations effective Oct. 25, 2013, WSR 13-20-034. The statutes and regulations must be used to analyze Washington’s law. They are not duplicative.

WEST VIRGINIA. West Virginia has meaningful protections against seclusion and restraint in regulations. W. VA. CODE ST. R. § 126-28-8 (8.14), § 126-99 (4373) Chapter 4, §§ 3-4 (§126-99 adopted Dec. 2011; effective July 2012).

WISCONSIN. In March 2012, Wisconsin adopted meaningful protections against seclusion and restraint in statute. 2012 WISC. LAWS 146 (Mar. 19, 2012; previously Senate Bill 353). Previously, Wisconsin had nonbinding guidelines, but these were rendered inoperative by the new statute. WISCONSIN DEPT. OF PUBLIC INSTRU., WDPI DIRECTIVES FOR THE APPROPRIATE USE OF SECLUSION AND PHYSICAL RESTRAINT IN SPECIAL EDUCATION PROGRAMS (2009).

WYOMING. Wyoming has meaningful protections against seclusion and restraint in statute and regulations. WYO. STAT. § 21-2-202; WYO. EDUC. RULES 42-1 to 42-8 (Permanent Rules, Jan. 23, 2012).