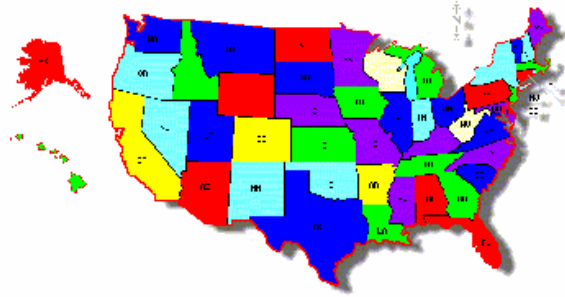


How Safe Is The Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



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January 16, 2012
DRAFT

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This report honors the memory of all the children who have suffered the pain of restraint, seclusion, and aversives, and all those who have perished or been injured. It honors every parent and family member who has had to know their anguish. It honors the advocates, school staff, and community members who have worked to ensure that positive environments prevail in education. The report is written with deepest gratitude to my friends and colleagues who provided insights about their state practices. I give my warmest thanks to my family and friends for their patience with this project.

Important Introductory Information

About the Report. This report presents interim research for a law review article. The report analyzes and compares state approaches to seclusion and restraint. It also examines the impact on the states of federal Congressional action, particularly the bill introduced by George Miller two years ago. Its intent is to provide information and analysis. It is not a comprehensive review of all elements of seclusion/restraint statutes, however.

The report analyzes state “laws” (statutes, regulations, and executive orders) and voluntary nonbinding guidelines, which lack the force of law and can be easily changed by the state Department of Education. Only laws create mandatory legal protections for children, and therefore, the report focuses on them.

Important Technical Details. The report uses 51 “states” to include the District of Columbia. Rather than footnote each state law every time, the report relies on a bibliography of state materials at the end. All information in the maps and charts appears in the text, although it is in another format. I tried to select colors for the maps that also show up as different shades in black and white. (Hopefully, I was successful.) The terms dark, medium, and light in the map legends are provided for people using black and white copies. Finally, state terminology was harmonized as much as possible. For example, the term “physical harm” is used in the report synonymously with bodily injury, bodily harm, and physical injury.

About the Author. Jessica Butler is the Congressional Affairs Coordinator for the Autism National Committee (www.autcom.org). She is the mother of a child with autism and an attorney who lives in Virginia. She served as Chair of the Board of Directors of the Council of Parent Attorneys and Advocates 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. It represents only Jessica’s views. It is not a statement on behalf of any other person, entity, or organization. You can reach Jessica at jessica@jnba.net.

Important Copyright Information. HOW SAFE IS THE SCHOOLHOUSE? is copyrighted by Jessica Butler. The report represents a great deal of research and work. I hope it will add to the body of knowledge about restraint and seclusion. Please feel free to copy, share, post, and redistribute the report with two conditions. First, please do not remove my name and email address from the report. If you photocopy or extract the charts, maps, or other parts of the report, please leave my name and email address on them. Second, if you use information from the report in writing other materials, please credit Jessica Butler, jessica@jnba.net. Thank you very much. If you have questions, feel free to contact me.

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Bibliography of State Laws and Materials

Summary of State Laws and Guidelines, State By State.

This section provides a summary of some key elements of restraint/seclusion law on a state-by-state basis.

Executive Summary

This provides a summary of some of the information in the report. The report itself is detailed, but does not cover every element of a potential seclusion/restraint law. The report uses 51 “states” to include the District of Columbia.

- Seclusion and restraint are highly dangerous interventions that have led to death, injury, and trauma in children. They should be restricted to only rare emergencies where they must be deployed to protect someone from physical harm.
- There is no federal law to protect children from seclusion/restraint. Bills have been introduced by Congressman George Miller and Senator Tom Harkin. With no single federal law, American children are covered by a patchwork of state laws, regulations, nonbinding guidelines, and even silence.

An Overview of State Laws

- In 2009, there were only 22 states with statutes and regulations providing meaningful protections against restraint and/or seclusion. Today, there are 29. These have the force of law and must be obeyed. Even the 29 states offer varying protections, with key safeguards present in some states and missing in others. There are 13 states with nonbinding guidelines, but these lack the force of law and can be readily changed without using the rulemaking or legislative process. They are not the equivalent of statutes or regulations.
- Only 14 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm. Many states have no laws or have loopholes that allow restraint to be used with little limitation.
- The definition of seclusion determines what is regulated in the state. There are 32 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (door is locked, blocked by furniture or staff, etc.). By law, 5 states ban all seclusion. Another 6 by law permit seclusion only to prevent immediate threats of physical harm. The remaining 36 states lack laws limiting seclusion to physical safety emergencies.
- Certain requirements are needed to ensure that seclusion/restraint are used only as a last resort and only as long as an emergency lasts. Only 15 states by law require that less intrusive methods either fail or be deemed ineffective before seclusion/restraint are used. The remaining 36 states lack this legal requirement, allowing personnel to quickly escalate to restraint/seclusion. Only 14 states by law prohibit restraint and/or seclusion from continuing after the emergency ends. Some children have remained in

seclusion/restraint until they can sit perfectly still, show a happy face, pull apart socks or do other socks unrelated to an emergency.

- States increasingly prohibit three types of restraint due to their severe risks: restraint that restricts breathing, mechanical restraint, and chemical restraint. Only 20 states have laws specifically restricting restraints that impede breathing and/or prone restraint. There are 15 states that ban all restraints that impair breathing. By law, 15 states ban mechanical restraints; 10 ban chemical ones.
- Children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized. But of the states allowing seclusion, only 16 require staff to continuously watch a child in a seclusion room. Another 5 permit occasional monitoring. Other states lack laws that require monitoring.
- Parents must be notified promptly of seclusion/restraint, so they can provide care for concussions, hidden injuries, other injuries, and trauma. Only 12 states by law require schools to take steps to notify the parent on the same day the event occurs. Six more require notification within 24 hours or the same calendar day. But other states delay far longer. There are 27 states with no legal requirement to tell parents that a child was restrained/secluded.
- Data collection is very important. In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. Nearly 33,000 students were restrained/secluded in Texas and California in 2007-08. Yet, only 13 states collect minimal data on the use of restraint/seclusion each year.

**Congressional Bills Strengthen State Laws;
10 States Either Adopted New Laws or Strengthen Old Ones**

- In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. The Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features. In the two years since introduction, 7 states adopted laws and 3 overhauled their existing laws. All 10 incorporated important features from Congressman Miller's bill, although to varying degrees.
- The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than Congressman Miller's bill, and equal to it in others. Together, the two national bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action.

Some Important Sample State Provisions

- The report concludes with some examples of important state law protections for children. One provision ensures that children are not denied the ability to communicate that they cannot breathe or medical distress while in restraint/seclusion. Another ensures that no more force than necessary is used during seclusion. A third requires schools to refrain from using restraint/seclusion when it is medically or psychologically contraindicated. A fourth prohibits retaliation.

HOW SAFE IS THE SCHOOLHOUSE?
AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES

by Jessica Butler

HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES

In 2009, the Government Accountability Office (GAO) documented the use of seclusion and restraint upon hundreds of school children, resulting in death, injury, and trauma. Stories included a 7 year old dying after being held face down for hours by staff, 5 year olds tied to chairs with duct tape and suffering broken arms and bloody noses, and a 13 year old who hung himself while unattended in a seclusion room. Most of the incidents involved children with disabilities.¹ Staff are also injured and traumatized by these techniques.

For over two decades, evidence of the vast physical and psychological toll caused by restraint and seclusion has accumulated.² In 2009, the National Disability Rights Network (NDRN) catalogued the use of abusive interventions against children in over 2/3 of states,³ and state protection and advocacy agencies also published reports.⁴ The Council of Parent Attorneys and Advocates (COPAA) documented 185 episodes in which aversive techniques were used, often on young children.⁵ In 2005, TASH and the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion published the *In the Name of Treatment*.⁶ 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"⁷ and the "widespread" use of restraint in educational and other environments.⁸

In December 2009, Congressman George Miller (then-Chair of the Education & Labor Committee), introduced a House bill to protect children from restraint, seclusion, and other aversives. Although it passed the House, the bill did not become law. In April 2011, he reintroduced the Keeping All Students Safe Act, H.R. 1381. In December 2011, Senator Tom Harkin (Chair, Senate Health Education Labor and Pensions Committee) introduced a Senate

¹ 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).

² See H.R. REP. NO. 111-417, PREVENTING HARMFUL RESTRAINT AND SECLUSION IN SCHOOLS ACT 14 (2009).

³ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009).

⁴ See, e.g., DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007); 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).

⁵ JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Council of Parent Attorneys & Advocates 2009).

⁶ 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).

⁷ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

⁸ Council for Children with Behavioral Disorders, *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009).

bill, also named the Keeping All Students Safe Act, S. 2020.

But at present, there is no federal restraint and seclusion statute; state laws govern. They vary widely--a patchwork of laws, regulations, voluntary guidance, and complete silence covering the nation. Parents and the public are often ignorant of what the state laws are.

This report has three purposes. First, it examines the current state laws regarding seclusion/restraint. Second, the report analyzes the effect the national Congressional efforts have had on state law, particularly those states which have enacted laws or strengthened them since Congressman Miller's bill was introduced two years ago. Finally, the report explores particular state requirements which provide important protections against restraint and seclusion.

This report concentrates on the states because state law presently controls the issue. This is not to suggest that state activities may substitute for federal action. Some state laws are strong; others weak or nonexistent. Where a child lives still determines the protection he/she gets. For example, there are three states within 25 miles of Memphis, Tennessee. Tennessee limits seclusion/restraint to emergency threats of physical harm, requires continuous visual monitoring of students, and provides an array of protections. Arkansas provides somewhat more limited protections for children in seclusion, allows seclusion for reasons other than protecting physical safety, and does not seek to regulate restraint. Mississippi has no limits whatsoever.

I. A PATCHWORK OF STATE LEGAL PROTECTIONS AGAINST SECLUSION/RESTRAINT

Meaningful Protections In Law

There are 29 states with statutes and regulations providing meaningful protections against restraint and/or seclusion. These have the force of law and must be obeyed.

The states are Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire, Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming. Of these, 7 were adopted after the Miller bill was introduced in December 2009 (Alabama, Florida, Georgia, Louisiana, Vermont, West Virginia, and Wyoming), and 3 were substantially strengthened (New Hampshire, Oregon, and Tennessee).⁹

Only 29 states provide meaningful protection against either restraint or seclusion by law.

⁹ To provide meaningful protection, a state has to fall in one of two categories. First, it provides multiple protections against restraint and/or seclusion for students. Second, it has few protections but strictly limits the intervention to emergency threats of physical harm. Some states provide greater protections than others. Florida was classified in this group because it has one of the strongest data collection provisions in the country, requires parental notification, bans restraint that interferes with breathing, and has other features. While it does not explicitly limit restraint to threats of physical harm, it implicitly does so, requiring schools to report why each incident

For ease, the term “law” is used to encompass statutes, regulations, and executive orders, because they have the force of law.

Even the 29 states offer varying protections, with key safeguards present in some states and missing in others. Two protect against either restraint or seclusion--but not both. Others protect more against restraint than seclusion or vice versa, meaning that the intervention chosen by staff determines the degree of protection.¹⁰ Of the 29 states, 7 have statutes, 6 have statutes and regulations, and 17 have regulations alone.¹¹ Typically, state regulations are more easily changed than statutes, requiring State Department of Education approval rather than a vote by two houses of a legislature and approval by the Governor. Accordingly, weaker federal seclusion/restraint proposals have the potential to weaken state regulations, and stronger federal proposals, to strengthen them.

Of the states with meaningful laws, 13 cover all students; 15 protect students with disabilities--the most commonly reported victims of these abusive techniques. In addition, New Hampshire protects all students from restraint and students with disabilities from seclusion. Ideally, all children should be protected from restraint/seclusion. Nonetheless, because these techniques have been used frequently upon children with disabilities, and they have disproportionately suffered death, injury, and trauma, special care is often taken to protect their rights and safety.¹²

involved a threat of serious bodily injury. Nonetheless, because it lacks an express limit on the use of seclusion/restraint, the Florida statute was near the boundary.

¹⁰ For example, Ohio regulates only restraint; Arkansas, only seclusion; Illinois, limits restraint to emergency threats of physical harm but permits seclusion to maintain order; Wyoming restricts seclusion to threats of physical harm but does not regulation when restraint may be used.

¹¹ States with statutes only include Florida, Minnesota, Louisiana, North Carolina, Nevada, Oregon, and Tennessee. The states with both statutes and regulations are California, Connecticut, Illinois, New Hampshire, Texas, and Wyoming. Finally, the states that have regulations alone are Alabama, Arkansas, Colorado, Georgia, Iowa, Massachusetts, Maryland, Maine, Montana, New York, Ohio (Executive Order), Pennsylvania, Rhode Island, Utah, Vermont, Washington, and West Virginia. New Hampshire’s Special Education regulations were revised in December 2010, although the seclusion/restraint regulation is similar to original 2008 regulation. In September 2010, the state had adopted a new restraint statute. The statute overrides the regulations where there is a conflict. The regulations remain the controlling document for seclusion, which was not in the statute.

¹² This disproportionate impact is readily apparent from the wealth of literature and reports documenting harm to students with disabilities and the paucity of reports focusing on children without disabilities. All of the children in the GAO report who died had disabilities; the GAO stated that almost all of the reports it received involved students with disabilities. The 13 states that protect students with disabilities, often through the state special education or disability regulations, are Arkansas, California, Colorado, Connecticut, Florida, Louisiana, Maine, Minnesota, Montana, Nevada, Pennsylvania, Texas, and Washington. The 15 states that protect all students are Alabama, Georgia, Iowa, Illinois, Massachusetts, Maryland, North Carolina, New York, Ohio, Oregon, Rhode Island, Tennessee, Vermont, West Virginia, and Wyoming. New Hampshire is divided, with its special education regulations protecting students with disabilities from seclusion and its statute protecting all students from restraint.

Weak Protections in Law

Another 7 states have statutes or regulations providing such a limited, weak form of protection that they are not even remotely akin to those providing meaningful protection. Some do not even protect children, but simply authorize conduct. They include Alaska (allows “reasonable and necessary physical restraint” to protect from physical injury, obtain a weapon, maintain order, or protect property); Delaware (autism regulation provides some protection but permits committees to authorize use of abusive interventions and appears to have no limits on interventions used in non-emergencies or on students without autism); Hawaii (authorizes use of reasonable force to prevent injury to person or property, including implementing “therapeutic behavior plans” contained in a child’s IEP); 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 awaiting law enforcement); and Washington, D.C. (prohibits “unreasonable” restraint). Three of these states, Washington, D.C., Michigan, and Missouri, also have nonbinding guidelines because their laws are so weak.

States Without Protections in Law

There are 13 states with voluntary guidelines that are not legally binding. These documents include guidance approved by the State Board of Education; documents authored by/for the State Department of Education or Director of Special Education; and model principles that schools might consider.

In these state, students lack mandatory legal protection. The guidelines are not statutes or regulations. They do not have the force of law. Such guidelines are readily changed or eliminated, requiring only approval by the state Department of Education, rather than the formal legislative or rulemaking process.¹³ The insufficiency of such guidance is apparent from Vermont’s and Louisiana’s recent replacement of guidelines with laws, and the legislative efforts in Wisconsin and Michigan. Nonetheless, the guidance represents the State’s view that seclusion and restraint are dangerous techniques and that steps should be taken to limit their use. The 13 states are Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, Utah, Virginia, Washington, D.C., and Wisconsin.¹⁴

¹³ At times, some people seem to view such guidelines as the equivalent of statute and regulation. This is likely due to confusion about the proposed Congressional bills, which require states to adopt “policies” incorporating the statutory requirements. States would not be free not free to eliminate or change those federal requirements, and schools within the state must follow the policies. Thus, these mandatory “policies” would differ markedly from the kind of nonbinding guidance currently in place. Accordingly, such nonbinding guidance documents should not be given the same recognition or treatment as actual statutes or regulations.

¹⁴ A few of these documents appear to be directives using “mandatory” language. Nevertheless, they are not binding laws or regulations that protect children. They lack the force of law and may be readily changed. They are similar to any school district guidance or policy. State practice determines whether the State will act to ensure that seemingly-mandatory guidelines are followed and whether there are repercussions for employees or districts that do not adhere to them. But, many of the documents are simply suggested sets of principles, such as those in Indiana (principles “the Department recommends”); Missouri (a “model policy”); Nebraska (“provide[s] information and guidance for Nebraska School districts in creating new, or revising existing policies”); and Utah (“This document is a recommended practices guideline” and consists of “best practices”). Of the guidelines, those

The experience in two states is noteworthy. In 2006, after two children died in restraint, Michigan adopted nonbinding state guidance recommending that school boards adopt voluntary 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 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.” MPAS also received stories about restraint and seclusion in 32 of the state’s counties from parents, indicating that the nonbinding guidelines were not enough.¹⁵

Similarly, Wisconsin organizations found that the state’s restraint/seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. The directives lacked the “the force of law” and “sufficient enforcement.” They reported that Wisconsin students continued to be hurt and traumatized by restraint and seclusion.¹⁶

Finally, six states have absolutely nothing: Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota, despite efforts in at least three of them to take action.¹⁷

by the Chancellor of the District of Columbia Schools may be entitled to the strongest weight, as they consist of prohibitory terms (e.g., mechanical restraints “are not authorized”) rather than permissive terms or factors that schools might consider. Still, they are readily changed and do not have the force of law. Washington, D.C. proposed regulations in 2010 but was unable to enact them.

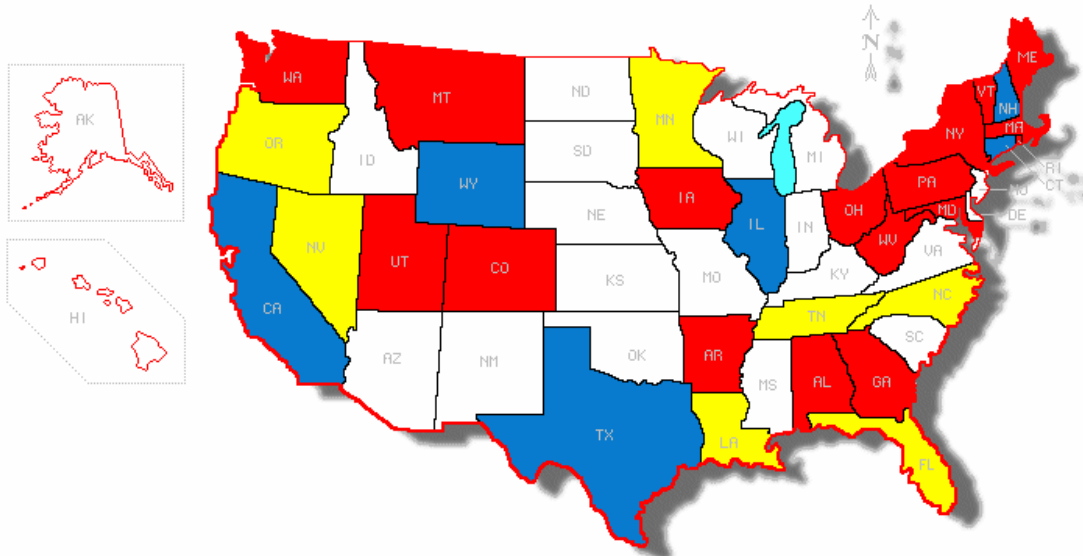
¹⁵ MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., *SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5* (2009).

¹⁶ 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).

¹⁷ Each legislative session, the New Jersey legislature has considered Matthew’s Law, named for a child who died after spending much of two years in mechanical restraints. Dave Reynolds, *Teen’s Death Prompts New Restraint And Seclusion Measure*, INCLUSION DAILY EXPRESS, Sept. 19, 2002. Idaho considered adopting regulations but deferred any decision in December 2010. An Arizona stakeholders’ task force drafted recommendations in 2009 but the state never acted upon them.

Statute, Regulation, or Both: 29 States with Meaningful Protections

- - Regulation
- - Both
- - Statute



In this map, yellow means the state has only a statute; red, regulation; blue, both regulation and statute.

Jessica Butler, jessica@jnba.net. Please copy, share, and distribute as long as my name remains on the map.

II. SECLUSION/RESTRAINT AS EMERGENCY INTERVENTIONS

Given the serious risks involved, restraint and seclusion should be emergency interventions used only when necessary to protect individuals from physical danger. This section of the report analyzes whether states limit restraint and seclusion so that they are emergency interventions, or allow them under other circumstances when no person is at risk.

A. IS RESTRAINT LIMITED TO EMERGENCIES THREATENING PHYSICAL SAFETY?

Of the hundreds of stories the GAO collected, at least 20 involved children who died from restraint. Other children were injured, including suffering broken bones and bloody noses, and traumatized to the point of suffering from post-traumatic stress syndrome.¹⁸ Given the dangers, restraint should only be used in rare emergencies where it must be deployed to protect people from physical danger. Instead, restraint has been used for failing to do class work, being noisy, tearing paper, being unable to pay attention due to disability issues, pushing items off desks, staff convenience, punishment, and similar issues.¹⁹

Only 14 states by law limit restraint to emergencies involving an immediate risk of physical harm or serious physical harm.²⁰ Four require an imminent threat of serious or substantial physical harm/injury: Louisiana; New Hampshire; Oregon; and Rhode Island. Florida appears to implicitly use this standard, although the statute is not explicit, and subject to being ignored.²¹ Nine states require an immediate threat of physical harm: Alabama, Colorado, Connecticut, Georgia, Illinois, Ohio, Pennsylvania, Tennessee, and Vermont.

Only 14 states limit restraint by law to emergencies threatening physical harm.

The remaining 37 states lack such laws. Some have statutes and regulations that permit restraint even when the child is not posing a danger of physical harm to anyone. Others have no limits, allowing states to do as they wish.

Massachusetts and Maryland by regulation allow restraint for threats of serious physical harm or

¹⁸ GAO REPORT at 1, 8, 10-12.

¹⁹ See generally NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009); JESSICA BUTLER, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009); Complaint, *Ebonie S. v. Pueblo School District No. 60* (D. Colo. filed Apr. 13, 2009).

²⁰ For purposes of this report, physical harm and bodily harm/injury/danger/safety are treated synonymously. Various state definitions may differ, but they are largely the same.

²¹ Florida's 2011 statute, FLA. STAT. 1003.573, implicitly suggests a serious physical harm standard, by requiring the school to explain in its report why there was an imminent risk of serious harm if seclusion/restraint were used. Florida practitioners confirm that the language's purpose was to impose a physical harm standard. Nonetheless, the statute is not explicit and can be misinterpreted as permitting seclusion/restraint for unlimited purposes.

as stated in a child’s Behavioral Intervention Plan (BIP) or Individualized Education Program (IEP).²² Maine does the same, using a physical harm standard. These rules appear superficially strong, but the IEP/BIP loophole lets schools to use restraint for almost any reason. Some staff may even add restraints to IEPs to avoid any questions about whether there was an emergency.

Likewise, California law contains a significant loophole. It authorizes restraint in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. The statute and regulations are worded in such a way that California does not forbid the use of restraint in non-emergencies. Consequently, if restraint is used because of a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency, and protections in the law do not apply.²³

Minnesota, Nevada, Texas, and West Virginia authorize restraint for threats of physical harm or serious destruction of property. Six states by law (Alaska, Iowa, Michigan, Montana, New York, Washington) permit restraint for threats of physical harm, destruction of property, or educational disruption/ maintaining “order.” Property destruction and educational disruption are appropriately handled through positive behavioral supports, de-escalation, conflict resolution, and perhaps other adjustments.²⁴ North Carolina by statute allows restraint for threats of physical harm, property destruction, educational disruption, or as stated in the IEP/BIP, another wide loophole.

Many states have no laws or have loopholes that allow restraint to be used with little limitation.

The remaining states have no laws. Seven states with nonbinding, recommended guidelines urge that restraint be limited to threats of physical harm: Indiana, Kansas, Nebraska, Oklahoma (serious physical harm), Virginia, Washington, D.C., and Wisconsin. In addition to physical harm, Utah suggests permitting restraint for serious property damage; New Mexico, destruction of property; and Missouri, destruction of property or as stated in the IEP. These guidelines lack the force of law and are easily changed.

The remaining 12 states do not seek even in voluntary, recommended guidance to limit the reasons for which restraint may be used: Arkansas, Arizona, Delaware,²⁵ Hawaii, Idaho, Kentucky, North Dakota, New Jersey, South Carolina, South Dakota, and Wyoming. Their laws are largely or entirely silent.

²² For children with disabilities, the BIP is often part of the IEP.

²³ 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).

²⁴ To the extent that property destruction threatens physical harm, it should be treated as a physical harm issue.

²⁵ Delaware permits committees to authorize “emergency interventions” for children with autism that may be used if there is a threat of physical harm or destruction of property. But it does not protect other children from emergency interventions. Nor does it limit the use of the same interventions on students with autism for non-emergencies. A Delaware child could be put in restraint or seclusion for tearing a book, failing to follow instructions, or running around. This regulation thus provides almost no protection.

B. IS SECLUSION BANNED OR LIMITED TO EMERGENCIES INVOLVING PHYSICAL SAFETY?

Like restraint, seclusion is highly dangerous, causing death, injuries, and trauma, as the GAO and others have documented. Children have been secluded in locked closets and rooms and in unlocked rooms they cannot exit--often because staff or furniture block the door. Doors may even be altered to prevent children from opening them. Seclusion is often used for non-emergencies and continues long after any emergency has ended. One 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.²⁶ Children confined in closets and seclusion rooms have been denied food, water, and access to the restroom.²⁷

States differ markedly in how they define and treat seclusion. Some recognize the danger of seclusion and seek to restrict it either by law or voluntary guidance. By law, 5 states ban all forms of seclusion, which eliminates the tremendous risk of harm that seclusion poses. Another 6 states by law limit seclusion to emergencies involving threats to physical safety. Other states permit seclusion for a wide variety of reasons or even no reason at all, subjecting children to physical and psychological danger and harm.

Seclusion Defined.

Unlike restraint, seclusion is defined differently in different states, leading to some confusion and differences in the degree of protection students receive. Some states regulate only "locked" seclusion and are entirely silent about whether there is any protection against doors blocked by staff, furniture, or through using cheap child-proofing devices that adults can easily open but children with some physical or cognitive disabilities cannot.

32 states would define seclusion as a space a child cannot exit, whether the door is locked or blocked by furniture, staff, etc.

There are 32 states that would define seclusion (or isolation) as a room or space a child is prevented from exiting (door is locked, blocked by furniture or staff, etc.). Twenty-one states do it by law:

Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Maine,²⁸ Massachusetts, Maryland (if alone), Minnesota, Montana, North Carolina (and also a room a child cannot leave due to

²⁶ GAO REPORT at 13.

²⁷ SCHOOL IS NOT SUPPOSED TO HURT at 15-20; CCBD, *Position Summary on the Use of Seclusion in School Settings* at 236.

²⁸ Maine bans any form of seclusion in which the door cannot be opened. It permits the use of what it calls "time-out rooms" in which students are alone, are observed by staff through a window, but children are able to exit the room. These rooms may be used in emergency situations that threaten physical harm or property destruction, or as stated in the IEP/BIP. Under both proposed federal bills, and the definition in this report, these rooms would not be considered "seclusion."

physical or mental incapacity), New Hampshire, Nevada, Oregon, Rhode Island (if without access to staff), Texas (if alone in room), Tennessee, Vermont, Wyoming (definition of “isolation”); and West Virginia (if unsupervised). Eleven states have a similar definition in nonbinding guidance: Indiana, Kansas, Michigan, Missouri, Nebraska, New Mexico, Oklahoma, South Carolina (if child alone), Utah, Virginia, and Washington, D.C. Two states by law limit seclusion to locking a child in a room: Alabama and Florida. In the U.S. Congress, the pending House bill defines seclusion as locked isolation; the Senate bill, as locked isolation or a space from which the child is prevented from leaving.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting, whether locked or blocked in some other way.²⁹ For short-hand, these may be referred to as “no-exit rooms.”

Bans on Forms of Seclusion.

By law, 11 states prohibit some form of seclusion. Of these, 5 ban it entirely, forbidding the use of rooms children are prevented from exiting, whether locked or technically unlocked but blocked: Georgia, Maine, Nevada, Pennsylvania, and Texas.³⁰ Given the dangers that seclusion poses, a ban is one important protection for children.

**5 states ban all seclusion;
6 ban locked seclusion, allowing furniture & staff to block doors.**

Another 6 states by law prohibit all or most forms of locked seclusion: Alabama, Arkansas, Montana (except in certain residential treatment facilities), New Mexico (fire code violation), New York, and Wyoming. These states would permit seclusion in spaces children cannot exit, which are as dangerous as those with formal locks.³¹

Six more by law allow locked seclusion only if the lock can automatically release, either through

²⁹ Rooms that are locked or from which children are prevented from exiting are considered “seclusion” in this report even if called something else (e.g., “confinement,” “isolation,” “time-out,” or “quiet room”). These rooms 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. The report definition focuses on the function of the room. For example, Wyoming distinguishes “locked seclusion” (locked space), which it bans, from “isolation” (unlocked space from which a child cannot exit), which it allows under strict conditions. It also has a separate category for “seclusion from the learning environment,” which appears to be a form of time-out. Wyoming’s “isolation” is treated as most states treat “seclusion,” and therefore, this report uses Wyoming’s isolation unless otherwise stated. Where it would make a difference, Wyoming’s locked seclusion and isolation are treated differently in this report.

³⁰ Texas law forbids the use of locked spaces unless there is a threat of bodily harm, and only while awaiting the arrival of law enforcement. It permits time-out, which it defines as an unlocked room from which egress is permitted. Thus, Texas law appears to implicitly forbid unlocked no-exit rooms. But, the absence of an explicit prohibition may be viewed as a loophole that is exploited to use of such rooms.

³¹ California was excluded from the group. By law, locked seclusion is not permitted as an emergency intervention, unless the state has otherwise licensed a facility to use a locked room. Yet, due to a loophole in wording, California permits locked seclusion for non-emergencies, which can include predictable events that threaten serious physical harm or events that do not threaten serious physical harm.

an emergency alarm system or when a person stops holding it: Connecticut, Iowa, Illinois, Florida (fire code referenced), Minnesota, South Carolina (fire code referenced). Most seclusion laws and guidelines are silent about fire, safety, and building codes, although they likely impose limitations on locked doors. When seclusion policies omit these codes, they leave staff and parents unaware and can lead to a belief that locking students in closets and rooms is permissible. Of course, a door that automatically unlocks in an emergency does not eliminate the grave physical or psychological dangers of seclusion.

The remaining 34 states do not ban either locked seclusion or seclusion in rooms children cannot exit.³²

Permitting Seclusion But Restricting It To Physical Safety Emergencies.

While 5 states ban all seclusion, 6 by law limit it to emergencies where it is necessary to prevent an immediate threat of physical harm: Oregon (“serious” physical harm), Colorado, Louisiana (“substantial” physical harm), Tennessee, Vermont, and Wyoming. Florida appears to have implicitly incorporated a serious physical harm standard, by requiring incident reports to explain why the use of seclusion met this standard. Still, the lack of an explicit limitation means some may interpret the law to allow seclusion for other reasons.

The remaining 36 states do not limit seclusion to physical safety emergencies by law, exposing children to serious risk of harm.

³² Two states (Washington, D.C. and Michigan) urge in their nonbinding guidance that children not be locked in rooms, although D.C. would permit staff to physically block the door. Kansas and Nebraska suggest doors that automatically unlock in their voluntary guidance.

There are 14 states that even explicitly permit seclusion by law in non-emergencies, or which have significant loopholes in their laws. [The information in this table is presented in text format on the following pages for readers who require text for disability or other reason.]

14 States Explicitly Permit Seclusion in Non-Emergencies by Law

| State | Seclusion Law and/or Loophole |
|--|--|
| CA ³³ | Bans locked seclusion as an emergency intervention for threats of serious physical harm, but does not forbid it under other circumstances. Could be used if behavior pattern is predictable or for other non-emergencies. (Also allows locked seclusion for emergencies if authorized by state license.) |
| NH | Bans unobserved seclusion in space child cannot exit unless written into IEP. (1) Does not restrict reasons such seclusion can be added to IEP. (2) Does not regulate observed seclusion, allowing staff to use it for any reason. Observation can be by video camera. |
| MN | Emergency threats of physical harm or serious destruction of property. |
| MA | Bans locked seclusion unless child has “access” to staff. Access is undefined and could simply be the ability to call or signal for staff. |
| RI | Bans seclusion unless the child is observed, and it is in BIP. Rhode Island does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration. |
| WV | Bans seclusion if a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. There are no limits on seclusion if the student is “supervised.” |
| AL | Bans locked seclusion. No regulation of seclusion in rooms where exit is blocked. |
| IA, MT, NY, IL, ³⁴ AR | Explicitly allow seclusion for any destruction of property or educational disruption (AR requires severe disruption). While time-out in a space child can leave may be appropriate for educational disruption, placing child in a room he cannot exit is not appropriate. |
| NC | Allows seclusion for threats of physical harm, property destruction, educational disruption, or as stated in IEP/BIP. Can be included in IEP/BIP for any reason. |
| CT, MD | Allow seclusion for threats of physical harm or as stated in the IEP/BIP. Gives schools freedom to put seclusion in IEP/BIP for any reason. May encourage them to do so to avoid any questions about whether there was an emergency. |

³³ 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).

³⁴ Illinois allows seclusion for threats of physical harm or maintaining an orderly environment. Destruction of property likely could be included under the latter.

Information from Above Table in Textual Format

14 States Explicitly Permit Seclusion in Non-Emergencies by Law

Minnesota permits seclusion for emergency threats of physical harm or serious destruction of property. Five states by law permit seclusion for threats of physical harm, destruction of property, or educational disruption: Arkansas (but limiting seclusion to severe occurrences), Iowa, Montana, New York, and Illinois.³⁵ While time-out in a space a child is able to leave may be appropriate for disruptive behavior, seclusion is not.

Other states have statutes or regulations permitting seclusion under broader circumstances. North Carolina permits seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP. New Hampshire prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP after certain conditions are met. This has two loopholes. First, it allows unobserved, locked seclusion for almost any reason when documented in the IEP. Second, it allows seclusion for any reason without any regulation as long as the child is observed. Observation could be by remote video camera, allowing children to languish in rooms for hours.

Massachusetts bans seclusion rooms if students lack “access” to staff, potentially allowing students to be locked in rooms for any reason with little limit as they can call or signal for staff. Rhode Island bans seclusion unless the child is observed, and seclusion has been agreed to in the child’s BIP. Rhode Island does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration. West Virginia is similar, banning seclusion if a child is in an “unsupervised” space she cannot exit. Supervised is undefined and could mean intermittently checking the room. There are no limits on seclusion if the student is “supervised.” Alabama bans locked seclusion, but does not regulate seclusion where the exit is blocked or the child otherwise is prevented from exiting.

California has a significant loophole. It 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 forbid the use of seclusion in non-emergencies. Consequently, if seclusion is used due to a predictable behavior pattern or a behavior that does not threaten serious physical harm, it is a non-emergency use, and protections in the law do not apply.³⁶

Two states, Connecticut and Maryland, by law permit seclusion for threats of physical harm or as stated in the BIP/IEP. 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. According to recent news reports, in 2007, about 2/3 of Connecticut schools had restraint and seclusion practices.³⁷

End of Textual Alternative

³⁵ Illinois allows seclusion for threats of physical harm or maintaining an orderly environment. Destruction of property likely could be included under the latter.

³⁶ 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).

³⁷ Jordan Fenster, *Scream Rooms' May Be More Common Than Parents Know*, NEW HAVEN REGISTER, Jan. 12, 2012.

Loopholes in these laws can have dramatic consequences, as was apparent in the state of Connecticut in January 2012. Connecticut permits seclusion for risks of physical harm or as otherwise stated in the IEP. 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 {school district} 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.’

Rather than seeking to reduce use of the seclusion rooms, in which children were screaming, the district decided they would “be moved to out-of-the-way locations so their use in the future is not disruptive to other students.”³⁸ If seclusion was banned, or strictly limited to emergency threats of physical danger, staff would be extremely unlikely to view seclusion as a regular or appropriate intervention for students with disabilities, or to seek to continue the rooms but hide them in another location.

There are 25 states that lack any legal protections at all. Eight have nonbinding guidance or voluntary principles urging that seclusion be limited to threats of physical harm. They are Indiana, Michigan, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin. Unfortunately, guidelines also counsel for permitting seclusion under circumstances which would harm children. Kansas urges that seclusion be used for threats of harm or as stated in the BIP/IEP, a wide loophole. Kansas also suggests that seclusion is a legitimate behavior modification techniques unrelated to emergencies as long as it is included in the IEP. Missouri’s guidelines suggests states consider allowing seclusion for threats of physical harm, destruction of property, or as stated in the IEP. Utah advocates for limiting restraint to threats of physical harm or serious destruction of property.

The remaining 14 states do not seek even in recommended guidance to limit seclusion to certain circumstances: Alaska, Arizona, Delaware,³⁹ Hawaii, Idaho, Kentucky (describes seclusion as a behavioral intervention), Mississippi, Ohio, North Dakota, New Jersey, New Mexico (guidance even explicitly describes seclusion as permitted for behavior modification), South Dakota, and Washington. Rather, they are silent or permit seclusion for a wide variety of reasons.

For comparison, Senator Harkin’s bill would ban all seclusion; Congressman Miller’s bill would permit seclusion only if necessary to prevent an imminent threat of physical harm to an individual in an emergency.

³⁸ 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.)

³⁹ Delaware permits the use of “emergency interventions” for threats of physical harm or destruction of property by children with autism. But it places no limits on the use of seclusion with other children or the non-emergency use of seclusion for children with autism.

C. OTHER STEPS TO ENSURE INTERVENTIONS ARE USED ONLY IN AN EMERGENCY

Several states permit seclusion and/or restraint only as emergency interventions, given the risk of serious harm to children and staff. A number of states allow restraint/seclusion only if less intense interventions have failed, and require them to end when the emergency ends. Both of these approaches have been incorporated in the federal bills proposed by Senator Harkin and Congressman Miller. (In states that ban all seclusion, these two requirements are still relevant for restraint.) In addition, some states explicitly forbid their use for discipline or punishment, a position also mirrored in the federal bills.

Less Restrictive Measures Must Fail.

If less-restrictive methods would resolve an issue, they must be used first. Restraint and seclusion not only expose children to danger, but escalate behaviors and led to a cycle of violence. By contrast, positive interventions, de-escalation, and conflict resolution resolve difficult situations and help prevent and reduce the use of restraint and seclusion.⁴⁰ Research shows that these measures are among the most useful strategies for reducing seclusion and restraint use, according to the National Association of State Mental Health Program Directors (NASMHPD).⁴¹

Only 15 states by law require that less restrictive methods either fail or be deemed ineffective before seclusion/restraint are used: Alabama, California, Colorado, Georgia, Iowa, Louisiana, Massachusetts, Maryland, Minnesota, New Hampshire (restraint only), New York, Oregon, Rhode Island, Vermont, and Connecticut (restraint only; less-restrictive methods need not fail to use restraint when permitted in the IEP). Six of the 15 adopted the requirement after the Miller bill was introduced in 2009.

The remaining 36 states lack this legal requirement, allowing personnel to quickly escalate to restraint/seclusion, even when unnecessary and something else would resolve the problem.

15 state laws require less intensive interventions to fail or be ineffective before S/R are used. This ensures S/R are used only in emergencies, protecting children from unnecessary harm.

⁴⁰ See H.R. REP. NO. 111-417 at 20-21. For example, in one Utah case, a child was repeatedly restrained for smearing fecal matter on the wall and banging his head. A functional behavioral assessment determined that he was doing this because the restraints were the only physical contact he had. School personnel were able to end the behaviors by giving the child hugs and interactions for positive behavior, according to COPAA Executive Director Denise Marshall. Hence, a less restrictive intervention, identified through a functional behavioral assessment, stopped the child from injuring himself, while restraints only encouraged him to do so. Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

⁴¹ 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).

Maine and Montana require less restrictive methods to have been tried, but not necessarily to be ineffective.

This means that 34 states do not by law require any use of less-intrusive interventions before restraint/seclusion are used. Of the 34, 10 states that lack statutes and regulations suggest it in their nonbinding guidance: Kansas, Michigan, Missouri, New Mexico (restraint only), Oklahoma, South Carolina, Utah, Virginia, Washington, D.C., and Wisconsin--signaling the importance of less-restrictive interventions.

Intervention Must End When The Emergency No Longer Exists.

Without the threat of an emergency, there is no need to use seclusion (if permitted at all) or restraint. These interventions should end when the emergency ends. Instead, children have been ordered to sit still in yoga positions, show a happy face, pull apart socks, or do other tasks to end seclusion and/or restraint.⁴²

These requirements have nothing to do with an emergency or safety. Children with autism, intellectual disabilities, and other disabilities may even be unable to do them, even when they threaten no one. Other states or school personnel require that seclusion or restraint continue for required time periods, even if there is no longer an emergency. Of course, if a state bans seclusion, then the requirement is necessary only for restraint.

Only 14 states by law prohibit restraint and/or seclusion from continuing after the emergency ends: Alabama, California, Colorado, Georgia, Illinois (restraint only), Louisiana, Massachusetts, Minnesota, New Hampshire (restraint only); Nevada, Oregon, Rhode Island, Texas,⁴³ Vermont and West Virginia. Two states impose this limit only on restraint and not seclusion.

**Only 14 states by law
require
restraint/seclusion to
stop when the
emergency ends.**

Six states explicitly allow restraint/seclusion to continue even if there is no emergency. They set time limits or require children to be calm or composed, which is often impossible for children with autism and other disabilities. A child may be upset and crying, and yet threaten no one. Some even let the IEP team decide when restraint or seclusion should end, which has nothing to do with an emergency.

⁴² Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007; UNSAFE IN THE SCHOOLHOUSE, Appendix.

⁴³ Although Texas requires only that restraint end when the emergency ends, it effectively also imposes this requirement on seclusion, by allowing seclusion only for emergencies while awaiting the arrival of law enforcement. One law enforcement arrive, the emergency has ended and the child is with law enforcement.

These states are Connecticut (seclusion must end when child is “compose[d]” or 1 hour); 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); Montana (time limit in IEP/BIP); and New Hampshire (IEP team decides when seclusion should end). 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. This is designed to protect children. Maryland is to be lauded for this, but the standard can raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint because he/she is not yet calm. Still the 30 minute rule appears designed to ensure the staff take action to promptly end restraint or seclusion.

The other 32 states have no laws at all that require these dangerous techniques to end when there is no longer any emergency.

Seven states do have nonbinding guidelines supporting the principle that the intervention should end when the emergency ends: Indiana (restraint only), Missouri, Nebraska, Oklahoma, South Carolina, Washington, D.C., and Wisconsin (restraint only). Such guidance lacks the force of law. Indiana by nonbinding guidance suggests that seclusion end within 30 minutes after the behavior ends or as specified in the IEP. There are 25 states that are wholly silent: Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maine, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, and Wyoming. These states offer no protections by law nor suggest any through voluntary guidelines.

Forbidding Interventions for Punishment or Discipline

At least 18 states have laws indicating that seclusion/restraint may not be used as a means of discipline or punishment. Some also explicitly state that the interventions are not a substitute for educational programming. The states include: Alabama, California, Colorado, Connecticut, Georgia, Iowa, Illinois, Louisiana, Massachusetts, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and Wyoming. Other states may not include this language because limiting restraint/seclusion to threats of physical harm by definition excludes their use as discipline and punishment.

Is Restraint Limited to Immediate Emergency Threats to Physical Safety or Allowed for Non-Emergencies?

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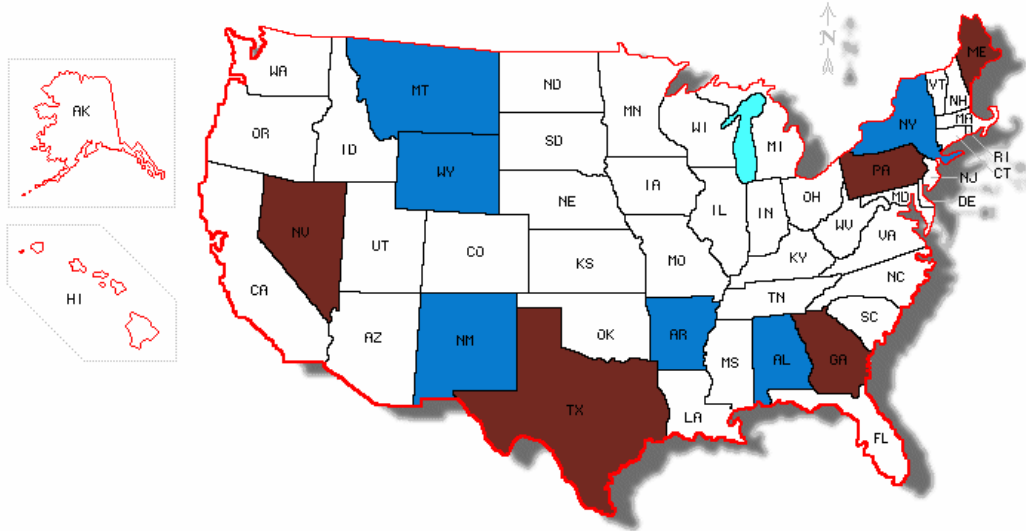
| | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys. Harm or DP | Phys Harm, DP, or Educational Disruption | Other, including allowing restraint as per IEP or BIP |
|--------------|--|--|--|--------------------------|------------------|--|--|
| Total by law | 5 | 8 | 3 | 1 | | 5 | 2 |
| AK | | | | | | | |
| AL | | X | | | | | |
| AR | | | | | | | |
| AZ | | | | | | | |
| CA | | | | | | | X (CA permits use of restraint in non-emergencies with little limitation due to law's wording) |
| CO | | | | | | | |
| CT | | X | | | | | |
| DE | | | | | | | |
| DC | | <i>Guidance - Not law - Can Change</i> | | | | | |
| FL | implied | | | | | | |
| GA | | X | | | | | |
| HI | | | | | | | |
| IA | | | | | | X | |
| ID | | | | | | | |
| IL | | X | | | | | |
| IN | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| KS | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| KY | | | | | | | |
| LA | X | | | | | | |
| MA | | | X | | | | |

| | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys. Harm or DP | Phys Harm, DP, or Educational Disruption | Other, including allowing restraint as per IEP or BIP |
|----|--|--|--|--|--|--|---|
| MD | | | X | | | | |
| ME | | | X | | | | |
| MI | | | | | | X | |
| MN | | | | X | | | |
| MO | | | | | | | <i>Voluntary Guidance - Not law - Can Change</i> |
| MS | | | | | | | |
| MT | | | | | | X | |
| NC | | | | | | | X |
| ND | | | | | | | |
| NE | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| NH | X | | | | | | |
| NJ | | | | | | | |
| NM | | | | | <i>Voluntary Guidance - Not law - Can Change</i> | | |
| NV | | | | X | | | |
| NY | | | | | | X | |
| OH | | X | | | | | |
| OK | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | | |
| OR | X | | | | | | |
| PA | | X | | | | | |
| RI | X | | | | | | |
| SC | | | | | | | |
| SD | | | | | | | |
| TN | | X | | | | | |
| TX | | | | X | | | |
| UT | | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | |

| | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys. Harm or DP | Phys Harm, DP, or Educational Disruption | Other, including allowing restraint as per IEP or BIP |
|----|---|--|--|--------------------------|------------------|--|---|
| VA | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| VT | | X | | | | | |
| WA | | | | | | X | |
| WI | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| WV | | | | X | | | |
| WY | | | | | | | |

Law Bans Locked Seclusion or All Seclusion (e.g. blocked doors)

- - All Seclusion Banned
- - Locked Seclusion Ban



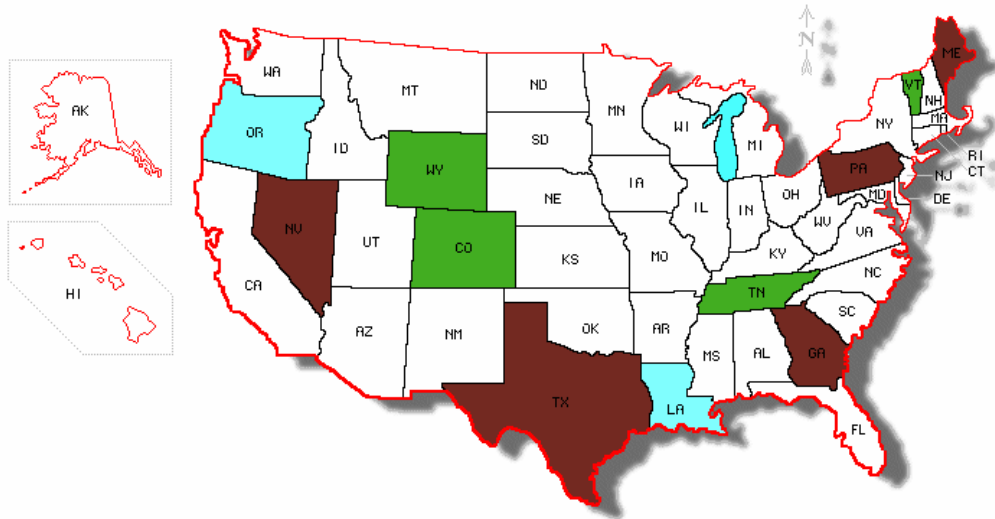
Brown (dark): all seclusion banned by law (includes doors blocked by furniture, staff, child proofing devices, etc.)

Blue (light): locked seclusion banned by law

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By Law, Seclusion is Banned or Limited To Emergency Threats of Physical Harm

- - All Seclusion Banned
- - Emerg Physical Harm
- - Serious Phys Harm



Brown (dark): all seclusion banned

Green (medium): seclusion limited to emergency threats of imminent physical harm

Cyan (light): seclusion limited to emergency threats of imminent serious physical harm

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How is Seclusion Defined, and Is It Banned?

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| | Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.) | State Bans all No-Exit Rooms | Seclusion Means Locked Room Only | State Bans Only Locked Seclusion | State Requires Locks to Automatically Release | No limit on seclusion |
|----|---|------------------------------|----------------------------------|--|---|-----------------------|
| AK | | | | | | X |
| AL | | | X | X | | |
| AR | | | | X | | |
| AZ | | | | | | X |
| CA | | | X | X (except certain licensed facilities) | | |
| CO | X | | | | | |
| CT | X | | | | | |
| DE | | | | | | X |
| DC | <i>Guidance - Not law - Can Change</i> | | | | | |
| FL | | | X | | | |
| GA | X | Total Ban | | | | |
| HI | | | | | | X |
| IA | X | | | | | |
| ID | | | | | | X |
| IL | X | | | | | |
| IN | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| KS | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| KY | | | | | | X |
| LA | X | | | | | |
| MA | X (if child lacks staff "access") | | | | | |
| MD | X (if alone) | | | | | |
| ME | | Total Ban | | | | |
| MI | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| MN | X | | | | | |
| MO | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| MS | | | | | | X |

| | Seclusion Means Child Is Prevented from Leaving Room/Space (locked door, door blocked by furniture or staff, childproofing, etc.) | State Bans all No-Exit Rooms | Seclusion Means Locked Room Only | State Bans Only Locked Seclusion | State Requires Locks to Automatically Release | No limit on seclusion |
|----|---|------------------------------|----------------------------------|---|---|-----------------------|
| MT | X | | | X (except certain residential facilities) | | |
| NC | X | | | | | |
| ND | | | | | | X |
| NE | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| NH | X | | | | | |
| NJ | | | | | | X |
| NM | <i>Voluntary Guidance - Not law - Can Change</i> | | | X | | |
| NV | X | Total Ban | | | | |
| NY | | | | X | | |
| OH | | | | | | X |
| OK | | | | | | |
| OR | X | | | | | |
| PA | | Total Ban | | | | |
| RI | X (if child unobserved) | | | | | |
| SC | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| SD | | | | | | X |
| TN | X | | | | | |
| TX | X (if alone in room) | Total Ban | | | | |
| UT | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| VA | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| VT | X | | | | | |
| WA | | | | | | |
| WI | | | | | | |
| WV | X iif child is unsupervised) | | | | | |
| WY | X (called "isolation" in WY) | | | X | | |

Is Seclusion Banned or Limited to Emergencies Involving Immediate Threats to Physical Safety?

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| | Bans Seclusion | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys Harm, DP, or Educational Disruption | Other, including allowing Seclusion as per IEP or BIP |
|--------------|----------------|--|---|--|--------------------------|--|--|
| Total by law | 4 | 3 | 6 | 2 | 1 | 5 | 7 |
| AK | | | | | | | |
| AL | | | | | | | X (bans locked seclusion; no limits on seclusion where exit is blocked) |
| AR | | | | | | X (but only severe educ. disrupt.) | |
| AZ | | | | | | | |
| CA | | | | | | | X (CA permits use of seclusion in non-emergencies with little limitation due to law's wording) |
| CO | | | X | | | | |
| CT | | | | X | | | |
| DE | | | | | | | |
| DC | | | <i>Guidance - Not law - Can Change</i> | | | | |
| FL | | implied | | | | | |
| GA | X | | | | | | |
| HI | | | | | | | |
| IA | | | | | | X | |

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| | Bans Seclusion | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys Harm, DP, or Educational Disruption | Other, including allowing Seclushn as per IEP or BIP |
|----|----------------|--|--|--|--------------------------|--|--|
| ID | | | | | | | |
| IL | | | | | | X | |
| IN | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| KS | | | | | | | <i>Voluntary Guidance - Not law - Can Change. Regards S as legit. behavior modif. technique, and permits if in IEP for any reason.</i> |
| KY | | | | | | | |
| LA | | X | | | | | |
| MA | | | | | | | X [1] |
| MD | | | | X | | | |
| ME | X [2] | | | | | | |
| MI | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| MN | | | | | X | | |
| MO | | | | | | | <i>Voluntary Guidance - Not law - Can Change</i> |
| MS | | | | | | | |

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| | Bans Seclusion | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys Harm, DP, or Educational Disruption | Other, including allowing Seclusrn as per IEP or BIP |
|----|----------------|--|--|--|--------------------------|--|---|
| MT | | | | | | X | |
| NC | | | | | | | X |
| ND | | | | | | | |
| NE | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| NH | | | | | | | X [3] |
| NJ | | | | | | | |
| NM | | | | | | | <i>Voluntary Guidance - Not law - Can Change. Considers seclusion legit. behavior modif. technique.</i> |
| NV | X | | | | | | |
| NY | | | | | | X | |
| OH | | | | | | | |
| OK | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | | |
| OR | | X | | | | | |
| PA | X | | | | | | |
| RI | | | | | | | X |
| SC | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| SD | | | | | | | |
| TN | | | X | | | | |

| | Bans Seclusion | Emergency Immediate Threat Serious Physical Harm | Emergency Immediate Threat of Physical Harm | Serious Phys. Harm/ Phys. Harm or in IEP | Phys. Harm or Serious DP | Phys Harm, DP, or Educational Disruption | Other, including allowing Seclun as per IEP or BIP |
|----|----------------|--|--|--|--|--|--|
| TX | X | | | | | | |
| UT | | | | | <i>Voluntary Guidance - Not law - Can Change</i> | | |
| VA | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| VT | | | X | | | | |
| WA | | | | | | | |
| WI | | | <i>Voluntary Guidance - Not law - Can Change</i> | | | | |
| WV | | | | | | | X [5] |
| WY | | | X | | | | |

Notes: [1] MA forbids locking children in rooms without access to "staff." If staff is accessible (perhaps by call or signal), MA does not regulate the rooms or limit the reasons they can be used.

[2] Maine permits the use of "time out" rooms that students are able to exit for purposes of time-out, when there is an emergency threat to physical safety or of property destruction, or as otherwise stated in the IEP. The doors are not locked, blocked, or secured in any way. The child is alone, and observed through a window. They are not "seclusion" under either Congressional bill or as defined in this report.

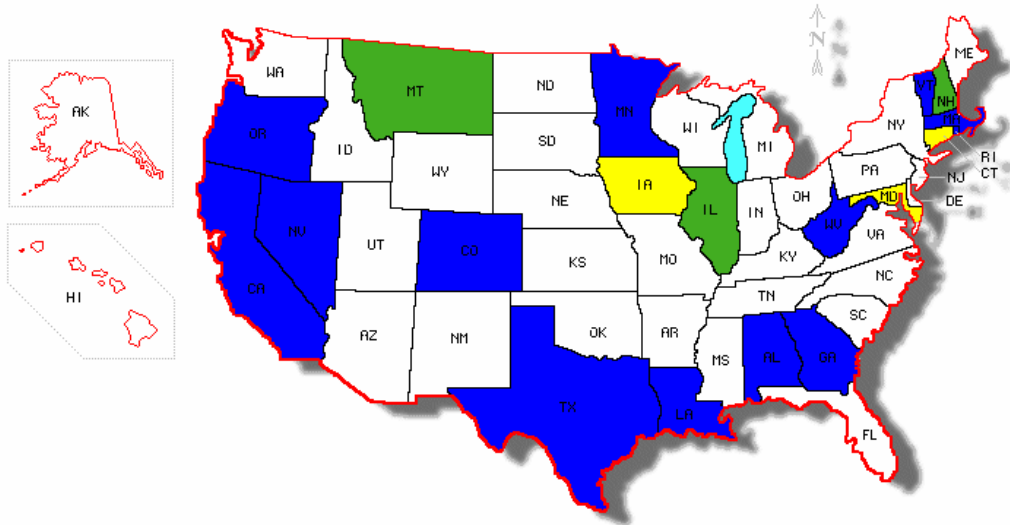
[3] NH effectively permits unobserved seclusion for any reason if permitted by the IEP (after certain conditons are met). It also allows seclusion for any reason as long as the child is observed (e.g. by video camera or window).

[4] RI bans unobserved seclusion. But if the child is being observed, Rhode Island does not regulate the rooms or restrict the reasons for secluding the child.

[5] WV bans unsupervised seclusion, without defining the term (can include occasionally checking a locked room). WV does not regulate seclusion as long as the child is supervised in some manner.

S/R Must End When the Emergency Ends

- - End Emerg Ends.
- - R&S Differ
- - Explicitly longer



Blue (dark): S/R must end when the emergency ends
Green (medium): different rules applied for when seclusion and restraint must end
Yellow (light): S/R are permitted by law to continue after the emergency ends

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**By Law, Does State Permit Seclusion/Restraint Only As a Last Resort
(i.e., after less-intensive interventions have failed or been deemed ineffective?)**

| Does State Permit S/R Only as a Last Resort? | Number States | State Names |
|--|----------------------|--|
| Less-Intensive Measures Must Fail/ Be Ineffective, by Law | 13 | AL, CA, CO, GA, IA, LA, MA, MD, MN, NY, OR, RI, and VT. |
| Try Less-Intensive Measures First; Need Not Fail | 2 | ME, MT |
| No Laws Requiring that Less Intensive Interventions Fail. Likely Results in Quicker Escalation to S/R. | 34 | AK, AR, AZ, DC, DE, FL, HI, ID, IL, IN, KS, KY, MI, MO, MS, NC, ND, NE, NJ, NM, NV, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WI, WV, WY. |
| Must Fail for Restraint; Need Not Fail to use seclusion. | 2 | CT (Less-restrictive measures must fail for restraint or if seclusion not IEP. Less-restrictive measures need not fail if seclusion in IEP; permits seclusion in IEP for any reason). NH (less-restrictive measures must fail for restraint, no limit for seclusion). |

By Law, Does State Require Seclusion/Restraint to Stop When The Emergency Ends?

| Does State Permit S/R Only as a Last Resort? | Number States | State Names |
|---|----------------------|--|
| By Law, S/R Must End When the Emergency Ends | 13 | AL, CA, CO, GA, LA, MA, MN, NV, OR, RI, TX, VT, WV. |
| Other Provision for When S/R Should End. | 3 | CT (Seclusion must end when child is "compose[d]" or 1 hour). IA (After "reasonable" period). MD (Seclusion must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm). |
| No Laws Requiring S/R to Stop When the Emergency Ends. | 32 | AK, AR, AZ, DC, DE, FL, HI, ID, IN, KS, KY, ME, MI, MO, MS, NC, ND, NE, NJ, NM, NY, OH, OK, PA, SC, SD, TN, UT, VA, WA, WI, WY. |
| Must Stop When Emergency Ends for Restraint; Need Not Stop for Seclusion. | 3 | NH (IEP team decides when seclusion ends). MT (IEP decides). IL (seclusion ends 30 minutes after behavior resulting in seclusion has ended). |

III. OTHER LIMITS ON RESTRAINT AND SECLUSION

This section analyzes other limits on restraint and seclusion. It includes bans on certain restraints (restraints impeding breathing, mechanical restraints, and chemical restraints); monitoring children in seclusion rooms (when seclusion is permitted); minimum room condition requirements; and the like.

A. BANNING CERTAIN RESTRAINTS

States increasingly prohibit three types of restraint due to their severe risks: restraint that restricts breathing, mechanical restraint, and chemical restraint.

Restraints that Restrict Breathing

Restraints that impede breathing are extraordinarily dangerous without further question. According to the GAO, when a small 14 year old boy would not stay in his seat, a 230 pound teacher put him into prone restraint and lay on top of him, killing him. Jonathan Carey was killed by suffocation after a school aide sat on top of him for being disruptive. The aide and driver of the van stopped at a game store and one of the employee's houses while he lay unconscious in the backseat.⁴⁴

Only 15 states ban all restraints that restrict breathing.

Nonetheless, only 20 states have laws specifically restricting restraints that impede breathing and/or prone restraint. There are 15 states that ban all restraints that impair breathing: Alabama, Colorado, Connecticut, Florida, Iowa, Louisiana, Massachusetts, Maryland, Minnesota, New Hampshire, Rhode Island, Tennessee, Vermont, Washington, and West Virginia. These laws protect children from any restraint that impairs breathing.

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 limit the space for the lungs to expand.⁴⁵ There are 10 states that ban prone restraint, either by name or by describing the components of the restraint: Georgia, Iowa, Maryland, Minnesota (prone banned effective Aug. 2012), New Hampshire, Ohio, Oregon, Pennsylvania, Wyoming, and West Virginia. Prone restraint is regulated in Massachusetts (limiting prone restraint to staff trained in the technique), and Vermont (allowing prone restraint under certain circumstances if less restrictive restraints would not be effective). Such regulations likely undercut prohibitions on restraints the impede

⁴⁴ GAO REPORT at 10-11.

⁴⁵ DISABILITY RIGHTS CALIFORNIA, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION (2002); *see also* NDRN, SCHOOL IS NOT SUPPOSED TO HURT at 13 (“Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.”)

breathing by exempting prone restraint from the prohibition. They are better than the states that have no protections, but they raise significant issues.

Six states with nonbinding guidance suggest forbidding these techniques: Missouri, Nebraska, New Mexico, Oklahoma, South Carolina, and Washington, D.C. (prone and supine; not mentioning other restraints that impede breathing). These guidelines are not equivalent to statute or regulation, but they do reflect the state's views of the issue.

For comparison, both Congressional bills would ban restraints that restrict breathing; Senator Harkin's bill is somewhat broader, prohibiting all life-threatening restraints.

Mechanical & Chemical Restraint

Mechanical restraints include straightjackets, chairs and furniture that children are locked into, devices that restrain arms, legs, torsos and other body parts, bungee cords and other straps and ties, and duct tape tying children to furniture, among other things. They are dangerous, as the GAO and numerous organizations have found. Children have been left in them for long periods of time, exacerbating the harm.

**15 states ban
mechanical restraints;
10, chemical ones.**

Only 15 states ban mechanical restraints by law: Alabama, Colorado (except armed security officers), Georgia, Iowa, Illinois, Louisiana, Maine, Montana,

New Hampshire, Oregon, Pennsylvania, Tennessee, Vermont, Wyoming, and West Virginia, leaving 35 that do not. Another 4 impose limitations: Massachusetts (permitted with parental consent and physician instructions); Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and Washington (limited to binding limbs to object, unless included in IEP with parental consent). Thus, 31 states have no limits in law at all.

Chemical restraints can kill and injure. Only 10 states ban them by law in school: Alabama, Colorado, Georgia, Iowa, Illinois, Maine, New Hampshire, Oregon, Rhode Island, and Vermont. Another 3 restrict them: Connecticut (bans chemical restraints unless otherwise stated in IEP), Massachusetts (permitted with parental consent and physician instructions), and Tennessee (permitted with parental consent and physician instructions). Other states are silent in their laws.

There are 6 states that have nonbinding guidelines urging that mechanical restraints not be used: Nebraska, New Mexico, Oklahoma, South Carolina, Washington, D.C., and Wisconsin (but allowed with medical oversight). The remaining 26 states are completely silent. Four states have guidance urging that chemical restraints not be used: Missouri, Nebraska, Washington, D.C., and Wisconsin (but allowed with medical oversight).

For comparison, both Congressional bills ban mechanical and chemical restraints.

Mechanical Restraints Magnify Seclusion Harm

The risks from seclusion are magnified if the state permits mechanical restraint, as children may be locked or strapped into therapy chairs or other devices, and left for hours in rooms and closets in which they may remain hidden from view and knowledge. A nonverbal Alabama second grader with autism was restrained in a chair alone in a bathroom because she was screaming. She had flipped the chair over on herself and was hanging by the restraints. She also had urinated on herself.⁴⁶ In Massachusetts a preschooler was allegedly strapped into a chair for being rambunctious, and placed in a closed closet as he cried.⁴⁷

B. OTHER SECLUSION REQUIREMENTS

Monitoring and Other Conditions of Seclusion.

A number of states with laws restricting seclusion require that children be monitored. Monitoring can range from continuous visual monitoring to simply being capable of seeing inside the room or checking the room occasionally. In 2004, 13 year old Jonathan King killed himself in a seclusion room, while the teacher sat outside, lifting the paper on the window to check the room occasionally.⁴⁸ Other children locked in closets, bathrooms, and other rooms and spaces unobserved have been killed, injured, and traumatized.

13 year old Jonathan King killed himself in a seclusion room as the teacher sat outside, occasionally looking in to monitor him.

Five states appear to ban all forms of seclusion, regardless of whether the door is locked or blocked (Georgia, Maine, Nevada, Pennsylvania, Texas). Of those permitting seclusion, only 16 by law require continuous, direct visual monitoring of children in seclusion rooms: Alabama, Arkansas, Iowa, Illinois, Louisiana, Maryland, Maine, Minnesota, Montana, New York, Oregon, Rhode Island, Tennessee, Vermont, Washington, and Wyoming (for “isolation” rooms).

The other 30 states permit seclusion and do not have laws requiring continuous and direct visual monitoring.

There are 5 states that by law permit staff to monitor the room occasionally, but do not require continuous visual contact:

30 states lack laws requiring staff to continuously watch students in seclusion rooms.

⁴⁶ ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (June 2009).

⁴⁷ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

⁴⁸ Alan Judd, *Death Highlights Lack of Regulation at Psycho-educational Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

California (requires “adequate” supervision for unlocked seclusion); Colorado (“reasonably monitored”), Connecticut (IEP team determines frequency of monitoring), Massachusetts (“access” to staff required), North Carolina (require staff to be “able to see and hear the student at all times”). An observation window will satisfy a requirement to be able to see the child at all times; but this is not the same as requiring that staff actually watch the student through the window continuously, as opposed to leaving the child alone for stretches of time.

Other states lack laws that require monitoring. Six states seek continuous visual monitoring in their nonbinding state guidelines: Kansas, Michigan, Oklahoma, South Carolina, Washington, D.C., Wisconsin, and three advocate for the *ability* to see the student at all times: Indiana, Missouri, and Nebraska. These guidelines do not have the force of law and are subject to change. In addition, 16 states say nothing at all about monitoring: Alaska, Arizona, Delaware, Florida, Hawaii, Idaho, Kentucky, Mississippi, North Dakota, New Hampshire, New Jersey, New Mexico, Ohio, Utah, Virginia, and West Virginia.

For comparison, Senator Harkin’s bill would ban all seclusion. Congressman Miller’s bill would require a staff member to be physically present in the seclusion room with the student. If this was too dangerous, in which case continuous visual monitoring through an observation window would be permitted.

Minimum Room Condition Requirements.

There have been complaints that students have been secluded in small, darkened closets or injured in rooms with furniture or other items. There have also been reports that they have been routinely denied access to the bathroom, food, and water. In some cases, children have removed their clothing to be able to urinate in the room.⁴⁹

Some states regulate seclusion room conditions through statutes and regulations. States are more likely to impose lighting (14 states) and ventilation (12 states) requirements than access to essential bathroom facilities (6 states).

Some room requirements in state statutes and regulations are as follows:

Room must be lit (14 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, West Virginia, and Wyoming.

Heating/cooling/ adequate ventilation (12 states by law): Arkansas, Colorado, Iowa, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, Washington, and

Only 6 states require bathroom access for children in seclusion rooms.

⁴⁹ See generally NDRN, SCHOOL IS NOT SUPPOSED TO HURT; J. BUTLER, UNSAFE IN THE SCHOOLHOUSE; OUT OF THE DARKNESS... INTO THE LIGHT (WISCONSIN).

Wyoming.

Free of dangerous furniture, objects, and conditions (12 states by law): Arkansas, Colorado, Iowa, Illinois, Louisiana, Maryland, Minnesota, New York, North Carolina, Tennessee, Vermont, and Wyoming.

Room size requirement (10 states by law): Arkansas, Colorado, Iowa, Louisiana, Maryland, Minnesota, New York, Tennessee, and Wyoming.

Bathroom access (6 states by law): Iowa, Maryland (hard 30 minute limit on seclusion), MN, New York (denial is forbidden aversive), North Carolina (same).

Access to water and food when normally served (1 state by law): Minnesota.

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

Arkansas, Minnesota, New York, Tennessee, and Vermont are also among the states requiring compliance with fire, safety, and building codes. Minnesota requires obtaining a written statement that the room is in compliance from local authorities.

Nonbinding guidelines in five states also suggest room condition requirements: Indiana, Kansas, Michigan, South Carolina, and Wisconsin. (Fire, building, and safety code requirements are always mandatory.)

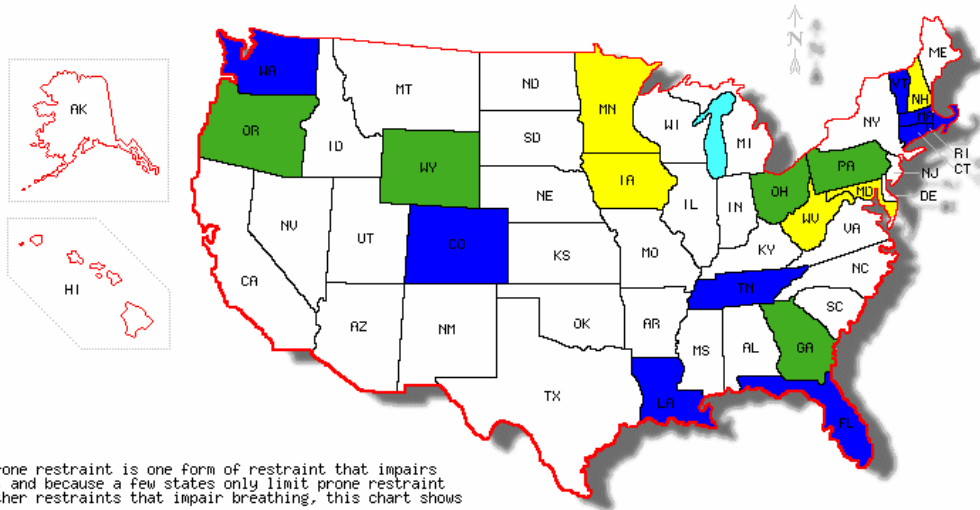
In the United States Congress, the Senate bill bans seclusion in non-exit rooms, rendering such requirements unnecessary. The House bill permits locked seclusion rooms and requires the Secretary of Education to regulate them, with the understanding that those regulations will include requirements regarding room safety and conditions.⁵⁰ The requirement that seclusion be limited to immediate threats of physical injury and end when the emergency ends also limits the duration in the rooms.

It is important to note that room condition requirements do not make seclusion rooms safe. The most well-lit and heated/ventilated room is still a room in which children can break a finger, sprain an ankle, become repeatedly bruised, and suffer severe trauma. The room requirements, however, ensure that seclusion rooms meet some very basic thresholds and children are not in icy rooms, boxes, unlit closets, etc.

⁵⁰ See H.R. REP. NO. 111-417 at 17-18. The House bill also requires staff to be physically present in the rooms unless it is dangerous, which likely would ensure that rooms are of proper temperature, lit, etc.

States that Ban Restraint that Impairs Breathing or Prone Restraint

- - Ban Impair Breathing
- - Ban Prone
- - Ban Both



Blue (dark): Bans restraint that limits breathing

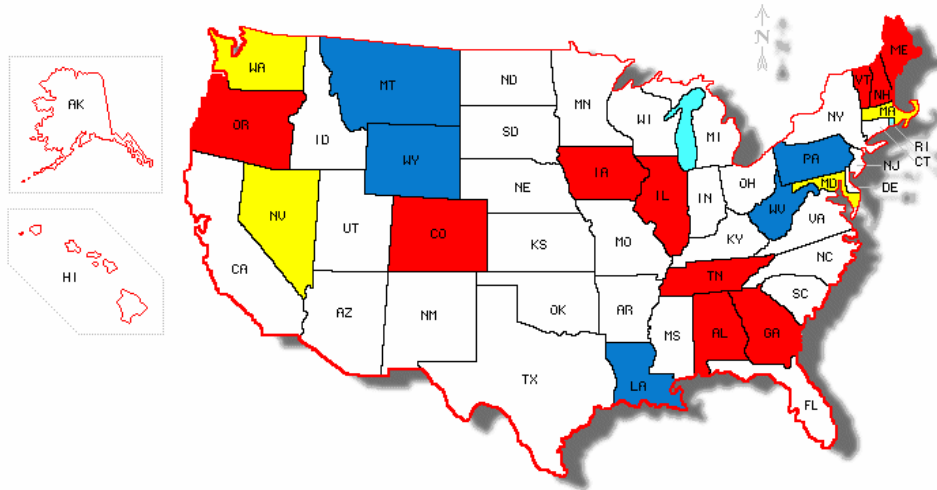
Green (medium): Bans prone restraint

Yellow (light): Bans both either explicitly or by describing component parts

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States that Ban Mechanical and Chemical Restraints

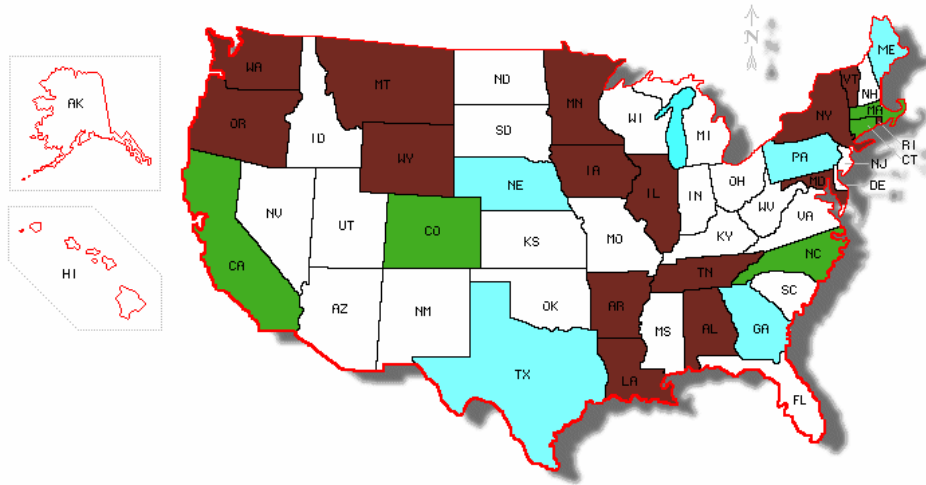
- - Ban Mechanical
- - Ban Chemical
- - Ban Both
- - Some limits mech



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State Requirements for Monitoring Children in Seclusion Rooms

- - Continuously Watch
- - Occasional Monitor
- - Ban All Seclusion



Brown (dark): Continuous visual monitoring (i.e. watching) the child is required
Green (medium): Occasional monitoring appears to be permitted
Cyan (light): All Seclusion banned; no need for monitoring

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A Summary of State Monitoring Requirements for Children in Seclusion Rooms

| Number of States | Monitoring Requirements. |
|------------------|---|
| 21 | Either ban seclusion or require continuous, direct visual monitoring. |
| 5 | All seclusion banned by law |
| 16 | Require staff to continuously and directly visually monitor (i.e. watch) child in seclusion room |
| 30 | Permit seclusion and do not have laws requiring continuous and direct visual monitoring. Laws may have loopholes or be non-existent. |
| 5 | Monitoring laws have loopholes, e.g. requiring only “reasonable” monitoring, allowing IEP team to determine how child will be monitored; or requiring that staff be able to see/hear a child at all times (but not that staff actually do so; this permits intermittent or occasional checking on the child). |
| 6 | Nonbinding guidelines, that lack force of law and can be changed at any time, urge continuous, direct visual monitoring. No mandatory statutes or regulations. |
| 3 | Nonbinding guidelines, that lack force of law and can be changed at any time, urge ability to see/hear child at all times (but not that staff actually do so). No mandatory statutes or regulations. |
| 16 | No monitoring requirements in law or even recommendations in nonbinding guidance. |

State Laws on Restraints that Impair Breathing, Prone Restraint, Mechanical Restraint, & Chemical Restraint.

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| | Restraint that Impairs Breathing | Prone Restraint Specifically | Mechanical Restraint | Chemical Restraint |
|--------------|---|--|---|---|
| total by law | 14 | 10 | 15 | 10 |
| AK | | | | |
| AL | ban | | ban | ban |
| AR | | | | |
| AZ | | | | |
| CA | | | | |
| CO | ban | | ban | ban |
| CT | ban | | | unless otherwise in IEP |
| DE | | | | |
| DC | | <i>Suggests ban in guidance- not law - can change</i> | <i>Suggests ban in guidance- not law - can change</i> | <i>Suggests ban in guidance- not law - can change</i> |
| FL | ban | | | |
| GA | | ban | ban | ban |
| HI | | | | |
| IA | ban | ban | ban | ban |
| ID | | | | |
| IL | | | ban | ban |
| IN | | | | |
| KS | | | | |
| KY | | | | |
| LA | ban | | ban | |
| MA | ban | permits prone restraint if staff is trained in the technique | permitted w/parent consent & physician instruct. | permitted w/parent consent & physician instruct. |
| MD | ban | ban | ban except certain schools w/hospital accreditation. | |
| ME | | | ban | ban |
| MI | | | | |
| MN | ban | ban | | |
| MO | <i>Suggests ban in guidance- not law - can change</i> | | | |
| MS | | | | |
| MT | | | ban (except in certain residential facilities) | |
| NC | | | | |
| ND | | | | |

| | Restraint that Impairs Breathing | Prone Restraint Specifically | Mechanical Restraint | Chemical Restraint |
|----|---|--|---|--|
| NE | <i>Suggests ban in guidance- not law - can change</i> | | <i>Suggests ban in guidance- not law - can change</i> | |
| NH | ban | ban | ban | ban |
| NJ | | | | |
| NM | <i>Suggests ban in guidance- not law - can change</i> | | <i>Suggests ban in guidance- not law - can change</i> | |
| NV | | | permitted w/doctor order, but must loosen every 15 min | |
| NY | | | | |
| OH | | ban | | |
| OK | <i>Suggests ban in guidance- not law - can change</i> | | <i>Suggests ban in guidance- not law - can change</i> | |
| OR | | ban | ban | ban |
| PA | | ban | ban | |
| RI | ban | | | ban |
| SC | <i>Suggests ban in guidance- not law - can change</i> | | <i>Suggests ban in guidance- not law - can change</i> | |
| SD | | | | |
| TN | ban | | ban | permitted w/parent consent & physician instruct. |
| TX | | | | |
| UT | | | | |
| VA | | | | |
| VT | ban | allowed in certain circumstances if less restrictive restraints would not be effective | ban | ban |
| WA | ban | | can't bind limbs to object or each other, unless in IEP | |
| WI | | | <i>Suggests ban in guidance- not law - can change</i> | |
| WV | ban | ban | ban | |
| WY | | ban | ban | |

IV. AWARENESS OF SECLUSION/RESTRAINT

A number of states have requirements related to disclosure and discussion of seclusion/restraint. These include the school's obligation to notify parents that a child was restrained/secluded; collection of data and making it available to the public; and debriefing and discussions that seek to reduce restraint/seclusion use and ensure that positive interventions and conflict resolution are used; and training requirements.

A. NOTICE TO PARENTS

Because of the dangers posed by seclusion/restraint, it is important that school staff notify parents promptly. But far too often, parents are unaware of what has happened to their child. Jonathan Carey was secluded in his room for extended periods of time at a private New York school, while employees repeatedly held the door, causing him to miss eight full days of school over a two week period. He was also repeatedly restrained and subjected to aversive interventions, including denial of 40 percent of his meals. His parents did not know about any of this, until his father arrived at the school to find Jonathan in his own urine, badly bruised and disoriented.⁵¹ Phyllis Musumeci's son, Christian, was restrained at least 89 times over 14 months, causing devastating psychological consequences and resulting in his parents removing him from school. His parents only found out a year later, when they requested school logs. One year of logs were missing.⁵² Numerous reports also detail the failure to give notice.

This section examines parental notification requirements in the states. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/next day notification and a fuller written report later to parents. Numbers may add up to 52 "states." The analysis includes the District of Columbia and New Hampshire appears twice, as its restraint and seclusion requirements differ.

First Notice on the Same Day or Within 24 Hours

Providing some sort of first notification to parents within 24 hours is important. Indeed, concussions, internal bleeding, and other hidden internal injuries need to be identified immediately because of the consequences. Using a "business day" or "school day" standard can delay notification over weekends and school holidays.

Parental notification is required by law in 25 states. Only 18 by law require that the school take steps to notify parents on either the same day or within 24 hours.

Of these, 12 have laws requiring schools to take steps to notify the parent on the same day the event occurs:

18 states have same day/24 hour parental notification requirements.

⁵¹ *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearing Before the House Comm. on Education and Labor, 111th Congress, 60-61 (2009).*

⁵² *Gradebook: A Weekend Interview with Phyllis Musumeci, TAMPA BAY TIMES, Jan. 24, 2009.*

Colorado[†], Connecticut[†] (attempted, for restraint and seclusion (if seclusion is not in the IEP)), Florida[†], Iowa[†] (attempted), Massachusetts[†] (unless parents waive or restraint lasts less than 5 minutes), Minnesota[†], Oregon[†], Rhode Island[†], Tennessee (“reasonable efforts”), Texas[†] (“good faith effort”), Vermont[†] (documented attempt), West Virginia[†] (“good faith”). Six require actual notice and six require that schools make reasonable attempts and good faith efforts to notify parents.

Another six states by law require schools to take steps to notify the parent within one calendar day or 24 hours: Illinois, Louisiana[†], Maryland (unless otherwise stated in IEP/BIP), New Hampshire[†] (attempt, restraint only), Utah, and Wyoming (written notice required unless parent agrees otherwise).

Twelve of these states require a fuller written report afterwards: Colorado, Connecticut, Florida, Iowa, Louisiana, Massachusetts, Minnesota, New Hampshire (restraint only), Oregon, Rhode Island, Texas, Vermont, and West Virginia. Of the 7 states requiring an attempt or good faith effort on the same day of the event or within 24 hours, 6 require fuller written notice later: Connecticut (written report within 2 school/business days), Iowa (written report mailed within 3 days); New Hampshire (allowing several days for written notice); Texas (written within 1 school day); Vermont (written within 24 hours); West Virginia (written within 1 school day).

Permitting Longer Notification Period

Three states require notification within one school or business day: Alabama, California, Georgia. Four states by law set a longer deadline for first notice: Maine (2 days), New York (required, but no deadline), Pennsylvania (setting no deadline, but requiring an IEP meeting within 10 days which effectively is the outer deadline); North Carolina (notify parents “promptly” with written follow up within 30 days if child was injured or seclusion lasts longer than 10 minutes; requires notification if the school violated the prohibitions in the statute).

27 states have no legal requirement to tell parents a child was restrained/secluded.

The remaining 27 states do not set deadlines by law. Without laws, it may be difficult to enforce the right to notice. In those states without statutes or regulations, eleven have guidelines. Six seek same-day first notice in the guidance: Michigan, Missouri[†], Nebraska[†], Oklahoma, South Carolina[†], and Washington, D.C.[†] (The states with the daggers also suggest a fuller written notice afterwards.) In addition, Nevada has guidance urging notification within one calendar day, and Kansas, within one school day. Indiana’s guidelines leave it up to the IEP team, and Virginia and Wisconsin leave the deadline up to the school or school district. There are 17 states that do not even have suggestions: Alaska, Arkansas, Arizona, Delaware, Hawaii, Idaho, Kentucky, Mississippi, Montana, North Dakota, New Hampshire (seclusion only), New Jersey, New Mexico, Ohio, South Dakota, Washington, West Virginia.

Loopholes

Of this group of states that ostensibly require notice in 24 hours or less, 4 have sizeable loopholes. They allow the IEP team to set another deadline (Maryland); leave the decision entirely to the IEP team Connecticut (when seclusion is included in the IEP); allow parents to agree to a different deadline (Wyoming); or allow schools to request that parents waive the right to notice (Massachusetts). Massachusetts forbids waiving the right to notice if the restraint lasts longer than 20 minutes or if it restraint results in “serious injury,” but this term is not defined, giving schools broad discretion. California requires notice within 1 school day when an emergency intervention has been used. Yet, because the law does not apply if restraint or seclusion is used for non-emergencies, there is no required notification in that situation.

These loopholes are dangerous. For example, Connecticut requires that schools take steps to notify parents on the same day if the child is restrained or placed in seclusion. A detailed written notification must be sent within 2 days. But if the child has seclusion in his/her IEP, the IEP team determines the time and manner of notification. The detailed written notification is also not required. Hence, if the IEP team agrees that the parent will not receive notice, the parent is left in the dark.

B. DEBRIEFING

A debriefing is a meeting that occurs after an incident of restraint or seclusion. Staff members, the parents, and the student may attend. Debriefings help reduce and eliminate restraint and seclusion, by determining what caused the event, how it could be avoided, and by planning for positive interventions.⁵³ It is 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).⁵⁴

There are 13 states that by law require some type of debriefing after restraint or seclusion: They include Alabama, California, Colorado, Connecticut, Louisiana, Massachusetts, Maryland, Minnesota, Nevada, Oregon, Pennsylvania, Rhode Island, Vermont, and Wyoming. No other states require a debriefing by law. Seven states also suggest a debriefing in their nonbinding guidelines: Indiana, Michigan, Missouri, Nebraska, Oklahoma, South Carolina (seclusion only), and Washington, D.C.

For comparison, Senator Harkin’s bill would require a debriefing after each incident, where

⁵³ *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).

⁵⁴ 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).

school, parent, and student analyze the antecedents to the event, plan for positive behavioral interventions to prevent further use of restraint, and plan for a functional behavioral analysis.

C. DATA

Data Reporting to the SEA.

In its 2009 report, the GAO found that there was no single entity that collected information on the use of seclusion/restraint or the extent of their alleged abuse. The GAO wrote about six states that collected data: California, Connecticut, Kansas, Pennsylvania, Texas, and Rhode Island.⁵⁵ The few states that collected data reported tens of thousands of restraint and seclusion each year, with 33,000 instances alone in Texas and California in 2007-08. Indeed, the GAO previously reported that seclusion/restraint data is likely to be understated due to the absence of consistent reporting requirements.⁵⁶

33,000 students were restrained/secluded in TX and CA in 2007-08. But only 13 states collect minimal data on the use of restraint/seclusion each year.

Today, by law, 13 SEAs collect data at least annually and a 14th collects it when the State monitors the LEA. SEAs required to collect data annually by statute or regulation include Alabama, California (but only for emergency interventions, not those used in non-emergencies), Connecticut (data made available for review prior to relicensure), Florida (monthly and annually), Louisiana, North Carolina, New Hampshire (restraint only), Nevada, Oregon, Rhode Island, Tennessee, Texas, Wyoming, with 7 states adopting this requirement in the wake of the Miller bill which created a data requirement. Pennsylvania requires that the data be made available to the SEA when it monitors an LEA. Nevada further requires a report when the rights of a child are violated by restraint or seclusion.

Massachusetts has very limited data collection. Data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported.

Kansas and Michigan recommend data collection in nonbinding guidance. Kansas is known to collect the data; Michigan's status is unclear. In any event, the requirement is subject to change. For example, in 2003, Vermont began collecting seclusion/restraint data as a result of task force recommendations. But with no mandatory requirements, Vermont ceased doing so a few years ago.

Even the mandatory state data requirements are not as robust as the data requirements in either

⁵⁵ GAO REPORT at 5, 7. This was not intended to be a full list.

⁵⁶ H.R. REP. NO. 111-417 at 13.

Congressman Miller's or Senator Harkin's bills. The two bills contain data requirements designed to break information down by subgroup (disability, race, etc.) and also to report information for each LEA. This data collection will better inform decision-making, and create sunshine on practices long hidden from public view. Still the state data collections signal that a significant number of states seem to favor reporting.

Data Reporting to the School or LEA.

Some states have lower-level data collection requirements. These indicate that data could readily be collected at the state level. By law, data is reported to the LEA or school board in eight states: Alabama, Florida, North Carolina, Nevada, Oregon, Tennessee, Vermont (certain circumstances). Other states keep data at the school-wide level, including Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Iowa, Massachusetts (if the restraint lasts for more than 5 minutes or there is an injury, unless the parent waives the requirement), Nevada, Rhode Island, and Tennessee. In addition, the following 21 states by law require that an incident report be completed after each use of restraint and placed in the child's file: California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts (if the incident lasted more than 5 minutes or led to an injury), Maryland, Maine, Minnesota, North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada, New York, Rhode Island, Texas, Vermont, Washington, and Wyoming.

A few states have nonbinding suggested guidelines which seek data. Nebraska, South Carolina, and Wisconsin suggest data be reported to the LEA or school board. Eight states in their nonbinding guidance also recommend that incident reports be placed in the child's file: Kansas, Michigan, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin.

The fact that states complete these kinds of reports tends to indicate that they could readily provide information through a computerized system to the state.

D. TRAINING AND OTHER MATTERS

A number of the deaths and injuries in the GAO report involved poorly trained or untrained staff.⁵⁷ Disability Rights California has also documented several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year old dragged down the hall by his wrists.⁵⁸

There are 21 states with seclusion/restraint laws that require some kind of staff training. 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 possible that some training provisions are included in other state laws and regulations, such as training related to

⁵⁷ H.R. REP. NO. 111-417 at 18.

⁵⁸ CALIFORNIA PROTECTION & ADVOCACY, INC., RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007).

positive behavioral supports.

For comparison, the House and Senate bills require training in evidence-based techniques “shown to be effective” in preventing the use of restraint (and seclusion in the House bill) and in keeping personnel and students safe in imposing restraint. They also require training in positive behavioral interventions, behavioral antecedents, functional behavioral assessments, de-escalation, and training in first aid and cardiopulmonary resuscitation. They require training in State seclusion/restraint policies and procedures, and certification in the skills. No state laws contain all of these requirements, and most contain far fewer. Only Oregon and Wyoming refer to evidence-based techniques, and only for certain requirements.

In the paragraphs below, some state training programs are designated “(restraint only);” these states ban seclusion, and require training only in restraint.

By law, 18 states require training in conflict de-escalation and prevention of seclusion/restraint: Alabama, Colorado, Connecticut, Georgia, Illinois, Massachusetts, Maryland, Maine (restraint only), Minnesota, North Carolina, Nevada, Oregon, Rhode Island, Tennessee, Texas, Vermont, Wyoming and West Virginia. The 13 states which include training in positive behavioral supports within their seclusion/restraint laws are Alabama, California, Georgia, Iowa, Minnesota, Montana (requiring person trained in positive interventions on IEP team), North Carolina, Nevada, Pennsylvania, Rhode Island, Tennessee, Vermont, and Wyoming.

There are 18 states that require training in safe and appropriate use of seclusion/restraint in their laws: Alabama (restraint only), Colorado, Connecticut, Georgia (restraint only), Iowa, Illinois, Massachusetts, Maine (restraint only) Maryland, Minnesota, North Carolina, New York, Oregon, Rhode Island, Tennessee, Texas, Vermont, and West Virginia. Another 7 states have laws explicitly requiring training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Connecticut, Illinois, Massachusetts, Maryland, Minnesota, Rhode Island (for staff trained in-depth), and Vermont. This issue may be addressed in some states implicitly through training in “safe use” of the techniques. Nevertheless, when procedures as dangerous as restraint and seclusion are, basic medical and health training should be explicitly required. There are 9 states that by law require training in the dangers of seclusion/restraint: Colorado, Connecticut, Iowa, Illinois, Massachusetts, Maryland, Minnesota, Rhode Island, and Vermont.

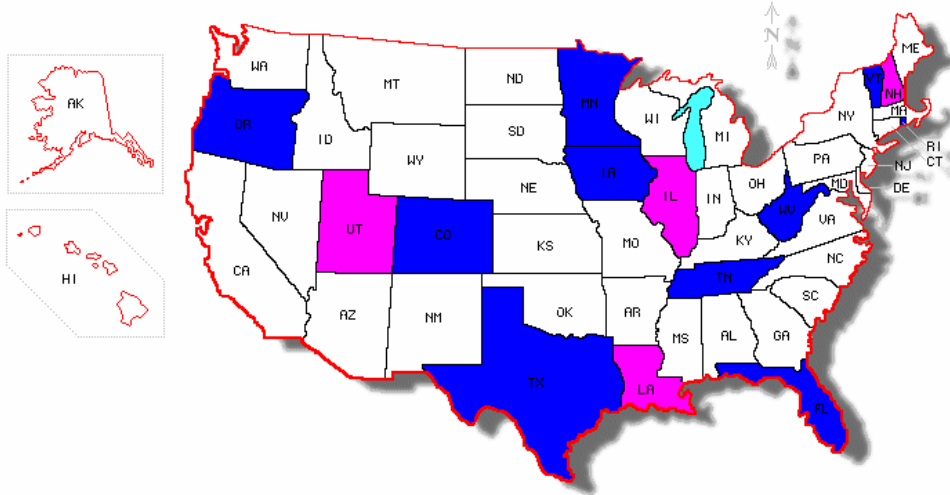
Surprisingly, very few states require training in state, LEA, and school policies and procedures regarding seclusion/restraint: Iowa (school only), Massachusetts (school only), Maryland, New York, Rhode Island (school only), Tennessee (if funding is available for training), and Wyoming (school only). Very few states by law require certification, proof of proficiency, or periodic retraining: Colorado (retrain every two years), Iowa (periodic retraining), Illinois (retrain every 2 years), Maryland (proficiency required for special school-wide resource staff), Rhode Island (special school-wide resources staff), and Wyoming.

Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. These 7 states in their nonbinding

guidance seek training in conflict de-escalation and prevention of seclusion/restraint: Indiana, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, and Wisconsin. There are 9 states with nonbinding guidelines urging training in safe and appropriate use of seclusion/restraint: Indiana, Kansas, Missouri, Nebraska, Oklahoma, South Carolina, Virginia, Washington, D.C., and Wisconsin. Five states have guidelines that suggest training related to first aid, identifying medical distress, cardiopulmonary resuscitation or similar issues: Washington, D.C., Oklahoma, South Carolina, and Virginia. Four states incorporate training in the dangers of seclusion/restraint in their guidance: Indiana, Oklahoma, South Carolina, and Virginia.

States Requiring Parental Notification Same Day or Within 24 Hours

- - Same Day
- - 24 hr/1Calndr Day

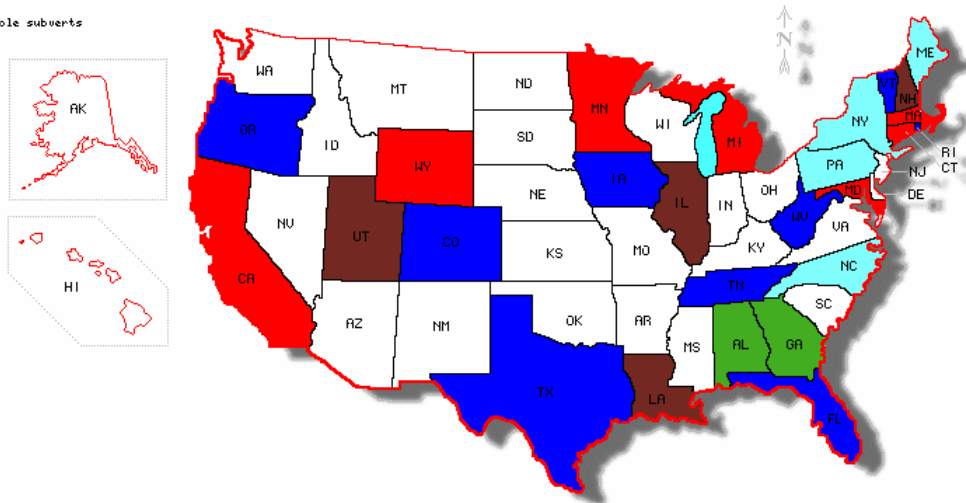


Blue (dark): same day
Pink (medium): within 24 hours or one calendar day

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Spectrum of Parental Notification Options

- - Same Day
- - 24 hr/10a1ndr Day
- - 1 School/Bus Day
- - Longer
- - Loophole subverts

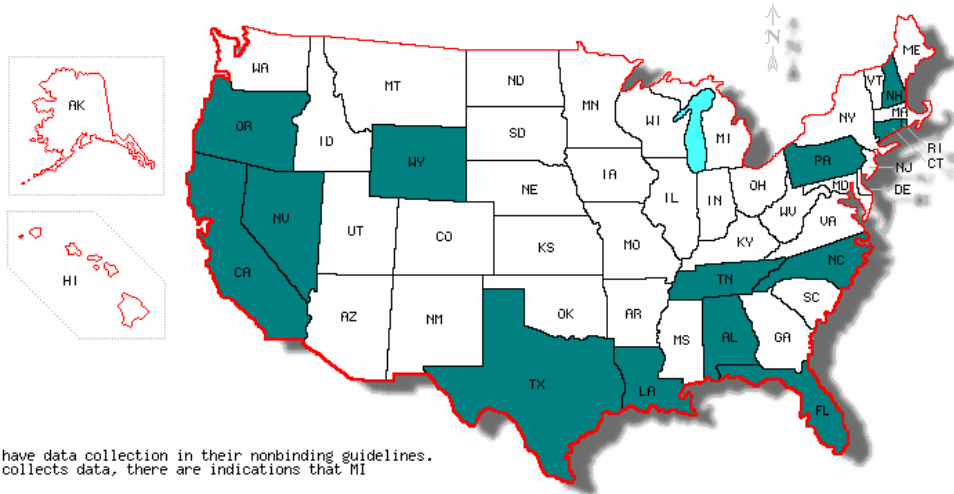


This map will only print properly in color.

“Loophole subverts” means that the state has a loophole in its parent notification law or another weakness that can prevent prompt notice to parents when a child has been restrained or secluded.

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State Requires Some Minimal Collection of Data By Law



The green states by law require at least the collection of the number of incidents of restraint and seclusion.

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Notifying Parent of Restraint/Seclusion Event.

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Permission to copy, share, and redistribute is granted, but please leave my name and email on the chart.

| | Notify Same Day | Notify w/l 1 calendar day or 24 hours | Notify w/l 1 school/ business day | Law sets longer deadline | Fuller written followup required |
|----|---|--|-------------------------------------|--|---|
| AK | | | | | |
| AL | | | | | |
| AR | | | | | |
| AZ | | | | | |
| CA | | | | | |
| CO | X | | | | X |
| CT | attempted (for seclusion if not in IEP and for restraint) | | | X (if seclusion is in IEP, IEP team sets deadline) | X (for seclusion if not in IEP and for restraint. If seclusion in IEP, not required.) |
| DE | | | | | |
| DC | | | | | |
| FL | X | | | | X |
| GA | | | | | |
| HI | | | | | |
| IA | attempted | | | | X |
| ID | | | | | |
| IL | | X | | | |
| IN | | | | | |
| KS | | | | | |
| KY | | | | | |
| LA | | X | | | X |
| MA | X | No notice if parent waives notice (at school request) or lasts for less than 5 mins. | | | X |
| MD | | X | unless otherwise stated in IEP/BIP. | | |
| ME | | | | | |
| MI | | | | | |
| MN | X | | | | x |
| MO | | | | | |

| | Notify Same Day | Notify w/l 1 calendar day or 24 hours | Notify w/l 1 school/ business day | Law sets longer deadline | Fuller written followup required |
|----|--|---------------------------------------|-----------------------------------|--------------------------|----------------------------------|
| MS | | | | | |
| MT | | | | | |
| NC | | | | | |
| ND | | | | | |
| NE | | | | | |
| NH | | attempted (restraint only) | | | X |
| NJ | | | | | |
| NM | | | | | |
| NV | | | | | |
| NY | | | | | |
| OH | | | | | |
| OK | | | | | |
| OR | X | | | | |
| PA | | | | | |
| RI | X | | | | X |
| SC | | | | | |
| SD | | | | | |
| TN | Required. If reasonable efforts were made, school held harmless. | | | | |
| TX | good faith efforts | | | | X |
| UT | | X | | | |
| VA | | | | | |
| VT | attempted | | | | X |
| WA | | | | | |
| WI | | | | | |
| WV | "good faith" | | | | X |
| WY | | X | unless parent agrees otherwise. | | |

V. CHANGES IN RESTRAINT/SECLUSION LAW

A. IMPACT OF FEDERAL BILLS ON STATE ACTION (CONGRESSMAN MILLER; SENATOR HARKIN)

In December 2009, when Congressman George Miller introduced the first national restraint/seclusion bill, 22 states had laws providing meaningful protections from seclusion and/or restraint. Prior to this, the only proposals had been at the state level or by independent academicians and organizations. Occasionally, states would appear to incorporate each other's policies in their own. But the Miller bill appears to have had a substantial impact, causing states to adopt and strengthen restraint/seclusion laws to incorporate several of its features.

Two years later, there are 29 states with meaningful protections in law: Alabama, Arkansas (seclusion only), California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Montana, North Carolina, New Hampshire, Nevada, New York, Ohio (executive order limiting physical restraint), Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, West Virginia and Wyoming.⁵⁹

Of these, 7 states adopted their laws after Congressman Miller introduced his bill (Alabama, Florida, Georgia, Louisiana, Vermont, West Virginia, and Wyoming), and 3 substantially strengthened theirs (New Hampshire, Oregon, and Tennessee). All 10 incorporated important features from Congressman Miller's bill, although to varying degrees. In addition, Wisconsin is currently considering a bill, and Maine, a new regulation, that incorporate elements of the bill.

The following analyzes some features of the Miller bill and their adoption into state law. It does not analyze all features. Many of the features discussed below are also components of Senator Harkin's newly introduced bill. But the focus here is what has happened over the last two years since the Miller bill was introduced.

Of the 10 states, 8 incorporate the requirement that physical restraint may not be used unless there is an imminent danger of physical injury, 1 also allowed it for threats of serious property destruction, and 1 is silent. These 8 states are the majority of the 14 states limiting restraint to emergency threats of physical danger. The Miller and Harkin bills differ on their physical danger requirements, but each would impose such a requirement.

⁵⁹ West Virginia's regulation was approved on December 16, 2011, one year and 7 days after Miller introduced his bill, and the same day Senator Harkin introduced his bill.

Of the 10 states that adopted or updated their seclusion laws, 5 limit seclusion to emergencies in which there is an imminent danger to physical safety, and 2 ban all seclusion.⁶⁰ These new states make up 7 of the 11 states that either ban all locked seclusion or limit it to physical safety emergencies. The Miller bill would limit seclusion to immediate threats of physical injury; the Harkin bill would ban it.

Similarly, 6 of the states that took action in the last two years have a clause requiring less restrictive measures to have failed/been ineffective. In addition, 6 explicitly require the intervention to end when the emergency ends. They make up slightly less than half of the 13 states with each provision. These are both features of the Miller and Harkin bills.

Moreover, 9 of the 10 states ban mechanical restraint, 7 ban chemical restraint, and all 10 ban either restraint that restricts breathing or prone restraint. (The Miller and Harkin bills would prohibit restrictions on breathing, which by definition include prone restraint, and mechanical and chemical restraints). Again, these make up nearly half or more of the states that ban each restraint.

Six of the new states mandate that schools to take steps to notify parents on the same day or within 24 hours of when the incident occurred, similar to the Miller and Harkin bills. (Some states require a good faith effort on the same day or within 24 hours, followed by written notification. The Miller and Harkin bills would require mandatory same day notification, followed by written notification within 24 hours).

In addition, the Miller and Harkin bills would require the collection of data. Of the newly-acting states, 7 require some data collection, making up the majority of the 13 states with data rules. Of course, the Miller and Harkin bills would require a fuller data collection to better enable informed decision-making and inform the public of practices long-kept hidden.

Nevertheless, states have not adopted all elements of the Miller bill (and by extension, the Harkin bill). The Miller bill would require personnel to provide in-person monitoring of children in seclusion, and if this is not safe, other continuous visual monitoring of the student. Only 1 of these 9 states has adopted the same provision (Vermont). By contrast, 3 mandate continuous visual monitoring only (the most common monitoring requirement in states that have them); 2 require staff to be “able” to see and hear the student at all times (but not actually to do so at all times); 2 leave it up to the school district, and 1 is silent. No state has adopted all of the training component of the Miller bill, and some states simply left decisions about training up to the school district or just required staff training, with little direction or detail.

⁶⁰ For Wyoming, see footnote above stating how its differing forms of seclusion and isolation are treated in this report.

The bill introduced by Senator Tom Harkin in 2011 is stronger in certain respects than the Miller bill, and equal to it in others. Together, the two national bills are likely to provide a basis of support for those states which wish to strengthen their laws and likely to cause others to keep their laws strong. Stronger national policy decisions appear to be mirrored in stronger state action, and weaker national policy decisions could be mirrored in weaker state action. Of course, none of the state laws is an exact duplicate of the Miller or Harkin bill and some vary significantly in certain respects. Florida, the weakest state, adopted the fewest features of the Miller bill.

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 10 states that took action in the last two years did not adopt all features of the Miller bill, and some weakened or changed features. Moreover, there are still only 29 states with meaningful protections by law, and 2 of these regulate just restraint or seclusion. There are 22 states without meaningful laws.

The protection a child receives is still randomly decided by where he/she lives, just as it was in December 2009. Families who move 15 minutes east from Augusta, Georgia to North Augusta, South Carolina; or who move an hour away from Nashville, Tennessee to Bowling Green, Kentucky will lose their protections. Furthermore, attempts to regulate or adopt statutes have failed in several states. Still others have seen no discernable effort at change (e.g., most of the states that explicitly permit seclusion/restraint for mere educational disruption have made no efforts to change their laws, despite the danger.) Others have nonbinding guidance, which is not in any way the equivalent of binding laws and regulations. It lacks the force of law, does not provide mandatory protection, and is easily changed by the State Department of Education.

Furthermore, the of state laws does not support the position that it is sufficient to merely provide aspirational or basic goals at the national level for states to consider, as some have advocated. Some states statutes, like Florida's, use this model—requiring school districts to write their own policies. These statutes, however, provide little protection to children. Instructing states to select the conditions for using restraint/seclusion, or to consider how children should be monitored, or to choose a deadline for parental notification does little to protect children from the serious physical and psychological dangers of these interventions. Put simply, a 24 hour notification provision enables parents to seek medical assistance promptly; a 7 day period or leaving the decision to the IEP team does not.

The harm of leaving issues up to the states is apparent from the recent situation in Connecticut. In January 2012, the media reported about “scream rooms” (seclusion rooms) in one district. Parents complained that children were alone in these rooms for long periods of time. They also alleged that blood was cleaned from them, indicating that children were injured. School officials stated that the rooms were used regularly only with children with disabilities who had seclusion in their IEPs.⁶¹

⁶¹ See, e.g., Julie Stagis, *Middletown: 'Scream Rooms' Will No Longer Be Used For Some Students*, HARTFORD COURANT, Jan. 14, 2012; Kathleen Magen, *Experts Call 'Scream Rooms' Untherapeutic, Harmful To Children And Others At School*, HARTFORD COURANT, Jan. 14, 2012; Lauren Petty, *Parents Protest "Scream*

Connecticut law allows schools to use seclusion for any reason when it is included in an IEP. Connecticut also leaves many decisions about seclusion up to the IEP team--including whether and why seclusion can be used; the conditions of the room; requirements for monitoring children in seclusion; and how (or whether) to notify parents.⁶² Connecticut also does not require that less-restrictive interventions fail before seclusion is used, as long as seclusion is in the IEP. By contrast, Connecticut limits restraint to threats of physical injury, requires less restrictive interventions to fail and requires schools to take steps to notify parents within 24 hours, followed by full written notification within 2 business days. There is no ability to simply add restraint to a student's IEP for any reason and thereby avoid the protections in the law.

B. PROVISIONS IN STATE LAW THAT ADVANCE GREATER PROTECTIONS FOR CHILDREN

In Sections I-III above, this report compares the ways in which different states treat certain elements of seclusion/restraint law. This report is not a comprehensive analysis of all potential elements of such a law. Nevertheless, many state laws include important protections from these potentially dangerous interventions.

Ensuring Children in Restraint/Seclusion Can Communicate

It is important that all children be able to communicate if they cannot breathe or are in medical distress. The GAO reported on at least four cases in which verbal children who died or were injured in restraint told staff that they could not breathe.⁶³

Yet, many children cannot speak or have difficulty doing so. According to a Galludet University survey of 37,500 deaf and hard of hearing students, 40% used sign language as their primary method of communication in school.⁶⁴ Other children who cannot speak use augmentative communication devices, which can range from simple symbol cards to dynamic computerized devices which "speak" for a child. There are popularly-reported estimates that up to 25 percent of children with autism are nonverbal.

Accordingly, to ensure that students who cannot speak can communicate medical distress, a number of states require that restraint and/or seclusion impair their methods of communication. Three 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.)

Rooms" In Schools, NBC CONNECTICUT, Jan. 11, 2012.

⁶² See CONN. GEN. STAT. §§ 46a-150 to 46a-154; CONN. ADMIN. REGS. §§ 10-76b-5 to 10-76b-11.

⁶³ GAO REPORT at 14, 16-17, 26, 29.

⁶⁴ 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 (2011) at 11.

- 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.”

For comparison, Senator Harkin’s bill would require that restraint cannot “interfere with the student’s ability to communicate in the student’s primary language or mode of communication.” Congressman Miller’s bill is silent.

Force Limited to That Necessary to Prevent Threatened Injury

As noted above, the GAO, NDRN, COPAA, and numerous other 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 used is much greater than the threatened injury. In one case in Tennessee, two adults allegedly lay on top of a 51 pound, 9 year old with autism.⁶⁵

Several states have incorporated the basic principle that restraint should be limited to the force needed to prevent the threatened injury. If grabbing a 6 year old’s hand and taking away scissors is sufficient, she should not be subjected to a more forceful restraint. 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 the use of physical restraint.”

⁶⁵ Bob Fowler, *Mom accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”

For comparison, Senator Harkin’s bill would provide that “LEAST AMOUNT OF FORCE NECESSARY.—When implementing a physical restraint, staff shall use only the amount of force necessary to protect the student or others from the threatened injury.” Congressman Miller’s bill is silent.

Medical and Psychological Contraindications

Restraint and seclusion are dangerous for all children. But for some children, health and medical conditions and psychological ones mean that the interventions would cause even more damage. Hence, there are states that further restrict the use of restraint or seclusion in these situations. 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.”

By comparison, Senator Harkin’s bill would forbid physical restraint “if contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition, as documented in a health care directive or medical management plan, a behavior intervention plan, an individualized education program or an individualized family service plan...or plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or other relevant record made available to the State or local educational agency.” Congressman Miller’s bill is silent.

Anti-Retaliation Clause

Many incidents of restraint and seclusion are reported by fellow teachers and staff.⁶⁶ In doing so, some may risk their jobs. Other incidents are reported by parents, children, and advocates. All could face retaliation. Nevada includes a non-retaliation provision in its seclusion/restraint 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 bill would likewise prohibit retaliation, using similar language.

These are only a few of the features in state law that help protect children from dangerous restraint and seclusion in school. There are several others.

VI. CONCLUSION

Two years after Congressman Miller introduced his national seclusion/restraint bill, there are 29 states with meaningful protections in statutes and regulations. A number of states have taken steps to ensure that children are not subjected to abusive restraint and seclusion in the guise of education. But children in 22 states lack legal protections. Even among the 29 states with meaningful laws, state requirements vary widely. Only 14 states limit restraint to emergencies threatening physical harm. Five states ban seclusion and six limit it to emergencies where seclusion is necessary to protect someone from physical harm. Some states require parental notification on the same day or within 24 hours; other states are content to wait for several days (a delay that can further harm injured children). A state may provide strong protections in one area and be weak in others.

Abusive interventions are neither educational nor effective. They are dangerous and unjust. It is time to provide meaningful protections against restraint and seclusion for children in all 50 states and the District of Columbia.

⁶⁶ *See generally*, Jessica Butler, UNSAFE IN THE SCHOOLHOUSE.

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¹ In addition, searches were performed of the Statutes, Administrative Regulations, and State Departments of Education websites for Arizona, Idaho, Mississippi, North Dakota, New Jersey, and South Dakota. This report excluded proposed regulations and nonbinding guidelines that were not adopted; nonbinding guidance with no indication that it was in force; and guidance not applicable to at least all students with disabilities (some states may have special, limited suggested guidance for children with particular disabilities).

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STATE BY STATE SUMMARY: RESTRAINT/SECLUSION LAWS

This summary was prepared for convenience. It includes certain key state law features, but not all of them. Refer to main document for fuller information.

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Please feel free to copy, redistribute and share this document, as long as you do not remove my name and email address from the document. If you use this information in writing another document, please give proper credit. Thank you.

AL.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Bans locked seclusion. There are no restrictions if door blocked, held closed by staff, or child proofing is used (that adults can open and children with physical or motor disabilities cannot).

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

First notification of parents required within 1 business/school day.

SEA collects data at least annually regarding use of interventions.

AK.

Some very minimal protection in regulation. Restraint permitted for threats of physical harm, property destruction, or educational disruption.

Restraint not limited to emergencies.

No limit on restraints that interfere with breathing, mech., chem. restraints.

No limits or requirements for seclusion.

No parental notification requirements and no data collection.

AR.

Statute or regulation with meaningful protections.

Applicable only to Seclusion.

Seclusion for threats of physical harm, property damage, & severe disruption.

Locked rooms forbidden.

Staff must continuously and directly watch children in seclusion.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Does not require monitoring of secluded child.

No parental notification requirements and no data collection.

AZ.

No statute, regulation, or even nonbinding guidelines to protect children.

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CA.

Statute or regulation with meaningful protections.

Explicitly permits restraint in “emergency” situations, which are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. Does not forbid use of restraint in non-emergencies. Bans locked seclusion as an emergency intervention, but does not prohibit seclusion in non-emergencies. Protections in law apply only to emergency interventions. Consequently, schools often claim that predictable behavior patterns, or behaviors that do not threaten serious physical harm are non-emergencies and the law's protections do not apply.

Does not limit restraint that impedes breathing or mech. or chem. restraint.

Requires only “adequate” supervision of unlocked seclusion (unlocked rooms child cannot physically exit), and no limits on non-emergency seclusion.

Parents must be notified of S/R within 1 business/school day.

SEA gets annual data for emergency interventions, but not non-emergency use.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be ineffective.

CO.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint (except by armed security officers).

Bans chemical restraint.

Seclusion only for emergencies: immediate threats of physical harm.

“Reasonable” monitoring of seclusion required.

Requires same day notification of parents with full written report later.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

CT.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Mechanical permitted for threats of physical harm or if provided for in IEP.

Bans chemical restraint (unless otherwise stated in IEP).

IEP team determines how often secluded children are monitored and the kind of room or space used (heating, cooling, lighting, closet, room, bathroom access, etc).

Same day attempted parent notification; written report required later.

Seclusion permitted for threats of physical harm or if written into IEP (no limits on reasons why it can be put in IEP).

Less-restrictive methods must fail before restraint is used. Less-restrictive methods need not fail if seclusion is permitted in the IEP; seclusion can be in IEP for any reason.

Seclusion must end when child is "compose[d]" or 1 hour.

Data about S/R use made available to State prior to relicensure.

DE.

DE permits committees to authorize “emergency interventions” for children with autism that may be used if there is a threat of physical harm or destruction of property. But Delaware is silent on the use of such interventions for other children and also silent on the use of restraint, seclusion, or other aversives in non-emergencies for children with autism. Thus, a Delaware child could be put in restraint or seclusion for tearing up a book or failing to follow instructions. This regulation provides very little protection.

DC.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Restraint only for emergencies: imminent threat of physical harm, per guidelines.

Guidelines state that prone and supine restraints are not authorized; nor are mechanical or chemical restraints.

Statute forbids "unreasonable restraint."

Lock on door to seclusion room should automatically release, per guidelines.

Seclusion only for emergencies: immediate threats of physical harm.

Children in seclusion should be continuously and directly visually monitored.

Intervention should end when the emergency ends, per guidelines.

S/R should not be used unless less restrictive interventions have failed/would be ineffective, per guidelines.

Parents should be notified of S/R same day, per guidelines.

FL.

Statute or regulation with meaningful protections.

Restraint and seclusion may only be used for emergencies: imminent threat of serious physical harm. Requirement is implied. Statute requires incident report that explains why there was a risk of serious/substantial physical harm. But requirement is not explicit, and statute may be interpreted as permitting restraint or seclusion for any reason.

Bans restraint that interferes with breathing and/or prone restraint.

No limit on mechanical or chemical restraints.

Does not require monitoring of secluded child; leaves to school district.

Lock on door to seclusion room should automatically release.

Notify parents same day; full written report later.

SEA collects data at least annually regarding use of interventions.

GA.

Statute or regulation with meaningful protections.
 Restraint only for emergencies: imminent threat of physical harm.
 Bans prone restraint; mechanical & chemical restraints.
 Bans all rooms from which children are physically prevented from exiting (locked, blocked by furniture, held shut by teachers, child proofing, etc.).
 Bans seclusion of child in room from which child cannot exit, so seclusion monitoring
 Intervention must end when the emergency ends.
 Less restrictive interventions must fail/be ineffective.
 Parents must be notified of S/R within 1 business/school day.

HI.

Weak Statute or regulation; some very minimal protection for restraint only. No limits on seclusion.
 Permits use of reasonable force to prevent injury to person or property, including implementing “therapeutic behavior plans” contained in a child’s IEP.
 Otherwise, Hawaii is silent and provides no protections.

IA.

Statute or regulation with meaningful protections.
 Restraint and seclusion allowed for threats of physical harm, property destruction, or educational disruption.
 Bans restraints that interfere with breathing and/or prone; mechanical, chemical.
 Lock on door to seclusion room should automatically release.
 Staff must continuously and directly watch children in seclusion.
 Restraint for “reasonable and necessary” period; seclusion for “reasonable” period.
 Less restrictive interventions must fail/be ineffective.
 Requires same day attempted notification of parents.
 Parents must receive a fuller written report later.

ID.

No statute, regulation, or even nonbinding guidelines to protect children.

IL.

Statute or regulation with meaningful protections.
 Restraint only for emergencies: imminent threat of physical harm.
 Bans restraints that interfere with breathing; mechanical; chemical.
 Seclusion permitted for threats of physical harm or educational disruption.
 Lock on door to seclusion room should automatically release.
 Staff must continuously and directly watch children in seclusion.
 Restraint should end when the emergency ends. Seclusion should end 30 minutes after behavior resulting in seclusion has ended.
 Parents must be notified of S/R within 1 calendar day or 24 hours.

IN.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests ability to see/hear at all times when child in seclusion. This does not require actually seeing/hearing the child, just being able to do so.

Suggests the intervention end when the emergency ends. for restraint.; seclusion ends 30 minutes after behavior resulting in seclusion has ended.

Suggests parental notice to be decided by IEP team.

Suggests SEA collects data at least annually regarding use of interventions.

KS.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion for threats of physical harm or as stated in the BIP/IEP.

Suggests lock on door to seclusion room should automatically release.

Suggests staff must continuously and directly watch children in seclusion.

Suggests S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Suggests parents notified within 1 business/school day.

KY.

Restraint: no limits.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Nonbinding guidelines describe seclusion as part of a continuum to manage behavior. No limit to emergencies.

LA.

Statute with meaningful protections.
 S/R limited to emergencies: risk of substantial physical harm.
 Bans restraint that interferes with breathing and/or prone restraint.
 Bans mechanical restraint.
 No limit on chemical restraints.
 Staff must continuously and directly watch children in seclusion.
 Intervention must end when the emergency ends.
 Less restrictive interventions must fail/be ineffective.
 Parents must be notified of S/R within 1 calendar day or 24 hours.
 Parents must receive a fuller written report later.
 SEA collects data at least annually regarding use of interventions.

MA.

Statute or regulation with meaningful protections.
 Restraint: only threats of serious physical harm or as stated in IEP/BIP.
 Bans restraint that interferes with breathing. (Prone restraint permitted by trained staff).
 Mechanical & chemical: permitted with parental consent and physician instructions.
 Bans all locked seclusion if there is no access to staff. Permits it without regulation if child has “access” to staff. The term “access” is undefined.
 Intervention must end when the emergency ends.
 Less restrictive interventions must fail/be ineffective.
 Requires same day notification of parents. School is only required to notify parents if the restraint lasts longer than 5 minutes. School can ask parents to waive notice. Waiver is forbidden if the restraint lasts longer than 20 minutes or if it restraint results in serious injury, but this term is not defined, giving schools broad discretion.
 Data is reported to the SEA only if the restraint exceeds 20 minutes or someone is seriously injured (undefined) during the restraint. Since many restraints last less than 20 minutes, these will go entirely unreported.

MD.

Statute or regulation with meaningful protections.
 Restraint for threats of serious/substantial physical harm or as stated in IEP/BIP.
 Bans restraint that interferes with breathing and/or prone restraint (and effectively bans
 Mechanical: banned with exceptions for schools with hospital accreditation.
 No limit on chemical restraints.
 Seclusion: immediate threats of physical harm or as stated in IEP/BIP.
 Staff must continuously and directly watch children in seclusion.
 Less restrictive interventions must fail/be ineffective.
 Notify parents within 1 calendar day or 24 hours unless otherwise stated in IEP.

ME.

Statute or regulation with meaningful protections.

Restraint: threats of serious/substantial physical harm or as stated in IEP/BIP.

No prohibition on restraints that interfere with breathing or prone restraint.

Bans mechanical & chemical restraint.

Seclusion room door may not be locked, latched or secured in any way that would prevent the student from exiting the room.

Maine appears to ban seclusion but allow what it calls time-out rooms, in which students are alone, observed by staff, and are able to exit the room. These rooms may be used in emergency situations that threaten physical harm or property destruction, or as stated in the IEP/BIP. Under both proposed federal bills, and the definition in this report, these rooms would not be considered “seclusion” because students can exit the rooms.

Less restrictive interventions must be tried; but Maine does not require that they fail or be ineffective before restraint is used.

Parent notification: 2 days.

MI.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process. Also has a weak statute with minimal protections.

Law allows restraint for threats of physical harm, property destruction or educ. disrupt.

Nonbinding guidance does not suggest limits on restraints that interfere with breathing or prone restraint, mechanical restraint, or chemical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff continuously and directly watch children in seclusion.

Suggests less restrictive interventions must fail/be ineffective.

Recommends parents be notified on the same day the event occurs.

Suggests data be collected by SEA, but current status is unclear.

MN.

Statute or regulation with meaningful protections.

Restraint for threats of physical harm or serious destruction of property.

Bans restraint that interferes with breathing; prone restraint banned Aug. 2012.

No limit on mechanical or chemical restraints.

Lock on seclusion room door should automatically release.

Seclusion for immediate threats of physical harm or serious property destruction.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

Less restrictive interventions must fail/be deemed ineffective.

Notify parents same day; full written report later.

MS.

No statute, regulation, or even nonbinding guidelines to protect children.

MO.

Weak statute with minimal protections. Nonbinding Guidelines. Such guidelines are

Suggests restraint can be used for threats of physical harm, property destruction, educational disruption, or as stated in the IEP.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests that mechanical be permitted as stated in the IEP.

Suggests ban on chemical restraint.

Law bans locked, solitary seclusion except if awaiting law enforcement's arrival.

Suggests permitting seclusion that is (a) unlocked or (b) locked but in which the child is observed if there is a threat of physical harm or as stated in the IEP. MO's guidelines would allow school districts to choose to permit seclusion for threats of physical harm, destruction of property, or as stated in the IEP.

Suggests staff have the ability to see/hear a secluded child at all times.

Suggests intervention must end when the emergency ends.

Suggest less restrictive interventions fail / be ineffective.

Suggests school notify parents that S/R has happened on the same day.

MT.

Statute or regulation with meaningful protections.

Restraint for threats of physical harm, property destruction, or educ. disruption.

Bans mechanical restraint.

No limit on restraints that interfere with breathing or chemical restraints.

Bans locked rooms.

Seclusion permitted for threats of physical harm, property damage, & educational disruption.

Staff must continuously and directly watch children in seclusion.

Time limits on S/R as stated in IEP/BIP.

Staff should try less restrictive interventions first, but there is no requirement that they fail or be ineffective before S/R is used.

No parental notification required.

NC.

Statute or regulation with meaningful protections.

Restraint allowed for threats of physical harm, property destruction, or educational disruption or as stated in the IEP/BIP.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Seclusion permitted for physical harm, property destruction, educational disruption, or as stated in the IEP/BIP. (Broad provision.)

Must be able to see/hear child at all times, but this does not require actually seeing or hearing the child.

School to notify parents "promptly" with written followup within 30 days if child was injured or seclusion lasts longer than 10 minutes. Requires notification if the school violated the prohibitions in the statute.

ND.

No statute, regulation, or even nonbinding guidelines to protect children.

NE.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not

Suggests restraint only for emergencies: imminent threat of physical harm.

Suggests no restraints that interfere with breathing and/or prone. Suggests no

Suggests lock on door to seclusion room should automatically release.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff have the ability to see/hear child in seclusion at all times.

Suggests intervention must end when the emergency ends.

Suggests parents be notified of S/R on the same day the event occurs.

SEA collects data at least annually regarding use of interventions..

NJ.

No statute, regulation, or even nonbinding guidelines to protect children.

NH.

Statute or regulation with meaningful protections.

Restraint is governed by a 2010 law.

Restraint only for emergencies: imminent threat of serious physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion is governed by older regulations. NH prohibits unobserved seclusion in a space the child cannot exit unless there is a threat of physical harm or it is documented in the IEP (after certain conditions are met). This has two large loopholes. First, it allows unobserved, locked seclusion for almost any reason when documented in the IEP.

Second, it allows seclusion for any reason without any regulation as long as the child is observed. Observation could be by remote video camera, allowing children to languish in rooms for hours.

Restraint should end when the emergency ends.

Restraint should not be used unless less restrictive interventions have failed/been deemed ineffective.

For restraint only: Must attempt notification of parents within 1 calendar day or 24 hours (attempted); parents must receive a fuller written report later for restraint. No notification requirements for seclusion.

SEA collects restraint (not seclusion) data at least annually.

NM.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint be limited to emergencies: immediate threats of physical harm or destruction of property.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Does not suggest limits on mechanical restraint, or chemical restraint.

Suggests restraint not be used unless less restrictive methods fail/be ineffective before use.

Bans locked seclusion under fire code. Guidance allows unlocked seclusion (e.g., rooms children cannot exit due to furniture blockage or staff holding door closed) for any purpose, including behavior modification.

No parental notification recommendations.

NV.

Statute or regulation with meaningful protections.

Restraint: imminent threats of physical harm or serious property destruction only.

Permits mechanical restraints upon physician order.

No limit on mechanical or chemical restraints.

Bans all rooms from which children are physically prevented from exiting.

Intervention must end when the emergency ends.

Recommends parents be notified of S/R within 1 calendar day or 24 hours.

SEA collects data at least annually regarding use of interventions.

NY.

Statute or regulation with meaningful protections.

Restraint: threats of physical harm, property destruction, or educational disruption.

No limit on restraints that interfere with breathing.

No limit on mechanical or chemical restraints.

Bans locked seclusion. There are no restrictions if door otherwise blocked closed.

Seclusion: threats of physical harm, property damage ,or educational disruption

Less restrictive interventions must fail/ be ineffective.

Staff must continuously and directly watch children in seclusion.

Parental notification required; no deadline.

OH.

Exec. Order with meaningful protections for RESTRAINT only.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint (prone).

OK.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of serious/substantial physical harm.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests ban on mechanical restraint.

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests intervention must end when the emergency ends.

Suggests less restrictive interventions must fail/be ineffective.

Suggests Staff must continuously and directly watch children in seclusion.

Suggests parents be notified of S/R on the same day it occurs.

OR (effective July 2012).

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of serious physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only emergencies: immediate threats of serious physical harm.

Staff must continuously and directly watch children in seclusion.

S/R must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day notification of parents.

SEA collects data at least annually regarding use of interventions.

PA.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint.

No limit on chemical restraints.

Bans all rooms from which children cannot readily exit (locked, blocked by furniture,

Requires parental notification but sets no deadline. The regulation, however, sets an IEP meeting within 10 days, making this effectively the outer deadline.

Data must be made available to the SEA when it monitors an LEA.

RI.

Statute or regulation with meaningful protections.

Restraint emergencies only: imminent threat of serious/substantial physical harm.

Bans restraint that interferes with breathing and/or prone restraint.

No limit on mechanical restraints.

Bans chemical restraint.

RI bans seclusion unless the child is observed, and seclusion has been agreed to in the child's BIP. RI does not regulate observed seclusion, meaning that it can occur for any reason and last for any duration.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

SC.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Does not suggest limits on restraint, except as noted.

Suggests ban on restraint that interferes with breathing and/or prone restraint.

Suggests ban on mechanical restraint.

Recommends lock on door to seclusion room should automatically release.

Guidelines state strong recommendation that seclusion be prohibited by local school districts. If it is not, then guidelines recommend certain limits.

Recommends seclusion only for emergencies: immediate threats of physical harm.

Recommends continuous visual monitoring of seclusion.

Recommends Intervention must end when the emergency ends.

Recommends S/R cannot be used unless less restrictive interventions have failed/would

SD.

No statute, regulation, or even nonbinding guidelines to protect children.

TN.

Statute or regulation with meaningful protections.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

SEA collects data at least annually regarding use of interventions.

TX.

Statute or regulation with meaningful protections.

Restraint may only be for immediate threats of physical harm or serious destruction of property.

No specific ban on restraints interfering with breathing or mech. or chem. restraints.

Texas law forbids the use of locked spaces unless there is a threat of bodily harm and

Same day good faith effort notify parents, followed by written report.

SEA collects data at least annually regarding use of interventions.

UT.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not

Statute requires consideration of guidelines, but explicitly does not require that guidelines be followed.

Guidelines suggest S/R for threat of physical harm or serious property destruction.

No suggested ban on restraints interfering with breathing, mech. or chem. restraint.

Recommends S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Parents must be notified within 1 calendar day or 24 hours, per regulation.

VA.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Does not suggest limits on restraints that interfere with breathing or prone restraint,

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests school district determine parental notification schedule.

VT.

Statute or regulation with meaningful protections.

Both restraint and seclusion.

Restraint only for emergencies: imminent threat of physical harm.

Bans restraints that interfere with breathing and/or prone. Bans mechanical and chemical restraints.

Seclusion only for emergencies: immediate threats of physical harm.

Staff must continuously and directly watch children in seclusion.

Intervention must end when the emergency ends.

S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Requires same day attempted notification of parents.

Parents must receive a fuller written report later.

WA.

Statute or regulation with meaningful protections.

Restraint allowed for threats of physical harm, property destruction, or educational disruption.

Bans restraint that interferes with breathing and/or prone restraint.

Limited ban on mechanical restraints. Forbids the binding of limbs to an object or each other. Permits such binding if included in IEP with parental consent).

No limit on chemical restraints.

Seclusion is permitted for any reason.

A child may not be secluded in a room or other enclosure unless it is provided for in the child's IEP. The room meets certain habitability and condition requirements. Continuous visual monitoring is required unless the child can free himself/herself from the room, in which case the adult need only remain in visual or auditory range of the child.

WI.

Nonbinding Guidelines. Such guidelines are not statutes/regulations and do not provide protections by law for children. They are also easily changed, requiring neither a legislative or rulemaking process.

Suggests restraint only for emergencies: imminent threat of physical harm.

Suggests ban on mechanical restraint (but allowed with medical oversight).

Suggests ban on chemical restraint (but allowed with medical oversight).

Suggests seclusion only for emergencies: immediate threats of physical harm.

Suggests staff must continuously and directly visually monitor children in seclusion.

Suggests the intervention end when the emergency ends (restraint only).

Suggests S/R cannot be used unless less restrictive interventions have failed/would be ineffective.

Suggests school determines parental notification schedule.

WV. (new regulation effective July 2012)

Statute or regulation with meaningful protections.

Physical restraint only for emergencies: threats of physical harm or serious destruction of property.

Ban on restraint that interferes with breathing and on prone restraint (describes elements of prone restraint).

Bans mechanical restraints; does not ban chemical restraints.

Unsupervised seclusion is prohibited; defined as removing child to unsupervised space.

"Supervision" is undefined, and may simply mean checking on the student intermittently.

Intervention must end when the emergency ends.

Requires "good faith" effort to verbally notify parents on same day.

Written report to parents must be put in mail within 1 school day.

WY.

Statute or regulation with meaningful protections.

No limit on physical restraint.

Bans restraint that interferes with breathing and/or prone restraint.

Bans mechanical restraint.

No limit on chemical restraints.

Bans locked seclusion.

Seclusion only for emergencies: immediate threats of physical harm. This is the standard for using a room in which the child is isolated and cannot exit, but is not locked.

Wyoming calls these rooms "isolation" rooms but they meet the standards for "seclusion" under both federal bills and this report, and the generally understood definition of seclusion.

Isolation room must allow continuous visual and auditory monitoring of child.

Parents must be notified of S/R within 1 calendar day or 24 hours.

SEA collects data at least annually regarding use of interventions.