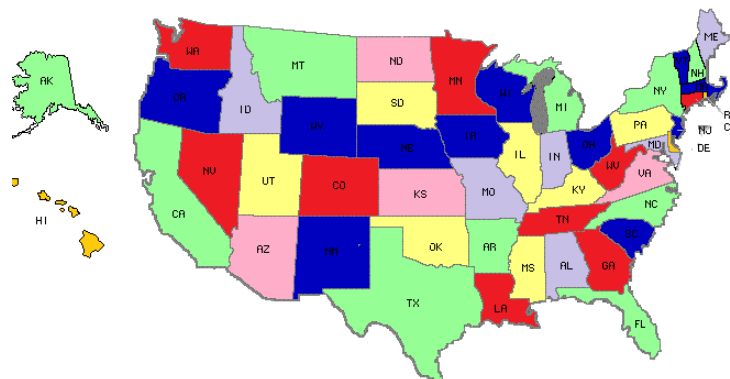


How Safe Is the Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



Author: Jessica Butler
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State Restraint and Seclusion Laws, Regulations, Rules , and Policies
effective December 31, 2016.

The brief Quick Bullet Summary at the beginning provides a short overview of state laws and policies.

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Important Introductory Information

About the Report. This report was revised in 2017 to discuss new state restraint and seclusion statutes, regulations, rules, and policies. It includes all laws in effect as of December 31, 2016. This updates earlier versions of the report, which have been published since 2012. The report presents research analyzing and comparing state approaches to restraint and seclusion that may be helpful to parents, professionals, educators, people with disabilities, and advocates.

Important Technical Details (Read this!). (1) I use 51 “states” to include the District of Columbia. I did not have territorial materials. (2) For brevity, the term “laws” refers to both statutes and regulations. Both are legally binding, and thus differ from nonbinding policies and guidelines, which are only suggestions. (3) **The report indicates whether a law applies to all children or only those with disabilities.** A superscripted d (^d) means the rules apply only to students with disabilities (students in special education). A superscripted m (^m) means the state has a mix of disability-only and all-children laws. If there is no symbol, the law applies to all children. (4) I have included the laws and other resources I used in a bibliography, to avoid a blizzard of law review style footnotes. (5) All information in the maps and charts is in the text. The report seeks to maximize access by people of all abilities. Some cannot see visuals or otherwise need text. Some need visuals. Where possible, the colors on maps will reflect differences when printed in black and white. Technology was limited; there is no funding underwriting this work. (6) Some states are followed by (2015) or (2016). This simply signifies that a state has recently updated its laws.

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must write something like this in my report, and I wish I did not have to.

About the Author. Jessica is the mother of a child with autism and an attorney. She previously coordinated Congressional affairs for the Autism National Committee (www.autcom.org). AutCom has worked for over 25 years to eradicate the use of abusive interventions upon people with autism and other disabilities. Before that, she served as Chair of the Board of Directors of the Council of Parent Attorneys and Advocates (COPAA), on COPAA's Board of Directors for several years, and was a primary coordinator of COPAA's Congressional affairs efforts. She is the author of UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (COPAA 2009), which describes over 180 cases in which students were subjected to restraint and seclusion. This report, HOW SAFE IS THE SCHOOLHOUSE?, was authored entirely by Jessica Butler and represents only her views and work. It is not a statement on behalf of AutCom or any entity, organization, or person, and is not owned by AutCom. It is owned by Jessica. **You can email Jessica at jessica@jnba.net. The current report is available free of charge on AutCom's webpage, www.autcom.org, and no one should charge you money for a copy.** Information from HOW SAFE IS THE SCHOOLHOUSE? has been featured in various national and state media reports, including the major news networks and major American newspapers and magazines.

How Safe Is the Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies

December 31, 2016

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QUICK BULLET SUMMARY OF STATE RESTRAINT AND SECLUSION LAWS (December 31, 2016)

Seclusion and restraint are dangerous practices; children have suffered death, injury, and trauma. The Government Accountability Office collected at least 20 stories of children who died in restraint, and other children have died and been injured in seclusion. Due to these dangers, many states prohibit non-emergency restraint and seclusion use. Increasingly, states require parents to be quickly notified, so they can watch for concussions and hidden injuries. They also collect data. Generally, restraint and seclusion should only be used in rare emergency situations, when less restrictive measures would not prevent the threat to physical safety. Some restraint and seclusion practices are so dangerous that increasing numbers of states are banning them. Still many states do not have laws or protection for children. They allow restraint and seclusion for mundane activities when no one is at risk of harm; they may not require parental notification; and they allow very dangerous forms of restraint and seclusion, including those that impair breathing.

Limits on restraint and seclusion in school are largely state law issues. There is no federal law that regulates their use. Families moving from one state to another can find their protections changing greatly. Children who move from Philadelphia to its New Jersey suburbs, or from Arizona to New Mexico can go from full protection to no protection. While efforts to enact comprehensive legislation have not yet succeeded, the Every Student Succeeds Act (2015) required state plans to reduce the use of aversives, including restraint and seclusion. This report examines state restraint and seclusion laws and policies. It analyzes their similarities and differences. It also highlights new changes and newly adopted state laws.

An Overview of State Laws

- **This report uses 51 “states” to include the District of Columbia.** The term “law” includes statutes and regulations. They must be obeyed because they have the full force of law. It does not include nonbinding policies which are largely recommendations and are not enforceable or binding.
- **28 states have laws providing meaningful protections against restraint and seclusion for all children; 38, for children with disabilities.** Protections vary; and important safeguards present in some states are absent in others. Some states have only suggested guidelines and others have nothing at all.
- **19 states by law require that an emergency threatening physical danger exist before restraint can be used for all children; 22, for children with disabilities.** States imposing these limits recognize that restraint is so dangerous, it should only be used when necessary to protect self or others. Other states impose few limits; they allow restraint and seclusion even when no one’s safety is at risk. Still, the states have made progress. In

2009, prior to the introduction of the first Congressional bill, only 3 states limited restraint to emergencies threatening physical danger for all children; 5, for students with disabilities. Many states that adopted laws in the last 8 years used the Congressional bills as models.

- **There are 38 states that in their laws or guidance would define seclusion as a room a child cannot exit (door is locked, or blocked closed by furniture, equipment, child-proofing, staff, etc.).** This is the most common definition used.
- **There are 19 states that protect all children from non-emergency seclusion; 23 protect children with disabilities.** By law, only 2 states ban all seclusion for all children; 5, for children with disabilities. The remainder have statutes and regulations limiting seclusion to emergencies threatening physical harm. Some state laws have weaknesses that undercut them, and others may allow seclusion when no one is at risk of harm. Children have died in seclusion and been injured. States have made progress, often by adopting provisions from the Congressional bills. When the first Congressional bill was introduced in 2009, only 1 state had this protection for all students, 4, students with disabilities.
- **Restraints that impede breathing and threaten life are forbidden by law in only 27 states for all children; 33 states, for children with disabilities.** These laws may be phrased as prohibiting life-threatening restraints, restraints that impair breathing, or prone restraints. A common contemporary practice among states is to ban both prone restraint and restraint the impairs breathing.
- Mechanical restraints include chairs and other devices that children are locked into; duct tape, bungee cords, ties, and rope used to restrain children; and other devices. Sometimes, therapy chairs intended to help children sit are used instead by staff as locking chairs for children. 20 states ban mechanical restraint for all children; 24 for students with disabilities. 20 states ban dangerous chemical restraints, but all of these states protect all children.
- Children confined in closets and other isolation rooms and spaces unobserved have been killed, injured, and traumatized. 23 states either ban seclusion or require staff to continuously watch all students in seclusion; 32, students with disabilities. At Atlanta teen died in seclusion while being checked on occasionally in 2007; another child attempted suicide while being monitored occasionally in 2011.
- Certain requirements ensure that seclusion and restraint are used only as last resorts and only as long as an emergency lasts. Sometimes, students remain in seclusion or restraint until they can sit perfectly still or do other tasks unrelated to an emergency. Children with significant disabilities may be unable to respond to such commands and yet pose no threat of danger. 23 states by law require that less restrictive and harmful methods either fail or be deemed ineffective before restraint are used on all children; 28, children with disabilities. These numbers are 22 and 27 for seclusion respectively. Moreover, 24 states

by law require restraint to end for all children when there is no longer an emergency, and 23, seclusion. 29 require restraint to end for children with disabilities when there is no longer an emergency; 28, seclusion.

- **In 29 states, schools must by law notify all parents of both restraint and seclusion; in 38, parents of students with disabilities. Notification must occur in 1 school day or less in 22 states for all children, and 29 states for students with disabilities. But many states still do not require notification or timely notification.** It is important to notify parents promptly, so they can seek medical care for concussions and other injuries, some of which may be hidden. The majority of states with laws or nonbinding guidance about parent notification support notification within 1 school day or less. For comparison, only a handful of states required prompt parental notification before the introduction of the Congressional bills prioritizing same day notification. **The “Parental Notification Laws at a Glance” chart is on page 83.**
- Data collection is very important. It helps schools develop benchmarks to reduce restraint and seclusion usage. It enables public oversight. 20 states collect data at the State Education Agency (SEA) level for all students; 25, for students with disabilities. Others collect it at the Local Education Agency (LEA) level. This indicates that keeping such records is not burdensome.

A Study of the Effect Congressional Models Have Had on State Restraint and Seclusion Laws and Policies

- Congressional bills are often viewed through the lens of passage or defeat. But with regard to restraint and seclusion, the Congressional bills have also acted as models for the states, causing them to adopt and strengthen their state laws. Since the introduction of the first bill in late 2009, 19 states adopted new laws and 9 strengthened existing ones (with one doing both). States incorporated a number of features from the Congressional bills to varying degrees. This has been true in states across the country, from Mississippi to Michigan; Alaska to Delaware.
- Among key features multiple states adapted from the Congressional bills, 19 states restrict physical restraint to emergencies threatening physical danger for children with disabilities, 28 for all children. 21 states ban non-emergency seclusion for students with disabilities, 19, for all children. These comprise the majority of states taking action after the Congressional bills were introduced.
- Of the 27 states that adopted new laws or strengthened existing ones in the wake of the Congressional bills, all 27 ban restraint that impairs breathing. 22 ban non-observed seclusion (which has killed students). 18 ban dangerous mechanical restraint, 16, ban chemical. These provisions are similar to those in the Congressional bills.

Additional Important Sample State Provisions

- The report concludes with some examples of important protections states have increasingly adopted, several of which were included in the Senate bill introduced by Senator Tom Harkin.
- One provision frequently adopted ensures that children are able to communicate that they cannot breathe or are experiencing medical distress. The GAO identified 20 students who died in restraint or seclusion; at least 4 of whom verbally told staff that they could not breathe. Several states have adopted this provision.
- Many other states have adopted a provision requiring schools to refrain from using restraint and seclusion when a doctor determines that it is medically or psychologically contraindicated. Several states prohibit using more force than necessary during restraint or seclusion, so as to reduce the danger to students and staff. Many states require in-person monitoring of children in physical restraint.

Note: Before using the report, please read the paragraph “Important Technical Details” on page i. It explains the copyright protection requirements, and how you must comply with them. It also explains the codes and superscript abbreviations I use. The word “laws” means include statutes and regulations. Both have the full force of law and must be obeyed, unlike suggested guidelines. I use 51 “states” to include the District of Columbia.

I. INTRODUCTION

A. Background

Almost 2 decades have passed since the *Hartford Courant’s* ground-breaking reporting of deaths and injuries from restraint and seclusion. Victims included a 12 year old with disabilities who died face down in restraint at a residential school after a dispute over a teddy bear.¹ In 2009, the Government Accountability Office, a Congressional research organization, documented 20 deaths from restraint or seclusion in school, and injuries ranging from broken bones to bloody noses.² States have reacted by adopting laws to keep students safe in school. On December 29, 2016, Michigan became the most recent state to take action. Still, there is no nationwide set of comprehensive restraint and seclusion protections. Many states permit restraint and seclusion when no one is at risk of danger. Several states do not require schools to inform parents their child is subjected to restraint or seclusion. Comprehensive Congressional bills have been introduced regularly since 2009. But no comprehensive national bill has been adopted. Accordingly, restraint and seclusion use are questions of state law. This report seeks to provide information about those state laws.

Almost weekly, there are new media reports about the use of restraint or seclusion on a school child.³ Evidence of their harm has continued to mount. Parents share information about how

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

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

³ News reports range from the large national media to state and local outlets. See, e.g., Ashley Goudeau, *Snook ISD Employee Fired After Video Shows Him Pushing Child*, KVUE ABC (Austin), Oct. 15, 2016; Carl Monday, *Carl Monday Investigates Restraint & Seclusion Rooms in Our Schools*, Fox 19 Now (Ohio), Aug. 29, 2016; Kara Kenney, *CALL 6: School Districts Misreport Seclusion, Restraint Incidents*, RTV6 (Indianapolis), Oct. 10, 2016; Allison Ross and Deborah Yetter, *State Slams JCPS, Orders Restraint Review*, LOUISVILLE COURIER-JOURNAL, July 20, 2016 (and other stories); Meghan Dwyer, *More Than a Time Out: Report Shows Seclusion, Restraint Happening More Than You Might Think in Schools*, Fox6Now (Milwaukee), Feb. 10, 2016; Mareesa Nicosia, *The Future of Restraint and Seclusion in Schools*, THE ATLANTIC, Jan. 24, 2016; Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASH POST, Jan. 19, 2015; Jessica Bock, *Francis Howell Student with Special Needs Injured in Isolation Room*, ST. LOUIS POST-DISPATCH, Nov. 20, 2015; Joseph Shapiro, *National Data Confirm Cases of Restraint and Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014; John Schuppe, *Outcries Prompt Many States to Reconsider Seclusion of Students*, NBC CONNECTICUT, Nov. 19, 2013; Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Brian Ross, Angela M. Hill and Matthew Mosk, *Death at School: Child Restraints Spark Controversy*, ABC WORLD NEWS TONIGHT, Broadcast Nov. 29, 2012.

their children were hurt on social media and websites.⁴ The National Disability Rights Network (NDRN) has catalogued the use of abusive interventions against children in over 2/3 of states.⁵ State protection and advocacy agencies have published reports detailing the harm in their states.⁶

Much data available elsewhere catalogues the breadth and impact of restraint and seclusion use. In 2013-14, restraint and seclusion were used on at least 110,000 children in school.⁷ Children are hurt and injured. The Connecticut Office of the Child Advocate reported more than 1,300 incidents of injury in Connecticut schools from restraint or seclusion, over 2 dozen labeled serious.⁸ The Anchorage, Alaska School District reported 420 incidents of restraint or seclusion that resulted in injury in 2014-15, according to the Alaska Dispatch News.⁹ Ohio reported 400 injuries to students from restraint in 2014-15.¹⁰

State law governs restraint and seclusion, as there is no comprehensive national bill. Congressional efforts began in 2009, when Representative George Miller and Representative Cathy McMorris Rodgers introduced the first bill. The bill passed the House but did not become law.¹¹ Similar bills were reintroduced in 2011-12, and 2013-14 in the Senate by Senator Tom Harkin, and in the House by Representative George Miller and Representative Gregg Harper.¹² In 2015, Representative Don Beyer introduced a similar bill, and Representative Bobby Scott introduced legislation to add similar language to America's primary education law.¹³ In 2009 and

⁴ See, e.g., The Focus Room Horror, <http://helpingalex.squarespace.com>; Families Against Restraint and Seclusion, <http://familiesagainstrestraintandseclusion.blogspot.com/>, Rhode Island Families Against Restraint and Seclusion, <http://rhodeislandfamiliesagainstrestraint.blogspot.com/>; Another Blog About School, Dismantle the Boxes, <http://anotherblogaboutschoo.blogspot.com/2016/11/dismantle-boxes.html>

⁵ NATIONAL DISABILITY RIGHTS NETWORK, SCHOOL IS NOT SUPPOSED TO HURT (2009).

⁶ Examples include DISABILITY RIGHTS WISCONSIN, WISCONSIN FAMILY TIES, AND WI FACETS, SECLUSION & RESTRAINT IN WISCONSIN PUBLIC SCHOOL DISTRICTS 2013-2014: MILES TO GO (2016); DISABILITY RIGHTS CALIFORNIA & EACH MIND MATTERS, RESTRAINT AND SECLUSION IN SCHOOLS: RECOMMENDATIONS FOR CALIFORNIA (2015); DISABILITY LAW CENTER OF MASS., INVESTIGATION REPORT PECK SCHOOL, HOLYOKE, MA (2015); DISABILITY LAW CENTER OF VIRGINIA, RESTRAINT IN VIRGINIA'S PUBLIC SCHOOLS: INVESTIGATIVE STUDY OF POLICIES AND PROCEDURES TO PROTECT STUDENTS (2014); DISABILITY RIGHTS OREGON, KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON'S SCHOOLS (2011); ALABAMA DISABILITIES ADVOCACY PROGRAM, SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS (JUNE 2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009); DISABILITY RIGHTS CALIFORNIA, RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE (June 2007). Many other Protection and Advocacy agencies wrote outstanding, highly useful reports; they are too numerous to cite all of them.

⁷ CRDC, Data Snapshot: School Discipline at 9 (March 2014).

⁸ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION (Office of the Child Advocate Feb. 2015).

⁹ Tegan Hanlon, *Mother Sues Anchorage School District over the Restraint, Seclusion of Her Disabled Son*, ALASKA DISPATCH NEWS, Jan. 22 2016.

¹⁰ Amanda Burger & Brooks Jarosz, *Discipline or Abuse? Uncovering a Controversial Form of Discipline*, ABC6 (Columbus, OH), Feb. 8, 2016.

¹¹ H.R. 4247 (111th Congress).

¹² H.R. 1381 (112th Congress); H.R. 1893 (113th Congress); S. 2020 (112th Congress); S. 2036 (113th Congress). Every Congress spans two years.

¹³ H.R. 927 (114th Congress); H. Amdt. 66 to H.R. 5, Title IX, Subtitle C, 161 Cong. Rec., H1393, H1394, H1464-

2012, Congressional hearings put the spotlight on important information about restraint and seclusion and their effects. Parents testified about their children who were injured and even killed during restraint and seclusion. One child, suffocated by a teacher twice his size, had tried to tell staff he could not breathe. Another child suffered multiple episodes of restraint and seclusion. The school did not tell her parents of the final incident, where the teacher threw her head-first into the ground. The school did not inform the parents of the head trauma, which would have enabled them to watch for a potential concussion and subdural hematoma. In addition, Experts testified about the great success using positive and preventative behavioral supports to identify and prevent challenging behavior. Use of such systems sharply reduces the use of restraint and seclusion in schools, while making the schools better learning environments for everyone, according to the testimony.¹⁴

In 2015, Congress passed the Every Student Succeeds Act (ESSA), with committees led by Senator Lamar Alexander, Congressman John Klein, Senator Patty Murray, and Congressman Bobby Scott. Among many other things, the new law requires states to adopt plans to reduce use of aversives,¹⁵ including restraint and seclusion.¹⁶ In the meantime, many states have adopted their own rules, often using the earlier more detailed Congressional legislation as a model.

This report focuses on the states because they regulate restraint and seclusion. The report examines the various state laws, regulations, voluntary guidance, and even silence. Although restraint and seclusion can kill and injure students, many states allow them to be used when no one is in any danger. Families who move across a river or down a highway into another state can lose their protections. A child moving from Mississippi to Arkansas loses his protection from restraint; a child moving from Minnesota to North Dakota loses all of her protections. Military families may be transferred between bases in different states. Civilian parents may be transferred by their employers, or move to find better jobs or care for family members.

In this report, the term “laws” includes statutes and regulations, both of which are legally binding. This distinguishes them from policies and suggested guidance, which are not mandatory. Such guidelines, however, can help demonstrate what states consider to be good public policy.

1467 (daily ed. Feb. 27, 2015). The Elementary and Secondary Education Act is the primary law for K-12 education.

¹⁴ *Examining the Abusive and Deadly Use of Seclusion and Restraint in Schools, Hearings before the House Comm. on Education and Labor, 111th Congress (2009)* [hereinafter *House Hearings*]; *Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students, Hearings before the Senate Comm. on Health, Education, Labor, and Pensions, 112th Congress (2012)* [hereinafter *Senate Hearings*].

¹⁵ Public Law 114-95 (S.1177), Sec. 1111(g)(1)(C).

¹⁶ See H.R. Rep. No. 114-354, Every Student Succeeds Act Conference Report 451 (2015).

B. State Changes in 2014-2016

Prior editions of this report were published in 2012-2015. Increasingly, states have adopted safeguards for students. In 2014-16, such protective rules were enacted under several state Governors, including Terry McAuliffe (Virginia), Sean Parnell (Alaska), Dan Malloy (Connecticut), Neil Abercrombie (Hawaii), Phil Bryant (Mississippi), Sam Brownback (Kansas), Jay Inslee (Washington), and Rick Snyder (Michigan). Others oversaw the strengthening of existing rules, including Governors Doug Ducey (Arizona), John Bel Edwards (Louisiana), Deval Patrick (Massachusetts), Maggie Hassan (New Hampshire), Gina Raimondo (Rhode Island), and Gary Herbert (Utah). Michigan became the most recent state to take action, with its bill signed on December 29, 2016.

States have also taken actions other than passing protective laws. North Dakota commissioned a study on the use of restraint and seclusion, similar to one Virginia had done before passing legislation. Massachusetts issued a memorandum explaining and supplementing its 2014 regulations. Maryland issued guidance strengthening definitions in its protections from restraint and seclusion. Ohio removed an exemption from its law for charter schools.¹⁷

C. General Framework for State Laws, Regulations, and Policies

Protections from restraint and seclusion vary among states. Some states have strong safeguards; others have narrow laws or laws with weaknesses in them. Some states limit one practice more than the other.¹⁸ States provide different kinds of protection. Some have statutes; others, regulations; and some, both.¹⁹ Generally, state regulations are easier to change than statutes, which require majority approval by both houses of a legislature and then approval by a governor.

Statutes have more power than regulations. This is important because some states have adopted newer comprehensive laws, but still have older, less-protective regulations on websites and in their regulatory compilations. The more recent statute controls if the regulation is

¹⁷ This exemption existed only because Ohio's general charter school law strictly limited the regulations the state Department of Education could impose on charter schools. The restraint and seclusion regulation did not apply to those schools until the state passed a law specifically allowing it. Some mistakenly think that Ohio had written an exemption into its restraint and seclusion law for charter schools, and use this to justify other exemptions from restraint and seclusion laws for other kinds of schools or programs. But their underlying premise is not true.

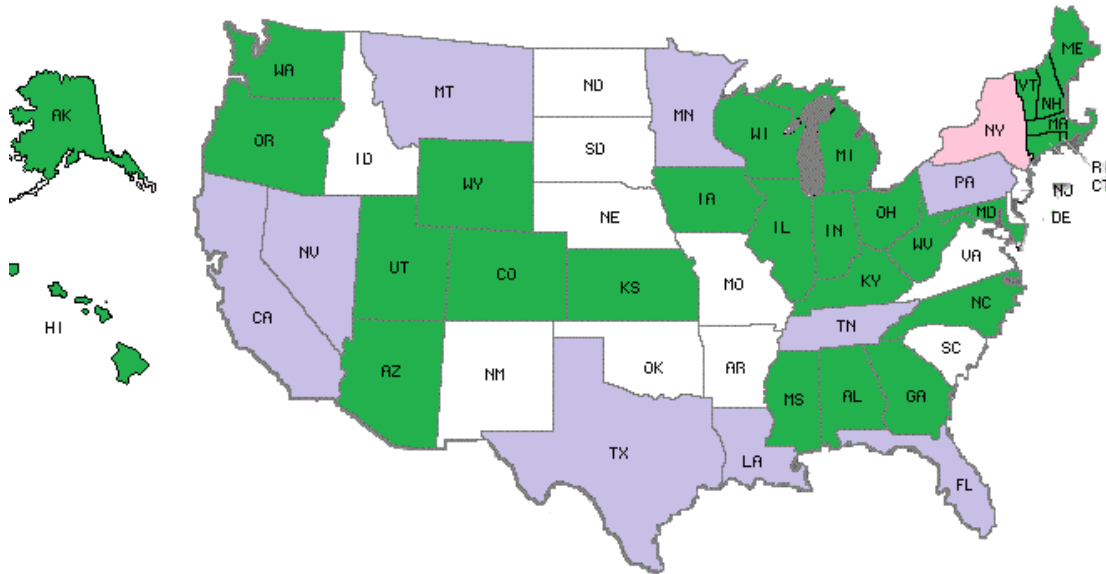
¹⁸ For example, Illinois limits restraint to threats of physical harm but permits seclusion more broadly.

¹⁹ These 9 states have statutes alone: Arizona (2015), Alaska, Florida^d, Hawaii, Louisiana^d, Michigan (2016), North Carolina, Nevada^d, and Wisconsin. These 16 states have both statutes and regulations: California^d, Colorado, Connecticut (2015 statute, older regulations not yet revised), Delaware (2013 statute, 2014 regulations), Illinois, Indiana (2013 statute, 2014 regulations), Kansas (2015 statute, regulations to be revised), Maine, Maryland, Minnesota^d, New Hampshire, Oregon, Tennessee^d, Texas^d, Washington, and Wyoming. Finally, these 14 states have only regulations: Alabama, Georgia, Iowa, Kentucky, Massachusetts, Mississippi (2016), Montana^d, New York^m, Ohio, Pennsylvania^d, Rhode Island, Utah (2015), Vermont, and West Virginia. When its process is complete, Virginia will have both a statute and regulation.

inconsistent. Similarly, if a state has a nonbinding policy that is inconsistent with its statute or regulations, the statute and regulation control.

II. STATES WITH MEANINGFUL PROTECTIONS FROM RESTRAINT & SECLUSION

Map 1: States with Meaningful Protections by Law from Both Restraint and Seclusion for Children with Disabilities (December 31, 2016)



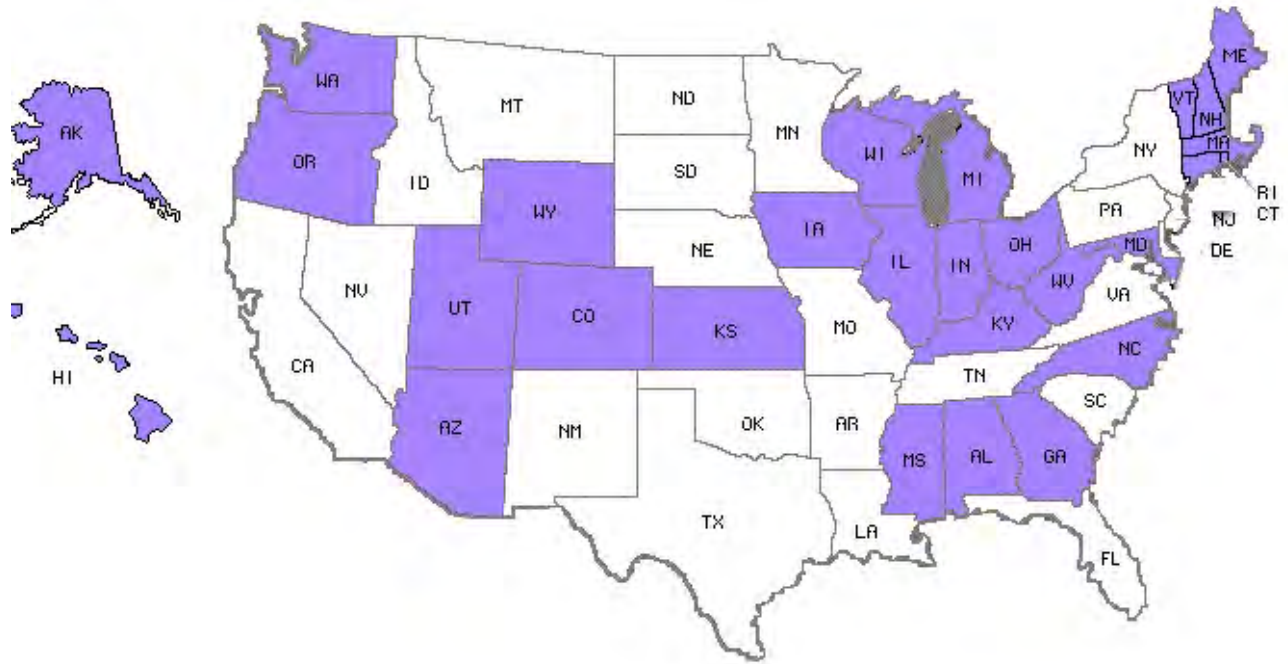
Dark Green (Dark): Meaningful protections from both restraint and seclusion for all students.

Lavender (Medium): Meaningful protections from both restraint and seclusion for children with disabilities.

Pink (Lightest): NY has meaningful protections for children with disabilities and some meaningful protections for children without disabilities.

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**Map 2: States with Meaningful Protections by Law from
Both Restraint and Seclusion for All Children (December 31, 2016)**



Purple: State has meaningful protections for all students from both restraint and seclusion.

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A. Meaningful Protections from Restraint and Seclusion in State Law

As of December 31, 2016, 28 state laws provided meaningful protections for all children from both restraint and seclusion: Alabama, Alaska, Arizona (2015), Colorado, Connecticut (2015 upgrade), Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (2015), Kentucky, Maryland, Massachusetts, Maine, Michigan (2016), Mississippi (2016), New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, Vermont, Utah (2015), Washington (2015), West Virginia, Wisconsin, and Wyoming. These statutes and regulations have the force of law and must be obeyed. This report uses the term “laws” to refer to them. The criteria for considering state laws “meaningful” is laid out in the footnote below.²⁰

28 states provide some meaningful protections by law from restraint & seclusion for all children. 38 states do for children with disabilities.

In March 2015, Virginia enacted a statute directing the Virginia Department of Education to write regulations incorporating comprehensive protections. Once regulations are promulgated, Virginia is expected to provide meaningful protections as long as those regulations embody the legislation.

For children with disabilities, 38 states by law require schools to provide some meaningful protections against both restraint and seclusion. They are Alabama, Arizona (2015), Alaska, California^d, Colorado, Connecticut (2015), Florida^d, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Michigan (2016), Minnesota^d, Mississippi (2016), Montana^d, Nevada^d, New Hampshire, New York^m, North Carolina, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Texas^d, Utah (2015), Vermont, Washington (2015 and 2013 upgrades),²¹ West Virginia, Wisconsin, and Wyoming. (New York has a superscripted m (^m) because it has a broader regulation for children with disabilities and a more limited regulation for all children.) Louisiana adopted a new law which mandates that an Advisory Committee provide guidance on best practices for reducing the use of restraint and seclusion, and that schools adopt master plans to improve restraint and seclusion practices.

Restraint and seclusion are dangerous. Their use is widespread. A number of illustrative news

²⁰ To provide meaningful protection, a state must fall into one of two categories. One, it provides multiple protections against restraint and seclusion for students. Two, it has few protections but strictly limits the technique to emergency threats of physical harm. States that protect only against one practice are not regarded as having meaningful protections. The “meaningful” designation does not necessarily mean that a state’s laws provide sufficient protection. The author made her meaningful designations based on the wording in the statute or regulation, and related state materials. If a state does not require implementation of a good policy, this would undercut the protections and could render them non-meaningful. The same is true if the personnel interpret statutory language in a manner contrary to its ordinary meaning. The people with the best knowledge about how statutes and regulations are actually implemented are local families and professionals.

²¹ Washington previously had weak protections for all students in one law and weak protections for students with disabilities in another. In 2013, the law was strengthened and made more comprehensive for students with disabilities. In 2015, the law was strengthened again, this time for all students.

stories are set out in the footnote.²² The majority of students restrained and secluded have disabilities, although many nondisabled students are also subjected to the practices.²³ Some states, particularly those with older laws, have more protections for children with disabilities. There are two likely reasons. First, older laws were designed around the historic use of restraint and seclusion upon people with disabilities. Second, students with certain disabilities cannot effectively communicate what happened to them. These can include nonverbal children, as well as children whose disabilities effect their ability to remember, understand, and/or communicate properly.²⁴ Because nondisabled children are also subjected to these practices, the more common contemporary practice is to include all children within a state's law. Indeed, younger children without disabilities may similarly be unable to tell their parents, and older children may not be able to effectively or accurately inform them.

Among the states with meaningful protections, Florida came close to being moved to the weaker group. Its protections are meaningful because it has strong data collection requirements, monitors schools for compliance and publishes the monitoring results, requires parental notification, bans restraint that interferes with breathing, and has other protections in its law. Florida's law requires schools to report why each restraint incident involved a threat of serious bodily injury. Yet, the statute does not explicitly limit restraint and seclusion to emergencies threatening physical danger, a significant problem. Efforts to amend Florida's law to impose such a restriction have failed.

²² Deborah Yetter, [Police at First Refused JCPS Broken Leg Case](#), LOUISVILLE COURIER-JOURNAL, Aug. 12, 2016; [Family Seeks Video after Son Was Tied down on Bus](#), Fox4 News (Dallas), Sept. 23, 2015; [Fresno Mom Alleges Teacher Put Her 7-Year-Old Special Ed Daughter in a "Cage,"](#) CBS Bay Area, Nov. 8, 2014; Jacob Pucci, [Inside Syracuse School's Illegal Timeout Room: Kid, 9, Sent to 'Elevator Machine Room'](#), SYRACUSE.COM, Oct. 2, 2014 with link to applicable police report; Kemberly Richardson, [Video Shows Special-Needs Student Restrained in Bronx School](#), EYEWITNESS NEWS ABC 7, Sept. 30, 2014; Ken Kalthoff, [Mansfield ISD Scream Room Draws Federal Lawsuit](#), NBCDFW5, Aug. 29, 2014; Alia Wong, [Hawaii Lawmakers Mull Clearer Rules for Schools with Uncontrollable Kids](#), HONOLULU CIVIL BEAT, Feb. 20, 2014; [Tucson Girl Says Teacher Taped Her to Chair](#), azcentral.com (channel 3), Aug. 21, 2013; Joel Moreno, [Mom: School Used Isolation Room to Punish Special Needs Child](#), KOMO News Network, Apr. 23, 2013; Rich Rodriguez, [Student Tied To Classroom Chair; Teacher Accused](#), KMPH FOX-26 (Fresno), Jan. 31, 2013; Greg Toppo, [Restraint Can Dispirit and Hurt Special-Ed Students](#), USA TODAY, May 18, 2009.

²³ In 2012-14, students with disabilities made up 12% of the student population, but 58% of students secluded, and 75% of those physically restrained. By comparison, 42% of children secluded, and 75% of those physically restrained, were nondisabled. CRDC, Data Snapshot (March 2014). In some states, data is available based on whether the children have, or do not have, disabilities. Such data has indicated greater use of children with disabilities. For example, an independent Wisconsin analysis of data collected by Local Education Agencies found that, in 2013-14, over 3,500 children in that state were restrained or secluded over 20,000 times; 80% had disabilities. Disability Rights Wisconsin, Wisconsin Family Ties, And WI FACETS, SECLUSION & RESTRAINT IN WISCONSIN PUBLIC SCHOOL DISTRICTS 2013-2014: MILES TO GO (2016). In 2011-12, 78% of Connecticut seclusion incidents involved students with seclusion in their Individualized Education Programs, meaning that they had disabilities. Conn. State Dept. of Educ., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND Seclusion, SCHOOL YEAR 2011-12.

²⁴ GAO REPORT at 5. As one commentator has observed, "[There is a] special danger and injustice inherent in the use of restraints on people with disabilities: they are used repeatedly as standard procedure, and the people on whom they are used have no right or power to end these abusive relationships." Pat Amos, *What Restraints Teach*, TASH CONNECTIONS, Nov. 1999.

B. Delaware: Using the State Supervisory Process to Protect Children

Delaware was not included in the meaningful protection category because its laws allow the state to waive its protections against seclusion and mechanical restraint for children. Nonetheless, Delaware is highly commended for its use of the state supervisory process in 2015 to limit these practices to threats of serious physical harm, and thus, protect students from misuse of the practices.

In 2013, Delaware adopted a comprehensive statute, protecting all students from physical restraint. The law banned seclusion and mechanical restraint, but allowed the state Department of Education to waive these bans on a student-by-student basis with compelling justification. Neither the statute nor subsequent regulation defined compelling justification or restricted when the practices can be used (e.g. punishment, behavioral compliance, etc.). But more recently, Delaware's Department of Education has created a form to be used for seeking a waiver. It requires documentation of a significant and imminent threat of bodily harm that necessitates use of seclusion or mechanical restraint. It also requires proof that proper positive behavioral supports, functional behavioral analyses, and de-escalation are used to prevent the behaviors involved. It requires monitoring and durational requirements. But there are few other limits. There also are no limits on the number of children who can receive such waivers. In 2015-16, Delaware enrolled 153,540 public and private school students.²⁵ If waivers reached 1% of these students, approximately 1,500 students could be secluded and/or mechanically restrained. Delaware might consider collecting seclusion and mechanical restraint data and continually review it to ensure that this does not create a weakness in the law whereby children are secluded with less protection and oversight than children who are physically restrained.

Moreover, state supervisory requirements are more easily changed than statutes and regulations, which go through longer, more formal review and approval procedures. Still, the author believes it is important to recognize Delaware's requirements and work to restrict seclusion and mechanical restraint to emergencies. Thus, Delaware is in its own category in this version of the report.

C. Arkansas: Legal Protection from One but Not the Other

By regulation, Arkansas gives children with disabilities some safeguards against seclusion, but not from restraint. A 2013 statute directed the State Education Agency to study restraint; the agency posted recommended voluntary restraint guidelines in 2014. Arkansas is the only state in this category. Other states that previously were in this category, such as Arizona, have adopted

²⁵ <http://profiles.doe.k12.de.us/SchoolProfiles/State/Account.aspx> Under the Individuals with Disabilities Education Act and through other state laws and programs, students can be placed in private schools at public expense.

comprehensive protections from both restraint and seclusion.

D. Weak Protections in Law

As of December 31, 2016, 3 states had laws providing such limited, weak protections that they are not at all like those that provide meaningful protection. They are Missouri (bans only solitary locked seclusion unless awaiting law enforcement), Nebraska (2012 regulation requires LEAs to adopt restraint and seclusion policies, without imposing any requirements whatsoever), and Washington, D.C. (prohibits “unreasonable” restraint). They each also have far more extensive nonbinding guidelines, likely because their laws are so weak. Alaska, Hawaii, Michigan, and Utah were previously in this category, but adopted comprehensive laws in 2014-16.²⁶

E. Non-Binding Guidance (No Legal Effect)

As of, December 31, 2016, 7 states had only voluntary guidelines imposing no legal requirements: Missouri, Nebraska, New Mexico^m (seclusion guidelines for all children; restraint for children with disabilities), Oklahoma^d, South Carolina, Virginia, and Washington, D.C. (Because Virginia does not yet have implementing regulations, only its nonbinding 2009 Virginia Department of Education policy is in place.) A number of the documents describe themselves as voluntary recommendations and suggested models.

Guidelines, model principles, and memoranda are not statutes or regulations.²⁷ They are not mandatory and there are no requirements to follow them or provisions to enforce them. Guidelines have done so little to protect children that at least 12 states have replaced them with mandatory statutes and regulations over the last five years: Alaska, Indiana, Kansas, Kentucky,

²⁶ North Dakota has a law that applies only to people with developmental disabilities in schools and other facilities. It limits restraint and seclusion to incidents of physical harm, provides for administrator review, but otherwise, has very few protections. As this law excludes all students except those with developmental disabilities, it is not included in this report as providing meaningful protection. Data indicates that students with other disabilities, including mental health issues, comprise a significant number of those restrained or secluded. Florida Dept. of Educ., Restraint Incidents by District, Seclusion Incidents by District, Aug. 1, 2013- Apr. 30, 2014 (45-66% of students subjected to practices had emotional and behavioral disabilities); Connecticut Dept. of Ed., Annual Report on the Use of Physical Restraint and Seclusion in Connecticut, 2012-13 at 10 (2014) (substantial proportion of students restrained and secluded had emotional disabilities or other health impairments, including ADD/ADHD); Tennessee Dept. of Educ., Student Support, Special Educ., Data Services & Supports, 2012-13 Isolation and Restraint Data (same). But, this is not to impugn North Dakota’s efforts to protect students with developmental disabilities. Efforts to protect these students, some of whom are among the most vulnerable, are very important.

²⁷ At times, some seem to have viewed such guidelines as the equivalent of statute and regulation. This is likely due to confusion about one proposed Congressional bill, which would have required states to adopt “policies” incorporating the statutory requirements. But States could not eliminate or change the federal requirements. By contrast, the guidelines described in this report can be easily changed by the state education agency.

Michigan (2016), Mississippi (2016), Louisiana, Ohio, Virginia (2015), Utah (2015), Vermont, and Wisconsin. Still, suggested guidelines useful to show the practices that states have identified as good public policy.

Analyses of such nonbinding policy documents illustrate their significant limitations.

Wisconsin disability organizations found in 2009 that the state's then-existing restraint and seclusion "directives" were insufficient to protect children from seclusion and restraint, making state legislation necessary. Wisconsin enacted a new statute in March 2012, replacing the nonbinding directives.²⁸ In 2006, following the death of two children in restraint, Michigan adopted a nonbinding state policy recommending that school boards adopt guidelines. After a 2009 statewide survey, Michigan Protection and Advocacy Service (MPAS) concluded that "children remain at risk" and recommended legislation instead. MPAS found that "while some intermediate school districts (ISDs) have tried to apply the voluntary Board policy, most have not." It further determined that "the Michigan Department of 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 had received seclusion and restraint stories in 32 of the state's counties, indicating that the nonbinding guidelines were not effective.²⁹ In 2016, under the leadership of Michigan Lieutenant Governor Brian Calley, Michigan adopted legislation to protect students.

In 2007-12, when Kentucky only had voluntary guidelines, Kentucky Protection & Advocacy investigated over 80 allegations of restraint or seclusion misuse, with a number of others reported but not investigated.³⁰ Kentucky adopted a regulation in 2013.

Finally, Virginia had only suggested guidelines for years. Rather than adopt the state's guidelines, many districts instead used a Virginia School Board Association proposal, according to the Virginia Commission on Youth and the Virginia Disability Law Center. Those policies allowed far more freedom to use restraint and seclusion than the State's voluntary guidelines recommended. They allowed schools 15 days to notify parents, allowed broad use of restraint and seclusion when no one was in danger of harm, and provided that once restraint was added to a child's individualized educational program, it would not be considered restraint and the child would have no protections.³¹ Ultimately, Virginia adopted a statute in 2015 to provide

²⁸ Disability Rights Wisconsin, Wisconsin Facets, and Wisconsin Family Ties, *Out Of The Darkness... Into The Light, New Approaches To Reducing The Use Of Seclusion And Restraint With Wisconsin Children* (2009); 2012 Wisc. Laws 146 (Mar. 19, 2012; previously Senate Bill 353).

²⁹ Michigan Protection and Advocacy Service, Inc., *Safe and Protected? Restraint and Seclusion Remain Unregulated and Underreported in Michigan Schools 4-5* (2009).

³⁰ Kentucky Protection & Advocacy and the Commonwealth Council on Developmental Disabilities, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

³¹ VIRGINIA SCHOOL BOARD ASSOCIATION POLICY MANUAL, Section JM (2012). For a more analysis, see Leah Mills, Virginia Commission on Youth, *USE OF RESTRAINT AND SECLUSION BY SCHOOL* (Oct. 20, 2014) (VSBA policy used by 78% of all school districts and 89% of those with policies); Disability Law Center of Virginia, *SECLUSION AND RESTRAINT IN VIRGINIA'S PUBLIC SCHOOLS: INVESTIGATIVE STUDY OF POLICIES AND PROCEDURES TO PROTECT STUDENTS* (August 2014).

protections students needed.

F. States with Nothing (Neither Laws nor Voluntary Policies)

There are 4 states which are silent on both restraint and seclusion. They have no laws or even voluntary principles. They are Idaho, North Dakota, New Jersey, and South Dakota. Another state, Wyoming, has seclusion protections, but none for restraint.

In 2012, there were six states in this category, but Arizona and Mississippi adopted rules protecting students. Three of the silent states have tried to take action. Bills have been repeatedly introduced in New Jersey. North Dakota's legislature has ordered a study of restraint and seclusion, as Virginia's legislature did before adopting a law. South Dakota considered protections in 2015. Due to previously described requirements in the 2015 Elementary and Secondary Education Act amendments, all 4 will need to at least adopt plans addressing the use of aversives, including restraint and seclusion. This is, however, a minimal requirement.

Chart 1: Does State Law Provide Meaningful Protections? (Dec. 31, 2016)

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	All Students	Students w/Disabilities	Other
AK	Meaningful Law (2014)	Included in All Children's Law	
AL	Meaningful Law	Included in All Children's Law	
AR			Meaningful Law Applicable to Only Seclusion. Nonbinding recommended Guidance for Restraint (Not Law; easily changed by state).
AZ	Meaningful Law (2015)	Included in All Children's Law	
CA		Meaningful Law	
CO	Meaningful Law	Included in All Children's Law	
CT	Meaningful Law (2015)	Included in All Children's Law	
DC			Weak Regulation (bans "unreasonable restraint"). DC also has nonbinding guidance for all children (Not Law; easily changed by state).
DE	Meaningful Law	Included in All Children's Law	
FL		Meaningful Law	Bills to provide better protections and for all children have consistently died in legislature.
GA	Meaningful Law	Included in All Children's Law	
HI	Meaningful Law (2014)	Included in All Children's Law	
IA	Meaningful Law	Included in All Children's Law	
ID			Nothing
IL	Meaningful Law	Included in All Children's Law	
IN	Meaningful Law	Included in All Children's Law	
KS	Meaningful Law (2015)	Included in All Children's Law	
KY	Meaningful Law	Included in All Children's Law	
LA		Meaningful Law	
MA	Meaningful Law	Included in All Children's Law	

	All Students	Students w/Disabilities	Other
MD	Meaningful Law	Included in All Children's Law	
ME	Meaningful Law	Included in All Children's Law	
MI	Meaningful Law (2016)		
MN		Meaningful Law	
MO			Weak Law (unlocked, unattended seclusion while awaiting law enforcement). All-Students Nonbinding Guidance (Not Law; easily changed by state).
MS	Meaningful Law (2016)		
MT		Meaningful Law	
NC	Meaningful Law	Included in All Children's Law	
ND			Extremely limited law for students with developmental disabilities only applicable to schools and other institutions. Legislature ordered a study of current practices in 2015.
NE			Weak regulation requires LEAs to adopt a policy, but does not require anything in it. Nonbinding Guidance (Not Law; easily changed by state)
NH	Meaningful Law	Included in All Children's Law	
NJ			Nothing
NV		Meaningful Law	
NY	some protections for all children, but not as full as those for children with disabilities	Meaningful Law	
OH	Meaningful Law	Included in All Children's Law	
OK			Nonbinding Guidance (Not Law; easily changed by state)
OR	Meaningful Law	Included in All Children's Law	
PA		Meaningful Law	
RI	Meaningful Law	Included in All Children's Law	

	All Students	Students w/Disabilities	Other
SC			All-Students: Nonbinding Guidance (Not Law; easily changed by state)
SD			Nothing
TN		Meaningful Law	
TX		Meaningful Law	
UT	Meaningful Law (2015)		
VA			Currently Nonbinding Guidance. Virginia in March 2015 passed a statute requiring comprehensive protections in regulations, but students will not have protections until those regulations are adopted.
VT	Meaningful Law	Included in All Children's Law	
WA	Meaningful Law (2015)	Included in All Children's Law (2015); also specific protections in prior laws	
WI	Meaningful Law	Included in All Children's Law	
WV	Meaningful Law	Included in All Children's Law	
WY	Meaningful Law	Included in All Children's Law	

III. RESTRAINT AND SECLUSION: STATES USING THEM AS EMERGENCY PRACTICES FOR IMMINENT THREATS OF PHYSICAL DANGER

Seclusion and restraint are risky, dangerous interventions that should only be used in physical safety emergencies. This section of the report analyzes whether states limit physical restraint and seclusion to emergencies, or allow them when no one's safety is threatened.

A. Restraint

Of the 51 states, 19 by law limit restraint of all children to threats of physical danger; 23, for children with disabilities, as discussed below. America has made significant progress in this regard. In 2009, before Congress introduced its first bill with this standard, only 3 states had this protection for all students; 5 for students with disabilities.

19 states limit restraint for all children to emergencies where physical safety is at risk. 23 states have this limit for children with disabilities. In 2009, only a handful of states did.

Schoolchildren have been restrained for being unable to pay attention due to disabilities, getting out of a seat, sharpening too many pencils, taking off shoes, not doing their work, staff convenience, punishment, and similar activities.³² Yet, restraint is highly dangerous, resulting in deaths and injuries. The GAO documented at least 20 cases of children who died from restraint,³³ and others who were injured, including broken bones and bloody noses. Children as young as preschoolers were tethered to ropes, tied and bound to furniture, and placed in strangleholds. A preschooler was strapped into a miniature electric chair, leading to deep psychiatric trauma.³⁴

Restraint is dangerous. It has killed at least 20 students and injured many others. Young children have suffered broken bones, sprains, and bloody noses.

In 2014, restraint shattered the femur of a Kentucky

³² See GAO REPORT at 22-25; Mareesa Nicosia, *The Future of Restraint and Seclusion in Schools*, THE ATLANTIC, Jan. 24, 2016; *Tucson Girl Says Teacher Taped Her to Chair*, acentral.com (channel 3), Aug. 21, 2013; Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Sandra Chapman, *13 Investigates: Duct Tape Incident Prompts Call for Change in State Law*, WTHR (IND.), Feb. 7, 2013; Zac Taylor, *Mason Principal Sued Over Alleged Abuse*, CHARLESTON GAZETTE, Apr. 13, 2012.; NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim).

³³ GAO Report at 8.

³⁴ GAO REPORT at 1, 8, 10-12.

teen with autism, an injury considered life-threatening. It would have taken 500 pounds of force to shatter the femur because of its length, the Louisville Courier-Journal reported.³⁵

1. States Limiting Restraint to Emergencies Threatening Physical Danger

There are 19 states that by law protect all children from the use of restraint except for immediate threats of physical danger.³⁶ They are Alabama, Alaska, Arizona (2015), Colorado, Connecticut (2015), Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan (2016), New Hampshire, Ohio, Oregon, Rhode Island, Vermont, and Wisconsin.

There are 23 states that protect children with disabilities this way: Alaska, Alabama, Arizona (2015), Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas (2015), Louisiana^d, Maine, Massachusetts, Michigan (2016), Minnesota^d, New Hampshire, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, and Wisconsin. A higher standard (*e.g.*, serious or substantial physical harm standard) is used in Louisiana^d, Massachusetts, New Hampshire, Oregon, and Rhode Island.

Florida is not included in this category. It was removed in January 2014. The reporting section of its law requires that restraint and seclusion reports identify the imminent risk of serious physical harm. But the law itself does not directly require such a threat to use restraint and seclusion. Rather, it says nothing about the circumstances under which restraint and seclusion may be used.³⁷

After communications with Minnesotans, Minnesota^d was moved into this category in 2015. Its law, however, is a poor model for legislative drafting. In 2012, Minnesota redefined “physical holding” as a physical restraint used “in order to protect” someone from physical injury. The statutory limits apply only to this “physical holding.” This would appear to mean that physical restraint used for other reasons is not a physical holding and thus may be outside the statute.³⁸ But, Minnesotans report that the law is interpreted to permit restraint only for threats

³⁵ Deborah Yetter & Allison Ross, *Expert Finds JCPS Broken Leg Case Was Abuse*, LOUISVILLE COURIER-JOURNAL, Aug. 18, 2016.

³⁶ For purposes of this report, physical harm and bodily harm, injury, danger, and safety are used synonymously.

³⁷ Florida’s actions are consistent with this analysis. Florida monitors school districts for compliance. Its reports do not describe a standard for using restraint and seclusion. Moreover, while monitoring teams point out other deficient practices, they do not discuss whether restraint and seclusion are used only for threats of physical danger. Likewise, the State’s overview of the new law did not discuss at all the circumstances under which restraint or seclusion could be used or prohibited (other than describing the ban on restraints compromising breathing), FLA. DEPT. OF EDUC., WHAT A DIFFERENCE A DAY MAKES! RESTRAINT AND SECLUSION DOCUMENTING, REPORTING, AND MONITORING (Sept. 14, 2011), www.fldoe.org/ese/ppt/amm/11rsdrm.ppt

³⁸ Compare MINN. STAT. § 125A.0941-42 (revised by Senate Bill S.F. 1917, signed Apr. 3, 2012) with 2009 c 96 art 3 s 11 (statute as originally enacted in 2009).

of physical harm, and that this is what the 2012 legislature intended.³⁹

Still, the better practice to eliminate any questions is to define physical restraint as a personal restriction that prevents a person from moving his/her body, and then to limit restraint use to only physical danger emergencies. This is how other states handle the issue, and it is far clearer. Compare the Minnesota language to the Keeping All Students Safe Act, H.R. 927 (2015) (“The term ‘physical restraint’ means a personal restriction that immobilizes or reduces the ability of an individual to move the individual’s arms, legs, torso, or head freely”) and S. 2036 (2014) (“The term ‘physical restraint’ means a personal restriction that immobilizes or reduces the ability of an individual to move the individual’s arms, legs, body, or head freely).”

2. Restraint Permitted in Non-Emergencies

Many states still allow the use of dangerous restraint even when there is no threat to safety.

Restraint can be used for threats of physical harm or property destruction in Nevada^d, Texas^d, West Virginia (all 3 “serious” damage only), Washington (2015) (“substantial” damage), Utah (2015) (any property damage). Washington requires evidence of behavior that has caused “substantial” property damage in the past. In 2015, Washington significantly improved its law, limiting restraint to physical danger or evidence of substantial destruction of property. Previously, Washington had a very confusing structure that allowed restraint for modifying undesirable” behaviors, which could include manifestations of a child’s disability (hand flapping, a tic, inability to comprehend and follow directions, etc.). The regulation had protections like parental notice which did not apply at all if restraint was used for educational disruption, property destruction, or other activities. No other states use this kind of structure, and Washington no longer does.

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

Another group of states is more permissive: Iowa, Michigan, Montana^d, New York (all children), Mississippi (2016), and North Carolina. The first three allow restraint for threats of physical harm, destruction of property, or educational disruption. Educational disruption can include tantrums caused by a child’s disability, being unable to sit still, making noise and other

³⁹ Communication with Dan Stewart, Mid-Minn. Legal Aid-Minn. Disability Law Center (July 1, 2015). In 2013, Minnesota further clarified its statute to state that physical holding and seclusion can occur only in an emergency threatening physical harm, explicitly excluding their use for behaviors such as failing to stay on task or hiding under a table. These revisions indicate that the legislature intended to limit restraint to physical danger emergencies, despite the poor wording.

manifestations of a child's disability that are properly addressed through behavioral supports and accommodations. Mississippi adopted regulations in 2016 allowing restraint for threats of physical harm, actual or potential property damage, and to remove a noncompliant student from an incident.

North Carolina has a far weaker law. By statute, it allows restraint of all children for threats of physical harm, property destruction, educational disruption, or for any reason at all if stated in the child's Individualized Education Program (IEP) or Behavioral Intervention Plan (BIP). This could mean using dangerous restraint on a child who tears a book, throws a toy, has a tantrum, does not follow instructions, cannot be quiet, or does other things that manifestations of the child's disability.⁴⁰

Finally, 3 other states have laws that may seem strong, but have loopholes undermining them: Maryland, California, and Kentucky.

Maryland regulation allows restraint for threats of serious physical harm or as stated in a child's Behavioral Intervention Plan or Individualized Education Program (IEP).⁴¹ (A 2014 technical assistance paper defines serious physical harm as serious bodily injury, a very significant achievement, but still allows the use of restraint for any reason if in a child's IEP.)⁴² Maine and Massachusetts eliminated similar regulatory provisions that allowed restraint for any reason if written into the child's IEP.

California's^d statute and regulations have a wording issue that creates a loophole. The law is worded to allow "emergency interventions" in the event of a spontaneous, unpredictable event posing an imminent threat of serious physical harm. But the law does not define the term "emergency intervention" or prohibit the use of restraint or seclusion. There is no emergency if a child engages in a predictable behavior pattern or a behavior that does not threaten serious physical harm. Hence, the law's protections likely do not apply to these situations, according to California's Protection and Advocacy organization.⁴³ Still, California's Department of Education suggested in a 2014 FAQ that restraint and seclusion are emergency interventions and cannot be

⁴⁰ There are some forms of property destruction that threaten physical safety. State laws limiting restraint to situations threatening physical harm would include such incidents. But allowing restraint for all property destruction includes such things as breaking a pencil or tearing a book, and many things that pose no threat to anyone. See REECE L. PETERSON, *DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS 20* (Nebraska Dept. of Educ. 2010). Positive and preventative supports would more properly remedy these issues and keep everyone safe. More information on positive supports and how they reduce restraint and seclusion can be found under "Less Restrictive Measures Must Fail" below.

⁴¹ For children with disabilities, the BIP is often part of the IEP.

⁴² Maryland State Dept. of Educ., Fact Sheet: The Use of Restraint and Seclusion (Apr. 2014).

⁴³ See CAL. ED. CODE §§ 56520-56525; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012 and reconfirmed, May 2015).

used in non-emergencies.⁴⁴

Kentucky, adopted its regulation in February 2013. Restraint is seemingly restricted to threats of physical harm but is also allowed “as permitted under KRS . . . 503.110.” This is a statute establishing a defense in criminal cases when the defendant is a teacher of a “mentally disabled” person or minor, and the force was necessary to promote their welfare and not intended to cause serious harm, or when used to maintain discipline.⁴⁵ It is not entirely clear what is meant. It could be a reaffirmation of the criminal defense created by statute.⁴⁶ But it could also mean that staff members can use restraint to maintain class discipline, regardless of whether anyone is at risk of harm.

Non-emergency restraint exposes children to dangerous procedures when it is not necessary. It also may increase the usage of restraint. Before Connecticut improved its law to limit the use of restraint and seclusion to emergencies, the Office of the Child Advocate found that more than 1,700 incidents of restraint and seclusion in 2013-14 exceeded 40 minutes, including 716 that persisted for more than an hour. More than 140 children were secluded or restrained over 50 times.⁴⁷ Connecticut keeps very detailed data, a practice that improves transparency and public oversight. It is to be highly commended for its data collection.

3. States Without Any Legal Limits on Restraint

There are 23 states that do not by law limit restraint of all children; 13, children with disabilities.

As of December 31, 2016, 8 states have rules protecting students with disabilities, but not students without: California^d, Louisiana^d, Montana^d, Minnesota^d, Nevada^d, Pennsylvania^d, Tennessee^d, and Texas^d. (Connecticut and Washington moved to all-children laws in 2015).

Another 9 states have voluntary guidance, 6 of which urge, but do not require, that restraint be limited to physical danger: Arkansas, Nebraska, Oklahoma^d (serious physical harm), South

⁴⁴ FAQs for LEAs Behavioral Intervention, Behavior Emergency Interventions, Question 6 (June 12, 2014).

⁴⁵ KY. REV. STAT. §§ 503.020, 503.110, 503.120; see also §§ 532.060 and 534.030 (prison terms and fines); 500.070 (burden of proof). The regulation also states that restraint is permitted under two laws creating a criminal defense when force is used in self-defense or defense of others. But this appears implicit in Kentucky’s limiting restraint to threats of physical danger. For this reason, the inclusion of these criminal provisions, 503.050 and 503.070, is of less concern.

⁴⁶ This criminal defense is arguably not appropriate in 2014, given the extensive research and evidence for positive supports to maintain discipline. The GAO documented stories of children who were died after being restrained for being “uncooperative,” “disruptive,” and refusing to remain seated. GAO REPORT at 10-11. Still, no regulation can alter a criminal defense created by statute.

⁴⁷ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 5 (Office of the Child Advocate Feb. 2015).

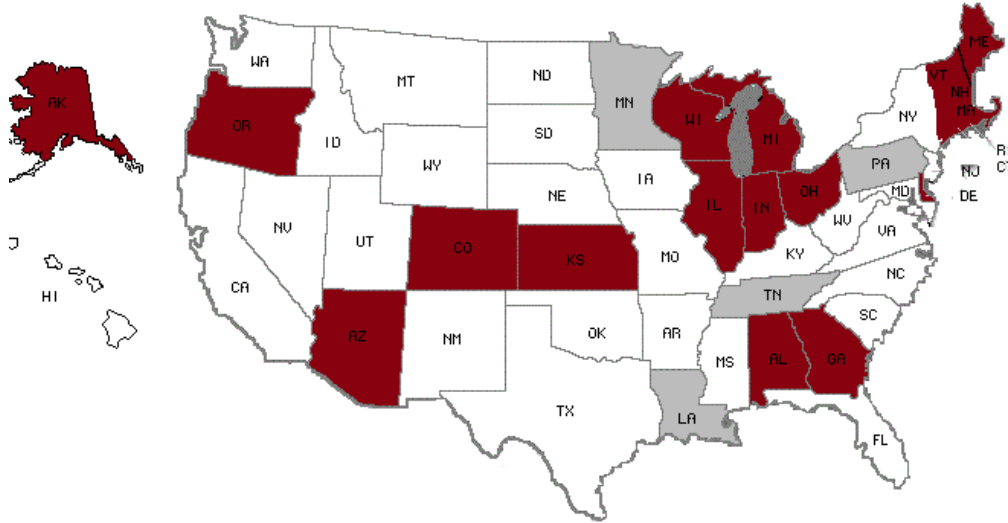
Carolina, Virginia,⁴⁸ and Washington, D.C. Michigan had been in this category but adopted a physical harm standard in December 2016. New Mexico's nonbinding guidelines would allow restraint for property destruction. Missouri's suggested guidance would bless its use for property destruction or as stated in the IEP, 504 plan, or behavioral plan. Utah had been in this category but adopted regulations in 2015.

There are 6 states without any laws or even nonbinding guidance limiting the reasons for using restraint: Florida,⁴⁹ Idaho, North Dakota, New Jersey, South Dakota, and Wyoming.

⁴⁸ As previously noted, Virginia adopted a statute in 2015 requiring regulations with comprehensive protections, including limiting restraint and seclusion to such emergencies. The regulations have yet to be promulgated.

⁴⁹ Florida's law is explained in footnote [37](#) and the accompanying text.

**Map 3: States Limiting Restraint to Emergency Threats of Physical Harm:
19 States (All Children) and 23 states (Children with Disabilities) (December 31,
2016)**

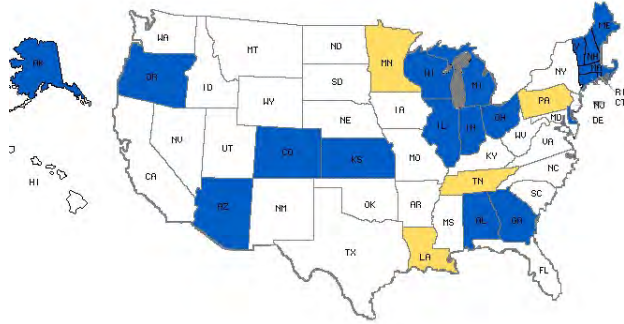


Red (dark): State limits restraint to emergency threats of physical danger for all children.
Gray (light): State limits restraint to emergency threats of physical danger for children with disabilities.
Louisiana (d), Massachusetts, New Hampshire, Oregon, and Rhode Island use a heightened standard (e.g. serious or substantial physical harm)

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Map 4: Number of States Limiting Restraint to Emergencies Threatening Physical Danger Grew Considerably from 2009 to 2016 (December 31, 2016)

December 31, 2016 Status of States



2009 Before First Congressional Bill (CO, IL, RI (All); PA, CT (SwDs))



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

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

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Chart 2: Is Restraint Limited to Immediate Emergency Threats to Physical Safety By Law? ((Dec. 31, 2016)

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D means Children with Disabilities Only; ALL Means All Children.

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educ. Disruption	Other, including allowing restraint as per IEP or BIP	
AK	ALL						
AL	ALL						
AR							
AZ	ALL (2015)						
CA						D- (CA permits use of restraint in non-emergencies with little limitation due to law's wording)	
CO	ALL						
CT	ALL (2015)						
DE	ALL						
DC	<i>Voluntary Guidance - Not law - Can Change</i>						
FL						statute silent, incident reports refer to physical harm	
GA	ALL						
HI			ALL				
IA					ALL		
ID						No law limits use	
IL	ALL						
IN	ALL						

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or as allowed in IEP (for any reason; loophole)	Phys. Harm or Serious Destruc. Prop.	Phys. Harm or Destruc. Prop.	Phys Harm, Dest. Prop, or Educ. Disruption	Other, including allowing restraint as per IEP or BIP	
KS	ALL (2015)						
KY						ALL - see report; certain defenses apply in criminal context	
LA	D						
MA	ALL						
MD		ALL					
ME	ALL						
MI	ALL (2016)						
MN						D - see report; possible unintended loophole	
MO						<i>Voluntary Guidance - Not law - Can Change</i>	
MS					ALL (2016)		
MT					D		
NC						ALL; permits for any reason if in IEP/BIP, even if no danger, as well as phys. harm, prop. destruc., and educ. disrupt.	
ND						No law limits use	
NE	<i>Voluntary Guidance - Not law - Can Change</i>					No law limits use	

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

B. Seclusion: Definition

The manner in which a state defines seclusion can determine whether a child receives the protections in its statute or regulations. While definitions vary, almost all describe seclusion as some kind of isolation that a child cannot leave.

As of December 31, 2016, 38 states defined seclusion as a room or space in which a child is involuntarily confined and physically prevented from exiting, usually because the door or exit is locked or obstructed (*e.g.*, furniture or equipment blocking the door, staff keeping it shut, or even improvised child proofing). There are 32 states that use such a definition in their statutes and regulations: Alaska, Arizona (2015), Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Michigan (2016), Minnesota^d, Mississippi (2016), Montana^d, New Hampshire, Nevada^d, North Carolina (and also including a room a child cannot leave due to physical or mental incapacity), Ohio, Oregon, Rhode Island (if without access to staff), Tennessee^d, Utah (2015), Vermont, Wisconsin, Washington, and Wyoming (definition of term “isolation”).

The majority of states (38) define seclusion as a room or space where a child is involuntarily confined and is physically prevented from leaving, usually because the door is locked or obstructed. This report uses this definition.

Another 6 states have a similar definition in nonbinding guidance: Missouri, Nebraska, Oklahoma^d, South Carolina (if child alone), Virginia, and Washington, D.C. Virginia adopted a 2015 statute that would require regulations to use this definition because it is used in the documents the statute required be followed.

Under many fire codes, a blocked door that cannot be opened is the same as a locked door. Nationwide, children have been put in rooms blocked by equipment, wooden barricades, or staff holding the door shut.⁵⁰ Furniture has been reconfigured to build barriers and seclude children. A Hawaii preschooler with Down Syndrome was trapped in a space behind two bookcases for 90

⁵⁰ *E.g.*, *Seclusion Rooms: A Controversial but Legal Last Resort for Schools*, Fox10TV (South Carolina), Sept. 17, 2015 (door held shut), Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASH POST, Jan. 19, 2015 (desk blocked door shut, trapping 7 year old inside room); Ken Kalthoff, *Strong Reaction to Reports of Mansfield School Discipline Room*, NBCDFW.COM, Apr. 16, 2014 (door held shut); Joel Moreno, *Mom: School Used ‘Isolation Room’ to Punish Special-Needs Child*, KOMO NEWS, Apr. 23, 2013 (wooden barricade blocked door to prevent young children from leaving); GAO REPORT at 13 (door held shut; child’s hands blistered as he tried to escape); NATIONAL DISABILITY RIGHTS NETWORK, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (numerous examples throughout of doors held shut or blocked by equipment or furniture); DISABILITY RIGHTS CALIFORNIA, *RESTRAINT & SECLUSION IN CALIFORNIA SCHOOLS: A FAILING GRADE* (June 2007) at 12 (classroom table with aide sitting on it blocked door; child believed hallway was locked.)

minutes a day because she was noisy at nap time.⁵¹ A California 7 year old with developmental delays who could not speak was allegedly placed in a makeshift seclusion space with two child gates locking her in, one on top of the other, creating a cage-like area.⁵²

Yet, two states by statute or regulation define seclusion only as locking a child in a room: Alabama and Florida.

Unless otherwise stated, this report uses “seclusion” to mean a room or space from which a child is prevented from exiting, as this by far represents the majority view among the states.

States and districts occasionally use other word for seclusion rooms, including “isolation,” “exclusion,” and “quiet room.” This report focuses on the room’s function, rather than its name. For example, Wyoming bans what it calls “locked seclusion,” while permitting limited use of “isolation,” an unlocked room from which a child is prevented from exiting. Such a room would be considered seclusion in other states, and this report analyses it that way.⁵³

Like restraint, seclusion is dangerous. Students in seclusion have died, been injured, and traumatized. In 2004, an Atlanta 13 year old, Jonathan King, hung himself in a seclusion room, dying as a school staff member sat outside, monitoring him by listening for him to be quiet.⁵⁴ In 2011, the National Disability Rights Network reported that a child attempted suicide in seclusion. He had been repeatedly secluded, and denied access to the bathroom. Forced to urinate on the floor, he was secluded again as a consequence. Unobserved, he allegedly attempted suicide by hanging.⁵⁵ A Kentucky child locked in a closet-sized room dug through the walls far enough to reach the dry wall in 2014.⁵⁶ A Minnesota child who “acted out” was put in seclusion where she severed a finger, according to a 2013 Minneapolis Star Tribune report.⁵⁷ A Virginia 10 year old with autism suffered broken hand and foot bones when forced into a concrete block seclusion room. His school relied upon seclusion. He attended it because his military father had been transferred to the area.⁵⁸

⁵¹ Alia Wong, Hawaii Lawmakers Mull Clearer Rules for Schools with Uncontrollable Kids, HONOLULU CIVIL BEAT, Feb. 20, 2014.

⁵² Angela Greenwood, Mother Claims Special Needs Daughter was Caged in Fresno Classroom, YOURCENTRALVALLEY.COM (KSEE24), Nov. 12, 2014; Fresno Mom Alleges Teacher Put Her 7-Year-Old Special Ed Daughter in a “Cage,” CBS BAY AREA, Nov. 8, 2014.

⁵³ Some schools even use the term “time out” for rooms a child is confined in and unable to exit. See Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007 (7 year old girl locked alone in concrete block room called “time out” for hours on regular basis). These differ from what are ordinarily called “time out” spaces—rooms in which a child goes to calm down in which he/she is physically capable of leaving. Staff is usually present and supervising. See, e.g., Utah State Office of Educ., SPECIAL EDUCATION LEAST RESTRICTIVE BEHAVIOR INTERVENTIONS TECHNICAL ASSISTANCE MANUAL 59, 108-09 (Sept. 2015). Thus, this report focuses on the room’s function, rather than its label.

⁵⁴ Alan Judd, *Death Highlights Lack of Regulat. at Psycho-Educ. Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

⁵⁵ National Disability Rights Network, *School Is Not Supposed to Hurt* (2012) at 11.

⁵⁶ Mother Claims Autistic Son ‘Clawed, Scratched Through Drywall’ After Staff Forced Him into Small Room, WAVE3 News, Sept. 3, 2014.

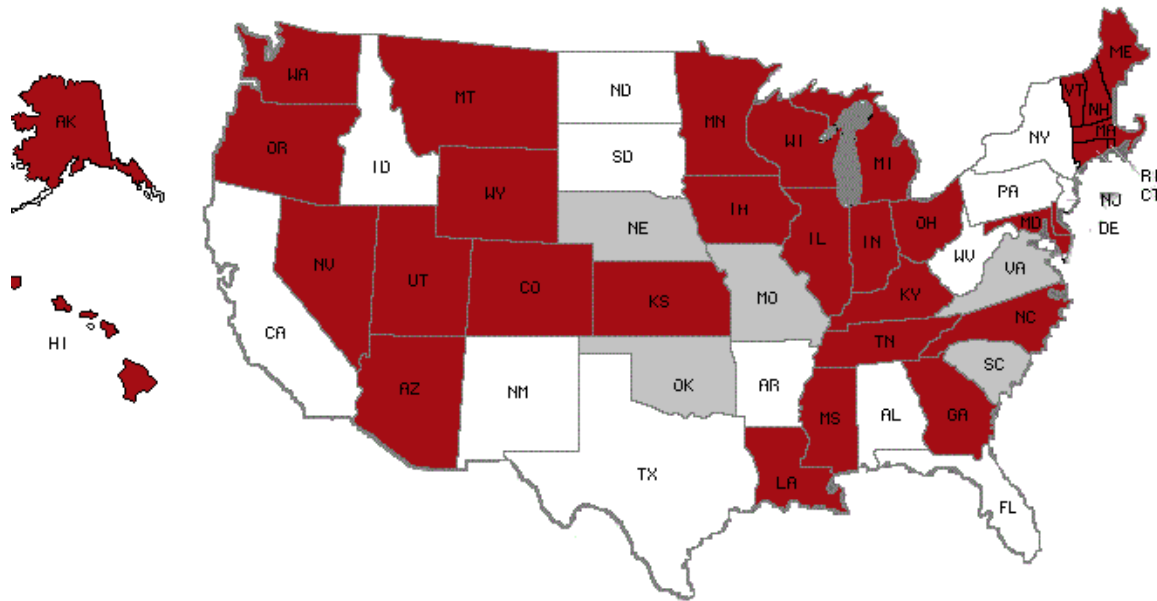
⁵⁷ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discip. in Minn.*, MINNEAPOLIS STAR TRIB., Apr. 28, 2013.

⁵⁸ Gabriella Souza, *VA. Bills Would Regulate Restraint in Schools*, VIRGINIAN-PILOT, Feb. 17, 2015; Author’s

Temporary, brief time outs in a space a child can physically leave differ from seclusion. Time out is a recognized behavior management technique. The child is not locked in the room and the door is not physically obstructed. Staff are often present to work with the child. Moving a child to another space may eliminate reinforcement for challenging behaviors that were present in the classroom. Such a move can also serve other functions to manage behaviors. Likewise, a time out in a quiet space with materials appropriate for calming (such as music and bean bag chairs) may be needed respite for some children with disabilities and even some children without disabilities. This, too, can calm a child. But dangerous isolation in a room where the door is locked or blocked closed is not time out. It is seclusion, and it poses the dangers of death, injury, and psychological trauma described above.

communication with Heather Luke, mother.

Map 5: 38 States Would Define Seclusion as Rooms/Spaces Child Cannot Exit
(December 31, 2016)



Red (darker): By law, seclusion is defined as rooms/spaces child prevented from exiting
Gray (lighter): By voluntary principles/guidance, state suggests defining seclusion as rooms/spaces child is prevented from exiting
Please see text for discussion of Massachusetts.

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C. State Limits on Seclusion

1. Why Prevent Seclusion?

Children have been secluded in locked closets and unlocked rooms with doors blocked by furniture, equipment, or staff. Seclusion is used for non-emergencies and is continued long after any emergency has ended. A New York child was secluded alone 75 times in 6 months for whistling, slouching, and hand waving. The staff held the unlocked door shut; the child's hands blistered as he tried to escape.⁵⁹ A 2015 report from the Connecticut Child Advocate report told of children secluded for not doing work and one, for repeatedly insisting he had won a board game he had actually lost.⁶⁰

In Kentucky, one child was secluded in a closet because he did not put things away fast enough; another, because staff believed she would not do well baking cookies, the classroom activity.⁶¹ In Ohio, an investigation found that only 4 of 42 incidents of seclusion at a Youngstown school involved any threats of physical danger. Other children were secluded for turning off music and pouting.⁶² In 2014, a Syracuse boy with ADHD was confined in a poorly ventilated, barren concrete closet-sized room for "acting out," causing him to vomit. The room locked only from the outside.⁶³ In early 2015, the Connecticut State Child Advocate reported about several children. One student with a disability was put in an isolated seclusion room several times a day because he did not say hello. His IEP allowed seclusion for non-compliance.⁶⁴

There are numerous reports of children confined in closets and seclusion rooms being denied food, water, and the restroom.⁶⁵ Students have been forcibly restrained and dragged into

⁵⁹ GAO Report at 13.

⁶⁰ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 12* (Office of the Child Advocate Feb. 2015).

⁶¹ Kentucky Protection & Advocacy and the Commonwealth Council on Developmental Disabilities, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

⁶² Molly Bloom and Jennifer Smith Richards, *Education: Isolation Chambers*, STATE IMPACT OHIO & COLUMBUS DISPATCH, August 5, 2012.

⁶³ Paul Riede, *Two Administrators, Teaching Assistant at Syracuse School Put on Leave after Discipline Complaint*, SYRACUSE.COM (SYRACUSE POST-STANDARD), June 24, 2014; Jacob Pucci, *Inside Syracuse School's Illegal Timeout Room: Kid, 9, Sent to 'Elevator Machine Room'*, SYRACUSE.COM, Oct. 2, 2014.

⁶⁴ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* (Office of the Child Advocate Feb. 2015).

⁶⁵ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discipline in Minnesota*, MINNEAPOLIS STAR TRIBUNE, Apr. 28, 2013; Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012 (child allegedly spent hours in seclusion room where he had contact with his own urine and developed an infection); *CN v. Willmar Pub. School*, 591 F.3d 624 (8th Cir.2010) (child denied access to restroom); *SCHOOL IS NOT SUPPOSED TO HURT* (2009) at 15-20; Council for Children with Behavioral Disorders, Council for Exceptional Children, *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009).

seclusion rooms.⁶⁶ A 2013 investigation by Alaska Disability Law Center (P&A) found that 60 students at a single elementary school were secluded for almost 42 cumulative school days.⁶⁷ A North Dakota girl spent half of a year in a seclusion room, according to a North Dakota Protection and Advocacy Report.⁶⁸

2. States Banning or Restricting Seclusion Generally

States limit seclusion in different ways. Some states limit seclusion by restricting the use of rooms that are locked or have obstructed exits, or imposing other restrictions on the room itself. Other states limit seclusion based on the reason for which the child is secluded.

⁶⁶ SCHOOL IS NOT SUPPOSED TO HURT (2009) (passim); Boy Tells Lawmakers He Was Forced into 'Seclusion Room', KATU (Oregon), Oct. 30, 2013; Disability Law Center of Alaska, NO TIME FOR LEARNING 4 (Aug. 2013).

⁶⁷ Disability Law Center of Alaska, NO TIME FOR LEARNING 4 (Aug. 2013).

⁶⁸ Blair Emerson, State Delves into Issues of Restraint, Seclusion in Schools, BISMARCK TRIBUNE, Apr. 26, 2016.

There are 18 states that by law ban seclusion of children with disabilities in some way without regard to why they are secluded. Given the perils of seclusion, a prohibition can be an important protection for children. These states are divided into two groups.

First, 5 states ban all seclusion for children with disabilities. They are Georgia, Hawaii, Nevada^d, Pennsylvania^d, and Texas^d. Georgia and Hawaii prohibit it for all children.

A second group of 13 states forbid all or most forms of locked seclusion in their seclusion rules. Of these, 10 ban it in their statutes and regulations for all children; 13, for children with disabilities: Alabama, Arkansas^d, Kentucky, Maine, Montana^d (except in certain residential treatment facilities), Michigan (2016), Mississippi (2016), New York^d, Ohio, Utah (2015), Wisconsin, and Wyoming. New Mexico is included here, too. It has only seclusion guidelines, but they point out that locked seclusion is a fire code violation in the state. In addition, Washington, D.C. urges eliminating locks in its nonbinding materials. The states in this second group would exclude from their bans seclusion by blocking or obstructing the doors.⁶⁹ It is important to note that some of these states would, however, partially ban seclusion based on its purpose (i.e., those forbidding all seclusion except that threatening physical danger). Purpose-based limitations are discussed below.

A number of state laws ban seclusion in some form: 18 for children with disabilities, 12 for all children. These include 5 that ban all seclusion for students with disabilities. Still other states may ban locked rooms in their fire or building safety codes.

Oregon is in its own category, banning free-standing seclusion cells or booths, and permitting seclusion for emergencies threatening physical danger (discussed below).

In 2013, Delaware banned seclusion unless the state Department of Education granted a child-specific waiver based on “compelling justifications.” The law and subsequent regulations imposed no limitations. Nevertheless, Delaware used its state supervisory process to require a threat of significant physical harm, and appropriate supporting documentation, as part of the waiver process. The waiver form also requires proof that proper positive behavioral supports, functional behavioral analyses, and de-escalation were used to prevent the behaviors involved. This is a very significant change from the situation in 2014-15, when Delaware had no limits whatsoever on the use of seclusion, other than the “compelling justification” language.

Massachusetts adopted a new regulation in 2014 that appears to ban seclusion. But the regulation exempts from the definition of seclusion rooms those rooms used for “calming.” This can mean that children who are upset or crying, but threatening no one, could be effectively secluded—put in rooms with locked/blocked doors which they cannot physically exit. The state’s

⁶⁹ California is not included in this group. California’s law forbids locked seclusion in emergencies unless the state has otherwise licensed a facility to use locked rooms. But, due to a wording loophole, California’s law is silent about locked seclusion for non-emergencies (i.e., predictable events threatening serious physical harm or events that do not threaten serious physical harm). See footnote [43](#) and accompanying text.

2015 guidance indicates that if the child is prevented from opening the door, but there is staff immediately outside the room, the child is in permissible “exclusionary time out.” Massachusetts does require staff to be with the child or immediately available, a large improvement from the prior regulation, which simply required some “access” to staff. Very importantly, the regulation requires the room to be appropriate for calming, suggesting that closets, rooms with barren concrete walls, and separate tiny cells are forbidden. The need for the room to be a calming space is also emphasized in the 2015 guidance. Still, schools and parents should be aware of potential misuse, given the way in which the regulation is worded.

3. Requiring Locks to Automatically Disengage; Other Fire and Building Code Requirements & Seclusion

While not a ban on seclusion, 7 states permit locked seclusion only if the door can automatically open, either through an emergency alarm system or when a person stops holding the lock. They are Illinois, Iowa, Florida^d (fire code referenced), Kansas (2015), New Hampshire, Minnesota^d, and South Carolina (fire code referenced). In December 2016, Michigan banned both locked seclusion and blocking the door in a way that a child could not exit if staff were incapacitated. This would allow staff to hold a door closed, but would not allow obstructing the door with furniture or equipment so a child could not leave if staff were incapacitated.

Locked and blocked doors are very dangerous in fires, tornados, earthquakes, and similar events. Death and injury have occurred in building fires (school and non-school) with blocked exits or other exit problems.⁷⁰ Tornados and earthquakes also present hazards nationwide; and can occur without warning. School buildings have been damaged severely during these kinds of civil emergencies.⁷¹

Fire codes should, of course, apply to any seclusion room. Fire codes were created and are regularly updated and improved to prevent dangerous situations that occur when people cannot easily exit a building. Many fire and building codes require a “a continuous and unobstructed path” of “egress travel from any occupied portion of a building.”⁷² Seclusion rules and policies

⁷⁰ E.g., *Triangle Shirtwaist Factory Fire Victims Remembered*, NY1 NEWS, Mar. 25, 2014; John LaPlace & Ed Anderson, *29 Killed in Quarter Blaze*, NEW ORLEANS TIMES-PICAYUNE, June 25, 1973 (Upstairs Lounge Fire); Bernie Augustine, *The Station Nightclub Fire 10 Years Later*, NY DAILY NEWS, Feb. 21, 1983; *Tragedy at Our Lady of Angels School*, Chicago Tribune, 1958.

⁷¹ *Earthquake Fast Facts*, Federal Emerg. Mgt. Agency, <https://www.fema.gov/earthquake/earthquake-fast-facts>; American Red Cross, *Earthquake Preparedness* (45 five states and territories in the United States are at moderate to very high risk of earthquakes); Roger Edwards, NATIONAL WEATHER SERVICE, STORM PREDICTION CENTER, <http://www.spc.noaa.gov/faq/tornado/safety.html>; Bob Downing, *Brunswick Tornado Reminds not all Ohio Twisters Will Come with Weather Warnings*, AKRON BEACON JOURNAL, Ohio.com, June 25, 2014 (26% of U.S. tornados between 2000 and 2004 struck without warning). Tornados have destroyed schools. See Kelly Eckerman, *Schools Shift Strategies in Severe Weather Safety*, KMBC.COM, Mar. 3, 2015 (schools destroyed in Joplin, MO and Moore, OK); *Tornado-Damaged Shields Elementary Reopens*, FOX4 NEWS, Aug. 22, 2016 (Texas school severely damaged).

⁷² Ronald Green, MEANS OF EGRESS, THE CODE CORNER, RLGA Technical Services, No. 10, May 2005. Such codes

should be examined to ensure they follow state and municipal fire codes. Improvised seclusion cells or rooms built without following the state building code pose additional dangers. They have the same problems with doors that do not open in an emergency. They also likely do not comply with fire code requirements for sprinklers and less flammable building materials, and may have walls that could not survive an impact appropriately. Of course, doors that automatically open in emergencies do not eliminate seclusion's physical dangers or psychological risks. Yet, meeting fire and building codes is important when seclusion rooms are used.

Difficulties may occur when seclusion laws and guidelines are silent about fire, safety, and building codes. Unknowledgeable staff or parents may believe students can be put in locked or blocked rooms, closets, etc.⁷³ If the codes are not applied, or if parents cannot easily seek enforcement, the codes may not provide sufficient protection from fire and similar dangers in seclusion rooms. States have reacted to this by including explicit references to fire and building codes in their restraint and seclusion laws.

4. Do States Prohibit Seclusion in Non-Emergencies?

Some states respond to the risks of seclusion by limiting the circumstances under which it can be used. Increasingly, states either ban all seclusion or, more commonly, prohibit it unless it is necessary to resolve an emergency threatening imminent physical harm. These states view using isolated seclusion as the wrong response to a child who pouts, claims to have won a game he did not, does not like baking cookies, has a tantrum, acts out, breaks a pencil, or tears a book. Challenging, non-threatening behaviors are best addressed through evidence-based positive and preventative supports.

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

⁷³ For an excellent discussion of the effect that fire, building, and other safety codes may have on seclusion rooms, see SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2012). A building with more than five seclusion rooms may be considered a jail in South Carolina. In addition to the states with laws on this issue, Nebraska suggests that doors automatically unlock in their voluntary models, but do not require it.

▪ Forbidding Non-Emergency Seclusion

Today, 19 states by statute or regulation protect all children from non-emergency seclusion. Georgia and Hawaii forbid all seclusion. Another 17 states forbid seclusion except when there is a threat of physical danger: Alaska, Arizona (2015), Connecticut (2015), Colorado, Indiana, Kansas (2015), Kentucky, Maine, Michigan (2016), Mississippi (2016), New Hampshire, Ohio, Oregon, Utah (2015), Vermont, Wisconsin, and Wyoming. Virginia adopted a statute in March 2015 that would require regulations limiting seclusion to emergencies threatening serious physical harm. Those regulations have not yet been adopted.

19 states protect all children from non-emergency seclusion; 25, children with disabilities. The rest allow seclusion even if no one is at risk of danger.

There are 25 state laws that ban non-emergency seclusion for students with disabilities. Of these, 5 ban all forms of seclusion: Georgia, Hawaii, Nevada^d, Pennsylvania^d, and Texas^d). There are 20 that limit seclusion to threats of imminent physical danger: Alaska, Arizona (2015), Connecticut (2015), Colorado, Indiana, Kansas, Kentucky, Louisiana^d (“substantial” physical harm), Maine, Minnesota^d, Michigan (2016), Mississippi (2016) (serious physical harm), New Hampshire, Ohio, Oregon (“serious” physical harm), Tennessee^d, Utah (2015), Vermont, Wisconsin, and Wyoming. A number of these states acted to improve their laws in the last few years, replacing prior weaker laws.

Kansas’ 2015 statute allows seclusion only if there is a threat of imminent physical danger, including “violent action that is destructive of property.” Violence as used in the statute includes a threat of physical danger. This was a change from Kansas’ prior regulations.

Delaware and Massachusetts are not included in this category. Still, Delaware has taken significant action to limit the use of seclusion. Delaware’s 2013 statute and a later regulation ban seclusion but permit the state department of education to grant child-specific waivers for “compelling justifications.” In 2016, Delaware’s Department of Education published the waiver form. It requires a threat of significant physical danger, supporting documentation, and requires the school to have used less restrictive methods, particularly evidence-based behavioral interventions to prevent the behavior. Delaware’s waiver form does much more than the statute did to protect children from dangerous seclusion. But it is neither statute nor regulation. statutes require majority votes in a legislature and governor approval; regulations require a notice and comment process and become formalized, with the effect of law. The waiver form is more easily changed, requiring only Delaware Department of Education action. It also does not give children in seclusion all of the same protections and oversight as children in physical restraint. Massachusetts (2014) appears to permit the use of rooms with locked or blocked doors for purposes of calming a child without regard to whether there is any physical danger, as discussed in the prior section.

Out of an abundance of caution, Florida was removed from this category in January 2014. At

most, Florida^d may have implicitly intended to forbid seclusion absent physical harm, as it requires that incident reports identify a threat of physical harm. But the law does not explicitly require such a threat to exist before seclusion is employed. This is discussed in more detail in [footnote 37](#) and the accompanying text.

Yet, many states still allow non-emergency seclusion, exposing children to danger. The next two sections examine these states.

▪ Seclusion Allowed for Non-Emergencies

Although many states prohibit the use of non-emergency seclusion, other states have not yet reached this level.

In 16 states, laws allow non-emergency seclusion either explicitly or through a weakness in their state law. They are Arkansas^d, California^d, Delaware, Alabama, Illinois, Iowa, Maryland, Massachusetts, Missouri, Montana^d, New Mexico, New York^d, North Carolina, Rhode Island, Washington (2015 statute), and West Virginia. New Hampshire, Connecticut, and Arizona were removed from this category when they strengthened their laws in 2014-15.

There are 7 states that explicitly permit non-emergency seclusion.

First, Washington (2015) allows seclusion for threats of physical harm or for behaviors that in the past have evidenced substantial destruction of property. Washington made a significant improvement over its prior law, which permitted seclusion for all kinds of things, including modifying behaviors (even if a manifestation of a child's disability, like a tic, hand flapping, or inability to sit still), or if there was disruptive behavior (including a tantrum or being unable to remain in one's seat). The new law does limit the use of seclusion for destruction of property, requiring evidence of prior substantial destruction as a result of the behavior. Breaking a pencil or throwing a book will not suffice. Still, the law does not limit seclusion to emergencies threatening physical danger.

Second, 5 states allow seclusion for threats of physical harm, destruction of property, or educational disruption: Arkansas^d (but limiting seclusion to severe occurrences), Iowa, Montana^d, New York^d, and Illinois.⁷⁴ Third, North Carolina permits seclusion for threats of physical harm, property destruction, educational disruption, or as stated in the IEP or BIP (which can be for any reason). Most states that have taken action have moved away from such broad laws, because seclusion poses great risk to children and because the isolation can escalate challenging behaviors, rather than prevent them.⁷⁵

⁷⁴ Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

⁷⁵ There are those who seek to allow seclusion more broadly with a parent consent. But many times, parents give consent without fully understanding what they agreed to, particularly if the rooms are described as simple time

Another 10 state laws have weaknesses that permit non-emergency seclusion, even if unintended.

California^d has such a loophole. Its law explicitly bans seclusion in “emergency” situations. These are defined as spontaneous, unpredictable events posing an imminent threat of serious physical harm. But California does not regulate seclusion in non-emergencies, meaning the behavior is predictable (often true with children with autism or intellectual disabilities) or does not threaten serious physical harm.⁷⁶

There are 6 states that forbid seclusion if the door locks but place no limits on obstructing the door with furniture, equipment, or staff: Alabama, Arkansas^d, Missouri (forbidding locked solitary seclusion except when awaiting law enforcement personnel, but not otherwise limiting seclusion); Montana^d, New Mexico (fire code violation for door to lock), and New York^d. Many children are not able to push open doors held shut with a weight, particularly those with disabilities, younger children, or those without the physical strength to do so.

Two states seem to allow some forms of seclusion without regulation. West Virginia forbids seclusion only when children are “unsupervised.” It does not otherwise regulate “supervised” seclusion. This means a child could be put in a seclusion room with supervision for any reason (breaking a pencil, behavior modification, having a tantrum, staff convenience, etc.) with no other limits. Rhode Island’s regulation contains at least two conflicting provisions, both of which allow unregulated seclusion. One section prohibits seclusion unless the child is observed and the seclusion is documented as part of the child’s Behavior Intervention Plan. As long as these two conditions are met, seclusion can be used for any reason, without limitation. Thus, a child could be put in seclusion for failing to say hello, speaking too loudly or making noise, playing around, or similar reasons. (Positive and preventative supports are the proper, and more effective, responses to such behavior). Another section prohibits confining a child alone in a room unless a child has “access” to school staff. Because access is undefined, it could allow seclusion as long as staff are within shouting distance. Massachusetts and New Hampshire recently eliminated a similar provision.

One state, Maryland, permits seclusion for threats of serious physical harm or as stated in the IEP/BIP, which may allow it for any reason. Maryland has taken strong steps to define serious physical harm as serious bodily injury.

Massachusetts’ situation is nuanced, and appears to allow what is normally understood as

out. See Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007 (highly-educated parents unaware that time out room meant hours in a locked concrete-block room, with the child unable to leave unless she maintained a specific yoga position for a required length of time); UNSAFE IN THE SCHOOLHOUSE (COPAA 2009) at 4 and Appendix (describing other parent stories about consent).

⁷⁶ See CAL. ED. CODE §§ 56520-56525; Communication with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012 and reconfirmed May 2015).

seclusion for the purpose of calming a child, as previously discussed. Still, the 2014 regulation is a very significant improvement over the prior one. Delaware law bans seclusion for most students but permits it under child-specific waivers. Delaware's Department of Education has created a waiver form allowing seclusion only for behavior that threatens significant physical harm, with supporting documentation, and evidence that positive and preventative supports have been implemented. Children in seclusion under the waiver do not have the same protections as students who are physically restrained in Delaware. Still, these situations are quite different from states that broadly allow seclusion and should be recognized for their efforts.

Before 2015, Connecticut allowed seclusion for emergencies threatening physical danger or for any reason when included in the child's IEP. When problems with one school's use of seclusion emerged, a school superintendent tried to calm parents by telling them that seclusion was part of children's daily plans only if seclusion was in their IEP. He suggested that problems with overuse of seclusion could be resolved by moving the rooms to part of the school where other students would not overhear children in the rooms.⁷⁷

When seclusion is limited to emergency situations, staff do not think of it as an ordinary practice. Instead, they limit its use. Cyndi Pitonyak, a Virginia educator, testified that in her district, children with disabilities are included in regular education like other children, and made part of the fabric of the school. In this environment, restraint and seclusion are seen by teachers as "shocking" in classroom daily life.⁷⁸

■ States Lacking Any Legal Protections from Seclusion

There are 11 states that lack meaningful mandatory protections from seclusion for children with disabilities, 20, for children without disabilities.

There are 7 states with some sort of nonbinding guidelines. First, 5 states have voluntary guidance urging that seclusion only be used for threats of physical danger for children with disabilities: Nebraska, South Carolina, Virginia, Washington, D.C., and Oklahoma^d. Four of these make the same suggestion for students without disabilities. As previously noted, Virginia adopted a statute in March 2015 that requires comprehensive regulations to protect children, but these have not been adopted, leaving only the nonbinding policy in place.

Missouri forbids solitary locked confinement unless awaiting law enforcement personnel, but its

⁷⁷ Shawn R. Beals, *Angry Parents, Scared Students Seek Answers About Farm Hill School 'Scream Rooms,'* HARTFORD COURANT, Jan. 12, 2012. The following year, the school superintendent told NBC that the staff had been "completely retrained" and school policies, reevaluated. Sabina Kuriakose, *School Learns Lessons After "Scream Room" Investigation*, NBC CONNECTICUT, Nov. 19, 2013.

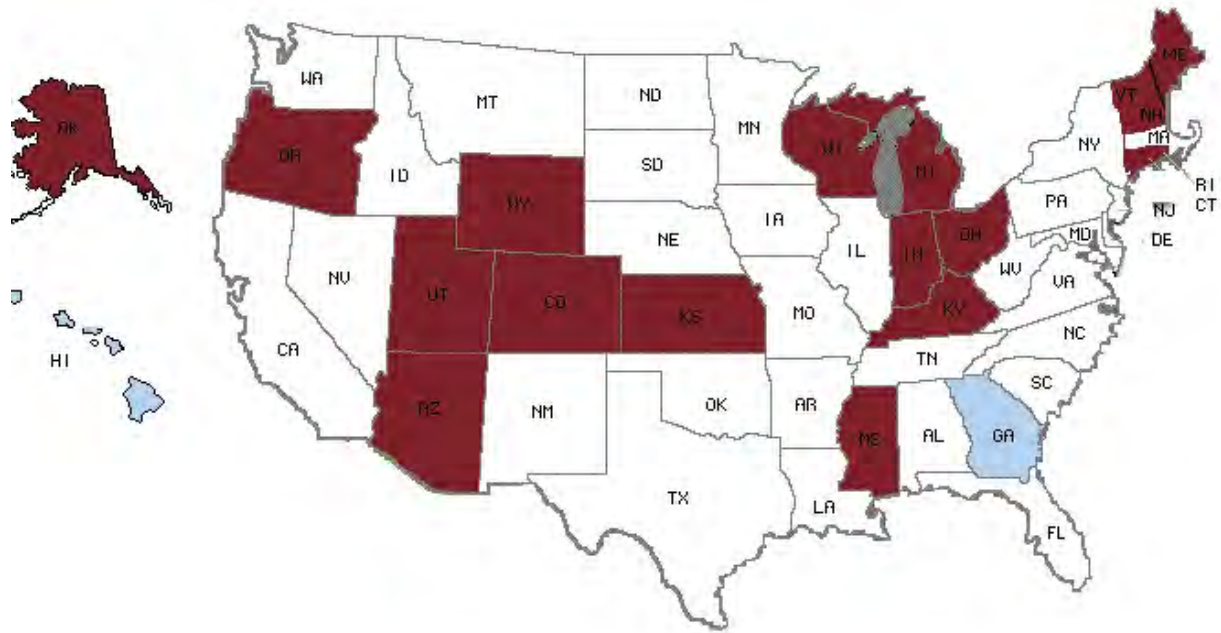
⁷⁸ Beyond Seclusion and Restraint: Creating Positive Learning Environments for All Students, Hearings before the Senate Comm. on Health, Education, Labor, and Pensions, 112th Congress (2012) (testimony of Cyndi Pitonyak).

law is silent on other forms of seclusion (*e.g.*, seclusion in a room where the door is blocked or obstructed). In these situations, Missouri has nonbinding, voluntary guidelines recommending that seclusion be allowed for threats of physical harm, destruction of property, or as stated in the IEP (which can be for any reason). Finally, New Mexico's non-binding guidelines endorse use of seclusion as a behavior modification technique.

In addition, 9 states protecting students with disabilities offer no protections for those without disabilities in the same schoolhouse: California^d, Florida^d, Louisiana^d, Minnesota^d, Nevada^d, New York^d, Pennsylvania^d, Tennessee^d, and Texas^d. (Connecticut is no longer in this category due to a new 2015 law covering all children.) Yet, data shows that students without disabilities are secluded.

There are 4 states that have nothing: Idaho, New Jersey, North Dakota, and South Dakota.

Map 8: States that Ban Seclusion and States that Restrict it to Emergencies Threatening Physical Harm: For All Children (December 31, 2016)

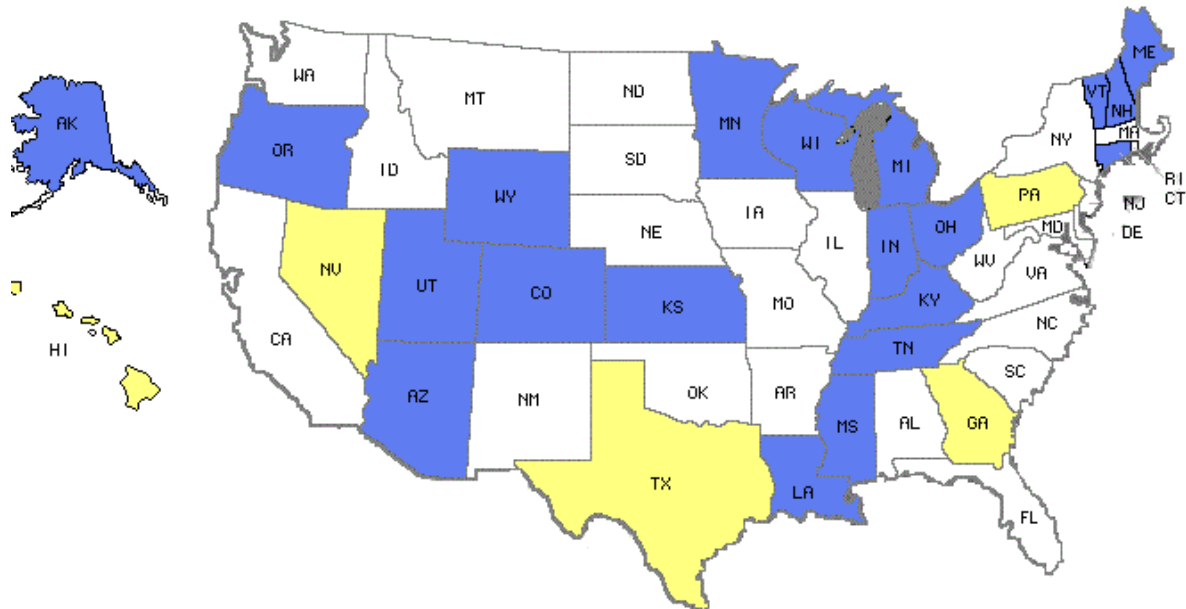


Blue (light): Seclusion banned for all children.

Dark Red (Dark): Seclusion limited to emergency threats of physical danger for all children.

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Map 9: States Banning Seclusion or Limiting Seclusion to Emergency Threats of Physical Harm: For Children with Disabilities (December 31, 2016)



Yellow (light): Seclusion banned for children with disabilities.

Purple (Dark): Seclusion limited to emergency threats of physical danger for all children.

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D. States Explicitly Forbidding Use for Punishment and Discipline

At least 29 states have statutes/regulations stating affirmatively that seclusion/restraint cannot be used to discipline or punish children. They include Alaska, Alabama, Arizona (2015), California^d, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Utah (2015), Vermont, West Virginia, and Wyoming. Some also explicitly state that the practices are not a substitute for educational programming. Other states forbid using seclusion and restraint for discipline or punishment by limiting them to threats of physical harm or banning seclusion entirely. Virginia's new statute requires regulations consistent with this requirement, but until the regulations are written and adopted, students will not have this protection.

E. Steps States Take to Ensure Restraint and Seclusion are Used Only in Emergencies

1. Evidence-Based Preventative Supports Reduce Challenging Behaviors

Restraint and seclusion expose children to danger, and can escalate difficult behaviors, worsening the situation and interfering with the learning process. Research shows that preventative interventions, conflict resolution, and de-escalation often resolve challenging situations and help prevent the use of seclusion and restraint. These supports keep everyone safer and make classrooms more conducive to learning.⁷⁹

According to testimony by Daniel Crimmins, Director, Center for Leadership in Disability at Georgia State University, positive supports and interventions, de-escalation, conflict management, and other positive strategies can virtually eliminate use of restraint and seclusion. Behaviors that could result in restraint are "quite predictable," and can be avoided when staff performs functional assessments, understand what triggers the behaviors, and build supports and de-escalation techniques that prevent situations from becoming dangerous.⁸⁰

⁷⁹ KEVIN ANN HUCKSHORN, SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL (National Association of State Mental Health Program Directors 2005). See also H.R. REP. NO. 111-417 at 20-21.

⁸⁰ *Senate Hearings* (testimony of Daniel Crimmins).

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

In one Virginia district, using preventative support programs cut crisis-level behaviors by 78%. Restraint and seclusion are rare. Schools use easily accessible evidence-based methods designed for busy school professionals.

Similarly, the Centennial School in Lehigh, Pennsylvania implemented a school-wide positive behavioral support program in 1998, according to Director Michael George. In 1997-98, there were 1,064 incidents of restraint (often intensive, dangerous basket holds and prone restraint). The two seclusion rooms were continually occupied. After 6 months of the positive behavioral support program, the number of physical restraints fell by 69% to 327. There were no restraints in the final 20 days of the year at Centennial. Time in seclusion fell by 77%, and the two time-out rooms became a school store and supply closet. In 2012, there were only 3 very brief uses of physical restraints. Through doing this, the school cut its costs substantially.⁸²

Preventative behavioral supports have reduced and eliminated restraint and seclusion in schools and facilities in Pennsylvania, Virginia, and Texas, among others. This has resulted in substantial costs savings and more time spent learning.

When the Texas Department of Juvenile Justice implemented a strong positive behavioral support program in its secured schools, disciplinary referrals fell substantially; average daily attendance and academic performance increased; and physical and mechanical restraint incidents fell to their lowest level in 4 years, according to a 2012 report.⁸³

⁸¹ *Senate Hearings* (testimony of Cyndi Pitonyak).

⁸² *Senate Hearings* (testimony of Michael George).

⁸³ Texas Juvenile Justice Dept., *Effectiveness of Positive Behav. Supp.*, Report to Texas Legislature, 2012.

Mental health treatment centers report results that are much the same. Virginia Treatment Center for Children is a hospital that switched to Collaborative Problem Solving to deescalate and prevent challenging situations. As of 2009, VTC was seclusion and restraint free, and workers' compensation claims dropped from \$530,000 to \$15,000, according to testimony to the COY from Dr. Bela Sood, Professor, Psychiatry and Pediatrics, VCUHS. If a hospital program can have such success, so can a school, which confronts much less difficult situations.⁸⁴ Indeed, evidence shows that when hospitals and other residential programs cut their restraint and seclusion use and turned their resources to training and using preventative methods, they achieved substantial cost reductions from decreasing staff turnover, staff injuries, worker's compensation, and other similar expenses.⁸⁵

Anecdotal evidence is also similar. A 10 year old Virginia student with autism was forced into a seclusion room so roughly that his hand and foot bones were broken. His military family has since moved to Maryland. His new school has used "research-based interventions" to virtually extinguish his aggression, his mother, Heather Luke, has testified to the Virginia General Assembly.⁸⁶

The Connecticut Office of the Child Advocate concluded in 2015, "Reducing restraint and seclusion requires that all children benefit from skilled instruction, with attention not only to academics but also to social-emotional learning and positive behavioral supports."⁸⁷

2. State Laws Requiring Preventative Methods and De-Escalation, Keeping Restraint and Seclusion as Last Resort

A number of states have laws that allow restraint or seclusion only as a last resort to be used only if these less-restrictive preventative methods fail or would be ineffective to stop the threatened danger.

⁸⁴ Statement of Dr. Aradhana Bela Sood, Child Mental Health Policy Professor, Psychiatry and Pediatrics, Statement for Commission on Youth Seclusion and Restraints in Schools to Virginia Commission on Youth, 2014.

⁸⁵ Janice LaBel for the Substance Abuse and Mental Health Services Admin., *THE BUSINESS CASE FOR PREVENTING AND REDUCING RESTRAINT AND SECLUSION USE* (2011).

⁸⁶ Rachel Weiner, *Virginia Lawmakers Move to Regulate School Seclusion and Restraint*, WASH POST, Jan. 19, 2015; Gabriella Souza, VA. *Bills Would Regulate Restraint in Schools*, VIRGINIAN-PILOT, Feb. 17, 2015. In an earlier Utah case, a child was restrained for smearing fecal matter and banging his head. A functional behavioral assessment found that if he could receive hugs and other forms of physical contact, he would not seek out restraint by injuring himself, according to Denise Marshall of COPAA. Mark Sherman, *Case Study Shows Importance of FBA*, SPECIAL ED. CONNECTIONS (LRP), July 15, 2008.

⁸⁷ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION* (Office of the Child Advocate Feb. 2015).

For children with disabilities, 28 state laws require that schools first try preventative interventions or that those interventions be deemed ineffective before restraint is used; 23 require this for all children. They are Alabama, Alaska, Arizona (2015), California^d, Connecticut (2015 statute revision), Colorado, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Vermont, and Wisconsin.

Over half of all states require that less dangerous preventative supports fail or be ineffective, before teachers use restraint and seclusion on children with disabilities.

There are 27 states that apply this rule to seclusion for children with disabilities, 22, for all children: Alabama, Alaska, Arizona (2015), California^d, Connecticut (2015 statute revision adding protection for seclusion), Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Vermont, and Wisconsin. For seclusion, Delaware does not have this requirement. Delaware's 2016 waiver form does require documentation that the school is implementing positive and preventative supports and the child has a Behavioral Intervention Plan as part of seeking the waiver. But the waiver form does not specifically require that less restrictive measures be considered or used before seclusion is used. Still, Delaware's including positive and preventative supports is a very real improvement over the requirements in the state law.

Montana lacks a last resort requirements, as it requires less harmful methods to have been tried, but not necessarily to have been ineffective before restraint and seclusion are used.

Of the remaining states without mandatory requirements, 5 recommend less restrictive practices be tried first in their voluntary guidance for all children, and 7, for children with disabilities: Arkansas (restraint 2014), Missouri, New Mexico (restraint only)^d, Oklahoma^d, South Carolina, Virginia, and Washington, D.C. Virginia's forthcoming regulations should incorporate this provision under the state's new statutory standards, but until the regulations are promulgated, students will not have this protection.

3. States Requiring Restraint and Seclusion to End When the Emergency Ends

Restraint and seclusion are emergency practices, designed to protect self or others from harm. When the emergency ends, restraint or seclusion should end. Instead, children have allegedly been ordered to maintain specific still positions for several minutes, show a happy face, be quiet, write apology letters or thought sheets, or other similar tasks to end seclusion and restraint.⁸⁸ Children with autism, intellectual disabilities, and other disabilities may threaten no one but be unable to follow the commands or do these tasks under pressure or when upset. They appear entirely unrelated to safety.

A 7 year old with disabilities was initially sent to seclusion for gurgling her milk and talking. She failed to sit still in a specified position for 15 minutes, a condition of ending the seclusion. In reaction, she was placed in prone restraint, where the 67 pound child died.

A 7 year old was killed in prone restraint in a Wisconsin therapeutic day school when she would not sit still in a specified position, a condition of ending seclusion. "Expectations of total body control are not realistic for almost any seven-year-old child, much less one with ADHD and oppositional defiant disorder among her multiple disabilities," concluded Wisconsin's Protection and Advocacy Organization, Disability Rights Wisconsin. Unable to sit in the chair in the proper position, the 67 pound child was forced into prone restraint and died.⁸⁹

There are multiple reports of hours-long and repeated episodes of seclusion⁹⁰ and restraint.⁹¹

⁸⁸ Decision on IDEA Complaint No. 13-002, Northland Pines School Dist., Wisconsin Dept. of Public Instruction, March 11, 2013; Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son "In a Box,"* Fox6Now (Milwaukee), May 15, 2012; Robert Tomsho, *When Discipline Starts a Fight,* WALL ST. J., July 9, 2007.

⁸⁹ Disability Rights Wisconsin, *A Tragic Result of a Failure to Act: The Death of Angellika Arndt* (2008).

⁹⁰ *House Hearings 11-14* (testimony of Ann Gaydos) (child secluded for hours, and later restrained for playing with tooth in seclusion room; another child isolated all day for 19 successive school days); Scott Friedman, *NBC 5 Investigation Reveals Mansfield ISD Schools Used "Recovery Rooms" Hundreds of Times for Troubled Children,* NBCDFW5.Com, Nov.3, 2014 (school policy to place students in seclusion for the remainder of day or even next day); Alan Judd, *Death Highlights Lack of Regulation at Psycho-Educational Schools,* ATLANTA J. CONSTITUTION, July 27, 2009 (child who later killed himself in a seclusion room was secluded for 15 hours over 2 school days; and at other times for over 6 hours for being argumentative or not accepting feedback); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT III* (2012) (passim) (incidents include child who attempted suicide after 4 hours in seclusion); NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim).

⁹¹ GAO Report at 1, 2, 6, 7; Disability Rights Oregon, *Keep School Safe for Everyone: A Report on the Restraint and Seclusion of Children with Disabilities in Oregon's Schools* (2011) at 5 (documenting restraints over 2 hours); Alabama Disabilities Advocacy Program, *Seclusion And Restraint In Alabama Schools* (June 2009) at 2 (child tied to chair for 2.5 hours); Bob Fowler, *Mom Accuses Anderson County School of Restraint,* Knoxville News Sentinel, Sept. 12, 2008 (9 year old, 51 pound child with autism physically restrained by two adults in seclusion room for 3-4 hours); Pamela Brown, *Montgomery County Schools Restraint Policy Examined,* WJLA, Aug. 30, 2012 (40 pound child with

By statute or regulation, 29 states require restraint to end for children with disabilities when there is no longer an emergency, and 24, for all children: Alaska, Alabama, Arizona (2015), California^d, Colorado, Connecticut (2015), Delaware (2013; restraint only), Georgia, Hawaii, Illinois (restraint only), Indiana,⁹² Kansas (2015), Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, Mississippi (2016), Michigan (2016), New Hampshire (2010 and 2014), Nevada^d, Oregon, Rhode Island, Texas^d,⁹³ Vermont, Utah (2015), Washington (2015), Wisconsin, and West Virginia. These numbers have been steadily growing since the first Congressional bill using this standard was introduced in 2009. About half of all states do not by law provide for the ending of restraint and seclusion for children with disabilities; slightly more than half do not for all children.

Many states require restraint and seclusion to end when the emergency ends. Children have been secluded and restrained for hours and even the majority of the day, even though no one is in danger.

For seclusion, the numbers are 23 for all children, 28 for children with disabilities. Ohio is added; Delaware and Illinois, excluded. Delaware is excluded because it bans seclusion but permits it for students without adding this requirement when the state grants a waiver. The waiver form must specify the duration of seclusion. Illinois allows seclusion to continue until 30 minutes after the emergency has ended. (When one considers the length of an average class period, 30 minutes extra is a long time for a child to remain in seclusion, particularly younger children or those with certain disabilities). Ohio does not have this requirement for restraint but does for seclusion. Due to statutory requirements, Virginia should add this provision when it adopts final regulations.

There are 4 states impose additional restrictions. They require the procedure to end when the emergency ends. They also require the overall time to be brief (Indiana); that the child be checked at specific time intervals (Connecticut, 2015), or that the procedures end after specified brief periods (Michigan, 2016, Utah, 2015). These two-part rules can further help ensure that restraint and seclusion are not overused.

On the other end of the spectrum are states allowing restraint and seclusion to go on after the emergency is over. There are 5 states that explicitly allow restraint or seclusion to continue even if there is no longer an emergency: Maryland (seclusion must end within 30 minutes; restraint

Down Syndrome restrained for 45 minutes by 4 adults for throwing bowl of pasta and attempting to hit his head; State ultimately found the restraint too lengthy and unnecessary).

⁹² While Indiana's 2013 statute provided that the practices must end when the emergency ends or within a "short time," it later adopted a different regulation in 2014. The regulations requires that they end when the emergency ends "and" within a short time period. Thus, Indiana is counted among these states.

⁹³ Although Texas requires only that restraint end when the emergency ends, it effectively imposes this requirement on seclusion. Texas permits seclusion only while awaiting the arrival of law enforcement and only for emergencies involving students who have weapons and threaten bodily harm to someone a person. Once law enforcement personnel arrive, the emergency has ended.

must end within 30 minutes or earlier if child is calm); Iowa (restraint for “reasonable and necessary” period; seclusion for “reasonable” period); Illinois (seclusion ends 30 minutes after behavior resulting in seclusion has ended); and Montana^d (duration set in IEP/BIP). New Hampshire and Connecticut recently strengthened their laws to eliminate similar weaknesses. These kinds of provisions that impose a time limit but allow restraint and seclusion to continue when there is no longer a threat, can lead to overuse of restraint and seclusion. A child who is not a threat may be crying or upset. A child can remain in seclusion when they should be in the classroom, because the time period is not over. Maryland’s durational limit differs from the others in that it sets a hard deadline of 30 minutes under all circumstances, which seems designed to protect children. Maryland is to be lauded for this, but the standard may raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint or seclusion.

About half of the states lack laws requiring restraint and seclusion to end when there is no longer an emergency.

There are 6 states with mere nonbinding policies suggesting that the practices end when the emergency ends: Arkansas (2014, restraint only), Missouri, Nebraska, Oklahoma^d, South Carolina, and Washington, D.C. Such guidance lacks the force of law. There are 15 states that are wholly silent: Delaware, Florida, Idaho, Michigan, Mississippi, New Jersey, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Virginia, and Wyoming. These states offer no protections by law nor recommend any through voluntary guidelines. When Virginia replaces its guidelines with new regulations pursuant to a March 2015 statute, it must include this provision under the standards the statute incorporates. But students will not have this protection until that happens.

IV. Other Limits on Use of Restraint and Seclusion

A. Banning Certain Restraints

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

1. Restraints that Restrict Breathing and Threaten Life

Restraints that impede breathing and threaten life are highly dangerous, and there is no reason to use them on school children. A teenage Jonathan Carey was killed by suffocation after a school aide sat on top of him in a van for being disruptive. The aide and driver of the van stopped at a game store and an employee's house while he lay unconscious in the back seat. Cedric Napoleon, a small 14-year, was an abuse survivor who had been deprived of food. When he tried to leave the classroom to get lunch, his 230-pound teacher (twice his size) put him into prone restraint, laying on top of him and suffocating him. When he said that he could not breathe, his teacher replied that if he could talk, he could breathe, according to his foster mother's 2008 testimony. She testified, "I want to make sure this doesn't happen to anyone else's child. It is awful the way Cedric died. He was a good kid. This should have never happened. The morning Cedric died, as he was boarding the bus, he turned around and got a beaming smile on his face, and said to me 'you know I love you, ma.'" The teacher left Texas and taught in Virginia, where the school district was unaware of the situation until the GAO investigation. The media reported that the Virginia district was investigating in 2009 whether she had revealed the incident in her application.⁹⁴

Children have been killed by restraints that restrict breathing and threaten life. The GAO counted 20 deaths from restraint alone.

A number of states have sought to prevent use of these most dangerous restraints. The states may phrase their prohibitions as bans on "life-threatening restraints," restraints that impair "breathing," or "prone restraints." They are largely the same in their effect. Indeed, state laws phrased as the first two reach a broader range of restraints, including restraints that cover the face or restrict breathing, even when the child is not face down. Still, some school district employees may interpret them as allowing some prone restraint. Accordingly, some states which

⁹⁴ GAO REPORT at 10-11; House Hearings 16-17 (testimony of Toni Price); Greg Toppo, *Restraint Can Dispirit and Hurt Special-Ed Students*, USA TODAY, May 18, 2009; Ann Sanner, *Special Ed Teacher Suspended After Texas Death Revealed*, NBC4 (Washington DC), July 13, 2009.

have most recently adopted laws forbid both.

Prone restraint can kill a child. A child in prone restraint is pinned in a prone, face-down position. Prone restraint causes suffocation, by compressing the child's ribs so the chest cavity cannot expand, and pushing the abdominal organs up so they restrict the diaphragm and reduce the room for lung expansion.⁹⁵ In a study of hospital patients who died during restraint, asphyxiation was the cause of death in 40% of cases, including through the use of prone restraint and placing a soft object over the patient's nose and mouth during restraint.⁹⁶

There are 33 states with laws banning the use of life-threatening restraints on children with disabilities, 27, on all children. These states may be divided as follows.

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

Second, 23 states ban all restraints that obstruct breathing or threaten life for all children; 27, for children with disabilities. The states with explicit bans are: Alaska, Alabama, Arizona (2015), Colorado, Connecticut (2015), Delaware, Florida^d, Hawaii, Iowa, Kansas (2016 regulations), Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, Rhode Island, Tennessee^d, Utah (2015), Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

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

Although Virginia does not currently prohibit the use of restraints that impede breathing, the standards applied by the March 2015 statute will require future regulations that do so.

Of the states listed above, 14 specifically ban both restraints that impair breathing generally and prone restraint more specifically: Alaska, Connecticut (2015), Iowa, Kansas (2016 regulations), Kentucky, Maryland, Minnesota^d (2016), Michigan (2016), New Hampshire, Ohio, Rhode Island (2016), Utah (2015), West Virginia, and Wyoming. Alaska, Maryland and New Hampshire do not ban prone restraint by name, but ban the actions that make up prone restraint.

33 states by law forbid use of prone restraints or life-threatening restraints on children with disabilities, 27 on all children.

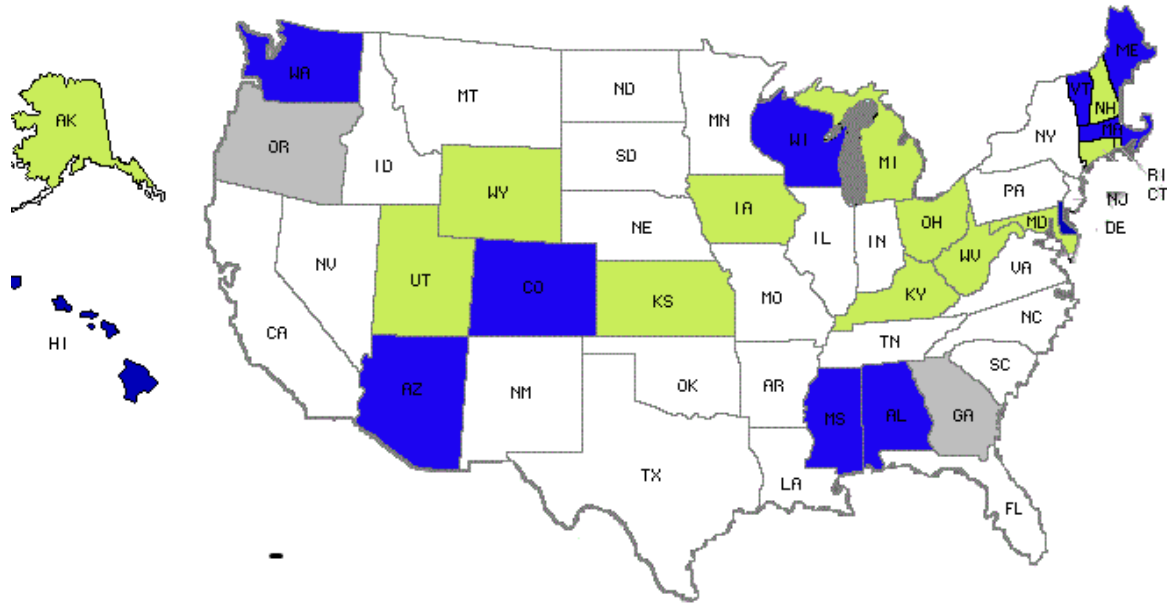
⁹⁵ Disability Rights California, THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION 17-18 (2002); NDRN, SCHOOL IS NOT SUPPOSED TO HURT at 13 (2009) (“Studies and organizations, including the Joint Commission on Accreditation of Healthcare Organizations, have concluded that prone restraint may predispose a patient to suffocation.”)

⁹⁶ JOINT COMMISSION ON ACCREDITATION OF HEALTHCARE ORGANIZATIONS, PREVENTING RESTRAINT DEATHS, SENTINEL EVENT ALERT, Nov. 18, 1988. While this was a study of medical patients, prone restraint has the same effect on any person, regardless of location.

In addition, 2 states do not ban--but regulate--prone restraint: Massachusetts and Vermont. Massachusetts strengthened its regulations in 2014, but still permits prone restraint of students who cannot provide required medical documentation forbidding its use Minnesota previously allowed prone restraint, but forbade it in 2016.

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

Map 14: All Children: States Banning Restraints that Impair Breathing and Prone Restraint (December 31, 2016)



Light Green (Medium): Law bans all restraints that impair breathing for all children.

Gray (Light): Law bans prone restraint only for all children.

Blue (Dark): Law bans both for all children.

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2. Mechanical Restraint

Mechanical restraints include duct tape, straps, bungee cords, and ropes used to tie children to furniture or to tie body parts together; chairs and furniture that children are locked into; devices that restrain arms, legs, torsos and other body parts; weighted materials; and similar mechanisms.

For years, there have been reports of mechanical restraint use. A teacher reportedly duct-taped the mouth of an Ohio nonverbal kindergartener with disabilities. The principal called the family after a teacher's aide told her.⁹⁷ A California child was strapped into a wheelchair and it was inverted. He was helpless to free himself.⁹⁸ In 2013, an 8-year old girl with Down Syndrome, returned home with her shoes duct-taped so tightly that she could not walk and her ankles were bruised, according to media reports.⁹⁹ Children have been duct-taped to furniture for getting up too much or being unable to sit still.¹⁰⁰ Another teacher pled guilty to false imprisonment after having been charged with using duct-tape to tie a child with autism to a chair and confining a blind child under a desk.¹⁰¹

Children have been left in mechanical restraints for long periods of time, or alone in seclusion rooms, exacerbating the harm. In Georgia, a middle-schooler with multiple disabilities was allegedly strapped into a chair, and left in a locked, dark room by his teacher, only to be discovered by another teacher. He suffered physical and psychological harm and regressed in his education. A child was repeatedly strapped to a therapy chair and confined alone in a room for several hours a day, it was reported.¹⁰² In Pennsylvania, a teacher allegedly strapped children with bungee cords into therapy chairs, punishing and abusing them.¹⁰³ A nonverbal second grader with autism was reportedly restrained in a chair alone in a bathroom. She flipped the

⁹⁷ Melissa Reid, Parents of Student Who Had Mouth Duct Taped Shut by His Teacher Speak Out, FOX 8 CLEVELAND, Apr. 19, 2016.

⁹⁸ *D.K. v. Solano Off. of Educ.*, 667 F. Supp. 2d 1184 (E.D. Cal. 2009).

⁹⁹ Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl's Feet Duct-Taped*, INDIANAPOLIS STAR, Feb. 6, 2013.

¹⁰⁰ Kevin Keen, *Tucson Student: Teacher Taped Me to a Chair*, KGUN9 (ARIZ.), AUG. 20, 2013; Lindsay Kastner, *Teacher Duct-Taped Judson ISD Student to Chair*, MY SAN ANTONIO/SAN ANTONIO EXPRESS, June 5, 2013. There are many media reports of students allegedly duct-taped. Examples include Henry Lee, *\$250k Settlement Over Duct-Taping of Boy at Antioch School*, SFGate, Feb. 13, 2015; *Police: Lakeland Teacher Duct Taped Student's Hands Together*, WFLA NEWS CHANNEL 8 (Lakeland, FL), July 8, 2014; Warren Kulo, *Ocean Springs Teacher Disciplined for Duct-Taping Student's Mouth Shut*, MISSISSIPPI PRESS NEWS, Oct. 23, 2013; Tom Hensley, *Student Duct Taped to Chair*, KFVS12 (CBS) (undated)/

¹⁰¹ Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011; Holly Roberson, *Woodstock Teacher Pleads Guilty to Abuse*, Woodstock Patch, Feb. 24, 2011.

¹⁰² *A.W. v. Fulton Co. Sch. Dist.*, Docket No. OSAH-DOE-SE-1135718-60 (Georgia State Administrative Hearing Feb. 1, 2012). Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 and accompanying blog story.

¹⁰³ *Vicky M. v. Northeastern Educational Intermed. Unit 19*, No. 06-01898 (M.D. Pa. May 15, 2007).

chair over on herself and was hanging by the restraints, having also urinated on herself.¹⁰⁴ A child with a Down-syndrome like condition was strapped to a cot, a lead weighted therapy vest on his body, with knots so tight it allegedly took the teacher 5 minutes to undo them, according to the GAO. Among other things, his mother worried that in a fire, he would not be able to leave.¹⁰⁵ A Massachusetts preschooler was allegedly strapped into a therapy chair, and left alone in a closed, darkened closet as he cried--until another teacher rescued him, the Boston Globe reported.¹⁰⁶

There are 20 states that ban mechanical restraint of all children; 24 states, children with disabilities. The states with bans are: Alabama, Alaska, Colorado, Georgia, Hawaii, Indiana, Illinois, Iowa, Kentucky, Louisiana^d, Maine, Massachusetts, Michigan (2016), Mississippi (2016), Montana^d, Ohio, Oregon, Pennsylvania^d, Tennessee^d, Utah (2015), Vermont, Wyoming, West Virginia, and Wisconsin. Virginia's March 2015 statute requires regulations that prevent the use of mechanical restraints, although those regulations have not yet been promulgated. State laws sometimes include exceptions for exceptions for devices used for therapeutic or safety purposes for which they were designed, such as devices that improve mobility, similar to Congressional proposals. Banning mechanical restraint is more common in modern laws. Of the states listed above, 19 enacted their protective laws or regulations since 2009.

20 states ban mechanical restraints for all children; 24 for children with disabilities. Mechanical restraints include duct-tape, tying children to furniture, teachers strapping them into chairs in darkened rooms alone, and other episodes. States banning mechanical restraint range from Alaska to Massachusetts, Mississippi to Michigan.

Of the remaining states, 3 have specific provisions regarding mechanical restraint. Maryland is fairly strict, forbidding mechanical restraint except in very few schools with hospital accreditation. Delaware forbids mechanical restraint unless authorized by waiver from the state department of education. As with seclusion, the only statutory limit on the waiver is that it be for "compelling justification." Delaware has published a waiver form that requires proof of a threat of significant danger, proof that the child's plan includes positive and preventative supports, and supporting documentation. But children subjected to mechanical restraint do not have the same protections and oversight as children subjected to physical restraint. There is also no limit on the number of children who can receive mechanical restraint waivers. Nevada^d permits mechanical restraint with a physician's order, as long as staff loosen the restraints every 15 minutes to determine whether the child will stop injuring himself. (This implies that Nevada only allows the restraints to prevent self-injury.)

¹⁰⁴ Alabama Disabilities Advoc. Program, *Seclusion and Restraint in Alabama Schools* (June 2009).

¹⁰⁵ GAO Report at 23.

¹⁰⁶ James Vaznis, *Restraining Of Students Questioned, Some Wonder Whether Schools Cross The Line*, BOSTON GLOBE, May 4, 2009.

Among the states without mandatory laws, 6 have voluntary guidelines suggesting that mechanical restraints not be used: Arkansas, Nebraska, New Mexico^d, Oklahoma^d, South Carolina, and Washington, D.C.

3. Chemical Restraint

Chemical restraints can kill and injure.¹⁰⁷ The dangers documented by the Hartford Courant in 1989,¹⁰⁸ remain today. There are 20 states prohibiting chemical restraints in their statutes and regulations, all applicable to all children: Alabama, Alaska, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan (2016), Mississippi (2016), Ohio, Oregon, Rhode Island, Utah (2015), Vermont, and Wisconsin. These laws apply to all children. Virginia's March 2015 statute required the promulgation of regulations that should include this prohibition. As with mechanical restraints, chemical restraint bans have been more common in modern laws. Most of the states listed here enacted their chemical restraint bans after 2009.

20 states ban chemical restraint. As with mechanical restraints, such bans are more common in states enacting laws in the last few years.

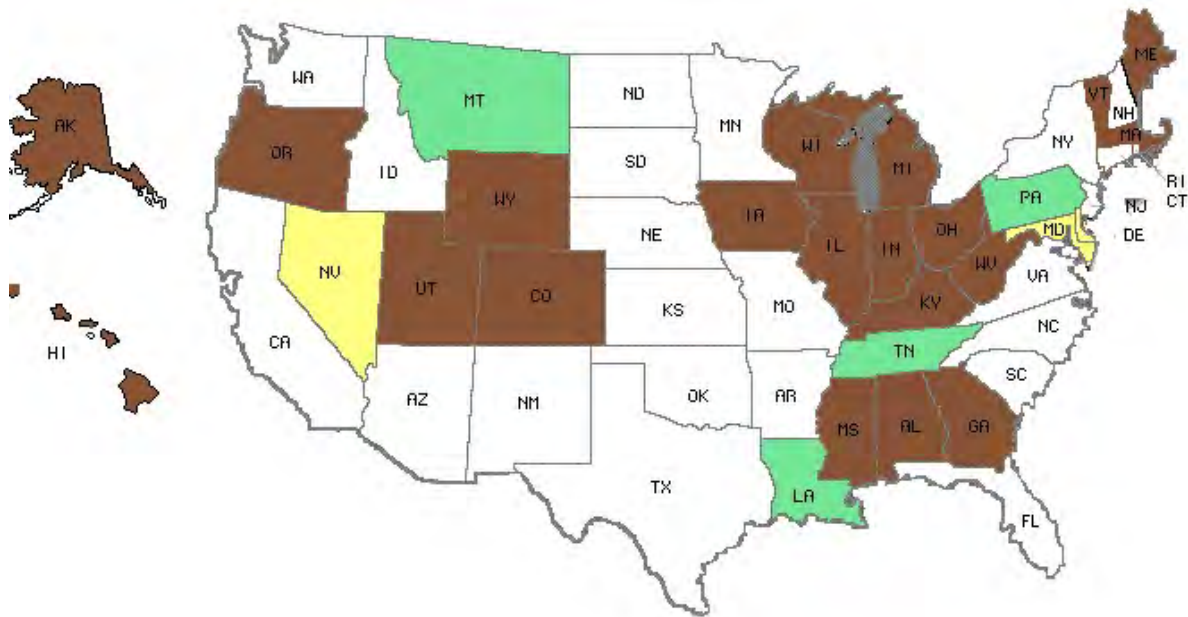
There are two states with chemical restraint laws that are somewhat different. Connecticut previously banned chemical restraints unless otherwise stated in an IEP, which was permitted for any reason. In 2015, Connecticut's new law substantially narrowed this weakness, but still permits "psychopharmacological agents" to prevent imminent physical harm or when used in an educational program that is part of a hospital, clinic, or other treatment facility. By contrast several states and the Congressional proposals ban chemical restraint but define it to exclude medication prescribed for the child's condition and administered in accord with those instructions. This effectively allows medications that are used properly but prohibits those that are used wrongfully. Tennessee^d law permits chemical restraint with parental consent and physician instructions, if the drugs are used to "control extreme violent physical behavior." Tennessee law is somewhat similar to laws that ban chemical restraint while defining it to exclude standard treatments for a child's condition. Those laws often also require that the medication be administered in accord with the instructions, or be a standard treatment for a child's condition, which is not a feature of Tennessee's rule.

The remaining states have no laws restricting use of chemical restraint. There are 4 states that suggest avoiding chemical restraint in guidance: Arkansas, Missouri, Nebraska, and Washington, D.C.

¹⁰⁷ Chemical restraints include drugs that restrict the child's ability to move or control his behavior which were not prescribed by a physical as a standard treatment for the child's condition and or that are not administered as prescribed (*e.g.*, a much larger dose is given).

¹⁰⁸ Eric Weiss et al., Hundreds of The Nation's Most Vulnerable Have Been Killed by the System Intended to Care for Them, HARTFORD COURANT, Oct. 11, 1998.

Map 15: States Banning Mechanical Restraint (December 31, 2016)



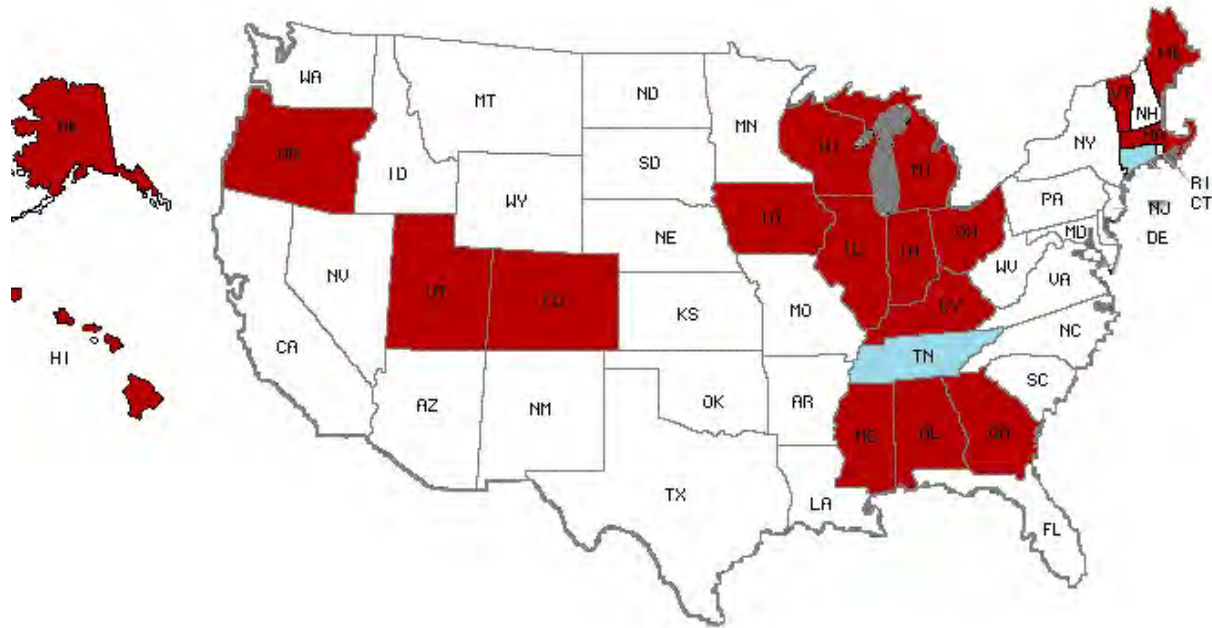
Brown (dark): By law, mechanical restraint is prohibited for all children.

Green (medium): By law, mechanical restraint is banned for children with disabilities only.

Yellow (lightest): By law, mechanical restraint may be used but with restrictions. Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and Washington (only binding of limbs to object or each other forbidden, and this is allowed if included in IEP with parent consent).

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Map 16: States Prohibiting Chemical Restraint (December 31, 2016)



Red (Dark): Chemical restraint is prohibited by law. Each of these statutes and regulations apply to all children.

Blue (Light): States regulating chemical restraint differently (TN, CT).

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B. Continuous Visual Observation of Seclusion

Several states with laws restricting seclusion require that children be monitored. Monitoring can range from continuously watching the child to simply being capable of seeing inside the room or checking the unobserved room occasionally. These last two are quite dangerous.

In 2004, 13-year-old Jonathan King killed himself in a seclusion room, a teacher sitting outside monitoring him by listening to him.¹⁰⁹ In January 2011, a student attempted suicide in a seclusion room where he was not observed, the National Disability Rights Network alleged. He previously had been placed in the room and forbidden to use the bathroom, causing him to urinate on himself. He was secluded for another day for having relieved himself, during which he allegedly attempted suicide.¹¹⁰ Other children confined unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized. The Council for Children with Behavioral Disorders has observed that suicide, electrocution, and “self injury due to cutting, pounding, and head banging” has occurred in seclusion.¹¹¹

There are 32 states that either ban seclusion or require continuous visual monitoring of students with disabilities by law; 23, all children. Seclusion is banned in 5 states for children with disabilities, and 2 states for all children: Georgia, Hawaii, Nevada^d, Pennsylvania^d, and Texas^d). Of those permitting seclusion, 27 by law require continuous direct observation of children with disabilities; 21 states, of all children: Alabama, Alaska, Arizona (2015), Arkansas^d, Connecticut (2015), Delaware (if State grants waiver to permit seclusion, monitoring required), Illinois, Indiana, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maryland, Maine, Minnesota^d, Michigan (2016), Mississippi (2016), Montana^d, New Hampshire, New York^d, Oregon, Rhode Island, Tennessee^d, Utah (2015), Vermont, Wisconsin, and Wyoming (“isolation” rooms). Virginia’s March 2015 statute requires regulations to be promulgated that should impose this requirement.

Children in seclusion who were not continually observed have died or been harmed. 32 states either ban seclusion or require continuous visual monitoring of children with disabilities in seclusion rooms; 23, all children.

Massachusetts bans most forms of seclusion, but allows what it calls time-out for purposes of calming in rooms where the door may be locked or blocked by furniture, equipment, etc. If a student is in this form of time-out, staff must be with the child or immediately accessible. This is

¹⁰⁹ Alan Judd, Death Highlights Lack of Regulation at Psycho-Educ. Schools, ATLANTA J. CONSTIT., July 27, 2009.

¹¹⁰ National Disability Rights Network, School Is Not Supposed to Hurt 11 (2012).

¹¹¹ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

a change from the old rules that could have allowed staff to be done the hall or within shouting distance. (Massachusetts would be among the more protective states if it limited use of rooms children could not exit to emergencies threatening physical danger.)

Other states do not require continuous visual monitoring. Some mandate more limited forms of monitoring that allow children to go unobserved.

Laws in 5 states require monitoring, but do not require that a staff member actually watch the child continually. Colorado requires “reasonable” monitoring. Ohio mandates “constant supervision by staff” and the ability to observe the student. North Carolina requires staff to be “able to see and hear the student at all times.” California^d requires only “adequate” supervision for unlocked seclusion of children with disabilities and is otherwise silent. Washington requires close monitoring of all students.

Other states do not have any laws requiring monitoring of students placed in seclusion. Guidelines encouraging, but not requiring, continuous visual monitoring exist in 3 states: Oklahoma^d, South Carolina, and Washington, D.C. Another 2 states advocate for the ability to see the student at all times: Missouri, and Nebraska. These guidelines do not have the force of law and are subject to change.

There are 7 states without laws or recommended guidelines stating that students should be monitored while in seclusion: Florida, Idaho, North Dakota, New Jersey, New Mexico, Virginia, and West Virginia. (Virginia should adopt monitoring requirements in future regulations under its new statute, as described above.) Finally, children without disabilities need not be monitored in those states with disability-only laws: Arkansas^d, Louisiana^d, Minnesota^d, Montana^d, New York^d, and Tennessee^d. Most have older laws. States that adopt more recent laws tend to apply them to all children, a trend is likely to continue in the future.

Continual visual monitoring is vital if students are to be placed in seclusion. Some have sought to narrow the definition of seclusion to exclude children who are monitored continuously. But that would deprive children in such rooms of all other protections. A child could be put into monitored seclusion for dropping a candy wrapper, tearing a book, not saying hello, or crying and tantrumming—activities that threaten no one. When behavior is nonthreatening, it is essential that positive and preventative supports be used first. Children have been placed in seclusion by teachers who deliberately egg them on and escalate their behavior, instead of using preventative supports to de-escalate.¹¹² (There are many teachers who do not engage in such escalating acts, and many who work hard to apply positive and preventative behavioral supports throughout their classrooms.) But, such uses of seclusion should not go unmonitored. Importantly, parents would not be informed if their children were placed in monitored seclusion rooms. No records or data would be kept (states often require school-level incident reports, in addition to data collection). The children could be left in seclusion as long as staff wanted, perhaps monitored

¹¹² Scott Friedman, *Exclusive Video Provides Rare Glimpse Inside a Plano ISD Calm Room*, NBC5 (NBCDFW), Apr 23, 2015.

only by a cheap camera device. There would be no other protections. Finally, monitoring does not prevent all injuries or the psychological trauma that seclusion causes.¹¹³

Alex Campbell, a 9-year-old with autism, was secluded, alone in a closet-size room. A school staff member pushed a desk against the door and watched him through the window. This could last for 30 minutes to almost 2 hours, Alex testified. Alex did not tell his parents because the staff member said he would be returned to seclusion if he did. Being in the room was scary and traumatic, Alex testified.¹¹⁴ Alex was secluded for tearing paper, running around, and banging on the door, not for putting anyone at risk of danger.¹¹⁵ Monitoring alone does not resolve the problems and dangers of seclusion.

¹¹³ Peter Linton-Smith, *Lawsuit: Footage Shows School Abuse*, MY FOX TAMPA BAY, Aug. 14, 2009.

¹¹⁴ Alex Campbell, TESTIMONY TO GENERAL ASSEMBLY OF VIRGINIA, Feb. 8, 2015.

¹¹⁵ Rachel Weiner, *Virginia Lawmakers Move to Reg. School Seclusion and Restraint*, WASH POST, Feb. 8, 2015.

C. Minimum Room Condition Requirements

Students have been secluded in small, darkened closets or boxes, or injured by furniture they can overturn or other dangerous items. Others have been denied food, water, and bathroom access. In some cases, children have had no choice but to urinate in the room or upon themselves.¹¹⁶ There have been repeated news reports of students secluded in locked boxes or small seclusion booths.¹¹⁷ Such boxes likely do not comply with state fire and building codes.¹¹⁸

Some states have eliminated this problem by banning all seclusion. Oregon has banned free-standing seclusion booths. Other states cover room conditions in their regulations. Some state law room requirements are below:

Room must be lit (21 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, North Carolina, Ohio, Tennessee^d, Vermont, Washington, West Virginia, and Wyoming.

Heating/cooling/adequate ventilation (19 states by law): Arkansas^d, Colorado, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, North

While many states do not regulate seclusion room conditions, several do: 12 states require bathroom access for children in seclusion rooms; 21 require rooms to be lit; and 19 require adequate heating/cooling.

¹¹⁶ See generally Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012; Addison Martin, *Some Parents Voice School Concerns*, DAILY IOWAN, Nov. 4, 2016; Carl Monday, *Carl Monday Investigates Restraint & Seclusion Rooms in Our Schools*, Fox19Now (Ohio), Aug. 29, 2016; NDRN, SCHOOL IS NOT SUPPOSED TO HURT (2009); J. Butler, *Unsafe in the Schoolhouse* (2009); DISABILITY RIGHTS WISCONSIN, WISCONSIN FACETS, AND WISCONSIN FAMILY TIES, OUT OF THE DARKNESS... INTO THE LIGHT, NEW APPROACHES TO REDUCING THE USE OF SECLUSION AND RESTRAINT WITH WISCONSIN CHILDREN (2009); MICHIGAN PROTECTION AND ADVOCACY SERVICE, INC., SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS (2009).

¹¹⁷ *Boy Tells Lawmakers He Was Forced into "Seclusion Room"*, KATU (Oregon), Oct. 30, 2013; *Parents Angry Over School District's Use of "Isolation Booth"*, KOMO NEWS (WASHINGTON), Nov. 29, 2012; Stephen Davis and Bryan Polcyn, *Mom Says School Put Her Autistic Son "In a Box"*, Fox6 Now (Wisconsin), May 15, 2012; Carey Pena, *Elementary School Faces Lawsuit Over Padded Seclusion Room*, AZFAMILY.COM (KTVK-3TV, Arizona), Sept. 19, 2012; Abby Welsh Alusheff, *Parents File Complaint over Placing Child in Box*, LIVINGSTON (MI) DAILY, July 7, 2016.

¹¹⁸ See SOUTH CAROLINA DEPT. OF EDUC., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (Aug. 20, 2012).

Carolina, Ohio, Tennessee^d, Vermont, Washington, and Wyoming.

Free of dangerous furniture, objects, and conditions (19 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kansas (2015), Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Mississippi (2016), New Hampshire, New York^d, North Carolina, Tennessee^d, Vermont, Wisconsin, and Wyoming. Michigan (2016) requires that the rooms be safe for the child.

Room size requirements (14 states by law): Arkansas^d, Colorado, Iowa, Kansas (2015), Louisiana^d, Maryland, Minnesota^d, Michigan (2016), Ohio, New Hampshire, New York^d, Tennessee^d, and Wyoming impose overall requirements. Oregon forbids the use of free-standing seclusion cells or booths, which are often very small.

Bathroom access (12 states by law, 9 explicitly): California, Iowa, Kentucky, Minnesota^d, Mississippi (2016), New York^d, North Carolina, Wisconsin, and Washington (2016). Of these states, California, Mississippi, Kentucky, New York^d, North Carolina, and Washington consider denial of reasonable bathroom access to be a forbidden aversive. (Washington frames it as ordinary hygiene care.) In 3 additional states, Maryland, Michigan, and Utah seclusion is limited to 20-30 minutes, which may make this less of an issue depending on the children, their age, disabilities or health issues, and other needs. In practice, this may also be true in Indiana, which limits seclusion to “brief” periods, although the term is more subjective.

Access to water and food when normally served (2 states by law): Minnesota^d and Wisconsin. In states where seclusion must be brief or less than 30 minutes, so this could be less of an issue, depending on the child, their age, disability or health issues, or other needs.

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

Explicit compliance with fire codes: Arkansas, Florida, Kentucky, Minnesota, Michigan (2016), New York, Tennessee, and Vermont are among the states explicitly requiring compliance with fire, safety, and building codes in their restraint and seclusion laws. Minnesota requires obtaining a written statement that a room is in compliance from local authorities. South Carolina explains the application of its state fire and building codes in its voluntary guidance document; these parts of the document are not voluntary. Fire codes and building codes and their requirements for exit access are universal; there are very few exceptions.¹¹⁹ Educators and parents should always refer to those codes, in addition to their state restraint and seclusion laws and policies. See also Section III.B.3. above for a fuller discussion of fire and building code issues.

Room conditions are also suggested in the nonbinding guidance in South Carolina.

It is important to note that room condition requirements do not ensure that seclusion rooms are safe. A well-lit and heated or ventilated room would not prevent a broken finger, sprained ankle,

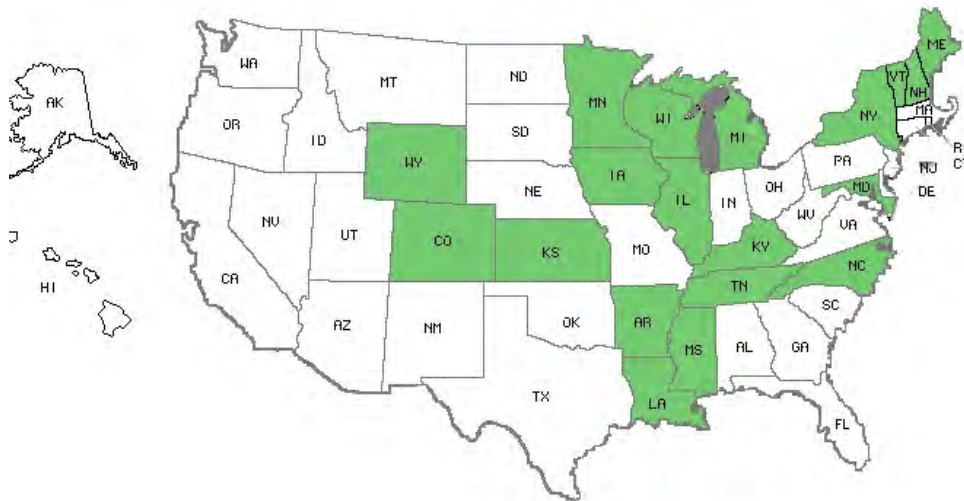
¹¹⁹ See footnotes [70-73](#) above and accompanying text regarding fire and other building safety codes.

bruising, or other injuries or trauma. Yet, room conditions will ensure that seclusion spaces meet some very basic thresholds. They help ensure children are not in abnormally cold or hot rooms, boxes, unlit closets or rooms, or cells or booths without functional sprinkler systems or meeting other fire and building codes. They limit the use of improvised seclusion booths and closets, which do not meet these criteria. This can act as a second check on unreported use of seclusion rooms because staff cannot put children in such closets; they must use a space that clearly is a seclusion space. Some of the abuse that has taken place has occurred in darkened rooms; the requirement for lit rooms should help combat that. Finally, room condition requirements can ensure that children's bathroom and other basic human needs are met.

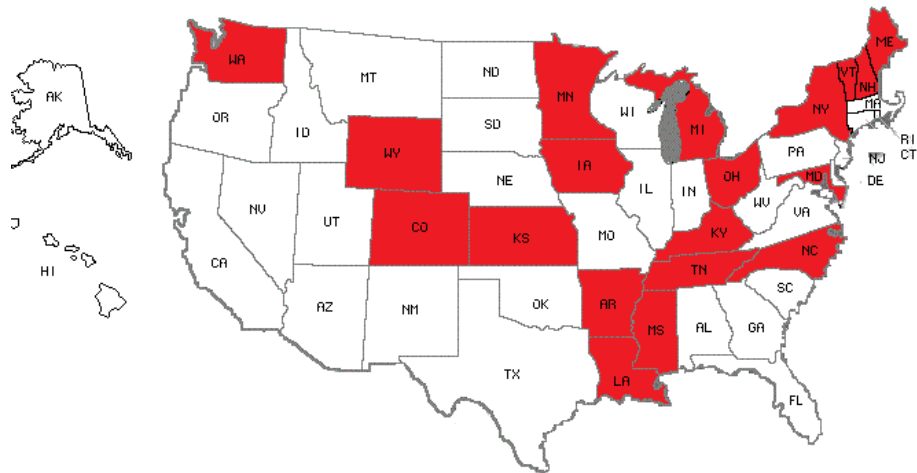
Maps 18A-D: States with Requirements to Improve Seclusion Room Safety (December 31, 2016)



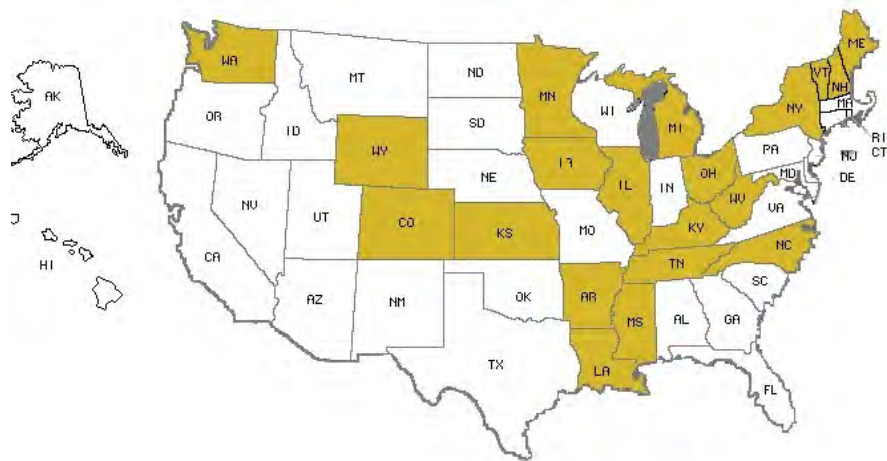
18A. Bathroom: Brown states require bathroom access for students in seclusion rooms. Light blue states set short durations that may ensure many students, but not some with significant disabilities, can use the bathroom.



18B. Safety: States requiring rooms to be free of unsafe objects and furnishings, or otherwise to be safe.



18C. Ventilation: States with rules regarding adequate ventilation, heating, or cooling.



18D. Lighting: States forbidding use of dark, unlit rooms

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

State requirements relating to informing parents about restraint and seclusion are very important. Other important related issues include reporting to school administration and the state; collecting data and making it available to the public; debriefings to reduce seclusion and restraint use; and training requirements.

A. Informing Parents of Restraint and Seclusion

1. Overview of Parental Notification in the States

Over the years, numerous news stories and reports have described parents who were not adequately informed when their children were restrained or secluded. These include parents who were never told, learned a long time later, were told things were fine when they were not, or did not receive information when they needed it to seek medical help.¹²⁰ Quick, honest parental notification is important. When parents learn of incidents days later, they lose the crucial window to seek needed medical and other care for concussions, hidden injuries, and psychological harm. Communication also enables parents and staff to work together to prevent further incidents, and use appropriate preventative and evidence-based behavioral interventions. Schools should not rely on children to adequately communicate what occurred, due to their youth, limited verbal, communicative, or cognitive skills, the trauma they endured, and fear of informing on adult staff. “Calendar day” notice is more prompt and effective than “business day” or “school day” notice. Calendar day notice ensures that parents are quickly aware of what happened and can seek help. School and business day standards can delay notification over weekends and lengthy school holidays, which is unsafe given the medical dangers involved here. Today’s instantaneous communications also make quick notification easier than even a decade ago. Some of the laws allowing long periods for notice were written

¹²⁰ See, e.g., NDRN, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); *House Hearings 11-14* (testimony of Ann Gaydos, who was not told teacher threw daughter head first into ground and of need to watch for concussions and subdural hemorrhage); DISABILITY RIGHTS OREGON, *KEEP SCHOOL SAFE FOR EVERYONE: A REPORT ON THE RESTRAINT AND SECLUSION OF CHILDREN WITH DISABILITIES IN OREGON’S SCHOOLS 4* (2011); KENTUCKY PROTECTION & ADVOCACY AND THE COMMONWEALTH COUNCIL ON DEVELOPMENTAL DISABILITIES, *RESTRAINT & SECLUSION* (2012); Ashley Goudeau, *Snook ISD Employee Fired After Video Shows Him Pushing Child*, KVUE ABC (Austin), Oct. 15, 2016; Camila Mortensen, *Use of Seclusion Rooms at 4J Challenged*, EugeneWeekly.com, Dec. 20, 2012; *Gradebook: A Weekend Interview with Phyllis Musumeci*, TAMPA BAY TIMES, Jan. 24, 2009; Alan Judd, *An Expensive Fight over a Boy with Autism*, ATLANTA J. CONSTITUTION, Sept. 26, 2011; *H.H. v. Moffett*, 335 Fed. Appx. 306 (4th Cir. 2009) (unpublished) (parents used hidden recorder to detect possible abuse in classroom).

many years ago. Indeed, schools often rely on text messaging today to notify parents of emergency situations or closed schools, meaning that sending text message notifications to parents is an accepted practice.

The majority of states require parental notification. When state voluntary guidelines are included, 34 states in some way support and advocate for having schools make reasonable efforts to notify parents within 1 day or less; 40, within 1 school day or less. Yet, not all states require prompt. Some have longer timelines; some do not require no notification. Some have guidelines supporting 1 day notification but not mandating it, which is problematic since the purpose is to inform parents so they may monitor their children’s health. Some require notification for children with disabilities, but not children without disabilities, regardless of the child’s age. But the nation is moving in the direction of notifying parents within 1 school day, at least verbally. More detailed written follow-up is a related, but separate issue. It is discussed separately below.

The following chart summarizes state parental notification laws. As can be seen, 38 states (74%) require parental notification for children with disabilities, 29 of these within 1 calendar day.

Chart: Parental Notification Laws At a Glance (Dec. 31, 2016)

	All Children	Children with Disabilities
Must notify parents of both seclusion and restraint by law, statute or regulation. (Total of all rows below.)	29 states	38 states
Must notify on the same day event occurs	14	18
Must notify within 1 calendar day/24 hours	8	11
Same day and 1 calendar day/24 hour notice combined together (Subtotal of above two rows.)	22	29
Must act to notify within 1 school or business day (allows school holidays and weekends to delay notice)	4*	5*
Must act to notify within 2 school days	2*	2*
Longer notification period	1	3
* MS has different notification periods for restraint and seclusion, which are reflected in the asterisked numbers. See text below.		

The state notice requirements break down as follows.

As of December 31, 2016, 29 states require that parents of all children be notified if restraint or seclusion are used: Alabama, Alaska, Arizona (2015), Colorado, Connecticut (2015), Delaware (2014 regulations), Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (2015), Kentucky, Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts (2014 regulations strengthened notice provisions), Michigan (2016), Mississippi (2016), New Hampshire, North Carolina (but not requiring notification under many circumstances, as noted below), Ohio, Oregon, Rhode Island, Utah (2015), Vermont, Washington, West Virginia, Wisconsin, and Wyoming. In 2015, Virginia adopted a statute requiring the state's education agency to promulgate prompt parental notification regulations.

For students with disabilities, 38 states by law require schools to tell parents when their child was restrained or secluded: Alaska, Alabama, Arizona (2015), California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts, Minnesota, Michigan (2016), Mississippi (2016), Montana, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The next section describes various deadlines for notification. In these lists, laws for all children come first, followed by those for children with disabilities only. Some states appear twice, and are designated with a dagger(†). They mandate both a quick same day/24 hour notification, followed by a more extensive written report to parents with a longer deadline.

2. States Requiring Parental Notification Same Day or Next Day

Same Day Notification of Both Restraint and Seclusion: This is the rule in 14 states for all children, and 18 states for children of disabilities: Alaska, Colorado[†], Hawaii, Iowa[†] (attempted), Indiana (same day or as soon as practicable), Maine, Michigan[†] (2016), Kansas (2015)[†], New Hampshire[†], Ohio[†], Oregon[†], Vermont[†] (documented attempt), West Virginia[†] (“good faith”), Florida^{†d}, Minnesota^{†d}, Tennessee^d (“reasonable efforts”), Utah[†] (2015), Texas^{†d} (“good faith effort”).

24 Hour or 1 Calendar Day Notification of Both Restraint and Seclusion: This is the rule in 8 states for all children and 11 states for children with disabilities: Arizona[†] (2015), Connecticut[†] (2015), Delaware (same day preferred, 24 hour deadline, but IEP team can set longer deadline; 2014 regulations), Illinois, Kentucky, Maryland (unless otherwise stated in IEP/BIP), Massachusetts (“reasonable efforts;” 2014 regulations), Washington (“reasonable efforts”), Wyoming (unless parent agrees otherwise), Louisiana^{†d}, Montana^d (“as soon as possible,” but within 24 hours”). Of these states, Arizona expresses a strong preference for same day notice but permits 24 hours as the outside deadline if circumstances prevent same day notification. It is categorized based on its outside window.

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

Delaware is worthy of a separate note. Its new 2014 regulations require schools to attempt notification on the same day, but complete it within 24 hours for physical restraint and for mechanical restraint and seclusion (if a state waiver is granted to permit the latter two). These seem strong. But if restraint is included in a child's IEP or 504 plan, the IEP or 504 team determines when and how parents are notified, a troublesome weakness that could result in parents' not being notified appropriately. Connecticut used to have similar language, but upgraded it more recently. The majority of children who are restrained and secluded have disabilities and the majority of those killed or injured have disabilities. Hence, prompt notification is essential, so that parents of children with disabilities are notified as quickly as parents of children without disabilities.

3. States with Longer or Ambiguous Notice Periods

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

1 School or Business Day: This is the rule in 4 states for all children; 5, for children with disabilities: Alabama, Georgia, Wisconsin, Mississippi[†] (2016, restraint), and California^d. Mississippi's regulations have three different timelines. One section requires parents to be notified of restraint on the day of the event; another section requires notification of restraint and seclusion incidents preferably on the same day but no later than 48 hours; and a final section requires school districts to adopt policies regarding notification, permitting no more than 1 school day for notification about restraint. The outer limit of the restraint deadline is used here.

2 Days: This is the rule in 2 states. Rhode Island requires notice for all children as soon as possible, but no later than 2 days. Mississippi[†] (2016) requires notice to parents of seclusion, preferably on the same day, but no later than 48 hours after the event.

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

notice. All of these states have rules that are substantially older and predate the 2009-2015 Congressional bills with their same day notification requirement.

4. Notification of One Practice but Not the Other

Previously, Arizona and New Hampshire had required notification of the use of one practice but not the other, a very troublesome practice. These laws were repealed in the last two years.

5. States Requiring Detailed Written Follow-Up after Quick Notice

There are 22 states that require more detailed written follow-up for all children; 25, for children with disabilities: Alaska, Arizona (2015), Colorado, Connecticut, Delaware (2014 regulations), Hawaii, Illinois, Indiana (2014 regulations), Iowa, Kansas (2015), Kentucky, Maine, Massachusetts, Michigan (2016), Mississippi (2016, notification of documentation; parents must request it), New Hampshire, Ohio, Oregon, Utah (2015, notification of documentation, parents must request it), Vermont, Washington, West Virginia, Florida^d, Louisiana^d, and Texas^d. Other states mandate written communication only if verbal or electronic communication on the first day fails, including Kentucky and Minnesota^d.

Some state laws require that supplemental written notification be sent within 24 hours of the use of restraint and seclusion. This is a good practice given mail delays. They include Florida^d, Hawaii, Illinois, Kentucky, Louisiana^d, Ohio, Oregon, Texas^d, and Vermont.

Other state laws allow the written report to be sent a few days later. These include Alaska (no specific deadline), Colorado (written report within 5 days), Delaware (72 hours), Iowa (3 days), Maine (7 days), Massachusetts (3 school days), Michigan (2016, 1 school day or 7 calendar days, whichever is less), Mississippi (2016, parents are notified documentation available in folder within 48 hours), New Hampshire (up to 7 days allowed); Utah (2015, no specific deadline), Washington (as soon as practical, but no later than 5 business days), West Virginia (1 school day). In Indiana, written notification must be sent as soon as practicable.

Written notice may take a few more days when it is more detailed than the initial call or contact with parents. In many states, written notification must contain additional useful information that can help prevent future incidents of restraint and seclusion and help parents understand what happened to their child. For example, Colorado's written notification requires a detailed

A more detailed, and useful, written follow-up is required in 22 states for all children, 25 for those with disabilities. Such information is helpful for parents to understand what happened. Schools and parents can use it to work together in reducing the use of restraint and seclusion.

description of the incident and the type and duration of the restraint or seclusion; the behavioral antecedents leading up to the event; efforts made to de-escalate and use other alternatives; any injuries; and the names of the staff involved. Other states have similar requirements. This is one reason that states may set different deadlines for a quick initial contact and then a more detailed, written incident report.

6. States Without Notification Requirements

There are 13 states lacking parental notification statutes or regulations of both restraint and seclusion for children with disabilities; 23, for all children (because several states have disability-only laws). Of these, 7 states recommend notification.

For children with disabilities, these states do not mandate parental notification of both restraint and seclusion: Arkansas, Idaho, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Virginia, and Washington, D.C. The vast majority of these states have no restraint and seclusion law at all, although Arkansas restricts seclusion but not restraint. Virginia's nonbinding guidelines advised the school/school district to set a time period. Evidence indicates that a number of districts used a Virginia School Board Association (private organization) set of guidelines allowing up to 15 business days to notify the family, and not even suggesting notice if restraint is included in the child's IEP.¹²¹ Once Virginia's future regulations are promulgated, they should contain a same day or similar notification provision based on the statutory standards adopted in March 2015.

These states do not by law require parental notification for every child: Arkansas, California, District of Columbia, Florida, Idaho, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, and Virginia. As noted above, Virginia's future regulations once promulgated should include a parental notification provision because of the standards incorporated in its March 2015 statute. Several of these have disability-only laws.

▪ States with Guidelines Urging Parental Notification

Some states without statutes or regulations have suggested guidelines. These show what a state supports and advocates for. Of these, 6 recommend notification, 5 on the same school day: Missouri[†], Nebraska[†], Oklahoma^d, South Carolina[†], and Washington, D.C.[†] (The states with the daggers also suggest a fuller written notice afterwards.) Nevada urges notification within one calendar day.

¹²¹ See footnote [31](#), above, and accompanying text.

7. Weaknesses that Can Undermine Notification

Although many states require notice in 24 hours or less, some of these have weaknesses that can undercut the intended prompt notice.

Maryland allows the IEP team to set another deadline. Delaware (2014 regulations) allows the IEP team to do so for physical restraint. Wyoming allows parents to agree to a different deadline. California's law does not apply to non-emergency use of restraint and seclusion.

Such provisions can be problematic because restraint and seclusion can kill and injure. That's what makes this different than notice about other things. Parents need to know quickly, so they can seek needed medical care or understand changes in a child's behavior. Regardless of whether restraint and seclusion is in the IEP or parents agree to a different deadline, the likelihood of injury is the same, and in the case of some disabilities, may even be greater (*e.g.*, brittle bone syndrome, physical health issues associated with Down Syndrome and other chromosomal disabilities, certain issues related to autism, psychological trauma, etc.)

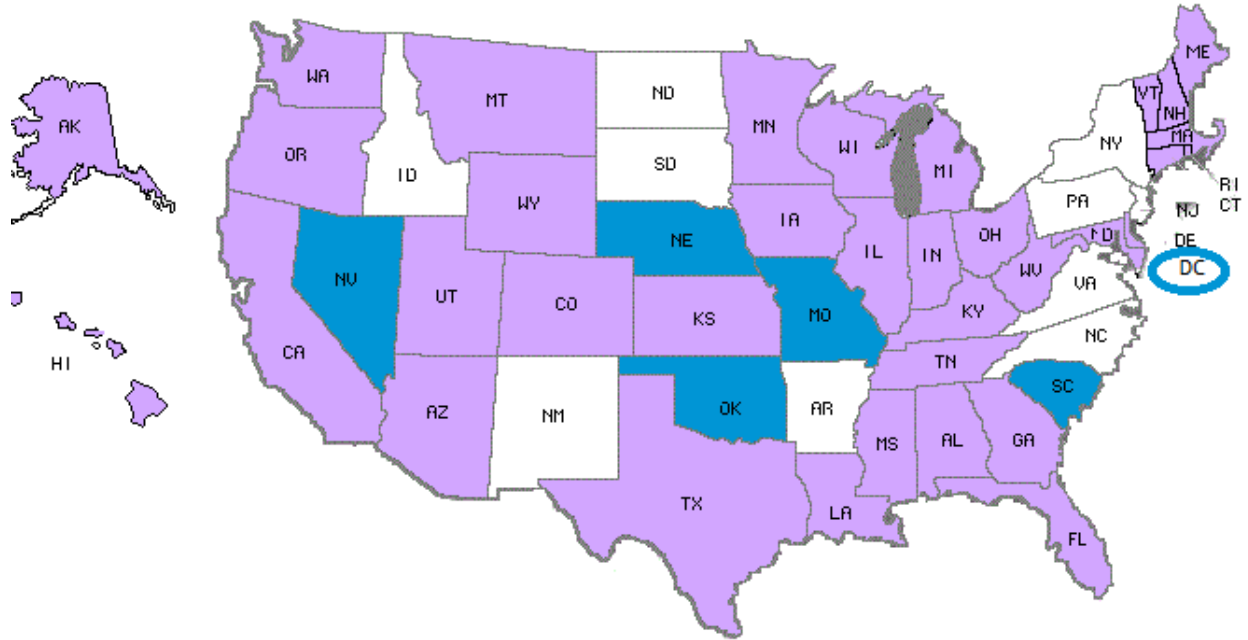
Massachusetts' prior practice was to permit schools ask parents to waive the right to notice. Connecticut previously allowed the IEP team to decide parental notification when seclusion was included in the IEP. These provisions were deleted in 2014 and 2015, respectively--an immense improvement. The impact in Connecticut could be significant. In 2011-12, 78% of Connecticut seclusion incidents involved students with seclusion in their IEPs.¹²² (Other states do not collect data with the effort and commitment for transparency that Connecticut has, and for which Connecticut is highly commended. Rather, the Connecticut numbers give a sense of how things would look in other states with similar IEP provisions.)

North Carolina has much longer timelines than any other state with parental notification requirements. Its law also includes several exceptions that can result in parents not being informed of seclusion or restraint, a dangerous proposition. Schools need not inform parents if there are no observable injuries (concussions and internal injuries often aren't observed; certain forms of restraint leave no physical mark¹²³); if certain restraints are used in accord with the statute; and if seclusion lasts for less than the time period in the child's behavioral plan (writing long time periods in the plan may mean parents never find out these practices were used).

¹²² Conn. State Dept. of Educ., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND Seclusion, SCHOOL YEAR 2011-12.

¹²³ Brian Wilson and Adam Tamburin, *Nashville Principal Resigns after Spanking Two 6 Year Olds*, THE TENNESSEAN, Nov. 7, 2013 (use of pressure point pinch restraint that left no mark on young children.)

**Map 19: Majority of States Urge Informing Parents in 1 School Day or Less,
By Law or Nonbinding Policy (December 31, 2016)**



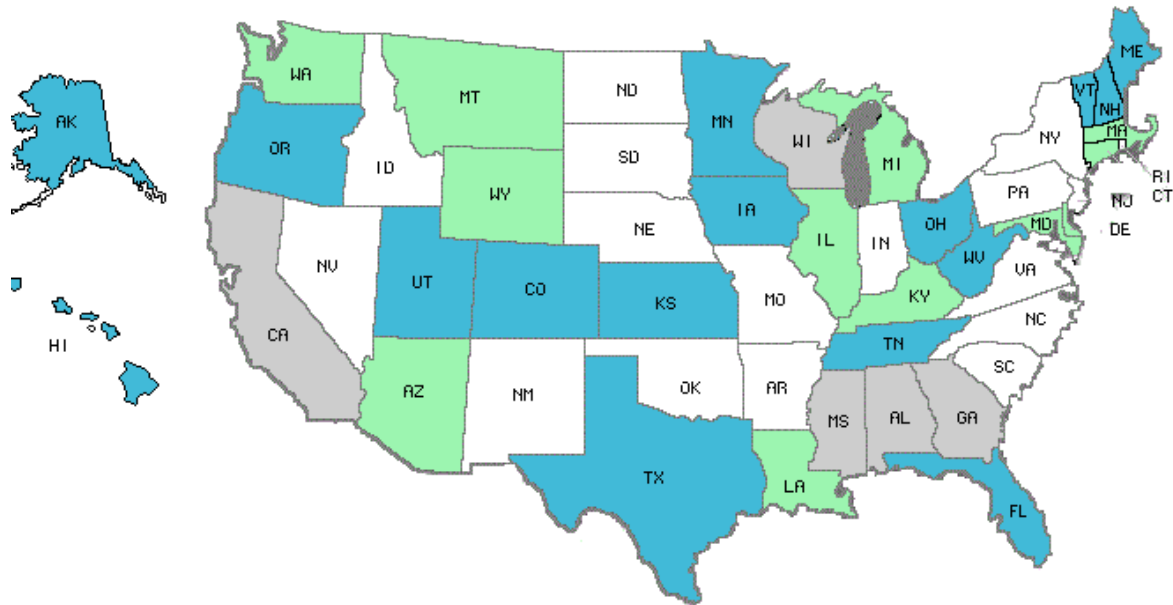
Majority of states with restraint/seclusion laws or nonbinding guidance support notification in 1 school day or less.

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

Blue (dark): Nonbinding policy suggests notifying parents within 1 school day or less.

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**Map 20: For Children with Disabilities: State Requires Notification
in 1 School Day or Less, Broken Down by Timeline (December 31, 2016)**



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

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

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

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B. State Debriefing Requirements

A debriefing is a discussion held after restraint or seclusion are used to determine what caused the event, how it could be avoided, and to plan for and implement positive and preventative supports. Debriefings have been described as “critical”¹²⁴ for reducing and eliminating restraint and seclusion.¹²⁵ They are one of the six core strategies identified for decreasing the use of seclusion and restraint by the National Association of State Mental Health Program Directors (NASMHPD).¹²⁶ Staff, parents, and students may attend. In some situations, parents may wish to exercise caution, particularly if they have concerns about retraumatizing their child or whether the meeting would support their child. There may be times that parents wish to consult with a professional advocate about a debriefing and who attends it.

Debriefings are mandated by law for all children in 19 states; for children with disabilities, in 24. The states are: Alaska, Alabama, Arizona (2015), Colorado, Connecticut (2015), Indiana, Kansas (2015), Maine, Maryland, Massachusetts, Michigan (2016), Mississippi (2016), New Hampshire, Oregon, Rhode Island, Vermont, Wisconsin, Wyoming, Washington (2015), California^d, Louisiana^d, Minnesota^d, Nevada^d, and Pennsylvania^d. In addition, two states, Kentucky and Utah, require a debriefing if requested by parent or student.

There are 6 states that suggest a debriefing in nonbinding guidelines: Missouri, Nebraska, Ohio, Oklahoma^d, South Carolina (seclusion only), and Washington, D.C. While Ohio’s January 2013 nonbinding guidance included the debriefing, its mandatory April 2013 regulations do not.

¹²⁴ Psychiatric Facilities Interim Final Rule, 66 FED. REG. at 7152.

¹²⁵ 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 helps prevent 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).

¹²⁶ KEVIN ANN HUCKSHORN, *SIX CORE STRATEGIES TO REDUCE THE USE OF SECLUSION AND RESTRAINT AS A PLANNING TOOL* (The National Association of State Mental Health Program Directors 2005).

C. State Requirements for Data Collection and Sunshine

1. Need for Data Collection

In its 2009 report, the GAO described only six states that collected data: California^d, Connecticut^d, Kansas^d, Pennsylvania^d, Texas^d, and Rhode Island. Data helps parents, educators, and the public understand the extent of restraint and seclusion. It also helps educators work to improve and reduce use of these practices.

Known state numbers indicate significant use of restraint and seclusion. Connecticut recorded almost 19,000 incidents of restraint and 18,000 incidents of seclusion for 2011-12, in response to a new state data collection law. Connecticut is small, and at the time, was the 31st largest state in student enrollment.¹²⁷ This indicates that the number of incidents in other, larger states, is likely far greater. Connecticut is to be commended for its work in gathering data and making it available to the public. Maine's data analysis of 2012-13 showed 3,752 incidents of restraint, and 1,400 incidents of seclusion, even though one-third of the districts failed to report.¹²⁸ Texas and California reported 33,000 instances alone in 2007-08.¹²⁹ In Ohio, 14,000 incidents were reported to the State Board of Education, with others likely not reported at all. Of the 14,000, 80 percent of the students had disabilities.¹³⁰ These states are to be commended for their efforts to gather and make public data, as they work to reduce restraint and seclusion. This is a service to the public, students, and educators. Some states, including some quite populous ones, may not keep their own data or make it readily available to the public. But this does not necessarily mean that do not use restraint and seclusion, or that they have no problems. It simply means that they do not keep data or they do not make it publicly available.

The 2011-12 CRDC documented that at least 110,000 students nationwide were subjected to restraint or seclusion, and that the practices were disproportionately used upon students with disabilities.¹³¹ Until 2009, there was no national count of counts of restraint and seclusion use. Yet, restraint and seclusion have been used in special education for almost 40 years, according to leading professors.¹³² In 2011-12, many large school districts, reported no incidents of restraint and seclusion, including Chicago, New York City, Los Angeles, Philadelphia, Denver, Fairfax and Norfolk, Virginia, Baltimore, Memphis, Tennessee; and Atlanta, Georgia, according to the

¹²⁷ Nat'l Ctr. for Educ. Statistics, Table 203.20, Enrollment in Public Elementary and Secondary Schools, by Region, State, and Jurisdiction: Selected Years, Fall 1990 Through Fall 2023.

¹²⁸ Christopher Cousins, Data from Schools Show Widespread Use of Restraint and Seclusion, but Validity of Numbers Debated, BANGOR DAILY NEWS, Sept. 26, 2013.

¹²⁹ GAO REPORT at 5, 7. The list was not intended to be complete.

¹³⁰ Carl Monday, Carl Monday Investigates Restraint & Seclusion Rooms in Our Schools, Fox19Now (Ohio), Aug. 29, 2016.

¹³¹ CRDC 2011-12 Report 9-10.

¹³² Joseph Ryan, Reece Peterson, George Tetreault, Emily van der Hagen, *Reducing the Use of Seclusion and Restraint in a Day School Program* 203 (2007).

collection. It is not known if districts reporting zero did not use the practices or if they did not collect data, National Public Radio reported.¹³³ Prince William County Public Schools in Virginia (over 81,000 students in 88 schools) reported no use of restraint or seclusion,¹³⁴ although news reports indicated that the practices were used with some frequency upon County students in the 2011-12 timeframe.¹³⁵

There have been concerns about school district data, according to media reports. Kentucky's Jefferson County Public Schools reported only 174 restraint and seclusion episodes in 2014-15 to the state, even though it restrained or secluded students over 4,000 times a year, a story reported extensively by the Louisville Courier-Journal (lead) and others. An independent auditor hired by the county reported that administrators found, in addition to computer system difficulties, some employees were reportedly encouraged not to report incidents for fear it would reflect badly on their schools. As part of the ensuing inquiry, the Kentucky Education Commissioner sent staff to review the district's restraint and seclusion practices.¹³⁶ Indiana's CALL 6 likewise reported on alleged inaccurate reporting of restraint and seclusion incidents, contrary to the state's new law. The State Commission on Seclusion and Restraint was concerned about the relatively high number of zeros reported.¹³⁷

Data collection and public attention can make a real difference, as seen in Florida. Florida began collecting data by law in 2010. In 2011-12, Florida recorded 9,751 restraint and 4,245 seclusion episodes in 2011-12.¹³⁸ The mandatory state data reporting caused Pasco, Florida schools to focus on how frequently seclusion was utilized and to move to end its use as 28 other Florida districts did, the Tampa Bay Times reported. The District's Director of Student Support Services explained, "Based on more recent research, and people being able to articulate the trauma they have experienced, we don't feel it's in the best interest of children. . . . We thought there were no other choices before." A Special Education Supervisor echoed these sentiments, "The law helped us understand what our practices were. . . . We had to take ownership of it, and we have to take action to make things better."¹³⁹

¹³³ Joseph Shapiro, *National Data Confirm Cases of Restraint and Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014.

¹³⁴ Civil Rights Data Collection, District Search, Prince William County Public Schools I.D. No. 5103130 (2011-12).

¹³⁵ Donna St. George, *Prince William Schools Restrain, Seclude Disabled Kids Frequently, Inquiry Finds*, WASH POST, Aug 6, 2014.

¹³⁶ Allison Ross and Deborah Yetter, *State Slams JCPS, Orders Restraint Review*, LOUISVILLE COURIER-JOURNAL, July 20, 2016; Allison Ross, *Audit: 'Code of Silence' in JCPS on Restraint*, LOUISVILLE COURIER-JOURNAL, May 10, 2016; Antoinette Konz, *Auditor: JCPS Employees Were Told Not to Report Seclusion, Restraint Incidents*, WDRB 41 (Louisville), May 10, 2016.

¹³⁷ Kara Kenney, *CALL 6: School Districts Misreport Seclusion, Restraint Incidents*, RTV6 (ABC, Indianapolis), Oct. 10, 2016.

¹³⁸ Sarah Gonzalez and John O'Connor, *Florida Keeps Two Sets of Seclusion Data -- and Why Neither May Tell the Full Story*, STATE IMPACT/NPR, Aug. 14, 2012.

¹³⁹ Jeffrey Solochek, *Pasco Schools Aim to End Use of Seclusion Rooms*, TAMPA BAY TIMES, Aug. 31, 2014.

States and districts which report and analyze their data like this are to be highly commended. Their examples and work are not evidence of weakness; they are evidence of strength and efforts to improve and find ways to prevent and decrease use of restraint and seclusion. Other states do not collect data and thus are unable to make the same efforts to improve.

States and districts that gather and analyze data to make improvements are to be highly commended. A number do so.

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

State efforts indicate that data can readily be collected. As of December 31, 2016, 20 states require an annual data collection for all children; 25, for children with disabilities: Alaska, Alabama, Connecticut (2015 statute; comprehensive collection for all children), Delaware, Florida^d, Hawaii, Indiana, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts (2014 regulation requires more comprehensive data collection than in past), Michigan (2016, statute mandates comprehensive data collection), Mississippi (2016), North Carolina, New Hampshire (2014 applicable to restraint and seclusion), Nevada^{d, 140}, Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, Utah (2015), Washington (2015), and Wyoming. Pennsylvania does not require a state collection, but requires that data be made available to the SEA when it monitors an LEA. Virginia is expected to also adopt state data collection requirements when its regulations are promulgated, under standards made applicable by its March 2015 statute.

Of these states, 20 mandated data collections after the Congressional models proposed comprehensive data gathering and reporting, which began 8 years ago. This significant increase in the last 8 years indicates that states favor reporting, and that such data can readily be gathered in modern times.

California previously required a state-level data collection but repealed these requirements. Data is now kept only at the local level, and concerns have been expressed that data is vastly underreported.¹⁴¹

When data collection is voluntary, rather than mandatory, states may not collect it. For example, in 2003, Vermont began collecting seclusion/restraint data. Yet, since the state law did not require it, Vermont stopped doing so a few years later.

¹⁴⁰ Nevada collects restraint data. It bans seclusion of students with disabilities. As it requires data about violations of the law, it encompasses seclusion.

¹⁴¹ Jane Meredith Adams and John C. Osborn, *Little Oversight of Restraint Practices in Special Education*, EdSource.org, Apr. 19, 2015.

3. Data Reporting to the School or LEA

Some states mandate data collection at lower levels, indicating that data could readily be sent to the state level. By law, data is reported to the LEA or school board in 15 states, 11 of which apply the rules to all children: Alabama, Florida^d, Illinois (2014 regulations), Kansas, Maine, Michigan (2016), Mississippi (2016), North Carolina, Nevada^d, Oregon, Tennessee^d, Texas^d, Vermont (certain circumstances), Wisconsin, and Washington. As with data collected at the state level, local data collections can be subject to underreporting.¹⁴²

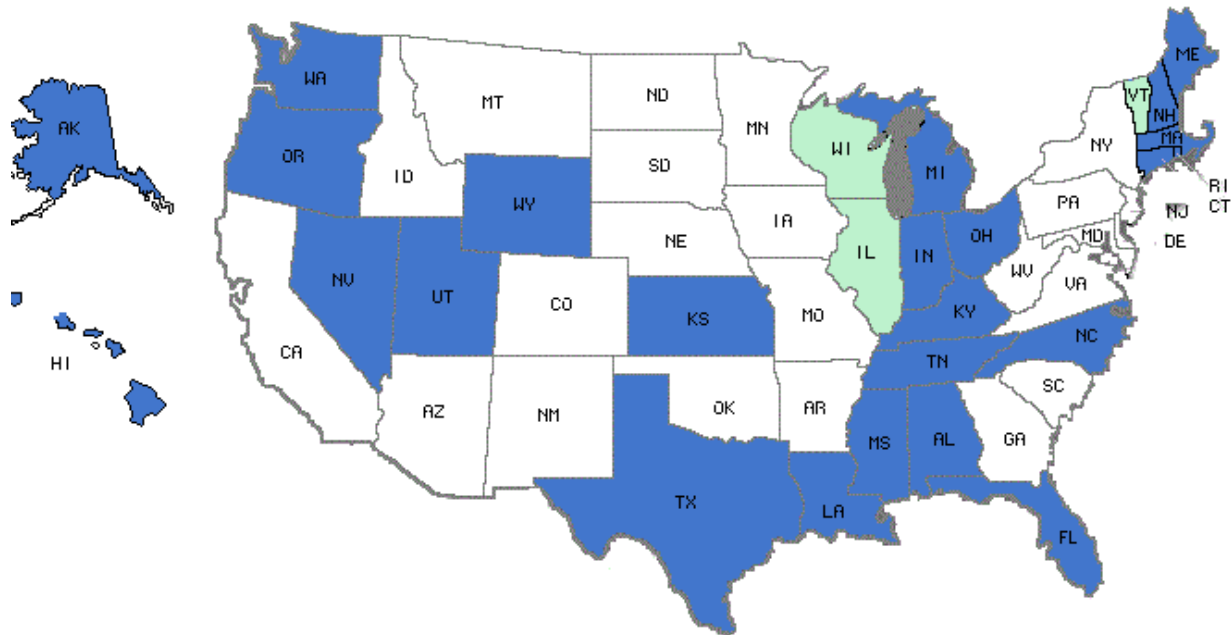
Some states keep data at the school level, including, but not limited to, Arkansas (seclusion only), California^d, Colorado, Connecticut, Florida^d, Iowa, Kansas, Ohio, Nevada^d, Rhode Island, and Tennessee^d. California previously required a state-level data collection, but repealed these requirements.

There are 22 states that require an incident report to be put in the child's school file after each use of restraint and seclusion for all children, and 28, for children with disabilities: Alaska, California^d, Colorado, Connecticut, Florida^d, Georgia (but not seclusion as it is banned), Illinois, Iowa, Kansas (regulations), Kentucky, Louisiana^d, Maryland, Massachusetts, Maine, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d (for restraint or aversives only), North Carolina (if the incident lasted longer than 10 minutes, involved prohibited activity, or resulted in an injury), New Hampshire, Nevada^d, Rhode Island, Texas^d, Utah (2015), Vermont, Washington, Wisconsin, and Wyoming.

In addition, a few states have voluntary guidelines which seek data at lower levels. Nebraska and South Carolina urge that data be reported to the LEA or school board. There are 5 states that recommend putting an incident report in the child's file: Nebraska, Oklahoma^d, South Carolina, Virginia, and Washington, D.C.

¹⁴² Disability Rights Wisconsin, *Report Offers First Statewide Look at Seclusion and Restraint in Wisconsin's Public Schools*, Oct. 22, 2014, <http://www.disabilityrightswi.org/archives/4668> (describing effects of confusion about state data collection rules).

Map 22: State Requires Data Collection at State or Local Level (December 31, 2016)



Blue (dark): Data collected at State Education Agency level by state law.

Green (light): Data collected at Local Education Agency level but not State level by law.

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D. Training and Related Matters

A number of the deaths and injuries described in the GAO report involved poorly trained or untrained staff.¹⁴³ The California Protection & Advocacy Office, Disability Rights California, described several incidents in which children were wrongfully restrained and secluded by untrained staff, including an untrained aide who dragged a six-year-old child down the hall by his wrists.¹⁴⁴ In Ohio, untrained school staff utilized life-threatening prone restraint and seclusion rooms to punish students for being noncompliant or disrespectful.¹⁴⁵ A

Although the GAO found that untrained staff were involved in many injuries, not all states require comprehensive training programs.

Massachusetts teacher who missed her training session strapped a preschooler into a chair from which he could not escape and confined him in a darkened room. Another teacher found and rescued him.¹⁴⁶

There are 31 states with seclusion and restraint laws that require some kind of staff training, although a number are fairly minimal. Training requirements vary widely. This report does not attempt to catalogue all of them, but only to highlight some of the more significant elements. Moreover, other state regulations and programs, such as those for positive behavioral support, may include relevant training requirements. This report focuses only on the training requirements within seclusion and restraint laws due to difficulty obtaining all of these additional regulations and program requirements.

At the national level, bills introduced in Congress can be compared to the state requirements. The bills introduced by Senator Tom Harkin (2011 and 2014), Congressman George Miller with Congresswoman McMorris Rodgers (2009), and Congressman Gregg Harper (2011 and 2013), and by Congressmen Bobby Scott and Don Beyer (2014) required training in the following: (1) evidence-based techniques “shown to be effective” in preventing the use of the practices and in keeping personnel and students safe; (2) positive behavioral interventions, behavioral antecedents, functional behavioral assessments, and de-escalation; (3) first aid and cardiopulmonary resuscitation; and (4) State seclusion/restraint policies and procedures. Certification and periodic re-training are also required.

No state laws include all of these requirements; most require much less. Oregon, Utah Wyoming, Alaska, and Hawaii are the states which refer to evidence-based techniques at all, and

¹⁴³ See H.R. REP. NO. 111–417 at 18.

¹⁴⁴ Disability Rights California, *Restraint & Seclusion in Calif. Schools: A Failing Grade* (June 2007).

¹⁴⁵ Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

¹⁴⁶ James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009.

only for certain requirements. All of these states enacted or upgraded their laws after the introduction of the Congressional models with their emphasis on proper training.

Some state law training requirements are these:

- *Training in conflict de-escalation and prevention of seclusion/restraint (24 state laws, all children; 28, children with disabilities):* Alaska, Alabama, Colorado, Connecticut (2015), Delaware, Georgia, Hawaii, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Maine, Minnesota^d, Michigan (2016), Mississippi (2016), North Carolina, Nevada^d, Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, Utah (2015), Vermont, Wisconsin, West Virginia, and Wyoming. Utah is also expected to adopt this provision in its final regulations, now in the final stages of promulgation.
- *Training in positive behavioral support training is included in the seclusion and restraint laws (15 state laws, all children; 21, children with disabilities):* Alaska, Alabama, California^d, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Minnesota^d, Michigan (2016), Mississippi (2016), Montana^d (requiring person trained in positive interventions on IEP team), North Carolina, Nevada^d, Pennsylvania^d, Rhode Island, Tennessee^d, Vermont, and Wyoming. In addition, Utah requires training in evidence-based practices, which almost certainly includes training in positive and preventative behavioral supports.
- *Training in safe and appropriate use of seclusion and restraint (21 state laws, all children; 25, children with disabilities):* Alaska, Alabama (restraint only; locked seclusion banned), Colorado, Connecticut (2015 statute: applicable to restraint and seclusion of all children), Georgia (restraint only; seclusion banned), Hawaii, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maine, Maryland, Minnesota^d, Michigan (2016), Mississippi (2016), New Hampshire, New York^d, North Carolina, Oregon, Rhode Island, Tennessee^d, Texas^d, Vermont, and West Virginia.
- *Explicit mandate for training related to first aid, signs of medical distress, cardiopulmonary resuscitation or similar issues (10 state laws, all children; 12, children with disabilities):* Alaska, Connecticut (2015), Illinois, Maine, Maryland, Massachusetts, Minnesota^d, Michigan (2016), Mississippi (2016), Rhode Island (part of in-depth training for certain key staff), and Vermont. Some states may implicitly address this through training in “safe use” of the techniques. Nevertheless, when procedures as dangerous as restraint and seclusion are sanctioned, laws should explicitly require basic medical and health training.
- *Training in dangers of seclusion/restraint (8 state laws, all children; 10, children with disabilities):* Colorado, Connecticut (2015), Illinois, Iowa, Maryland, Massachusetts, Minnesota^d, Michigan (2016), Rhode Island, and Vermont.

- *Training in state, LEA, and school policies and procedures (11 state laws, all children; 13, children with disabilities):* Alaska, Connecticut (2015), Iowa (school only), New Hampshire, Kentucky, Massachusetts (school only), Maryland, Michigan (2016), New York^d, Rhode Island (school only), Tennessee^d (if funding is available for training), Utah (2015), and Wyoming (school only).
- *Certification, proof of proficiency, or periodic re-training required (10 states, all children):* Colorado (retrain every two years), Hawaii, Iowa (periodic retraining), Illinois (retrain every 2 years), Indiana (2014) (recurrent training in accord with plan adopted by each school), Maine (certification), Maryland (proficiency required for special school-wide resource staff), Michigan (2016), Mississippi (2016), Rhode Island (special school-wide resources staff), and Wyoming (certification).

Rhode Island's regulations do not include such detailed training requirements. But in 2016, the state adopted a statute requiring personnel to be trained in reducing and preventing the use of restraint and seclusion.

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

When Virginia promulgates its new regulations, they will include training requirements in accord with the materials referenced in the state's March 2015 statute.

VI. A Study of the Effect Congressional Models Have Had on State Restraint and Seclusion Laws and Policies

A. Congressional Models and State Requirements

Congressional activity is often considered in the standard bill-to-law framework: bills either become law or they do not become law and die. But at least in the area of restraint and seclusion, the Congressional bills and attention have significantly impacted the states, causing them to adopt and strengthen state-level requirements. The bills have served as models for states, which adapted their provisions as they wrote state laws, regulations, and policies. With regard to some provisions, all or most of the states including the provision in their policy scheme took action after the Congressional bills began highlighting the same issue and action. What Congress does on the national level influences the states on restraint and seclusion. More comprehensive Congressional bills have been mirrored in adoption of stronger state laws and policies.

Before the first Congressional model was introduced in 2009, 9 states gave all children meaningful protections from restraint and seclusion. Today, 22 do. The numbers are higher for children with disabilities.

1. History of the Congressional Models on Restraint and Seclusion

In December 2009, Congressman George Miller and Congresswoman Cathy McMorris Rodgers introduced the first national restraint and seclusion bill, which was later named the Keeping All Students Safe Act. In late 2011, Senator Tom Harkin introduced the first Senate restraint and seclusion bill.

Legislation was introduced in each Congress thereafter (2011-12, 2013-14, and 2015-15). The 2011 and 2013 House bills were cosponsored by Congressman Miller and Congressman Gregg Harper; the 2015 bills, by Congressman Bobby Scott and Congressman Don Beyer. Congressman Miller chaired or served as ranking member of the relevant House committee when the House bill was introduced in 2009, 2011, and 2013; Congressman Scott, in 2015. Senator Harkin chaired the relevant Senate Committee when the Senate bill was introduced in

2011 and 2014. In 2009, the GAO report was provided as ordered by Congress. In 2009 and 2012, Congress held hearings on restraint and seclusion. Throughout the period, individual members of Congress also highlighted the issues in various bills.

This section of the report examines state law adoption of some features of the two Congressional Keeping All Students Safe bills. In the time since the first Congressional bill was introduced in 2009, state activity has grown immensely. When the first bill was introduced, only 9 states that provided meaningful protections against both restraint and seclusion for all children; and 21, for children with disabilities. Today, there are 22 states with some meaningful protections against both seclusion and restraint for all children, and 35 that protect children with disabilities. Many of these states modeled their legislation on the Congressional bills. One should not read this portion of the report as meaning that state law and Congressional legislation have identical impacts. A number of state laws are limited. Other states are unable or unwilling to adopt laws or strengthen existing ones. Rather, the purpose is to trace the use of the Congressional bills as models during the 8-year period since they were first introduced.

2. State Adaptation of Congressional Models: Specific Provisions

A substantial number of states that have taken significant action incorporating features of the Congressional Keeping All Students Safe Act bills, following the pathway laid by Congressman Miller, Senator Harkin, and their colleagues.

There are 19 that adopted new statutes or regulations: Alaska, Alabama, Arizona (2015), Delaware, Florida^d, Hawaii, Indiana, Georgia, Kansas (2013 regulations), Kentucky, Louisiana^d, Michigan (2016), Mississippi (2016), Ohio, Vermont, Wisconsin, West Virginia, Utah (2015), and Wyoming. There are 9 that substantially strengthened existing laws: Connecticut (2015 statute), Kansas (2015 statute strengthening 2013 regulations), Maine, Minnesota (2013 and 2016 substantial changes), Massachusetts (2014), New Hampshire (2012 and 2014), Oregon, Tennessee^d, and Washington (2013 and 2015 statutory strengthening). In total, 27 took significant action, as one state, Kansas, is in both categories. Moreover, Delaware's model waiver procedure, while not a law, incorporated additional standards from the House bill that required a threat of physical danger was used.

The following elements of the Congressional bills were adopted in a large majority of the 27 states that took action after introduction of the first Congressional model. Of the 27 states:

- 19 states limit physical restraint of children with disabilities to emergencies threatening physical danger (70% of the 27 states).

- 18 states restrict physical restraint of all children to emergencies threatening physical danger (67%).
 - In 2009, before the first Congressional bill was introduced, only 5 states have this protection for children with disabilities; 3, for all children.
- 21 states prohibit non-emergency seclusion for children with disabilities (78%).
- 19 states prohibit non-emergency seclusion for all children (70%).
 - These are the majority of states that prohibit non-emergency seclusion. The Senate bill (Harkin) banned all seclusion; the House bills (Miller with McMorris Rodgers and Harper; Scott, Beyer) limited it to emergencies threatening physical danger. In 2009, before the first Congressional bill was introduced, only 5 states banned on-emergency seclusion for children with disabilities; 1 for all children.
- 21 states require that less restrictive measures fail or be ineffective before restraint and seclusion are used (78%).
- 23 states require the procedure to end when the emergency ends (85%).
- All 27 states ban restraints that impede breathing and/or prone restraint (100%).
- 18 states ban mechanical restraint (67% of the 27, and the majority of states banning mechanical restraint).
- 16 states ban chemical restraint (60% of the 27, and the majority of states banning chemical restraint).
- 22 states prohibit non-observed seclusion, either by requiring continuous visual monitoring of seclusion or forbidding seclusion (81%).
- 21 states require state-level data collection (78%).
- 14 states require same-day parental notification (52%); 21 require notification within 24 hours (78%). The Congressional models would require same day notification. Both same day and 24 hour laws provide for far quicker notice for parents than the days-long periods that were more common in the past. The Congressional bills are likely linked to

the prevalence of shorter time periods in contemporary state schemes. Modern communications make prompt notice easier.

A number of requirements in the Senate bill introduced by Senator Harkin have been adopted in various states. These include the debriefing (meeting to discuss what happened and work to prevent it); and forbidding restraints that interfere with communicating (important to let adults know the child may be in medical distress).

Some provisions of the Congressional bills did not fare as well in the states. The Senate bill would have banned all seclusion. There are 5 states that do so for children with disabilities, with 1 having adopted it after introduction of the Senate bill. The House bill would have required direct person-to-person face-to-face monitoring of students in seclusion, restricting monitoring through a window to situations where face-to-face would be unsafe. Only Vermont copied both parts of the provision; most states simply mandate continuous visual monitoring or ban seclusion entirely. No state has adopted the entirety of the House or Senate training requirements, but the Congressional bills also authorized grants that could be used for training. Some states simply leave training details to the school district.

States have also gone further than the Congressional bills would have gone. For example, the Congressional bills did not ban prone restraint by name, focusing on restraint that impedes breathing. Several states both ban restraint that impedes breathing and prone restraint by name. Likewise, the initial House bill defined seclusion as a locked room, allowing doors to be blocked closed by furniture or equipment. Today, the vast majority of states with definitions defined it as room in which a child is placed alone from which the child is physically prevented from exiting.

Indeed, the states that have acted in the last 8 years largely raised the bar, as they increasingly adopted provisions similar to those in the Congressional Keeping All Students Safe Acts. By doing so, they encourage other states and localities to adopt stronger protections from restraint and seclusion. When the Congressional bills were first introduced, few states had comprehensive protections. Uniformity for its own sake (eliminate the patchwork) might have seemed like a desirable goal. But with so many states having adopted comprehensive approaches, one should be wary of simply seeking uniformity among the states for the sake of uniformity. Uniformity that requires only weak protection but requires them everywhere could weaken protections that families have in many states. Families, people with disabilities, educators, advocates, other professionals, state legislators, departments of education, Governors, and others have worked hard to create those comprehensive bills that protect children.

B. Additional Provisions That Advance Greater Safeguards For Children

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

1. Ensuring Children in Restraint and seclusion Can Communicate

Children must be able to communicate that they are having trouble breathing or are in other medical distress. The GAO documented at least four cases in which verbal children who died in restraint told staff that they could not breathe.¹⁴⁷ Yet, many children cannot speak or have difficulty doing so. According to a Gallaudet University survey of 37,500 deaf and hard of hearing students, 40% used sign language as their primary method of communication in school.¹⁴⁸ Many children with autism and intellectual disabilities have communication impairments, as may children with certain physical disabilities. These children may be unable to speak or communicate effectively. All of these children may use sign language or augmentative communication devices (such as computerized speaking devices). Children who speak and understand languages other than English need staff who can understand their language if they experience medical distress.

¹⁴⁷ GAO REPORT at 14, 16-17, 26, 29.

¹⁴⁸ Gallaudet Research Institute, Regional and National Summary Report of Data from the 2009-10 Annual Survey of Deaf and Hard of Hearing Children and Youth 11 (2011).

The bill Senator Harkin introduced in the Senate provided that restraint could not interfere with the student's ability to communicate in the student's primary language or mode of communication.

Several states have similar provisions. Some examples include:

- Colorado: "No restraint is administered in such a way that the student is inhibited or impeded from breathing or communicating." (Colorado defines restraint to include seclusion.)
- Iowa: "If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others."
- Maryland: "In applying physical restraint, school personnel may not . . . (ii) Place a student in any other position that will...restrict a student's ability to communicate distress."
- Kansas: LEAs shall adopt "policies and procedures [that] shall prohibit the following. . . or any physical restraint that impacts a student's primary mode of communication."
- Ohio: "The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication"
- Massachusetts: Physical restraint shall not be used...When the student cannot be safely restrained because it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting."
- Hawaii: Use of mechanical restraint prohibited. Mechanical restraint defined as "'Mechanical restraint' means the use of devices as a means of restricting a student's freedom of movement or the ability to communicate in the student's primary language or mode of communication." This appears to forbid restraint that

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

prevents a child from using a communication device.

- Michigan (2016): “Ensure to the extent practicable, in light of the ongoing emergency situation, that the emergency physical restraint does not interfere with the pupil’s ability to communicate using the pupil’s primary mode of communication;” and ensure that staff are present who can communicate with the child in his/her primary mode of communication.

2. Force Limited to That Necessary to Prevent Threatened Injury

As noted above, the GAO, national media, and numerous reports have documented the significant number of children killed and injured by restraint. Injuries include broken limbs, severe sprains, bloody noses, and other injuries. Too frequently, the degree of force applied is much greater than any threatened injury. In one Tennessee case, two adults allegedly lay on top of a 51 pound, 9-year-old boy with autism.¹⁴⁹ Three grown adults subjected a kindergartner in Virginia to a form of restraint that could suffocate him.¹⁵⁰ Cedric Napoleon, trying to leave class to get food, died when a teacher twice his size sat on him and suffocated him.

Because restraint and seclusion are so dangerous, state laws provide that they should involve no greater force than necessary to protect the child.

The bill introduced by Senator Harkin provided that staff should use only the amount of force necessary to protect the student or others from the threatened injury. If holding a child by the arm and taking away scissors is sufficient, the school should not use a more forceful, hazardous restraint.

Several states have incorporated this principle into their restraint and seclusion laws. Examples include:

- 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.”

¹⁴⁹ Bob Fowler, *Mom Accuses Anderson County School of Restraint*, KNOX NEWS SENTINEL, Sept. 12, 2008.

¹⁵⁰ Bill Sizemore, *Panel OKs Regulation of Seclusion, Restraint in Va. Schools*, WHSV- Channel 3, whsv.com, Jan. 19, 2015.

- 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.”
- Colorado: “Use restraints only for the period of time necessary and using no more force than is necessary.”
- Kentucky: “When implementing a physical restraint, school personnel shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.”
- Delaware: “Personnel use only the amount of force necessary to protect the student or others from the threatened harm.”
- Washington (2015): “Each school district shall adopt a policy providing for the least amount of restraint or isolation appropriate to protect the safety of students and staff under such circumstances.”

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

3. Medical and Psychological Contraindications

Restraint and seclusion are harmful for all children. Yet some children would be hurt even more, because of their health, medical, and psychological conditions. The bill introduced by Senator Harkin would bar restraints that are contraindicated due to the student’s disability, health care needs, or medical or psychiatric condition. Several states have adopted similar provisions, making them common among the states. 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."

Several states forbid the use of restraint and seclusion when it would be medically or psychologically harmful.

- 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."
- Kentucky: "School personnel shall not impose the following on any student. . .Physical restraint if they know that physical restraint is contraindicated based on the student's disability, health care needs, or medical or psychiatric condition."
- Massachusetts: "Physical restraint shall not be used. . . (b) When the student cannot be safely restrained because it is medically contraindicated for reasons including, but not limited to, asthma, seizures, a cardiac condition, obesity, bronchitis, communication-related disabilities, or risk of vomiting."
- Michigan (2016): Restraint and seclusion must be "proportionate to and sensitive to the pupil's severity of behavior, chronological and developmental age, physical size, gender, physical condition, medical condition, psychiatric condition, and personal history, including any history of physical or sexual abuse or other trauma." Appears to prohibit the use of physical restraint "when contraindicated based on a pupil's disability, health care needs, or medical or psychiatric condition, as documented" in records shared with the school.

Other states have similar provisions including Delaware, New Hampshire, Kansas (seclusion only), and others.

4. Anti-Retaliation Clause

Teachers and staff report many incidents of restraint and seclusion, as described in the footnote.¹⁵¹ Other incidents are reported by parents, children, and advocates.

¹⁵¹ James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009 (second teacher freed child from restraint in locked, darkened room); Katie Mulvaney, *Block* © Jessica Butler Jan. 3, 2017, jessica@jnba.net, p.100

Staff have been subjected to retaliation or discouraged from reporting incidents. In Pennsylvania, aides alleged that a special education teacher had engaged in repeated abuse of children with disabilities, including using aversives, bungee cords, duct tape and other restraints. They allegedly feared reporting those episodes because of an alleged code of silence among school staff. It was claimed that one detective commented, “[W]e’ve done internal affairs investigations for police departments, and people talk about the blue wall, that cops don’t testify against each other. I have never - never done an investigation where people covered for each other and people didn’t want to get involved like this case.”¹⁵² The aides’ eventual report led to the teachers’ removal from the classroom. According to news reports, a Kentucky school district reported close to 200 restraint and seclusion episodes when the number was actually around 4,000, ultimately leading the State to send staff to review the school’s practices. An independent auditor hired by the district reported that, among other things, some principals were discouraged from reporting restraint and seclusion episodes due to superior’s concerns about the appearance.¹⁵³

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

The Senate bill likewise included a prohibition on retaliation.

Island Officials Defend Room in School Basement, RHODE ISLAND PROVIDENCE J., June 14, 2008 (individual who disclosed existence of locked seclusion room by DVD feared retribution and requested anonymity); Julie Peterson, *Parents of Special Needs Students Say School District Covered Up Abuse*, CNN, broadcast May 15, 2012 (teacher informed administrators of another teacher’s abuse). In one case, staff members reported a Georgia special education teacher and paraprofessional who duct-taped a teen with autism to a chair and restrained a blind teen under a desk. The teacher who committed the offenses pled guilty to false imprisonment. The paraprofessional involved in the events was not prosecuted in exchange for offering testimony against the teacher that led to the guilty plea. The prosecutor explained, “[P]eople without a voice have been heard from. They’ve been protected.” Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011.

¹⁵² *Vicky M. v. Northeastern Educ. Intermed. Unit 19*, 486 F. Supp. 2d (2007) ; 689 F. Supp. 2d 721 (2009).

¹⁵³ Allison Ross and Deborah Yetter, *State Slams JCPS, Orders Restraint Review*, LOUISVILLE COURIER-JOURNAL, July 20, 2016; Allison Ross, *Audit: ‘Code of Silence’ in JCPS on Restraint*, LOUISVILLE COURIER-JOURNAL, May 10, 2016; Antoinette Konz, *Auditor: JCPS Employees Were Told Not to Report Seclusion, Restraint Incidents*, WDRB 41 (Louisville), May 10, 2016.

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5. Providing Parents with Restraint and Seclusion Policies

As parents, and members of the school community, parents should receive copies of school policies. These help parents know in advance what could be done with their children, what their rights and responsibilities are, and the limitations on using restraint and seclusion.

Providing policies also alerts parents generally to the use of restraint and seclusion, and enables them to discuss with the schools what appropriate policies should be and issues regarding their children. It is a relatively inexpensive, but highly useful, safeguard.

Many states have statutes or regulations requiring policies to be shared with parents, including Alabama, Alaska, Connecticut (2015), Georgia, Illinois, Indiana, Massachusetts, Minnesota, Mississippi (2016), Kansas (2015 statute), Kentucky, Maryland, New Hampshire, Ohio, Utah (2015), Vermont, and Washington. A number of these adopted their laws in recent years. For comparison, the bill introduced by Senator Harkin in 2011 and 2014 required schools to provide their policies to parents.

A number of states require school districts to give parents their restraint and seclusion policy. This helps improve safety and educate parents, an inexpensive, but very useful, safeguard.

6. Monitoring While Physical Restraint Is Used

Restraint and seclusion are dangerous. Many states require continuous visual monitoring of seclusion. A number also require monitoring while physical restraint is used. This helps staff know if a child is in medical distress, thus preventing injuries or death. It also ensures that staff can end the restraint when there is no longer a threat of physical harm. The Congressional bills required staff to engage in continuous face to face monitoring during restraint. If this would significantly endanger staff, the House bills would allow staff to maintain continuous visual monitoring from a distance. Some examples of states with similar provisions are:

- Alaska: staff must “continuously monitor [] the student in face-to-face contact or, if face-to-face contact is unsafe, by continuous direct visual contact with the student.”
- Vermont: students in restraint must be “monitored face-to-face,” and if safety is compromised, staff must be “in direct visual contact” with the student.
- Indiana: “careful and continuous” visual monitoring to “ensure safety.”

- Louisiana: “A student who has been placed in seclusion or has been physically restrained shall be monitored continuously. Such monitoring shall be documented at least every 15 minutes and adjustments made accordingly, based upon observations of the student’s behavior.”
- Washington: “Restraint or isolation must be closely monitored to prevent harm to the student.”
- Michigan: “Continually observe the pupil in emergency seclusion or emergency physical restraint for indications of physical distress and seek medical assistance if there is a concern.”
- Maine: “a student in physical restraint must be continuously monitored until the student no longer presents a risk of injury or harm to self or others.”
- Massachusetts: “No restraint shall be administered in such a way that the student is prevented from breathing or speaking. During the administration of a restraint, a staff member shall continuously monitor the physical status of the student, including skin temperature and color, and respiration.” Also requiring school to end restraint if communicates or demonstrates significant physical distress.

Mississippi, Minnesota, and Oregon are also among the other states requiring continuous monitoring of students subjected to physical restraint to prevent medical danger.

VII. CONCLUSION

It has been more than 8 years since the first nationwide restraint and seclusion bill was introduced. Many states have adopted comprehensive protections from restraint and seclusion. But in many others, children still lack protection from non-emergency restraint and seclusion. A number of states do not require prompt parental notice. Many allow use of dangerous mechanical and chemical restraint, and restraint that impedes breathing. Children who move across state lines may lose protections. Children have little choice of these matters; parents may be transferred in their jobs, moved to a new military posting, or move to care for family or for other reasons. American schools have advanced from where they were when the *Hartford Courant* first focused national attention on restraint and seclusion in 1998. Yet, much remains to be done. When children get on the school bus, their parents deserve to know that they will come home safe, regardless of where they choose to live.

VIII. BIBLIOGRAPHY OF STATE MATERIALS AND SUMMARY OF STATE LAWS, REGULATIONS AND POLICIES ABOUT RESTRAINT AND SECLUSION

(EFFECTIVE December 31, 2016)

This bibliography both provides traditional source information and summarizes the action in each state. This report has focused on state restraint and seclusion laws and policies in force and applicable to children in elementary and secondary schools. The following were excluded from consideration in the report analysis: proposed state bills, regulations, and guidance that were never enacted; nonbinding guidance applicable only to limited groups of children (*e.g.* children with certain disabilities or in certain kinds of classrooms); and laws applicable only to private schools and institutions but not to public elementary and secondary schools.¹⁵⁴

ARIZONA. 2015 ARIZ. LAWS CH. 300 (former S.B. 1459) (2015); ARIZONA REV. STAT. § 15-843 (as amended by H.B. 2476, April 3, 2013). In 2015, Arizona adopted a comprehensive protection statute. In 2013, it had limited protections for seclusion and none for restraint.

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

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

ARKANSAS. Arkansas has meaningful protections against seclusion, but is silent on restraint. ARKANSAS SPECIAL EDUC. PROC. REQUIREMENTS & PROGRAM STANDARDS § 20.00. In 2013, it adopted a statute requesting that the Department of Education report about the resources school districts needed to reduce restraint use. ARK. CODE. ANN. § 6-18-516 (2013). Arkansas has also adopted a nonbinding suggested policy regarding use of restraint, Arkansas Department of Education, ADVISORY GUIDELINES FOR THE USE OF STUDENT RESTRAINTS IN PUBLIC SCHOOL OR EDUCATIONAL SETTINGS (2014).

¹⁵⁴ As part of the research, searches were performed of the statutes, administrative regulations, and State Education Department websites for Idaho, North Dakota, New Jersey, and South Dakota. No materials in force were found.

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

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

CONNECTICUT. Connecticut adopted comprehensive protections against seclusion and restraint applicable to all children in 2015. PUBLIC ACTS 2015, No. 15-141 (FORMERLY S.B. 927) amending CONN. GEN. STAT. §§ 46a-150 to 46a-154. Regulations to be written. In July 2512, Connecticut adopted Public Act No. 12-88, amending 46a-153 to require data collection.

Delaware. DEL. CODE tit. 14, § 4122F (June 26, 2013 statute); DEL. EDUC. ADMIN. CODE tit. 14 §610 (2014 regulations); DELAWARE DEPT. OF EDUC., 2014-15 ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT Appendix B (Oct. 2015) (decision matrix and waiver form for seclusion and mechanical restraint); DELAWARE DEPT. OF EDUC., REQUEST FOR INDIVIDUAL STUDENT WAIVER FOR MECHANICAL RESTRAINT(S) OR SECLUSION, July 10, 2015. Delaware previously had a limited set of very weak regulations regarding using restraint and seclusion upon students with autism in emergencies. It did not protect other children with or without disabilities or protect students in non-emergencies. DEL. EDUC. ADMIN. CODE tit. 13 §929: 2.0.

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

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

GEORGIA. In 2010, Georgia adopted meaningful protections against seclusion and restraint by

regulation. GA. COMP. R. & REGS. R. 160-5-1-.35. More information about the binding regulation is contained in GEORGIA DEPT. OF EDUC., GUIDANCE FOR STATE BOARD OF EDUCATION RULE 160-5-1-.35 SECLUSION AND RESTRAINT FOR ALL STUDENTS, Apr. 20, 2012.

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

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

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

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

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

KANSAS. In 2015, Kansas adopted comprehensive protections in statute for all students from restraint and seclusion. H.B. 2364 amending K.S.A. 19-2761, 34 KANSAS REGISTER NO. 23 at 545, June 4, 2015. Kansas adopted updated regulations in 2016, Kansas Dept. of Educ., EMERGENCY SAFETY INTERVENTIONS, K.A.R. 91-42-1 through 91-42-7 (effective June 10, 2016), 35 KANSAS Register No. 21 at 486 (May 26, 2016). These replace prior 2013 regulations, KANSAS DEPT. OF EDUC., EMERGENCY SAFETY INTERVENTIONS, K.A.R. 91-42-1, 91-42-2 (adopted February 13, 2013); 32 KANSAS REGISTER No. 4 at 318 (Apr. 14, 2013). Before 2013, Kansas had nonbinding, voluntary guidance. KANSAS STATE DEPT. OF EDUC., KANSAS SECLUSION AND RESTRAINT GUIDELINES: GUIDANCE DOCUMENT (2007).

KENTUCKY. On February 1, 2013, comprehensive restraint and seclusion regulations became effective. 704 KY ADMIN. REGS. 7:160. There is nonbinding guidance explaining the regulation, KENTUCKY DEPT. OF ED., GUIDANCE FOR 704 KAR 7:160 USE OF PHYSICAL RESTRAINT AND SECLUSION IN PUBLIC SCHOOLS (Feb. 5, 2013). Kentucky previously had nonbinding seclusion principles. KENTUCKY DEPT. OF EDUC., EFFECTIVE USE OF TIME-OUT (2000).

LOUISIANA. Louisiana adopted meaningful protections against seclusion and restraint by statute in 2011, followed by regulations. LA. REV. STAT. ANN. §17:416.21; LA. ADMIN. CODE TIT. 28, § 542. (In 2010, Louisiana had adopted a statute that only authorized the state to write nonbinding guidelines. In 2011, the new statute with specific mandates replaced the old one.) In 2016, Louisiana enacted a new statute related to empowering an Advisory Committee to recommend restraint and seclusion best practices, state data collection and publication, and other matters. LA. ACT. No. 522, S.B. 316 (signed by Governor June 13, 2016).

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

MARYLAND. Maryland has meaningful protections against in statute and regulation. MD. CODE. EDUC. §§ 7-1101 TO 7-1104; MD. REGS. CODE tit. 13A, §13A.08.04.01-.06. Maryland also has nonbinding guidance explaining the regulations, MARYLAND STATE DEPT. OF EDUC., TECHNICAL ASSISTANCE BULLETIN 18: USE OF EXCLUSION, RESTRAINT AND SECLUSION (Sept. 2012), and a definition fact sheet, Maryland State Dept. of Educ., Fact Sheet: The Use of Restraint and Seclusion (Apr. 2014).

MASSACHUSETTS. In December 2014, Massachusetts substantially revised its restraint and seclusion regulations, 603 CODE OF MASS. REGS. §§ 46.00 - 46.07. In 2015, Massachusetts issued further guidance about seclusion and time-out rooms, MASS. DEPT. OF ELEM. & SEC. EDUC., TECHNICAL ASSISTANCE ADVISORY SPED 2016-1: TIME-OUT AND SECLUSION (July 31, 2015).

MICHIGAN. In 2016, Michigan enacted a comprehensive restraint and seclusion statute, comprised of House Bills 5409-5417 (signed by Lt. Governor Brian Calley, Dec. 29, 2016). The bills should be assigned Public Act Nos. 394-402. Michigan previously had recommended guidelines, MICHIGAN STATE BD. OF EDUC., SUPPORTING STUDENT BEHAVIOR: STANDARDS FOR THE EMERGENCY USE OF SECLUSION AND RESTRAINT (2006).

MINNESOTA. Minnesota has meaningful protections against seclusion and restraint in statute and regulation. These statutes are specifically applicable to restraint and seclusion in school, and were amended in 2009, 2011, 2012, 2013, and most recently, 2016 (H.F. No. 2749). MINN. STAT. § 125A.0941, 125A.0941, 125A.0942; MINN. R. 3523.2710(4)(F).

MISSISSIPPI. In 2016, Mississippi adopted a comprehensive regulation about restraint and seclusion, Rule 38.13 RESTRAINT AND SECLUSION (Apr. 2016).

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

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

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

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

NEW HAMPSHIRE. New Hampshire has meaningful protections against restraint in statute for all children, and against seclusion for children with disabilities in regulation. N.H. REV. STAT. ANN. §§ 126-U:1- 126-U:13 (Amended 2014, S.B. 396); N.H. RULES FOR THE EDUC. OF CHILDREN WITH DISABILITIES, §§ 1102.01, 1113.04 - 1113.07 (amended 2014); N.H. ADMIN. R. ED. 1200 (effective Jan. 8, 2016). In 2014, New Hampshire made its laws applicable to seclusion, as well as restraint. In 2016, it strengthened the rules, particularly with regard to complaints, creating a process to investigate complaints and remedy problems.

NEW JERSEY. New Jersey lacks a statute, regulation, or guidance specific to schools and restraint and seclusion. Bills have been introduced but have not yet been passed.

New Mexico. New Mexico has nonbinding, suggested guidance in the form of memoranda from its Special Education Office. New Mexico Public Education Department, Use of Physical Restraint as a Behavioral Intervention for Students with Disabilities Memorandum (2006); New Mexico Public Education Department, Policy on the Use of Time Out Rooms as a Behavioral Intervention (2003).

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

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

NORTH DAKOTA. North Dakota does not have any statute, regulation, or guidance specific to schools and restraint and seclusion for all children or even all children with disabilities. North Dakota has a very limited law applicable only to people with developmental disabilities in schools and other facilities. It limits restraint and seclusion to incidents of physical harm, provides for administrator review, and otherwise, has very few protections. N.D. CENT. CODE §§ 25-01.2-09, 25-1.2-10. Because this law applies only to students with developmental disabilities, and does not protect other students with disabilities, it is not included in the count in this report. See discussion in text. North Dakota's legislature has required a study of the state's restraint and seclusion practices. North Dakota Senate Concurrent Resolution No. 4018 (64th Legislative Assembly, adopted March 26, 2015). This was a process Virginia used as a predecessor for adopting a bill.

OHIO. Ohio has a regulation, nonbinding policy, and administrative order. Ohio Admin Code § 3301-35-15 (comprehensive restraint and seclusion regulation adopted April 9, 2013); Ohio Admin Code 3301-35-06; Ohio Dept. of Educ., State Bd. Of Educ., Policy on Positive Behavior Interventions and Support, and Restraint and Seclusion (2013); Ohio Exec. Order No. 2009-13S (Aug. 3, 2009). The regulations and policy update the Executive Order. In 2014, the law was made applicable to charter schools. Amend. Sub. H. B. No. 178 (2014). The previous exemption for charters existed due to loopholes in other parts of Ohio law; this loophole was closed with the 2014 law.

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

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

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

RHODE ISLAND. Since 2002, Rhode Island has had meaningful protections against seclusion and restraint in regulations. RHODE ISLAND BD. OF REGENTS FOR ELEM. & SEC. EDUC., PHYSICAL RESTRAINT REGULATIONS (2002). In 2016, Rhode Island enacted the Freedom from Prone Restraint Act, R.I. Gen. Laws §§ 42-158-1 through § 42-158-6. H. 7174, banning prone restraint in schools and other facilities and requiring plans to reduce the use of restraint and seclusion.

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

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

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

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

UTAH. In late 2015, Utah adopted comprehensive regulations to protect all students. UTAH R. 277-609-1 through 277-609-8. Utah previously had only nonbinding guidance, LEAST RESTRICTIVE BEHAVIORAL INTERVENTIONS (Utah State Off. of Educ.).

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

regulations, 16 V.S.A. § 1167 (May 2012).

VIRGINIA. Virginia has nonbinding guidance. Virginia Dept. of Educ., Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations in Virginia Public Schools (2009). In March 2015, the Governor signed into law a bill providing comprehensive restraint and seclusion protections. Acts of Virginia, Chapter 142 (2015 Session). But by its terms, it will not take effect until regulations are promulgated. In 2013, Virginia had passed a statute requiring the State Commission on Youth to study restraint and seclusion. H.B. 1106 (2013). After analysis and review, the Commission recommended that Virginia adopt a statute and regulations. Virginia Commission on Youth, Report to the General Assembly, Study of Seclusion and Restraint in Schools: Recommendations (2014).

WASHINGTON. in 2015, Washington adopted comprehensive protections against seclusion and restraint for all students. LAWS OF 2015, CHAPTER 206 (formerly Substitute House Bill No. 1240), which created WASH. REV. CODE § 28A.600.485. In December 2015, Washington adopted new regulations, replacing the old ones that had allowed broad use of restraint and seclusion. The new regulations are WASH. ADMIN. CODE §§ 392-172A-01031; ; 392-172A-01092; 392-172A-01107; 392-172A-01109; 392-172A-01142; 392-172A-01162; 392-172A-01163; 392-172A-02076; 392-172A-02105; 392-172A-02110. The repealed regulations are §§ 392-172A-03120; 392-172A-03125; 392-172A-03130; 392-172A-03135. An earlier-adopted statute forbids certain specific restraints, such as those that impede breathing or cause bodily harm greater than transient pain. REVISED CODE OF WASHINGTON 9A.16.100.

WEST VIRGINIA. West Virginia has meaningful protections against seclusion and restraint in regulations. W. VA. CODE ST. R. § 126-28-8 (8.14), § 126-99 (4373) Chapter 4, §§ 3-4 (§126-99 adopted Dec. 2011; effective July 2512).

WISCONSIN. In March 2012, Wisconsin adopted meaningful protections against seclusion and restraint in statute Wis. Stat. § 118.305. Previously, Wisconsin had nonbinding guidelines, but these were rendered inoperative by the new statute. WISCONSIN DEPT. OF PUBLIC INSTRU., WDPI DIRECTIVES FOR THE APPROPRIATE USE OF SECLUSION AND PHYSICAL RESTRAINT IN SPECIAL EDUCATION PROGRAMS (2009).

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