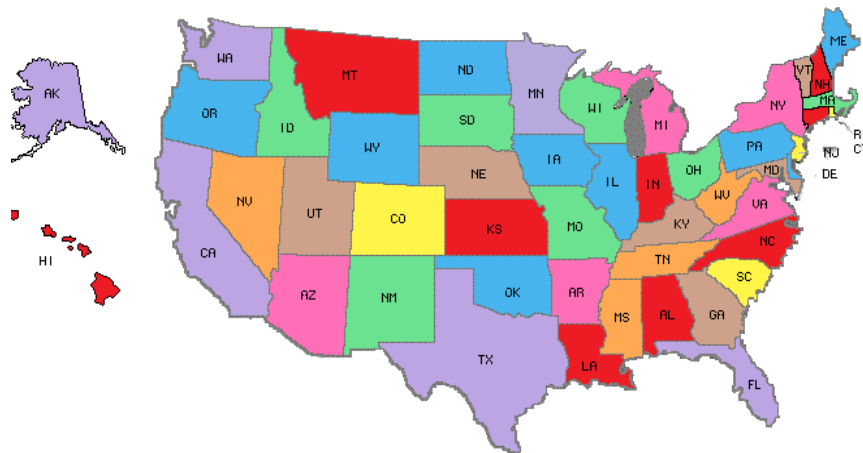


How Safe Is the Schoolhouse?

An Analysis of State Seclusion and Restraint Laws and Policies



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Updated July 2019 Guide to State Restraint and Seclusion Laws, Regulations, Rules, and Policies Laws in Effect as of July 1, 2019

The [Quick Bullet Summary](#) at the beginning provides an easy, brief overview of state laws and policies. There are also maps throughout to illustrate important types of laws. The [maps and charts index](#) is also at the beginning. The next update is planned for later this year.

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Published through the Autism National Committee (AutCom)

Link is <http://www.autcom.org/pdf/HowSafeSchoolhouse.pdf> (report free of charge)



Important Information About the Report

About the Report. This report was revised in 2019 to discuss new state restraint and seclusion statutes, regulations, rules, and policies. It includes all laws in effect as of July 1, 2019. This updates earlier versions of the report. The first version was published in 2012, and it has been updated several times since. 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 and Abbreviation Code (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 people cannot see visuals or otherwise need text. All information in the maps is also in the text. Some people need visuals to help organize the information. Some need distinctions between dark and light. 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.

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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) and led coalitions in support of Congressional legislation to create protections for students from restraint and seclusion. 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 and on the Board of Directors of the Council of Parent Attorneys and Advocates (COPAA), 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. 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. It is not owned by AutCom. The report 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. No one should charge you money for access to it.** Information from HOW SAFE IS THE SCHOOLHOUSE? has been featured in various national and state media reports, including the major television and radio news networks and leading American daily newspapers.

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I. QUICK BULLETS: STATE RESTRAINT AND SECLUSION LAWS: SUMMARY OF THE STATES, 2019

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.

There is no federal law comprehensively regulating the use of restraint and seclusion in schools. Efforts to enact comprehensive legislation have not yet succeeded. As a result, the issues have been left to the states. 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 and Policies in effect on July 1, 2019

- **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. Restraint and seclusion limits developed first for children with disabilities, likely because of the historic abuse of people with disabilities. Although many states have migrated to all-children’s laws, a number have disability-only laws.
- **30 states have laws providing meaningful protections against restraint and seclusion for all children; 39, 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.
- **22 states by law require that an emergency threatening physical danger exist before restraint can be used for all children; 26, 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.
- **In the first half of 2019, legislation to protect children failed when introduced in states with weaker or no protection. Parents in those states have tremendous difficulty getting their children protected.** Thus, bills to protect children died in Florida, Iowa, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, and Rhode Island. **Coincidentally perhaps, the Midwestern states listed tend to have few special education advocates and even fewer special education attorneys.** By contrast, two states with existing statutory protection, Oregon and Virginia, passed legislation to strengthen those

laws in Spring 2019. Bills to increase existing protections remained pending in California, Ohio, and Maine. At the time of publication, most state legislatures have adjourned.

- **There are 41 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 21 states that protect all children from non-emergency seclusion; 28 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.
- **Restraints that impede breathing and threaten life are forbidden by law in only 31 states for all children; 35 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. **A total of 21 states ban mechanical restraint for all children; 25 for students with disabilities. There are 21 states that prohibit dangerous chemical and drug restraints for children with and without disabilities.**
- Children confined in closets and other isolation rooms and spaces unobserved have been killed, injured, and traumatized. There are 25 states either ban seclusion or require staff to continuously watch all students in seclusion; 35, students with disabilities. At Atlanta teen with disabilities 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 without reacting (e.g., tantrum, giving up) and yet pose no threat of danger. 25 states by law require that less restrictive and harmful methods either fail or be deemed ineffective before restraint are used on all children; 29, children with disabilities. These numbers are 24 and 28 for seclusion respectively. Moreover, 27 states by law require restraint to end for all children when there is no longer an emergency, and 26, seclusion. 31 require restraint to end for children with disabilities when there is no longer an emergency; seclusion.

- **In 30 states, schools must by law notify all parents of both restraint and seclusion; in 40, parents of students with disabilities. Most states that mandate notification require that it be given within 1 calendar day—important so parents can watch for concussions, hidden internal injuries, and unexplained trauma and changes in behavior. At least 23 states require schools to tell parents within 1 day when they have restrained or secluded any student; at least 30, students with disabilities. But many states still do not require notification or timely notification, subjecting children to additional risks.** The majority of states with laws or nonbinding guidance about parent notification support notification within 1 school day or less. By comparison, only a handful of states required prompt parental notification before the introduction of the 2009 Congressional bill prioritizing same day notification. **The “[Parental Notification Laws at a Glance](#)” chart is on page [87](#).**
- Data collection is very important. It helps schools develop benchmarks to reduce restraint and seclusion usage. It enables public oversight. 21 states collect data at the State Education Agency (SEA) level for all students; 26, for students with disabilities. Others collect it at the Local Education Agency (LEA) level. This indicates that keeping such records is not burdensome. There have been widespread reports of inadequate data reporting, or even failing to report data. In 2019, Oregon adopted a law that threatened the state funding of school districts that ignore data reporting requirements or do not publish data in accord with the law. It became the first state to do so.

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, many states adopted new laws and others 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, 23 states restrict physical restraint to emergencies threatening physical danger for children with disabilities, 21 for all children. 24 states ban non-emergency seclusion for students with disabilities, 21, for all children. These comprise the majority of states taking action after the Congressional bills were introduced. Until 2018, the House bills allowed seclusion only in an emergency. In 2018, the House sponsors joined the Senate sponsors in forbidding all seclusion.
- Of the states that adopted new laws or strengthened existing ones in the wake of the Congressional bills, 29 ban restraint that impairs breathing; 25, non-observed seclusion

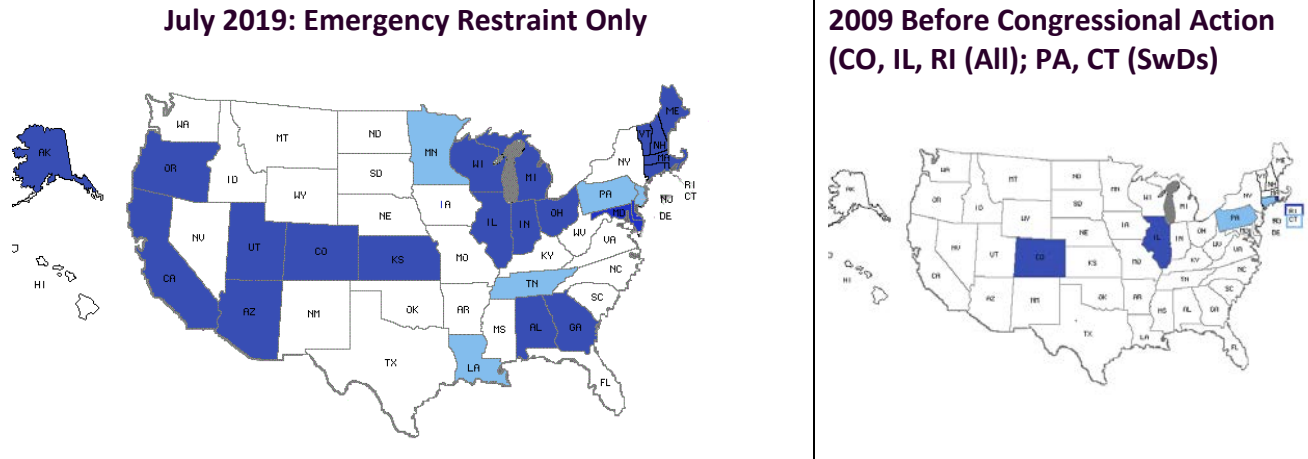
(which has killed students); 18 dangerous mechanical restraint, 16, chemical and drug restraint. These provisions are similar to those in the Congressional bills.

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 first introduced by Senator Tom Harkin, and the 2018 House and Senate bills.
- States frequently require schools to ensure that children can 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 states have adopted a provision requiring schools to refrain from using restraint and seclusion when a doctor or similar medical professional 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.
- The several bills introduced by Senator Harkin included an anti-retaliation provision, to protect school staff and others who report violations of the restraint and seclusion provisions. There is evidence that staff fear reporting. The 2018 House and Senate bills omitted the anti-retaliation clause.

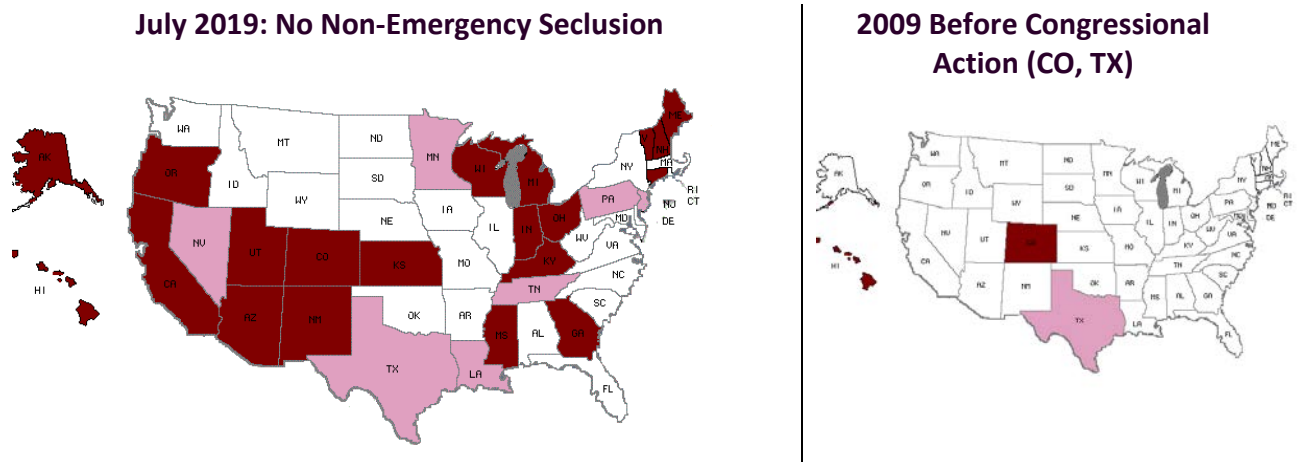
EFFECT OF A DECADE OF CONGRESSIONAL FOCUS ON RESTRAINT/SECLUSION

Map 4: Number of States Limiting Restraint to Emergencies Threatening Physical Danger Increased Sharply After Decade of Congressional Action (July 1, 2019)



Dark Blue: restraint limited to physical danger emergencies for all children.
Light Blue: restraint limited to physical danger emergencies for children with disabilities.

Map 10: Number of States Prohibiting Non-Emergency Seclusion Now and Before First Congressional Action (July 1, 2019)



Dark Red: State bans non-emergency restraint of all children
Pink: State bans non-emergency restraint of children with disabilities
 Note: Some of these states prohibit all seclusion

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How Safe Is the Schoolhouse?

An Analysis of State Seclusion and Restraint Laws, Regulations and Policies

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. The term “policies” often includes guidelines and suggested principles. I use 51 “states” to include the District of Columbia because of the relatively high special education population there.

II. Introduction

A. Background

Over 20 years ago, the [Hartford Courant](#) documented 142 deaths of people with disabilities from restraint and seclusion, the first major restraint and seclusion investigative series. A 12-year-old boy with disabilities died in prone restraint after a dispute over a toy.¹ Congress began focusing attention on school-based restraint and seclusion in 2009. A 2009 Government Accountability Office chronicled 20 deaths of children in restraint for Congress. It documented children as young as 5 tied to furniture with bungee cords and duct tape. Most children were disabled.² Bipartisan House hearings told the story of Cedric Napoleon, a young African-American teen with disabilities, who was [suffocated when restrained](#) by a teacher twice his size. A trauma survivor, and hungry after she delayed his lunch, he tried to leave class to find food.³ Congress heard from numerous experts about the dangers of restraint and seclusion and the need for positive and preventative supports, including Daniel Crimmins, George Michael, Reece Peterson, Cyndi Pitonyak, and George Sugai.⁴

In the time since, many states have adopted laws to protect school children, often patterned on the Congressional Keeping All Students Safe Act. Other states provide little protection to children, relying in decades-old rules or none at all. A child’s parents can move across a river or up a highway and find their son or daughter has little protection. States may strengthen their laws or may weaken them. A state law is not a guarantee of protection from restraint and

¹ David Altimari and Eric Weiss, *Reform Urged in Use of Restraints*, HARTFORD COURANT, Oct. 11, 1998.

² U.S. 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 Incidents Report].

³ Greg Toppo, *Restraint Can Dispirit and Hurt Special-Ed Students*, USA TODAY, May 18, 2009; 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* (2009)] 16-17 (testimony of Toni Price).

⁴ CLASSROOMS IN CRISIS: EXAMINING THE INAPPROPRIATE USE OF SECLUSION AND RESTRAINT PRACTICES, HEARING, U.S. HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON EARLY EDUCATION, ELEMENTARY, AND SECONDARY EDUCATION (2019) [hereinafter *House Hearings* (2019)]; 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* (2012)]; *House Hearings* (2009).

seclusion. In May 2019, Disability Rights Maine reported that restraint and seclusion use had increased 60% between the state's adoption of a restraint and seclusion law in 2014 through 2018. Maine's education programs continued to disproportionately restrain and seclude students with disabilities.⁵ (Maine had adopted state regulations in 2012 that were somewhat weakened in 2013 by state legislation.⁶) A California disability organization filed a lawsuit in 2019 alleging that, among other things, incidents of restraint and seclusion were not reported for children with disabilities in accord with state law.⁷

Indeed, each month, there are more reports about restraint and seclusion. In November 2018, a student with autism [died after an hour in prone](#) restraint in a California private school, the Sacramento Bee reported.⁸ In 2019, Spokane's KREM 2 reported that a secluded student hit herself repeatedly against a barren steel door.⁹ A young Virginia teen was [barricaded with bookcases](#) into isolation, her mother informed only after another student photographed the incident, according to the Washington Post.¹⁰ Parent Renee Smith testified to Congress in 2019 that her first grader with autism was traumatized by restraint and seclusion, unable to do his school work, resulting in more seclusion. He had been restrained and secluded in both kindergarten and first grade. His parents were rarely informed. He moved to a school with positive and preventative supports, and thrived.¹¹ A child in Oregon was apparently restrained and secluded through the use of gym mats, which her parents alleged were hit against her body, causing significant bruises, Oregon Public Broadcasting reported this March.¹²

Reporters have detailed the restraint and seclusion of hundreds of children, often with disabilities. Local media stories include [Fox 16 Arkansas](#); [Fox 59 Indianapolis](#); [NBC Connecticut](#); [Kansas City Star](#); [KPMH Fox 26 Salinas](#); [Portland \(Maine\) Press Herald](#); [Loudoun Times-Mirror](#); [WAMU 88.5](#); [Mercury News](#), [FoxDC5](#), [Washington Post](#), and many, many others. National media have reported about the overuse and danger of restraint and seclusion, including [ABC News](#); [NBC News](#); [Wall Street Journal](#); [CNN](#); [National Public Radio](#); and [USA Today](#). The media has documented injuries and alleged threats to breathing, including stories by the [Minneapolis Star-Tribune](#); [KREM2 \(Spokane\)](#); [NBC News](#); [St. Louis Post-Dispatch](#); [National Public Radio](#); and [WAVY-10 Norfolk](#). One Kentucky student suffered a life-threatening broken femur, resulting in weeks of hospitalization, according to the [Louisville Courier-Journal](#). More news reports of restraint and seclusion, and their dangers, are set out in the footnote.¹³

⁵ Disability Rights Maine, Restraint and Seclusion in Maine Schools, May 2019.

⁶ Maine LD 243, enacted as Resolve Chapter 8 (Apr. 2013).

⁷ Annie Sciacca, *Students with Special Needs Put in 'Abusive' Restraints, Seclusion at Concord School, Lawsuit Alleges*, MERCURY NEWS, May 16, 2019.

⁸ Sawsan Morrar, *School Where Boy with Autism Was Restrained, Later Died Has Been Investigated by State Multiple Times*, SACRAMENTO BEE, Jan. 15, 2019.

⁹ Whitney Ward, *Isolated at School: Spokane Parents Claim Isolation Rooms Misused at District Schools*, KREM2 (Spokane), Feb. 1, 2019.

¹⁰ Debbie Truong, *A Photo Emerges and a Virginia School System's Use of Seclusion Comes Under Scrutiny*, WASHINGTON POST, May 26, 2018.

¹¹ *House Hearings* (2019) (testimony of Renee Smith).

¹² Rob Manning, *NW Parents Challenge Schools' Handling of Students with Disabilities*, OREGON PUBLIC BROADCASTING, Mar. 18, 2019.

¹³ Sawsan Morrar, [School Where Boy with Autism Was Restrained, Later Died](#) Has Been Investigated by State

Organizations have also documented the dangers of these practices. State Protection and Advocacy agencies have published numerous reports in recent years.¹⁴ Earlier organizational work, including that of the National Disability Rights Network (NDRN) and Alliance to Prevent Restraint, Aversive Interventions, and Seclusion (APPRAIS), is likewise important. This work helped lead the path forward towards the development of legislation.¹⁵

Data reported in April 2018 showed that in 2015-16, restraint and seclusion were used on at least 120,000 children in school. According to the data, restraint and seclusion were disproportionately used on children with disabilities, and children who were African-American or Native-American.¹⁶ State data has documented significant use of restraint and seclusion,

Multiple Times, SACRAMENTO BEE, Jan. 15, 2019; Hal Scheurich, [Teacher and Two Aides Charged with Abusing Autistic Students](#), FOX10 (Mobile, AL report re Florida district), Jan. 28, 2019; V.H. Spears, [It Should Never Happen to Anyone Else. Another Autistic Child Dragged by Fayette School Staff](#), LEXINGTON HERALD LEADER, Oct. 26, 2018; 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; 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.

¹⁴ Examples include Disability Rights Maine, RESTRAINT AND SECLUSION IN MAINE SCHOOLS (2019); Disability Rights Arkansas, PROTECTING ARKANSAS STUDENTS WITH DISABILITIES: THE NEED FOR BINDING EDUCATIONAL STANDARDS AND LAW TO ADDRESS THE USE OF RESTRAINT IN ARKANSAS SCHOOLS (2017); Disability Rights DC, RESTRAINT, SECLUSION, AND ABUSE IN DISTRICT OF COLUMBIA SCHOOLS AND THE NEED FOR ACCOUNTABILITY (March 2017); Disability Rights Wisconsin, Wisconsin Family Ties, and WI FACETS, SECLUSION & RESTRAINT IN WISCONSIN PUBLIC SCHOOL DISTRICTS 2013-2014: Disability Law Center of Mass., INVESTIGATION REPORT PECK SCHOOL, HOLYOKE, MA; 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), AND RESTRAINT AND SECLUSION IN SCHOOLS: RECOMMENDATIONS FOR CALIFORNIA (2015). Many other Protection and Advocacy agencies wrote outstanding, highly useful reports.

¹⁵ National Disability Rights Network, SCHOOL IS NOT SUPPOSED TO HURT (2009) (cataloguing restraint and seclusion in 2/3 of states); Council for Children with Behavioral Disorders, Council for Exceptional Children, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009); *Position Summary on the Use of Seclusion in School Settings*, 34 BEHAVIORAL DISORDERS 235, 236 (2009) (both documenting the ways in which children can be injured, including electrocution, head-banging, suicide, pounding and cutting); TASH and the Alliance to Prevent Restraint, Aversive Interventions, and Seclusion, IN THE NAME OF TREATMENT: A PARENT'S GUIDE TO PROTECTING YOUR CHILD FROM THE USE OF RESTRAINT, AVERSIVE INTERVENTIONS, AND SECLUSION (2005). In 2009, this author documented 185 episodes in which aversive techniques were used, often on young children. Jessica Butler, UNSAFE IN THE SCHOOLHOUSE: ABUSE OF CHILDREN WITH DISABILITIES (Council of Parent Attorneys & Advocates 2009).

¹⁶ CRDC, School Climate and Safety, at 11-12 (Apr. 2018). Concerns have been raised that local school districts underreported data, particularly in large school districts. See Government Accountability Office, GAO-19-551R, June 18, 2019; Joseph Shapiro, *National Data Confirm Cases of Restraint and Seclusion in Public Schools*, NATIONAL PUBLIC RADIO, June 18, 2014. The CRDC remains, however, the only national number that exists, and therefore, this

including greater use on students with autism, emotional disabilities, and other disabilities.¹⁷ States have also documented the injuries caused by restraint and seclusion. In 2016-17, Connecticut recorded 215 incidents of restraint or seclusion involving injury, seven of them serious.¹⁸ Massachusetts reported 9,070 incidents in which 244 caused injury to students or staff.¹⁹ The Anchorage, Alaska School District reported 420 incidents of restraint or seclusion resulting in injury in 2014-15, according to the Alaska Dispatch News.²⁰ Ohio reported 400 injuries to students from restraint in 2014-15.²¹ Most states do not report the number of injuries, but their silence should not be construed as the absence of injury. Those that do collect data should be highly commended, not pilloried. More states should be incented to collect data, not disincentivized. The value of data is increasingly recognized, and bills introduced several states in 2019 sought data collections.²² Some states use data to get stronger laws. For example, Connecticut first passed a state data collection law, and then, with the data in hand, took steps to enhance protections and eliminate loopholes.

Many schools and school districts work hard to do the right thing. School staff have reported improper use of restraint and seclusion, sometimes at risk to themselves.²³ Many school districts, schools, and personnel implement positive and behavioral supports. They use restraint and seclusion only as last resort for emergencies threatening significant physical harm, and only when other measures fail. Children in those schools thrive. School psychologists, teachers, administrators, and other professionals have worked hard to limit restraint and seclusion, whether statewide or by writing district or school policies and guidance. While Virginia has not adopted regulations, its largest district, Fairfax County, allocated \$1 million to prevent the use of restraint and seclusion, after finding it likely that staff were not following guidelines.²⁴

Restraint and seclusion often escalate difficult behaviors, rather than reducing them. In 2019

report uses it.

¹⁷ Connecticut State Dept. of Education, ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION IN CONNECTICUT SCHOOL YEAR 2016-17 at 10-11 (2017); Disability Rights Ohio, THE STATE OF RESTRAINT AND SECLUSION IN OHIO: AN ANALYSIS OF DATA FROM OHIO'S PUBLIC SCHOOLS 10,15 (Mar. 2015); Florida Dept. of Ed., RESTRAINT INCIDENTS BY DISTRICT, SECLUSION INCIDENTS BY DISTRICT, Aug. 1, 2013-Apr. 30, 2014.

¹⁸ Connecticut State Dept. of Education, ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION IN CONNECTICUT SCHOOL YEAR 2016-17, at 7.

¹⁹ Collin Binkley, Associated Press, *Mass. Schools Physically Restrained Students 9,000 Times Last School Year*, FOX NEWS, Feb. 23, 2018.

²⁰ Tegan Hanlon, *Mother Sues Anchorage School District over the Restraint, Seclusion of Her Disabled Son*, ALASKA DISPATCH NEWS, Jan. 22 2016.

²¹ Amanda Burger & Brooks Jarosz, *Discipline or Abuse? Uncovering a Controversial Form of Discipline*, ABC6 (Columbus, OH), Feb. 8, 2016.

²² These included bills in Maine, Mississippi, Missouri, Nebraska, and North Dakota. Only the Maine bill is still alive; the others died when the state legislative sessions ended.

²³ *E.g.*, Melissa Reid, *Parents of Student Who Had Mouth Duct Taped Shut by His Teacher Speak Out*, FOX 8 CLEVELAND, Apr. 19, 2016; 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 abusive use of restraint and seclusion); James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009 (teacher rescued preschooler locked into chair in darkened room).

²⁴ Jenny Abamu, *Fairfax County Allocates Over \$1 Million To Address Seclusion and Restraint Practices*, WAMU 88.5, May 24, 2019.

testimony, George Sugai, a distinguished PBS expert at the University of Connecticut, explained, “The evidence is clear that students who experience R/S [restraint/seclusion] do not learn proactive skills, but instead develop increased likelihood of future uses of challenging behavior. They do not develop or maintain positive relationships with others, but instead maintain more negative, and sometimes adversarial, relationships.”²⁵ Daniel Crimmins Director, Center for Leadership in Disability at Georgia State University, testified that according to “the vast majority of professionals,” restraint and seclusion “are not effective means of changing student behavior and have no therapeutic or educational value. In fact, seclusion and restraint can escalate children’s arousal, deepen negative behavior patterns, and undermine children’s trust and capacity for learning.”²⁶

The first national bill was introduced in Congress in 2009 by Representatives George Miller and Cathy McMorris Rodgers. It was passed by the House of Representatives. Comprehensive legislation has been introduced in every Congress since, under the sponsorship of Representatives Bobby Scott, Don Beyer, Gregg Harper, and George Miller, and Senators Tom Harkin and Chris Murphy. All have been joined by cosponsors. But Congress has yet to adopt comprehensive restraint and seclusion protections into law.²⁷ In 2015, Congress passed the Every Student Succeeds Act (ESSA), with committees led by Senator Lamar Alexander, Senator Patty Murray, Congressman Bobby Scott, and Congressman John Klein. Among many other things, the new law sought state plans to reduce the use of aversives,²⁸ including restraint and seclusion.²⁹

Thus, restraint and seclusion remain issues of state law. Some states offer strong protection to children; others weak protection; some, none at all. In many states, dangerous restraint and seclusion can be used when no one is in danger of harm. Children who move from Texas to Arkansas, or from Kansas to Nebraska, can end up with little protection. This report explores those state laws as they exist on July 1, 2019.

In this report, the term “laws” means statutes and regulations, both of which are mandatory and have the force of law. This distinguishes them from policies and suggested guidance, which are not mandatory. There has been a lot of discussion of policies without this refinement. The issue is not whether a state has guidance that schools can follow; the question is whether the state has statutes and regulations that schools must follow. The dangers of restraint and seclusion demand nothing less; voluntary guidelines do not protect children from death or injury (Voluntary policies, however, can help show that states consider these issues to be important goals for public policy.)

²⁵ *HOUSE 2019* (testimony of George Sugai).

²⁶ *Senate Hearings (2012)* (testimony of Daniel Crimmins).

²⁷ H.R. 4247 (111th Congress); H.R. 1381 (112th Congress); H.R. 1893 (113th Congress); S. 2020 (112th Congress); S. 2036 (113th Congress); H.R. 1381 (112th Congress); H.R. 1893 (113th Congress); S. 2020 (112th Congress); S. 2036 (113th Congress). Every Congress spans two years.

²⁸ Public Law 114-95 (S.1177), Sec. 1111(g)(1)(C).

²⁹ See H.R. Rep. No. 114–354, EVERY STUDENT SUCCEEDS ACT CONFERENCE REPORT 451.

B. State Changes in 2017, 2018, and 2019

Prior editions of this report were published in most years between 2012 and 2017. Increasingly, states have adopted safeguards for students. Statutes and regulations were newly adopted or upgraded in 2017 in Colorado, New Jersey^d, and New Mexico (replacing voluntary guidelines in the last). The same occurred in 2018 in California, Kansas, Connecticut, Indiana, Maryland, Rhode Island, South Dakota, Texas, and Utah. In the first part of 2019, two states strengthened their laws. Oregon enacted broader protections for students. Virginia adopted a new state law that will require dangerous forms of restraint to be forbidden and implement seclusion safety standards.

South Dakota got its first law after strong work by advocates. But it only requires school districts to adopt policies, with few requirements. New Jersey^d limited restraint or seclusion to emergencies threatening serious physical harm for children with disabilities only. It also oddly required parental notice of restraint, but not seclusion. The state has directed schools to provide such notification in its guidance.

Protections for students were made stronger in California, Indiana, Kansas, Connecticut, Maryland, and Rhode Island. Both California and Maryland eliminated large loopholes that let schools to avoid regulation. Utah forbade the use of restraint for property destruction unless a person's physical safety is at risk, prohibiting the practice for tearing books or breaking pencils. Wyoming weakened its law. Idaho published a manual that endorsed the use of restraint and aversives when in a child's educational plan—a return to an old model that can encourage abuse of children with disabilities. Many states left this kind of model in the 21st century; even those without laws have adopted policies that seek to protect school children. Iowa attempted to enact regulations, and obtained public comment—only for an agency committee to decide that it wanted more comment from the school districts, which it considered the crucial stakeholder, not parents or children.³⁰

And yet, merely enacting a law is not enough to prevent the practices or to keep children safe. Even when a state has meaningful protections in its laws, children may not be adequately protected from harm. The law may not be followed or enforced. Parents may not have many avenues within the state to file complaints or seek remedies. States may not monitor school districts.


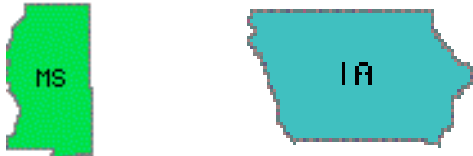


C. Attempted State Bills 2019

A number of states sought to pass bills protecting children from restraint and seclusion in the last few years. But in a number of states, particularly those with weaker or no protections, legislation is simply stuck. In the first half of 2019, legislation to protect children failed when introduced in states with weaker or no protection. Bills to protect children died without passage in Florida, Iowa, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, and Rhode Island. Most bills did

³⁰ Iowa Administrative Rules Review Committee, Legislative Services Agency, Minutes, March 2019.

not even make it to the floor for a vote. While Florida, Mississippi, North Dakota, and Oklahoma legislators sought to enact comprehensive protections like neighboring states have, other states sought little. Iowa legislators sought only to appoint a commission to review and report about existing rules and practices. This bill died. Nebraska legislators introduced a bill that would merely order the collection and reporting of data-- adding sunshine and transparency. This died in committee, too. Many state legislative sessions are short, and this works against parents. Bills did pass in Oregon and Virginia, but these strengthened existing statutes. (The Virginia situation is odd because Virginia passed a strong law in 2015 but has yet to promulgate the required regulations for any of those protections to take effect.) Bills to strengthen existing laws were pending in California, Maine, and Ohio, as this report was published. All three have meaningful protections for students, although with holes. Most state legislative sessions have adjourned.

**Chart 1: State Bills Introduced Jan.- July 2019
in States with Weaker or No Protections**

BILLS FAILED Most never made it to the floor before the state legislative session adjourned.	BILLS PASSED
FL, IA, MS, MO, NE, ND, OK	None
	<p align="center">0 (zero)</p>
	
	
	

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

1. Generally

State protections vary. Some have strong safeguards; others have narrow laws or laws with weaknesses in them. Some states limit one practice more than the other.³¹ Some states have statutes; others, regulations; and some, both.³² 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. Still, they are mandatory and must be followed; they are law and state agencies must go through a formal procedure to change them.

Parents may find that even in states with newer, stronger statutes, that their state education agencies may have older regulations or even older policies on their websites that could be found using an outside search engine. If a state legislature has adopted a newer statute or a newer regulation, and the state has an old set of guidelines on its website, that new statute generally states what is mandatory.³³ On the other hand, this author has found some State Department of Education websites that do not include more recent state laws, or the restraint and seclusion pages do not appear to be updated. Parents who are unsure should contact their State Departments of Education, State Protection & Advocacy Agencies, and other entities active on restraint and seclusion. If the media or a blogger/social media site reports about a law and you cannot find it on your state department of education website, call or email the state. State staff will almost always will help you find it.

2. Laws Applicable to Children with Disabilities or All Children

Today, most state laws protect all children; others are limited to children with disabilities. Many early state rules were disability focused, for three likely reasons. First, older laws addressed the known historic abuse of restraint and seclusion on people with disabilities, and an early, unacceptable belief that people with disabilities should learn through violence. The majority of

³¹ For example, Illinois limits restraint to threats of physical harm but permits seclusion more broadly.

³² Some have statutes alone, including Arizona, Florida^d, Hawaii, Louisiana^d, Michigan, New Jersey^d (2018), North Carolina, Nevada^d, and Wisconsin. States that have both statutes and regulations include California, Colorado, Connecticut, Delaware, Illinois, Indiana, Kansas, Maine, Maryland, Minnesota^d, New Hampshire, New Mexico, Oregon, Tennessee^d, Texas^d, Utah, Washington, and Wyoming. States with regulations alone include: Alabama, Georgia, Iowa, Kentucky, Massachusetts, Mississippi, Montana^d, New York^m, Ohio, Pennsylvania^d, Rhode Island, Vermont, and West Virginia. When its process is complete, Virginia will have both a statute and regulation. At present, it has a statute requiring a regulation, with no protection for children until those regulations are promulgated.

³³ It is not unusual to leave a webpage on a website, even when it is disconnected from an index or a main page. Such pages might be found through commercial search engines, even though they are no longer maintained by a state. Parents may wish to contact the sources listed in the text if they cannot determine whether information on their state website is correct or if it seems inconsistent with state laws or regulations.

students restrained and secluded have disabilities, according to available data.³⁴ Second, students with certain disabilities cannot effectively communicate what happened to them. These can include nonverbal children, as well as children whose disabilities affect their ability to remember, understand, and/or communicate properly.³⁵ Oregon Public Broadcasting explained, “many incidents are not reported, and often parents say they don’t learn about them until long after. The vast majority involve students with disabilities, many of them who struggle to communicate what they’re experiencing, leaving parents to wonder what’s happening to their children — and the children to wonder why their parents aren’t helping.”³⁶ Third, a few states may have been able to use their regulatory authority over special education to impose restraint and seclusion limits, particularly when their states lacked laws requiring protection.

Still, numerous nondisabled students are also restrained and secluded. Other children have disabilities that are not identified by their school districts as meeting standards for special education. So, in the last decade, most states adopting new laws or upgrading old ones include all children. California, Colorado, Connecticut, Maine, and Washington replaced disability-only laws with all-children's laws. Younger children without disabilities may be unable to tell their parents, and older children may not be able to effectively or accurately inform them. Moreover, the decision about whether to protect children from restraint and seclusion should not be limited to children who cannot report; restraint and seclusion used improperly are dangerous to any child. Still, in 2018, New Jersey^d went in the opposite direction, protecting only children with disabilities.

The need to protect all children should never be used to undercut the need for laws or to protect children with disabilities, however. A new trend has emerged with some pointing out that restraint and seclusion are rare compared to the total student population, and thus, implying that there is no need for protection. Instead, the work needs to focus on where restraint and seclusion are actually used, and how to remedy that.

³⁴ The most recent data, published in 2018, showed that children with disabilities were 71% of students subject to restraint, and 55% of those subject to seclusion, and 15% of all students. African-American children were 27% of students subject to restraint, 23% of students subject to seclusion, and 15% of all students. Native-American children were 3% of students secluded and 1% of all students. It is not clear how many of the minority children also were disabled. CRDC p.11-12. 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. Delaware reported that 78% of students restrained had disabilities, compared to 22% without disabilities. Dela. Dept. of Ed., ANNUAL REPORT USE OF PHYSICAL RESTRAINT IN DELAWARE PUBLIC SCHOOL DISTRICTS AND CHARTER SCHOOLS (2016-17).

³⁵ 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.

³⁶ Rob Manning, *NW Parents Challenge Schools' Handling of Students with Disabilities*, OREGON PUBLIC BROADCASTING, Mar. 18, 2019.

III. States with Meaningful Protections from Restraint and Seclusion

A. Meaningful Protections from Restraint and Seclusion by Law

As of July 1, 2019, 29 state laws provided meaningful protections for all children from both restraint and seclusion: Alabama, Alaska, Arizona, California (2018 upgrade), Colorado, Connecticut, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Maine, Michigan, Mississippi, New Hampshire, New Mexico (2017), North Carolina, Ohio, Oregon, Rhode Island, Vermont, Utah, Washington, West Virginia, and Wisconsin. 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.³⁷

30 state laws have some meaningful protections from restraint & seclusion for all children; 39 for those with disabilities.

In March 2015, Virginia enacted a statute directing the Virginia Department of Education to write regulations incorporating comprehensive protections, including a limit on restraint and seclusion to emergencies threatening physical danger. In February 2019, Virginia issued proposed regulations. They are under consideration and have not been adopted. Until they are, children in Virginia lack statewide protection. Some districts have rules or guidelines closer to the Keeping All Students Safe Act (comprehensive protection model); others rely on a far more permissive set of guidelines from the state school board association; and still others have nothing.

For children with disabilities, 38 states by law require schools to provide some meaningful protections against both restraint and seclusion. They are Alabama, Arizona, Alaska, California, Colorado, Connecticut, Florida^d, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Michigan, Minnesota^d, Mississippi, Montana^d, Nevada^d, New Hampshire, New Mexico, New York^m, North Carolina, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Texas^d, Utah, Vermont, Washington,³⁸ West Virginia, and Wisconsin. (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.) In addition, a 39th state, New Jersey, provides meaningful protections against restraint, but not seclusion (as it fails to require parental notification of seclusion).

Among the states with meaningful protections, Florida has come closest to being moved to the weaker group. Its protections are meaningful because it has strong data collection requirements,

³⁷ 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.

³⁸ Washington previously had an all-children and a disabilities-only law that were both weak. In 2013, the law was strengthened for students with disabilities. In 2015, the law was strengthened again, this time for all students.

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.

The "meaningful" designation in this report 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. The "meaningful" designation arose because there were some who counted any state with a law about restraint and seclusion as protecting children. Some of these laws at the time provided little protection, contained immense loopholes, or only covered some students (one state only protected preschoolers from being placed in darkened rooms, and provided no other protections). And meaningful does not mean comprehensive or that a state law provides all that is needed to protect students.

Moreover, meaningful protections are not always enough to protect school children. Maine has had a meaningful law for years, and yet restraint and seclusion use has increased in some places, according to a recent Disability Rights Maine analysis. Students can suffer harm when a law is not followed; when parents lack the ability to complain to the state or to easily seek enforcement from the state, and lack other remedies; and when there is not effective oversight to prevent misuse of restraint and seclusion. Some state education agencies may view their laws as setting only a requirement that districts adopt policies in line with the law, and not a requirement that they adhere to them. This makes little sense. There may be some personnel who wrongly interpret statutory language in a manner contrary to its ordinary meaning (e.g., interpret the term "dangerous" to encompass behaviors that threaten no one's safety). All of these can undercut what otherwise seems like a protective law. Because this author's work is based on the state statutory and regulatory language, she cannot know everything that happens on the ground. The people with the best knowledge about how statutes and regulations are actually implemented are local families and professionals. This author's work cannot replace them.

B. Several Protections, But Not in Meaningful Category

1. Delaware: State Supervisory Process Protects 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.³⁹ 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.

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. But for this issue, Delaware would have strong meaningful protections for its students.

2. 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 comprehensive protections from both restraint and seclusion.

3. New Jersey: No Seclusion Notification

New Jersey protects children with disabilities from seclusion, but its state statute does not require parental notification for secluded children. This can create incentives to misuse seclusion because no notice is required. Parental notification is such a basic protection that New Jersey could not be included in the states providing meaningful protection. It enables parents to have children evaluated for injuries (such as concussions from head banging) and psychological trauma, and to address the use of restraint and seclusion with their children's school. In today's era of electronic communication, parental notification is not remotely burdensome, and even if it were, is outweighed by the dangers posed by not requiring it.

³⁹ <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.

C. Very Weak or No Protections in Law

A total of 9 states had either extremely weak protections that provided no meaningful protection at all, or no protections in law or statute. Several seem to rely on nonbinding suggested principles.

1. States with Very Weak or No Protections in Law

As of July 1, 2019, 4 states had laws providing such limited, weak protections that they are not at all like those that provide meaningful protection.⁴⁰ 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), Washington, D.C. (prohibits “unreasonable” restraint); and South Dakota (2018 law requires school district policies, but little else). South Dakota advocates are to be commended on their work to adopt a law to protect children, and this author is hopeful that the law will be strengthened in the future. The first three states also have far more extensive nonbinding guidelines, likely because their laws are so weak.⁴¹ But nonbinding guidance is just that. School districts need not follow it.

States with nonbinding guidelines and no meaningful laws for all children include Arkansas, Missouri, Nebraska, Oklahoma, 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 as a statewide guideline.) Guidelines, model principles, and memoranda are not statutes or regulations.⁴² They are not mandatory. Oklahoma^d, South Carolina, and Virginia presently have only guidelines. North Dakota has regulations for people with developmental disabilities but provides no protections to other students. Idaho has no laws or voluntary guidance and ceased efforts several years ago. In 2018, it published a manual that appeared to recognize the use of restraint and aversives as part of a child’s educational programming.⁴³ Most states have recognized that this is an outdated model that exposes

⁴⁰ Alaska, Hawaii, Michigan, and Utah were in this category, but adopted comprehensive laws in 2014-16.

⁴¹ 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 Ed., 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, 2016-17 at 10-11 (substantial proportion of students restrained and secluded had emotional disabilities or other health impairments, including ADD/ADHD); Tennessee Dept. of Ed., Student Support, Special Ed., 2012-13 Isolation and Restraint Data (same). 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, very important.

⁴² 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.

⁴³ Idaho State Dept. of Ed., THE EDUCATOR’S GUIDE TO STUDENT DISCIPLINE AND SUPPORTS, A PRACTICAL LEGAL GUIDE FOR SCHOOL PERSONNEL IN IDAHO 21 (Aug. 2018) (physical restraint and aversive use can be part of a child's IEP or 504 plan).

children to great harm and no longer use this violence-dependent model. Even states that cannot pass bills recognize the need for positive behavioral supports, limiting restraint and seclusions to emergencies threatening physical harm, and notifying parents in nonbinding guidelines.

Of these states, legislators in Missouri, Nebraska, Oklahoma, and North Dakota sought to pass bills in 2019. Each bill died when the legislative session adjourned.

Still, there has been progress. Far more states lacked any protections in 2009, when Congress began to focus attention on these issues. In the 2012 edition of this report, 26 states had either weak laws, voluntary nonbinding guidelines alone, or nothing.⁴⁴ Due to provisions in the 2015 Elementary and Secondary Education Act amendments, states should at least adopt plans addressing the use of aversives, including restraint and seclusion. This is, however, a minimal requirement and does not limit restraint and seclusion to emergencies. Some states appear to have ignored it. Idaho's Consolidated State Plan did not address restraint or seclusion.⁴⁵ North Dakota's plan states, "The NDDPI does not support adverse behavioral interventions for the management of behavioral challenges in schools."⁴⁶ It is not clear whether the state includes restraint and seclusion in the definition of aversives. The term "aversives" is sometimes used to refer to other forms of abusing children, such as electric shock, spraying chlorine bleach or spraying or feeding noxious substances, deprivation of food, bathroom, and other essential needs, forcing children into freezing or over-heated spaces, forcing children into dangerous positions, and similar activities.

⁴⁴ Jessica Butler, *HOW SAFE IS THE SCHOOLHOUSE? AN ANALYSIS OF STATE SECLUSION AND RESTRAINT LAWS AND POLICIES* (2012).

⁴⁵ Idaho State Board of Education, *IDAHO CONSOLIDATED STATE PLAN, THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT* (2018).

⁴⁶ North Dakota Dept. of Public Instruction, *NORTH DAKOTA EVERY STUDENT SUCCEEDS ACT (ESSA) STATE PLAN 109* (2017).

2. Nonbinding State Guidelines Provide Little Protection, Analyses Report

Guidelines have done so little to protect children that at least 13 states have replaced them with mandatory statutes and regulations over the last five years: Alaska, Indiana, Kansas, Kentucky, Michigan, Mississippi, New Mexico (2017), Louisiana, Ohio, Virginia, Utah, Vermont, and Wisconsin.

Some state analyses are illustrative. 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.⁴⁷ In 2016, under the leadership of Michigan Lieutenant Governor Brian Calley, Michigan adopted legislation to protect students.

In the District of Columbia, the D.C. Protection and Advocacy in 2017 reported that without a regulation, Washington, D.C. “does not have uniform regulations, policies, or practices providing standards that restrict the use of seclusion or restraint, that describe how to report and investigate seclusion and restraint, or that describe how to collect data on the frequency or durations of seclusion and restraint, injuries associated with these incidents, or instances of staff abuse.”⁴⁸ Disability Rights Arkansas likewise explained in 2017, that although the Arkansas Department of Education had issued advisory restraint guidelines in 2014, “there is no way to enforce the guidelines to ensure that school districts are implementing the recommendations. As a result, Arkansas students continue to be subjected to dangerous and outdated physical restraint practices.”⁴⁹

Wisconsin and Kentucky also found that state guidelines were not enough to protect children from restraint and seclusion. Wisconsin Disability Rights, Wisconsin FACETS, and Wisconsin Family Ties found in 2009 that Wisconsin’s then-existing restraint and seclusion “directives” were insufficient to protect children from seclusion and restraint, making state legislation necessary. The directives lacked the “the force of law” and “sufficient enforcement,” resulting in the continued use of restraint and seclusion, and continued harm to students. Wisconsin enacted a new statute in March 2012, replacing the nonbinding directives.⁵⁰ In 2007-12, when Kentucky

⁴⁷ Michigan Protection and Advocacy Service, Inc., *SAFE AND PROTECTED? RESTRAINT AND SECLUSION REMAIN UNREGULATED AND UNDERREPORTED IN MICHIGAN SCHOOLS 4-5* (2009).

⁴⁸ Disability Rights DC at University Legal Services, *RESTRAINT, SECLUSION, AND ABUSE IN DISTRICT OF COLUMBIA SCHOOLS AND THE NEED FOR ACCOUNTABILITY* (Mar. 2017).

⁴⁹ Disability Rights Arkansas, *PROTECTING ARKANSAS STUDENTS WITH DISABILITIES: THE NEED FOR BINDING EDUCATIONAL STANDARDS AND LAW TO ADDRESS THE USE OF RESTRAINT IN ARKANSAS SCHOOLS* (2017).

⁵⁰ 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

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.⁵¹ The state adopted a regulation in 2013.

For years, Virginia's only governmental effort consisted of nonbinding State Department of Education guidelines. But rather than adopt these, 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. 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 put in a child's individualized educational program, it would not be considered restraint and the child would have no protections.⁵² Ultimately, Virginia adopted a statute in 2015 requiring regulations to protect students; those regulations are currently in a proposed stage and are not yet in effect.

Suggested guidelines are useful, however, to show the practices that states have identified as good public policy and needed to protect children with disabilities.

(Mar. 19, 2012; previously Senate Bill 353).

⁵¹ Kentucky Protection & Advocacy and the Commonwealth Council on Developmental Disabilities, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

⁵² 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).

**Chart 2: Does State Law Provide Meaningful Protections?
(July 1, 2019)**

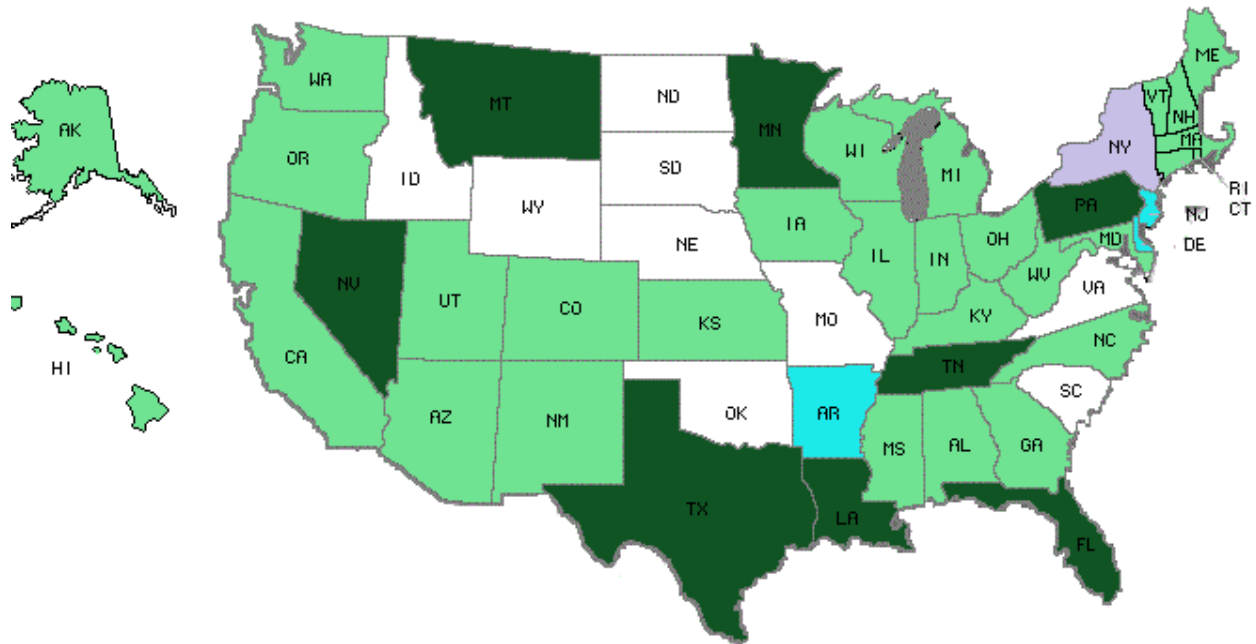
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	All Students	Students w/Disabilities	Other
AK	Meaningful Law (2014)	Included in All Children's Law	
AL	Meaningful Law	Included in All Children's Law	
AR			Limited regulation applicable to only seclusion of students with disabilities. Nonbinding recommended guidance for Restraint (not law; easily changed by state)
AZ	Meaningful Law	Included in All Children's Law	
CA	Meaningful Law (2018)	Included in All Children's Law	
CO	Meaningful Law	Included in All Children's Law	
CT	Meaningful Law	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	Included in All Children's Law	
KY	Meaningful Law	Included in All Children's Law	
LA		Meaningful Law	

	All Students	Students w/Disabilities	Other
MA	Meaningful Law	Included in All Children's Law	
MD	Meaningful Law	Included in All Children's Law	
ME	Meaningful Law	Included in All Children's Law	
MI	Meaningful Law		
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		
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		Limited Law (2017); no parental notice	
NM	Meaningful Law (2017)		
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)

	All Students	Students w/Disabilities	Other
OR	Meaningful Law	Included in All Children's Law	
PA		Meaningful Law	
RI	Meaningful Law	Included in All Children's Law	
SC			All-Students: Nonbinding Guidance (not law; easily changed by state)
SD	Weak Law (2018), but improvement from prior silence		
TN		Meaningful Law	
TX		Meaningful Law	
UT	Meaningful Law		
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	Included in All Children's Law; 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	

Map 1: States with Meaningful Protections by Law from Both Restraint and Seclusion for Children with Disabilities (July 1, 2019)



Light Green: Meaningful protections from both restraint and seclusion for all students.

Dark Green: Meaningful protections from both restraint and seclusion for children with disabilities only.

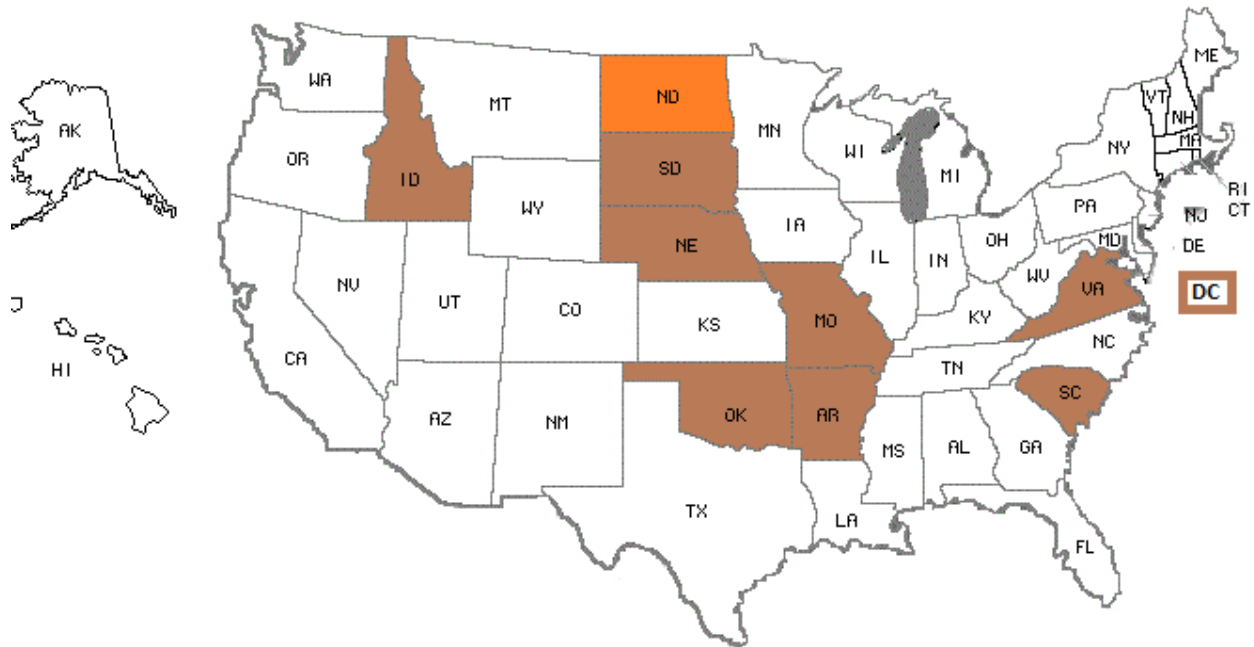
Lavender: NY has meaningful protections for children with disabilities and some meaningful protections for children without disabilities.

Aqua: DE provides protections through criteria in a state waiver process. NJ provides meaningful restraint protections, but not seclusion (no parental notice for seclusion). AR provides some protection from seclusion, but none from restraint

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Map 2: States with Very Weak or No Protection in by Law from Both Restraint and Seclusion for Children with Disabilities (July 1, 2019)



Brown: State has only weak or non-existent protections from both restraint and seclusion.

Orange: ND protects adults and students with developmental disabilities, but not other disabilities, such as emotional disturbance, ADHD/other health impairments, and Specific Learning Disabilities. (This report uses the IDEA terminology for special education, 20 U.S.C. 1401(3).)

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IV. RESTRAINT AND SECLUSION STATE LAWS: EMERGENCY PRACTICES FOR IMMINENT THREATS OF PHYSICAL DANGER

Seclusion and restraint are dangerous interventions that should only be used in an emergency when someone is at risk of physical harm. This section discusses whether states limit restraint and seclusion in this manner, or allow them even when safety is not at risk.

A. Restraint

Of the 51 state-level jurisdictions, 23 by law limit restraint of all children to threats of physical danger; 28, 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.

23 states limit restraint to emergencies threatening physical danger for all children, 28, for students with disabilities.

School children have been restrained for being unable to pay attention due to disabilities, throwing paper airplanes, getting out of a seat, sharpening too many pencils, taking off shoes, not doing their work, staff convenience, punishment, and similar activities.⁵³ Yet, restraint is highly dangerous, resulting in deaths and injuries. The GAO documented at least 20 cases of children who died from restraint,⁵⁴ 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.⁵⁵ In 2014, restraint shattered the femur of a Kentucky 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.⁵⁶

1. Defining Restraint

Physical restraint is defined in the Keeping All Students Safe Act (the Congressional bill) as “a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely, except that such term does not include a physical

⁵³ See GAO REPORT at 22-25; throwing paper airplanes. Marci Manley, *Fox 16 Investigates: State of Restraint*, KLRT FOX 16 (Arkansas), July, 17, 2017; Mareesa Nicosia, *The Future of Restraint and Seclusion in Schools*, THE ATLANTIC, Jan. 24, 2016; *Tucson Girl Says Teacher Taped Her to Chair*, azcentral.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).

⁵⁴ GAO Report at 8.

⁵⁵ GAO REPORT at 1, 8, 10-12.

⁵⁶ Deborah Yetter & Allison Ross, *Expert Finds JCPS Broken Leg Case Was Abuse*, LOUISVILLE COURIER-JOURNAL, Aug. 18, 2016.

escort, mechanical restraint, or chemical restraint.”

States that define restraint use a similar standard, but often refer to the whole body. States defining physical restraint as a reduction in the ability to move the body freely or an involuntary restriction of freedom of movement. These include Alabama, Alaska, Arizona, California, Colorado, Connecticut (and also including dragging and forced movement), Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, Ohio, Oregon, Pennsylvania, Nevada, New Hampshire, New Jersey^d, New Mexico, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. No other definitions are used. The effect of this is that even in states that permit restraint more broadly, regulatory limits and protections apply, parents are notified, and data is collected.

Restraint is almost always defined as an involuntary restriction on the ability to move the body freely. States will exempt incidental holds (e.g. physical escort, comfort), but not entire categories of actual restraint. This mirrors the Congressional bills' thrust.

Exemptions. Some actions are typically exempted from the definition of physical restraint. These are generally common-sense forms of contact.

Congress and many states exclude physical escort: temporarily touching or holding students to induce them to walk to a safer location. Some states limit physical escort to children who are disruptive or acting out or require that the restraint not involve force. States excluding physical escort from the restraint definition include Alabama, Arizona, California, Connecticut, Colorado, Delaware, Georgia, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, and Wyoming.

A number exempt holding children to comfort them, including Alabama, Arizona, Connecticut, Colorado, Georgia, Indiana, Kansas (consensual touch), Kentucky, Louisiana, Maine (voluntary touch), Maryland, Massachusetts, Michigan, Mississippi, Ohio, Pennsylvania, and Wyoming.

Many exempt touch to complete a task, or to teach or direct a student. These are common reasons to hold a child. Some children have been restrained by being forced to do something against their will or to the point of pain, such as repeating a motion over and over in the alleged guise of teaching a skill.⁵⁷ Hence, some states carefully require the contact to be minimal. States with this exception include Alabama, Colorado (minimal contact necessary to complete the task), Delaware, Georgia, Indiana (gentle assistance), Kansas, Kentucky, Massachusetts, Michigan (minimal), Ohio (if not resisted), Oregon (if not resisted) (2019), Pennsylvania, and Vermont.

Several states also omit from the physical restraint definition very limited actions to protect

⁵⁷ Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007 (7 year old girl forced into repetitive hand over hand coloring restraint as punishment; ultimately escalated to forced seclusion in cinder block room with harsh conditions to be freed).

safety, often to stop a child from acting impulsively (e.g. running into traffic). Among them are Alabama, Colorado (5-minute hold to protect self or others), Georgia, Kentucky, Louisiana (5 minute hold), Massachusetts, Maine, New Hampshire, Ohio (to prevent impulsive dangerous act), Oregon (Interrupt impulsive behavior threatening the child’s immediate safety, such as running in front of a vehicle or climbing an unsafe structure) (2019), and Vermont.

A final group exclude actions to break up a fight or prevent assault, including Maryland, Michigan, New Hampshire, Ohio, Oregon (“protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection”) (2019), and Wyoming. In some cases, state law may require this. Moreover, breaking up fights is generally necessary to prevent physical harm to the students involved.

With the exception of the final group, all of these exemptions are tied to the incidental nature of the hold (e.g., calming a child, 5 minute hold to prevent impulsive dangerous activity, escorting child away from disturbance or danger). States do not, however, broadly exempt categories of activity from their restraint definition, such as restraint if the student is engaged in X activity. Exempting activity means that parents are not informed, the restraints are hidden from the data collection, and state law protections do not apply (e.g. provisions forbidding restraint from impeding breathing, requiring it to end when the emergency ends, etc.).

2. Restraint Limited to Emergencies Threatening Physical Danger

When Congress began focusing on restraint and seclusion in 2009, only 5 states limited restraint to emergencies threatening physical harm. Today, 23 states by law protect all children from the use of restraint except for immediate threats of physical danger.⁵⁸ They are California (2018 upgrade), Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Maine, Maryland (2018 upgrade), Massachusetts, Michigan, New Hampshire, New Mexico (2017), Ohio, Oregon, Rhode Island, Utah, Vermont, and Wisconsin.

Moreover, 28 states do so for children with disabilities: Alaska, Alabama, Arizona, California (2018 upgrade), Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Louisiana^d, Maine, Maryland (2018 upgrade), Massachusetts, Michigan, Minnesota^d, New Hampshire, New Mexico (2017), New Jersey^d ((2018)), Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Utah ((2018)), Vermont, and Wisconsin. A higher standard (e.g., serious or substantial physical harm) is used in California, Louisiana^d, Maryland, Oregon (2019), Rhode Island, Massachusetts, New Hampshire, Oregon, and Rhode Island.

Over half of the states restrict restraint to emergencies threatening physical harm for students with disabilities. Only 5 did so when Congress began action in 2009.

While Florida was in this category in the earliest versions of this report, it was removed in

⁵⁸ For purposes of this report, physical harm and bodily harm, injury, danger, and safety are used synonymously.

January 2014. Its state statute requires that restraint and seclusion reports identify the imminent risk of serious physical harm. But the law itself is silent and does not directly require such a threat to use restraint and seclusion.⁵⁹

After communications with Minnesotans, Minnesota^d was moved into this category in 2015. 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.⁶⁰ But, Minnesotans report that the law is interpreted to permit restraint only for threats of physical harm, and that this is what the 2012 legislature intended.⁶¹

The Minnesota law, however, is a poor model for legislative drafting. 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. One should compare the Minnesota language to the Keeping All Students Safe Act, which defines physical restraint clearly as “a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely.”

Limiting restraint to emergencies threatening physical danger is an important protection. Restraint should only be used in the same way that acts of self-defense are used. But laws also require effective remedies and enforcement, whether via a state complaint process parents can use, state oversight and monitoring, or other action. Effective laws also require schools to actively implement effective positive and preventative behavioral supports to address and prevent challenging behaviors.

3. Restraint Permitted in Non-Emergencies

Many states still allow dangerous restraint to be used when no one is in danger. Some are very permissive. There are 4 states that permit restraint only for physical danger or property destruction. Three limit it to “serious” property damage, Nevada^d, Texas^d, West Virginia, and one, to substantial damage, Washington. Washington requires evidence of behavior that has

⁵⁹ 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 ED., WHAT A DIFFERENCE A DAY MAKES! RESTRAINT AND SECLUSION DOCUMENTING, REPORTING, AND MONITORING (Sept. 14, 2011), www.fldoe.org/ese/ppt/amm/11rsdrm.ppt

⁶⁰ 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).

⁶¹ 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.

caused “substantial” property damage in the past. Utah was in this category. But in 2018, it adopted a statute limiting restraint for property damage to situations where physical safety is at risk.⁶²

Another group of states have more permissive laws: Iowa, Montana^d, New York (all children), Mississippi, and North Carolina all allow restraint for threats of physical harm, property damage, and educational disruption. Educational disruption can include manifestations of a child's disability, such as tantrums, being unable to sit still or getting out of a seat, making noise, tics, etc. These are properly addressed through accommodations and behavioral supports. 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.

Many states allow dangerous restraint when no one is in danger, even though it often worsens behavior.

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.

For many years, a small group of states had laws that seemed strong on the surface, which included large loopholes. Some states defined restraint narrowly to exclude broad categories of restraint. Others seemed to limit restraint or seclusion, but then allowed them for any reason if in the child's IEP. But each year, states have increasingly closed such loopholes. Maryland and California both moved out of this category in 2018. Maryland eliminated an IEP loophole that permitted any restraint or seclusion in accord with an IEP. Maryland now only allows physical restraint for threats of serious physical harm, making it one of the stronger laws in the country.⁶³ California similarly limited restraint to emergencies threatening serious physical harm.⁶⁴

⁶² Some forms of property destruction threaten physical safety, and are covered by laws limiting restraint to threats of physical harm. Permitting restraint for all property destruction is overbroad, allowing restraint for actions like breaking a pencil or tearing a book that threaten no one. See REECE L. PETERSON, DEVELOPING SCHOOL POLICIES & PROCEDURES FOR PHYSICAL RESTRAINT AND SECLUSION IN NEBRASKA SCHOOLS 20 (Nebraska Dept. of Ed. 2010). Positive and preventative supports would more properly address these issues and teach the right behaviors. More information on positive supports and how they reduce restraint and seclusion can be found under “Less Restrictive Measures Must Fail” below.

⁶³ In prior years, Maine and Massachusetts likewise eliminated similar regulatory provisions permitting restraint for any reason if written into the child's IEP.

⁶⁴ Because of wording issues, California's previous law applied only to emergency interventions used for spontaneous, unpredictable events posing an imminent threat of serious physical harm. The law did not define “emergency intervention” and it did not apply if the student engaged in a predictable behavior pattern or a behavior that did not threaten serious physical harm. See prior version of CAL. ED. CODE §§ 56520-56525; Communications with Leslie Morrison, Directing Attorney, Investigations Unit, Disability Rights California (Jan. 2012 and reconfirmed, May 2015).

Kentucky appears to have included a loophole in its 2013 regulation. 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.⁶⁵ It is not entirely clear what is meant. It could be a reaffirmation of the criminal defense created by statute.⁶⁶ But it could also mean that staff members can use restraint to maintain class discipline, regardless of whether anyone is at risk of harm. (Kentucky has been the subject of recent news reports and videos of school staff dragging children along the floor.)⁶⁷

Non-emergency restraint exposes children to highly unnecessary, very dangerous practices. It can increase the usage of restraint. Before Connecticut restricted restraint and seclusion to emergencies, the Office of the Child Advocate found that more than 1,700 restraint or seclusion incidents lasted over 40 minutes; 716, an hour. Over 140 students were secluded or restrained over 50 times.⁶⁸ Connecticut keeps very detailed data, a practice that improves transparency and public oversight. It is to be highly commended for its data collection.

4. States Without Any Legal Limits on Restraint

There remain 19 states that do not by law limit restraint of all children; 12, children with disabilities.

As of July 1, 2019, 8 states have rules protecting students with disabilities, but none for students without: Louisiana^d, Montana^d, Minnesota^d, Nevada^d, New Jersey^d (2018), Pennsylvania^d, Tennessee^d, and Texas^d. California moved to an all-student law in 2018, as a number of states have done since 2009.

⁶⁵ 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.

⁶⁶ This criminal defense is arguably not appropriate in the modern era; restraint is not necessary to promote welfare and is not a discipline mechanism. 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. Today, we know that positive and preventative supports can do much to maintain and improve school discipline and climate, while injuring no one.

⁶⁷ V.H. Spears, *It Should Never Happen to Anyone Else. Another Autistic Child Dragged by Fayette School Staff*, LEXINGTON HERALD LEADER, Oct. 26, 2018 (6 year old with autism bruised when dragged); *Fayette County Public Schools Releases Video of Teachers Dragging Autistic Student*, WKYT (CBS), Oct. 13, 2018 (largely nonverbal 11 year old with autism allegedly dragged; hypermobility in joints put him at enhanced risk of injury, mother stated in news article).

⁶⁸ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 5* (Office of the Child Advocate Feb. 2015).

Another 7 states have voluntary guidance. Missouri, has suggested guidance that restraint be used for property destruction or as stated in the IEP, 504 plan, or behavioral plan⁶⁹-- a broad use of restraint when no one is at risk of harm. The other 6 urge, but do not require, that restraint be limited to physical danger: Arkansas, Nebraska, Oklahoma^d (serious physical harm), South Carolina, Virginia, and Washington, D.C. In 2015, Virginia adopted a law requiring regulations providing comprehensive protections similar to the Congressional Keeping All Students Safe Act. But those regulations have not yet been adopted.

There are 5 states without any laws limiting the circumstances under which restraint may be used, or even suggested guidance doing so: Florida,⁷⁰ Idaho, North Dakota, South Dakota, and Wyoming. North Dakota tried to enact a physical harm standard in 2019, but the bill failed. In these states, restraint can be used for any reason. South Dakota did require each school district to adopt a policy about restraint and seclusion, a weak law. Florida provides some protections when restraint is used, such as parental notification, data collection, and state-level monitoring.

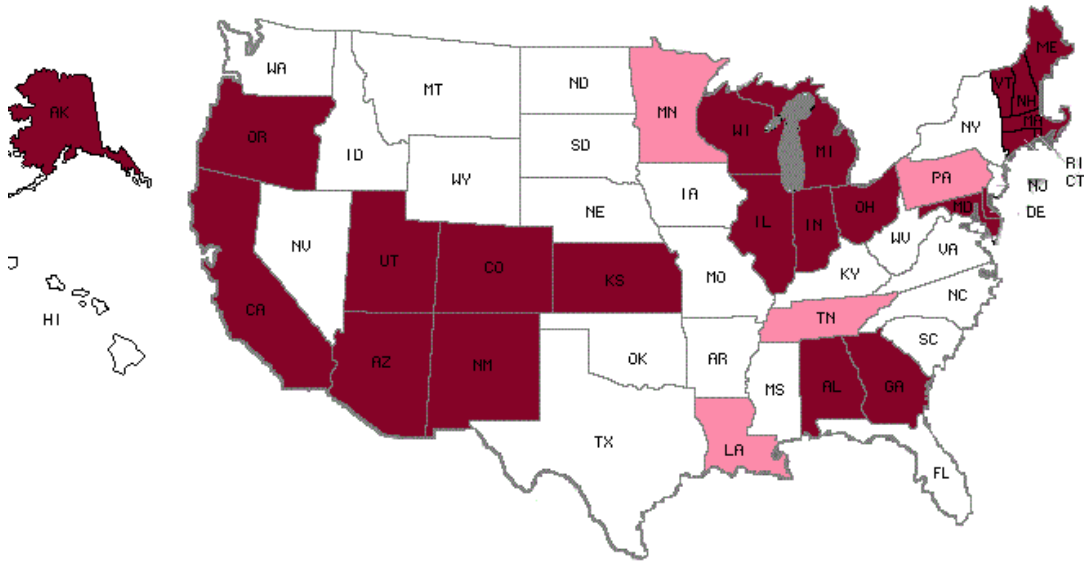
Of these states, physical harm legislation was proposed, but failed, in Florida, Mississippi, North Dakota, and Oklahoma.

19 state laws do not limit the reasons for which restraint may be used on children all children; 12, children with disabilities.

⁶⁹ Michigan and New Mexico most recently exited this category, as they adopted binding laws.

⁷⁰ Florida's law is explained in footnote [59](#) and accompanying text.

**Map 3: States Limiting Restraint to Emergency Threats of Physical Harm:
23 States (All Children) and 28 states (Children with Disabilities) (July 1, 2019)**



Dark Red: State limits restraint to emergency threats of physical danger for all children.

Light Pink: State limits restraint to emergency threats of physical danger for children with disabilities.

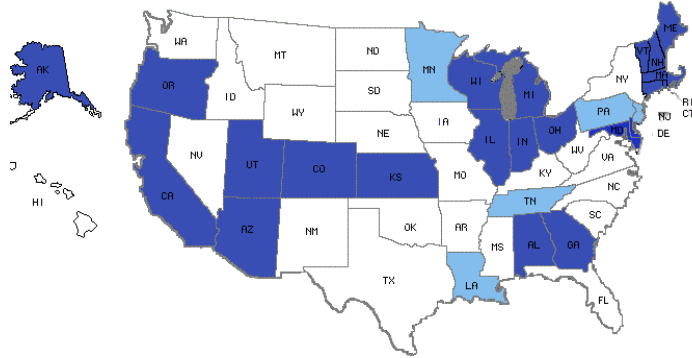
Note: Louisiana (d), Massachusetts, New Hampshire, Oregon, and Rhode Island use a heightened standard (serious or substantial physical harm)

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**Map 4: Number of States Limiting Restraint to Emergencies Threatening
Physical Danger Increased Sharply After Decade of Congressional Action (July 1, 2019)**

July 2019: Emergency Restraint Only



**2009 Before Congressional Action
(CO, IL, RI (All); PA, CT (SwDs))**



Dark Blue: restraint limited to physical danger emergencies for all children.

Light Blue: restraint limited to physical danger emergencies for children with disabilities.

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Chart 3: Does State Law Limit Restraint to Immediate Emergency Threats to Physical Safety? (July 1, 2019)

(All is all children; D is disability only)

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or Destruc. Prop.	Phys Harm, Destruc. Prop., or Ed. Disruption	Other
AK	ALL			
AL	ALL			
AR				No law limits use
AZ	ALL			
CA	All (2018)			
CO	ALL			
CT	ALL			
DE	ALL			
DC	<i>Voluntary Guidance - Not law - Can Change</i>			
FL				statute silent, incident reports refer to physical harm
GA	ALL			
HI		ALL (Serious DP)		
IA			ALL	
ID				No law limits use
IL	ALL			
IN	ALL			
KS	ALL			
KY				ALL - see report; certain defenses apply in criminal context
LA	D			
MA	ALL			
MD	ALL			
ME	ALL			
MI	ALL			

Chart 2: Does State Law Limit Restraint to Immediate Emergency Threats to Physical Safety? (July 1, 2019), p.2

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or Destruc. Prop.	Phys Harm, Destruc. Prop., or Ed. Disruption	Other
MN	D (but wording can invite circumvention)			
MO				<i>Voluntary Guidance - Not law - Can Change</i>
MS			All (restraint can be used to remove a noncompliant person from a disruption)	
MT			D	
NC				ALL; permits for any reason if in IEP/BIP, even if no danger, as well as phys. harm, prop. destruc., and Ed. disrup.
ND				No law limits use
NE	<i>Voluntary Guidance - Not law - Can Change</i>			No law limits use
NH	ALL			
NJ	ALL			
NV		D (serious DP)		
NY			ALL	
OH	ALL			
OK	<i>Voluntary Guidance - Not law - Can Change</i>			No law limits use
OR	ALL			
PA	D			
RI	ALL			

Chart 2: Does State Law Limit Restraint to Immediate Emergency Threats to Physical Safety? (July 1, 2019), p.3

	Only in Emergencies Imminently Threatening Physical Harm	Phys. Harm or Destruc. Prop.	Phys Harm, Destruc. Prop., or Ed. Disruption	Other
SC	<i>Voluntary Guidance - Not law - Can Change</i>			No law limits use
SD				Weak law requires districts to set policies
TN	D			
TX		D (serious DP)		
UT	ALL (2018)			
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			
WI	ALL			
WV		All (Serious DP)		
WY				No law limits use

B. Seclusion

Of the 51 state-level jurisdictions, 19 by law limit seclusion of all children to threats of physical danger; 24, for children with disabilities. Another 2 ban seclusion for all students, 5, for students with disabilities. In 2009, when Congress introduced its first bill, only 1 limited seclusion to such emergencies for all students, 3 for students with disabilities. The 2009 U.S. House of Representatives bill sought to limit seclusion to emergencies threatening physical harm, a position the House sponsors continued to follow until 2018. In 2018, they joined the Senate sponsors in seeking to ban seclusion.

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.⁷¹ In 2011, the National Disability Rights Network reported that a child attempted suicide in seclusion. He had been repeatedly secluded. Denied access to the bathroom, he was forced to urinate on the floor. He was secluded once again, as a consequence for having relieved himself. Unobserved, he allegedly attempted suicide by hanging.⁷² A Kentucky child locked in a closet-sized room dug through the walls far enough to reach the dry wall in 2014.⁷³ A Minnesota child who “acted out” was put in seclusion where she severed a finger, according to a 2013 Minneapolis Star Tribune report.⁷⁴ A Virginia 10 year old with autism suffered broken hand and foot bones when forced into a concrete block seclusion room. He attended the school that relied on seclusion because his military father was stationed in the area.⁷⁵

Parents have reported students secluded dozens of times, over and over again, according to 2019 news reports.⁷⁶ One Maine child spent over 25 hours in seclusion, almost full school week, Disability Rights Maine reported this year.⁷⁷ Repeated and lengthy seclusion often escalates and worsens the behavior, experts and parents alike report.⁷⁸

⁷¹ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Ed. Schools*, ATLANTA J. CONSTITUTION, July 27, 2009.

⁷² National Disability Rights Network, *SCHOOL IS NOT SUPPOSED TO HURT 11* (2012).

⁷³ *Mother Claims Autistic Son 'Clawed, Scratched Through Drywall' After Staff Forced Him into Small Room*, WAVE3 News, Sept. 3, 2014.

⁷⁴ Jeffrey Meitrodt, *Disabled Students Face Dangerous Discip. in Minn.*, MINNEAPOLIS STAR TRIB., Apr. 28, 2013.

⁷⁵ Gabriella Souza, VA. *Bills Would Regulate Restraint in Schools*, VIRGINIAN-PILOT, Feb. 17, 2015; Author's communication with Heather Luke, mother.

⁷⁶ Whitney Ward, *Isolated at School: Spokane Parents Claim Isolation Rooms Misused at District Schools*, KREM2 (Spokane), Feb. 1, 2019; Jenny Abamu, *Children Are Routinely Isolated In Some Fairfax County Schools*, WAMU 88.5 (radio), Apr. 20, 2019.

⁷⁷ Disability Rights Maine, *RESTRAINT AND SECLUSION IN MAINE SCHOOLS*, May 2019.

⁷⁸ *Senate Hearings* (2012) (testimony of Daniel Crimmins; statement of Chairman Tom Harkin); *House Hearings* (2019) (testimony of George Sugai; testimony of Renee Smith about 6 year old son whose behavior worsened due to repeated restraint and seclusion, leading to more restraint and seclusion); Peggy Fox, *Advocates Push to End Seclusion in Schools*, WUSA-9 CBS, Mar. 22, 2019 (child secluded repeatedly engaged in defecation and urination in desperation; seclusion worsened behaviors parents realized after child moved to school without seclusion).

1. Defining Seclusion

The way in which a state defines seclusion can determine whether a child is protected by state law or not. While definitions vary, almost all describe seclusion as some kind of isolation room or space that a child cannot exit.

As of July 1, 2019, 41 states would define seclusion as the involuntary confinement of children in a room or space from which they are prevented from exiting, usually because the door or exit is locked or obstructed (e.g., furniture or equipment block the door, staff keeping it shut, or even improvised child proofing). There are 35 states that define seclusion this way in their statutes and regulations: Alaska, Arizona, California (2018 upgrade), Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Michigan, Minnesota^d, Mississippi, Montana^d, New Hampshire, New Jersey^d (2017), New Mexico (2017), 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, Vermont, Wisconsin, Washington, and Wyoming (definition of term “isolation room”).

41 states would define seclusion as involuntarily confining children in a room or space and physically preventing them from exiting. This report uses this definition.

Another 6 states use the same definition in suggested 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.

It is vital to include blocked doors in the definition of seclusion. Most fire codes see a blocked door as identical to a locked one: in a fire, a person could not escape. This is particularly true for young children or those whose disabilities make it more difficult to exit. Students across this country have been secluded in rooms blocked by equipment, wooden barricades, or staff holding the door shut.⁷⁹ 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 minutes a day because she was noisy at nap time.⁸⁰ In 2017, a Virginia teen was secluded behind book

⁷⁹ E.g., *Seclusion Rooms: A Controversial but Legal Last Resort for Schools*, FOX10 TV (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); Scott Friedman, *NBC 5 Investigates: Exclusive Video Provides Rare Glimpse Inside a Plano ISD Calm Room*, NBC 5 (Dallas, TX), Apr. 23, 2015 (staff used bodies to keep door closed); 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.)

⁸⁰ Alia Wong, *Hawaii Lawmakers Mull Clearer Rules for Schools with Uncontrollable Kids*, HONOLULU CIVIL BEAT, Feb.

cases, and another student was allegedly barricaded with a gym mat and book case.⁸¹ A California 7 year old with developmental delays who could not speak was allegedly placed in a makeshift cage with two child gates locking her in.⁸²

But 2 states, Alabama and Florida, define seclusion as locking a child in a room. This represents an older view of the practice.

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.

Temporary, brief timeouts in a space a child can physically leave differ from seclusion. The child is not locked in the room and the door is not physically obstructed. Staff are often present to work with the child. Timeout is a recognized behavior management technique. Moving a child to another space may eliminate reinforcement for challenging behaviors that were present in the classroom. A timeout room may be a quiet space with materials appropriate for calming (such as music and bean bag chairs). This kind of timeout space may be a needed respite for some children with disabilities and even some children without disabilities. Timeout can occur with other children, or it can be a separate space (often called exclusionary timeout). But timeout is not putting a child in a room that he or she cannot leave because the exit is locked or blocked. That is seclusion.

Whether a room is a seclusion room depends on its function, not its name. Wyoming bans locked seclusion but permits isolation rooms, which are unlocked rooms 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. Sometimes, schools or staff may call seclusion rooms by other names, including “exclusion,” “quiet room,” “cool down” room, “blue room,” and “calm room.” Sometimes, the term “time-out room” is even wrongly used to mean dangerous isolation in a room from which a child cannot exit, rather than actual timeout.⁸³ Some may believe that calling the room by another name makes it non-seclusion. But seclusion is seclusion, and a room which meets the state’s definition of seclusion is a seclusion room, regardless of the name attached.

20, 2014.

⁸¹ Debbie Truong, *A Photo Emerges and a Va. School System’s Use of Seclusion Comes Under Scrutiny*, WASHINGTON POST, May 26, 2019.

⁸² 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,”* KPIX5 (CBS BAY AREA), Nov. 8, 2014.

⁸³ Some schools even label rooms a child is confined in, unable to exit, as “timeout” rooms. 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 “timeout” for hours on regular basis). These are actually seclusion rooms. They differ from what are ordinarily called “timeout” 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. For a description of time-out, see Utah State Office of Ed., SPECIAL EDUCATION LEAST RESTRICTIVE BEHAVIOR INTERVENTIONS TECHNICAL ASSISTANCE MANUAL 59, 108-09 (Sept. 2015).

2. 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.⁸⁴ In 2019, news media reported that school staff at a segregated Florida school had allegedly secluded three children with autism in a darkened bathroom as punishment.⁸⁵ 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.⁸⁶ 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.⁸⁷ 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.⁸⁸ A Texas child was secluded by a teacher who deliberately egged him on and escalated his behavior, instead of using preventative supports to de-escalate.⁸⁹ (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.) Parents alleged that their 3 year old son was secluded for not minding his teacher, according to a 2017 report.⁹⁰

There are numerous reports of children confined in closets and seclusion rooms being denied food, water, and the restroom.⁹¹ Students have been forcibly restrained and dragged into seclusion rooms.⁹² A 2013 investigation by Alaska Disability Law Center (P&A) found that 60

⁸⁴ GAO Report at 13.

⁸⁵ Hal Scheurich, *Teacher and Two Aides Charged with Abusing Autistic Students*, FOX10 (Mobile, AL), Jan. 28, 2019; Jason Murdock, *Florida Teacher and Two Aides Locked Autistic Kids in Pitch-Black Bathroom*, NEWSWEEK, Jan. 30, 2019.

⁸⁶ Sarah Eagan, Mickey Kramer, Donna Cambria, *SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION 12* (Office of the Child Advocate Feb. 2015).

⁸⁷ Kentucky Protection & Advocacy and the Commonwealth Council on Developmental Disabilities, *RESTRAINT & SECLUSION, THE REALITY IN KENTUCKY SCHOOLS* (2012).

⁸⁸ 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.

⁸⁹ Scott Friedman, *Exclusive Video Provides Rare Glimpse Inside a Plano ISD Calm Room*, NBC5 (NBCDFW), Apr 23, 2015.

⁹⁰ Jennifer Palmer, *Despite Objections, Oklahoma Schools Use 'Seclusion Rooms' to Isolate Students*, OKLAHOMA WATCH, Dec. 4, 2017.

⁹¹ 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); National Disability Rights Network, *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).

⁹² National Disability Rights Network, *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).

students at a single elementary school were secluded for almost 42 cumulative school days; a 2019 Disability Rights Maine investigation reported about a child secluded for almost a full school week.⁹³ A North Dakota girl spent half of a year in a seclusion room, according to a North Dakota Protection and Advocacy Report.⁹⁴ A 7 year old in Arkansas defecated on himself after being placed in seclusion, the local Fox affiliate reported in 2017.⁹⁵

States restrict the use of seclusion in different ways. Some restrict the use of rooms or spaces with locked or obstructed exits. Other states limit seclusion based on the reason for which the student is secluded. Some do both.

3. States Banning or Restricting Seclusion Generally

The 2018 House and Senate bills banned seclusion. Prior House bills allowed it only in emergencies threatening physical harm; prior Senate bills banned it. There are 20 states that ban seclusion in some way by law for students with disabilities 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, 4 states ban all seclusion for children with disabilities. They are Georgia, Hawaii, Nevada^d, and Pennsylvania^d. Texas^d forbids seclusion of students with disabilities. It allows confinement in a locked room only under extremely limited circumstances: while awaiting law enforcement when a student has a weapon and confinement is necessary to prevent bodily harm to others. Unless all 3 circumstances are met, seclusion is banned. Georgia and Hawaii prohibit seclusion for all children.

Several states ban some form of seclusion, 20 for children with disabilities, 12 for all children. 5 ban all seclusion for students with disabilities; others ban locked rooms.

Second, 15 states forbid all or most forms of locked seclusion in their seclusion rules. Of these, 12 ban it in their statutes and regulations for all children; 15, for children with disabilities: Alabama, Arkansas^d, California, Kentucky, Maine, Maryland Montana^d (except in certain residential treatment facilities), Michigan, Mississippi, Missouri (unless awaiting law enforcement), New York^d, Ohio, Utah, Wisconsin, and Wyoming.

A number of other states have important lock-related protections or provisions. Oregon bans free-standing seclusion cells or booths, some of which have been described as looking like meat lockers.

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

⁹³ Disability Law Center of Alaska, NO TIME FOR LEARNING 4 (Aug. 2013); Disability Rights Maine, RESTRAINT AND SECLUSION IN MAINE SCHOOLS 4-5 (2019).

⁹⁴ Blair Emerson, *State Delves into Issues of Restraint, Seclusion in Schools*, BISMARCK TRIBUNE, Apr. 26, 2016.

⁹⁵ Mari Manley, *Fox 16 Investigates: State of Restraint*, KLRT FOX 16 (Arkansas), July 17, 2017.

imposed no limitations on the waiver. 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 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 timeout.” Very importantly, the regulation and 2015 guidance require the room to be appropriate for calming, suggesting that closets, rooms with barren concrete walls, and separate tiny cells are forbidden. Massachusetts also requires staff to be with the child or immediately available, an improvement from the prior regulation, which simply required some “access” to staff. Still, schools and parents should be aware of potential misuse, given the way in which the regulation is worded. For example, one would expect, if the purpose is calming, for staff to remain with a student, particularly a younger child or one whose developmental needs suggest a need for support, rather than outside a door the child cannot open.

Finally, while New Mexico's prior guidance pointed out that locked seclusion was a state fire code violation, its current law does not.

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

There are 7 states that allow 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, 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) when exits are blocked or have other problems.⁹⁶ Tornados and earthquakes also present hazards and can occur without warning. School buildings have been damaged during civil emergencies.⁹⁷

Fire codes should, of course, apply to any seclusion room. Fire codes help keep people safe by ensuring they can exit the building, not blocked in. Many fire and building codes require a “a continuous and unobstructed path” of “egress travel from any occupied portion of a building.”⁹⁸ These requirements are applicable to schools.⁹⁹ Seclusion rules and policies 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 may lock. They also likely

⁹⁶ *E.g., Triangle Shirtwaist Factory Fire Victims Remembered*, NY1 NEWS, Mar. 25, 2014 (1911 factory fire); 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.

⁹⁷ *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 badly damaged).

⁹⁸ Ronald Green, MEANS OF EGRESS, THE CODE CORNER, RLGA TECHNICAL SERVICES, No. 10, May 2005. Such codes include the International Fire Code and International Building Code of the International Code Council, adopted in all states and the District of Columbia at the state or jurisdiction level, and the National Fire Protection Association Life Safety Code 101, adopted by many jurisdictions nationwide. International Code Council, INTERNATIONAL FIRE CODE AND INTERNATIONAL BUILDING CODE; National Fire Protection Association, LIFE SAFETY CODE 101.

⁹⁹ National Clearinghouse for Educational Facilities, National Institute of Building Sciences, DOOR LOCKING OPTIONS (2009), http://www.ncef.org/pubs/door_locks.pdf, Some school fire safety policies may 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.”)

do not comply with 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.

Difficulties may occur when seclusion laws and guidelines are silent about fire, safety, and building codes. Unknowledgeable staff or parents may believe doors can be locked or blocked with furniture, etc.¹⁰⁰ Some states have reacted to this by including explicit references to fire and building codes in their restraint and seclusion laws. More states should do so.

Even doors that automatically open when disengaged still result in dangerous seclusion. Children can be injured and badly traumatized, creating a cycle of failure in school. Non-emergency seclusion is still wrong, regardless of whether the door opens. Children in lengthy or repeated seclusion are not learning in the classroom and are isolated from their peers.

5. States Banning Non-Emergency Seclusion

When seclusion is limited to emergencies threatening physical danger or banned, staff do not think of it as an ordinary practice, but instead, restrict it to actual emergencies threatening real physical harm. 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.¹⁰¹

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 prevent an emergency threatening imminent physical harm. Seclusion should not be used when no one is in danger. Challenging, non-threatening behaviors are best addressed through evidence-based positive and preventative supports. (Of course, a strong state law is a vital protection for students. But without effective state enforcement, a state complaint process for parents, or state oversight and monitoring, it may be ignored and children may continue to suffer.)

a. State Law Forbids Non-Emergency Seclusion

Increasingly, states have moved either banning seclusion or permitting it only in emergencies threatening physical danger. But in 2017, Wyoming moved backwards, removing the definition of “emergency” from its regulations, and simply allowing seclusion for undefined “emergency.” The prior regulation limited an emergency to “a situation constituting an imminent risk to health or safety.”

¹⁰⁰ For an excellent discussion of the effect that fire, building, and other safety codes may have on seclusion rooms, see SOUTH CAROLINA DEPT. OF ED., 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.

¹⁰¹ *Senate Hearings* (2012) (testimony of Cyndi Pitonyak).

Today, 21 states by statute or regulation protect all children from non-emergency seclusion. Georgia and Hawaii forbid all seclusion. Then, 19 more states forbid seclusion except when there is a threat of physical danger: Alaska, Arizona, California, Connecticut, Colorado, Indiana, Kansas, Kentucky, Maine, Maryland (2018), Michigan, Mississippi, New Hampshire, New Mexico, Ohio, Oregon, Utah, Vermont, and Wisconsin. 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, and thus, seclusion may be used far more freely at present.

21 states protect all children from non-emergency seclusion; 28, children with disabilities. The rest allow seclusion even if no one is at risk of danger.

There are 28 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 24 that limit seclusion to threats of imminent physical danger: Alaska, Arizona, California, Connecticut, Colorado, Indiana, Kansas, Kentucky, Louisiana^d (“substantial” physical harm), Maryland (2018), Maine, Minnesota^d, Michigan, Mississippi (serious physical harm), New Hampshire, New Jersey^d, New Mexico, Ohio, Oregon (“serious” physical harm), Tennessee^d, Utah, Vermont, and Wisconsin. 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, Massachusetts, South Dakota, and Wyoming are not included here. Delaware's 2013 statute and later regulation banned seclusion unless the state department of education granted a student-specific waiver 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 does to protect children from dangerous seclusion. But it is neither statute nor regulation, and can be changed far more easily. Delaware also does not give children in excepted seclusion the same protections and oversight as children in physical restraint, likely because the permission to seclude is by waiver.

Massachusetts 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. South Dakota, in 2018 adopted a statute that prohibits locked seclusion alone unless there is a “clear and present danger.” But the term is undefined, and it is not clear that it means only physical danger. As previously noted, Wyoming removed language limiting seclusion to emergencies in which there was an “imminent risk to health or safety.”

Florida does not limit seclusion only to physical safety emergencies. 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 [59](#) and the accompanying text.

Many states still allow non-emergency seclusion, exposing children to danger, even when their actions threaten no one. The next two sections examine these states.

b. Seclusion Allowed When No Threat to Physical Safety by State Law

A number of states allow seclusion where there is no emergency and no one is at risk. There are 16 that do so either explicitly or through a loophole in their state law. They are Arkansas^d, Delaware, Alabama, Illinois, Iowa, Massachusetts, Missouri, Montana^d, New Mexico, New York^d, North Carolina, South Dakota, Rhode Island, Washington, West Virginia, and Wyoming.

16 state laws allow seclusion in non-emergencies either explicitly or through loopholes in their laws.

On the other hand, several states strengthened their laws in the time since Congress began taking action. They have moved out of this category. They include California, Maryland, New Hampshire, Connecticut, and Arizona.

Washington allows seclusion for threats of physical harm or for behaviors that in the past have evidenced substantial destruction of property. This was a significant improvement over the prior regulations, that allowed seclusion for all kinds of things threatening no one. Wyoming allows seclusion for “emergencies” but no longer defines the term. It previously was defined as imminent threats of physical danger.

There are 5 states that explicitly, by law, 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.¹⁰² North Carolina has a broader statute, permitting 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 since seclusion is so dangerous and escalates behaviors, rather than preventing them.¹⁰³

¹⁰² Illinois allows seclusion for threats of physical harm or to keep an orderly environment. Destruction of property likely would be included under the latter.

¹⁰³ 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 timeout. See Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007 (highly-educated parents unaware that timeout 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).

Another 8 state laws have weaknesses that permit seclusion even when there is no threat to physical safety. Often, these are unintended loopholes. Two states, California and Maryland eliminated such loopholes in 2017-18 and were removed from this category.

First, 5 states ban seclusion if the door locks but place no limits on blocking the door closed 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, 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,¹⁰⁴ speaking too loudly or making noise, 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. This does little to eliminate the risks of unwatched seclusion. Massachusetts and New Hampshire recently eliminated similar provisions.

Massachusetts' situation is nuanced, and appears to allow what is normally understood as seclusion for the purpose of calming a child, as previously discussed. The 2014 regulation, however, is a very significant improvement over the prior law. 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. Children in seclusion under the waiver do not have the same protections as students who are physically restrained in Delaware. Nonetheless, these situations are quite different from states that broadly allow seclusion and should be recognized for their efforts.

South Dakota forbids involuntary locked seclusion unless there is a clear and present danger, but danger is not defined as a physical danger. Still, the state has passed its first law; it previously, had nothing.

Before 2015, Connecticut allowed seclusion for emergencies threatening physical danger or for any reason when included in the child's IEP. Its experience is telling for others who may look at

¹⁰⁴ When Connecticut allowed seclusion in its IEPs, a child was secluded for failing to greet people. Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION (Office of the Child Advocate Feb. 2015).

this option. The Connecticut State Child Advocate reported that one student was put in isolation several times a day because he did not say hello. His IEP allowed seclusion for non-compliance. Another child was secluded for repeatedly insisting he'd won a game he lost because his IEP allowed seclusion as a behavior intervention.¹⁰⁵ In another event that led up to Connecticut's new legislation, parents expressed worry about children sobbing in the seclusion rooms. A superintendent tried to calm them by saying 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 solved by moving the rooms to part of the school where other students would not overhear children in the rooms.¹⁰⁶

c. States Lacking Any Legal Protections from Seclusion

There are 8 states that lack mandatory protections from seclusion for children with disabilities, 16, for children without disabilities.

First, there are 6 states with some sort of voluntary guidelines. Of these, 5 suggest that seclusion be limited to threats of physical danger: Nebraska, South Carolina, Virginia, Washington, D.C., and Oklahoma^d. As previously noted, Virginia adopted a statute in March 2015 that requires comprehensive regulations to protect children akin to the Keeping All Students Safe Act. But these have not been adopted, leaving only the nonbinding policy in place. Missouri forbids solitary locked confinement unless awaiting law enforcement personnel, but its law is silent on other forms of seclusion (*e.g.*, seclusion where the exit is blocked). 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).

16 states have no protections against seclusion for all children; 8, for children with disabilities.

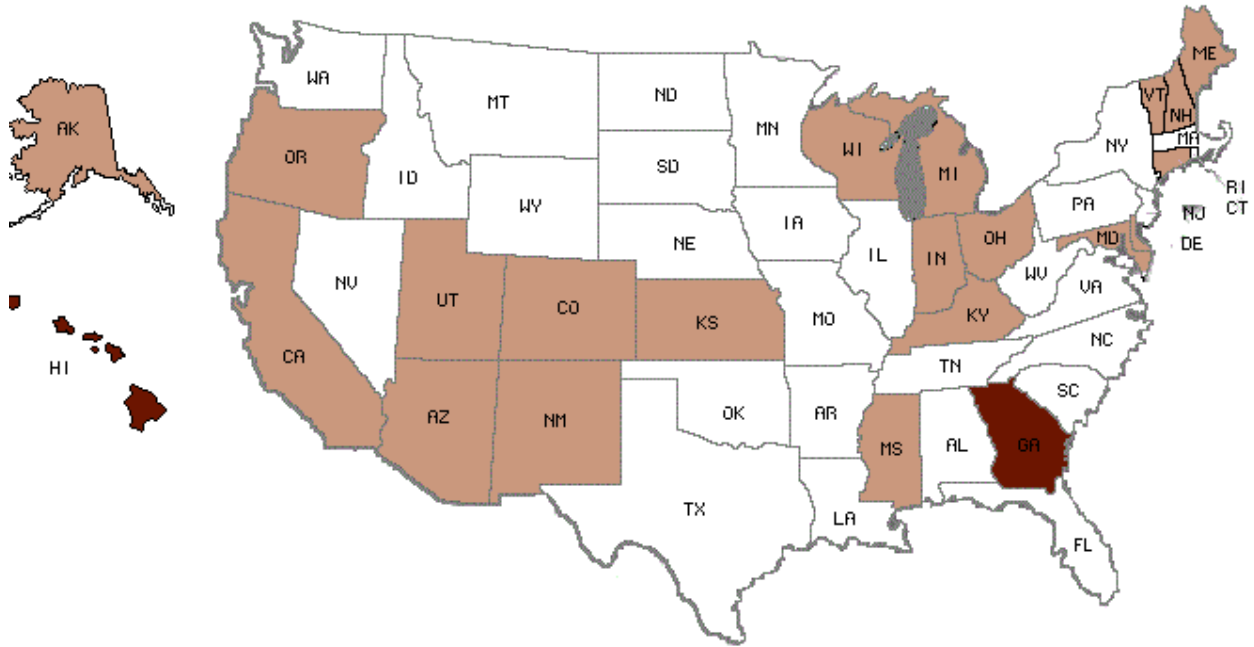
Second, 8 states protecting students with disabilities offer no protections for those without disabilities in the same schoolhouse: Florida^d, Louisiana^d, Minnesota^d, Nevada^d, New York^d, Pennsylvania^d, Tennessee^d, and Texas^d.)

Third, 2 states that are entirely silent, without even suggested guidelines: Idaho, New Jersey and North Dakota. (North Dakota does have protection for people with developmental disabilities.)

¹⁰⁵ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION (Office of the Child Advocate Feb. 2015).

¹⁰⁶ 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.

**Map 8: States that Ban Seclusion and States that Restrict it to Emergencies
Threatening Physical Harm for All Children (July 1, 2019)**



Dark Brown: Seclusion banned for all children.

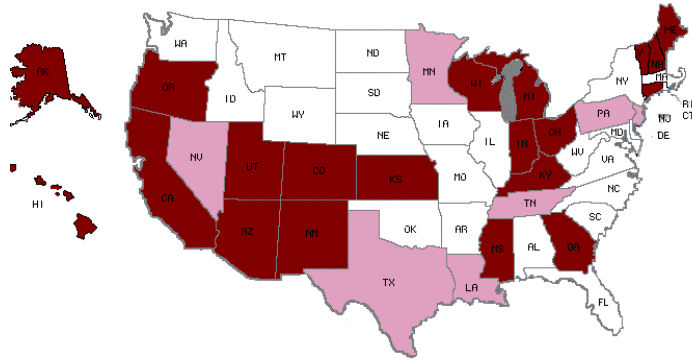
Light Brown: Seclusion limited to emergency threats of physical danger for all children.

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**Map 10: Number of States Prohibiting Non-Emergency Seclusion
Now and Before First Congressional Action (July 1, 2019)**

Jan 2019: No Non-Emergency Seclusion



**2009 Before Congressional Action
(CO, TX)**



Dark Red: State bans non-emergency restraint of all children

Pink: State bans non-emergency restraint of children with disabilities

Note: Some of these states prohibit all seclusion

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C. States Explicitly Forbidding Use for Punishment and Discipline

At least 29 states have statutes/regulations stating affirmatively that seclusion and restraint cannot be used to discipline or punish children. They include Alaska, Alabama, Arizona, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, Michigan, Mississippi, New Hampshire, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Tennessee^d, Utah, 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. Such provisions are important to prevent misuse of restraint and seclusion. But their inclusion does not always protect children, particularly in the absence of enforcement and state complaint mechanisms for parents to use, and oversight and monitoring.

D. Steps to Limit Restraint and Seclusion to 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.¹⁰⁷

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.¹⁰⁸ George Sugai, distinguished expert in positive behavioral supports at the University of Connecticut, likewise testified that schools "must provide multi-tiered organizational, policy, and procedural supports, like PBIS, that enable educators to be effective in preventing and responding to problem behaviors" and that students at high risk of developing such behaviors must receive pro-active preventative and constructive supports.¹⁰⁹

¹⁰⁷ 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.

¹⁰⁸ *Senate Hearings* (2012) (testimony of Daniel Crimmins).

¹⁰⁹ *House Hearings* (2019) (testimony of George Sugai).

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 one Virginia district, preventative support programs cut crisis-level behaviors by 78%. Restraint and seclusion are rare. Instead, schools use easily accessible evidence-based methods.

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."¹¹⁰

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.¹¹¹

At the Centennial School in Pennsylvania, 6 months of a positive and preventative behavioral support program reduced the number of physical restraints by 69% and virtually eliminated seclusion.

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.¹¹²

¹¹⁰ *Senate Hearings* (2012) (testimony of Cyndi Pitonyak).

¹¹¹ *Senate Hearings* (2012) (testimony of Michael George).

¹¹² Texas Juvenile Justice Dept., EFFECTIVENESS OF POSITIVE BEHAVIORAL SUPPORTS, 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.¹¹³ 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.¹¹⁴

Implementing positive supports caused the Virginia Treatment Center for Children to eliminate restraint and seclusion and reduced worker's compensation claims by hundreds of thousands of dollars.

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, testified to the Virginia General Assembly.¹¹⁵

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."¹¹⁶

On the other side of the equation, Disability Rights Ohio in 2015 undertook an analysis of that states' 2013-14 data, finding that school districts reported that there was no further actions after for nearly 47% of restraint incidents and 3.49% of seclusion occurrences.¹¹⁷ Working to create a framework of positive and preventative supports after such incidents, and to understand why they occurred, can reduce the use of restraint and seclusion.

¹¹³ 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.

¹¹⁴ Janice LaBel for the Substance Abuse and Mental Health Services Admin., THE BUSINESS CASE FOR PREVENTING AND REDUCING RESTRAINT AND SECLUSION USE (2011).

¹¹⁵ 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.

¹¹⁶ Sarah Eagan, Mickey Kramer, Donna Cambria, SECLUSION AND RESTRAINT IN CONNECTICUT SCHOOLS: A CALL TO ACTION (Office of the Child Advocate Feb. 2015).

¹¹⁷ Disability Rights Ohio, THE STATE OF RESTRAINT AND SECLUSION IN OHIO: AN ANALYSIS OF DATA FROM OHIO'S PUBLIC SCHOOLS (Mar. 2015).

2. States Requiring Less-Restrictive Preventative Methods and De-Escalation First, Restraint and Seclusion Only a Last Resort

Many states allow restraint and seclusion only if less-restrictive preventative methods would not prevent the threatened danger. Sometimes, this is referred to as “last resort.”¹¹⁸ This is similar to the Congressional position, as reflected in the various Keeping All Students Safe Acts over the years.¹¹⁹

For all children, 25 state laws require that less restrictive interventions be ineffective before restraint is used; 29, for children with disabilities. They are

Alabama, Alaska, Arizona, California (2018 upgrade), Connecticut, Colorado, Delaware, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan, Mississippi, New Hampshire, New Mexico, 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; slightly under half, on all children.

There are 24 states that apply this rule to seclusion for all children; 28, for children with disabilities. They are Alabama,

Alaska, Arizona, California, Connecticut, Colorado, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan, Mississippi, New Hampshire, New Mexico, New York^d, Ohio, Oregon, Pennsylvania^d, Rhode Island, Vermont, and Wisconsin. Delaware does not require this by statute or regulation for seclusion. Seclusion is permissible if a waiver is obtained. The State Department of Education’s waiver form requires documentation that the school is implementing positive and preventative supports and the child has a Behavioral Intervention Plan. But it does not require that less restrictive measures be considered or used before using seclusion. Still, the waiver’s inclusion of positive and preventative supports is a real improvement over the state’s legal requirements.

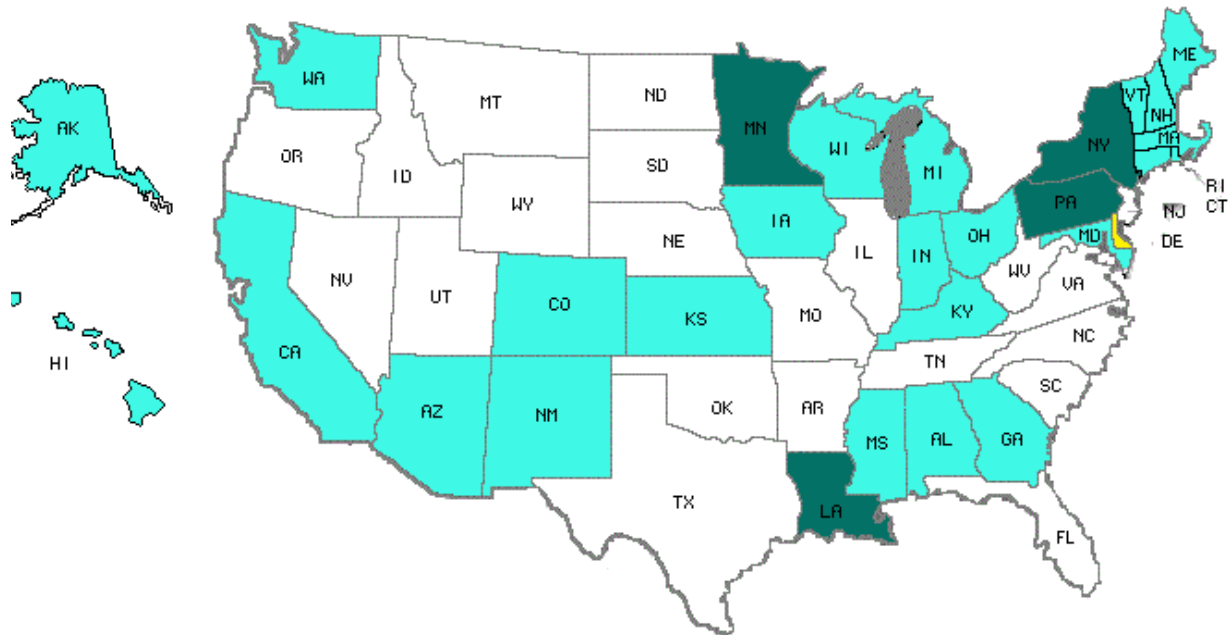
Montana lacks a last resort requirement, as it requires less harmful methods to have been tried, but not necessarily to have been ineffective before restraint and seclusion are used.

A large number of states are silent. Of the remaining states without mandatory requirements, 4 recommend less restrictive practices be tried first in their voluntary guidance for all children, and 7, for children with disabilities: Arkansas (restraint 2014), Missouri, 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. New Mexico had been in this group, but adopted a statute in 2017 to provide legally-mandated protection to all students.

¹¹⁸ The term “last resort” is sometimes used synonymously with the requirement to use less-restrictive methods first. But some states or school personnel simply say seclusion and restraint are last resorts, without requiring less restrictive methods be tried or deemed ineffective first. For this reason, the less restrictive method language is an important state requirement.

¹¹⁹ The 2018 Congressional bills would ban all seclusion, and thus lacked this provision for seclusion.

**Map 11: Schools Cannot Use Restraint & Seclusion if
Less Restrictive Interventions Would Be Effective (July 1, 2019)**



Light Aqua: By law, less restrictive methods must fail or be deemed ineffective before S/R are used (all children)

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

Yellow: DE requires less restrictive methods to fail or be deemed ineffective before restraint is used. See text for discussion of DE's seclusion approach.

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3. States Requiring Procedures to End When the Emergency Ends

Restraint and seclusion are emergency practices, to be used only to protect self or others from physical harm. When the emergency ends, restraint or seclusion should end.¹²⁰ 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. These tasks are unrelated to maintaining safety.

But, 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, regardless of whether the emergency is over.¹²¹ A 2018 news report told of a 12-year-old boy allegedly directed to sit cross-legged for 5-10 minutes in order to leave the seclusion space. The practice escalated the child to injure himself, his parents told the Washington Post.¹²² Similar practices were used with a child with autism in Colorado, who could escape seclusion only by sitting perfectly still for five minutes in a specific position. She was unable to do so, despite repeatedly trying.¹²³ Her parents ultimately prevailed in a due process hearing and litigation against the school district for the abuse of restraint and seclusion. But they had the funds to hire the expert witnesses necessary to do so.

While restraint and seclusion should be emergency interventions, children have been required to perform unrelated tasks to get out, including forcing children with autism and other disabilities to sit perfectly still, almost impossible because of their disabilities.

A 7-year-old girl 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 Disability Rights Wisconsin. Unable to sit in the chair in the proper position, the 67-pound child was forced into prone restraint and died.¹²⁴

A 7 year old died after being secluded for gurgling her milk. She was unable to sit still for 15 minutes to leave seclusion. So, private day school staff put her in prone restraint and she died.

¹²⁰ The 2018 Congressional bills would ban all seclusion. Obviously, if seclusion is banned, this kind of provision would not be necessary.

¹²¹ 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.

¹²² Debbie Truong, *A Photo Emerges and a Virginia School System's Use of Seclusion Comes Under Scrutiny*, WASHINGTON POST, May 26, 2018

¹²³ Robert Tomsho, *When Discipline Starts a Fight*, WALL ST. J., July 9, 2007.

¹²⁴ Disability Rights Wisconsin, *A TRAGIC RESULT OF A FAILURE TO ACT: THE DEATH OF ANGELLIKA ARNDT* (2008).

There are multiple reports of hours-long episodes and repeated episodes, covering many days, of both seclusion¹²⁵ and restraint.¹²⁶ In Maine, a child was allegedly restrained repeatedly on the floor by multiple adults, the *Portland Press Herald* reported in 2019. The child's parents alleged that the repeated practices led the child to act out, resulting in even more restraint and seclusion.¹²⁷ Similarly, a Rhode Island parent testified about her then 6-year-old son, "The more he was restrained and secluded, the less he was interested in school work, which resulted in more restraint and seclusion, a constant downward spiral."¹²⁸ (Several of the children live in states with protections, indicating that statutory and regulatory protections alone are not enough to prevent restraint and seclusion. Schools need to implement positive interventions and states need to create effective remedies and enforcement.)

¹²⁵ *House Hearings* (2009) 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); Disability Rights Maine, *RESTRAINT AND SECLUSION IN MAINE SCHOOLS* (2019) (child secluded for 25 hours in school year, almost a full school week lost from school); Jenny Abamu, *Children are Routinely Isolated in Some Fairfax County Schools*, WAMU 88.5, Mar. 13, 2019 (describing child whose parents reported he was secluded on most days at segregated school for children with disabilities; repeated seclusion caused him to act out even more); Stephanie Ballesteros, *Investigative report: Controversial Child Control*, WAVY 10 (Virginia Beach), Apr. 27, 2015 (reporting on recording stating that children can be secluded as long as two hours); 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); National Disability Rights Network, *SCHOOL IS NOT SUPPOSED TO HURT III* (2012) (passim) (incidents include child who attempted suicide after 4 hours in seclusion); *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim).

¹²⁶ GAO Report at 1, 2, 6, 7; Disability Rights Maine, *RESTRAINT AND SECLUSION IN MAINE SCHOOLS* (2019) (7 year old restrained 34 times in 42 school days); 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 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).

¹²⁷ Kevin Miller, *Use of Restraint and Seclusion on the Rise in Maine Schools, Advocacy Group Says*, PORTLAND PRESS HERALD, May 13, 2019.

¹²⁸ *HOUSE HEARINGS* (2019) (testimony of Renee Smith).

By law, restraint must cease when there is no longer an emergency for all students in 27 states, for children with disabilities, in 31 states: Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware (restraint only), Georgia, Hawaii, Illinois (restraint only), Indiana,¹²⁹ Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, Mississippi, Michigan, New Hampshire, New Mexico (2017), Nevada^d, Ohio,¹³⁰ Oregon, Rhode Island, Texas^d¹³¹, Vermont, Utah, Washington, Wisconsin, and West Virginia. These numbers have been steadily growing since the 2009 introduction of the first Congressional bill with this standard. Still, a large number of states do not require restraint to end when there is no longer an emergency.

A majority of states require restraint and seclusion to end when the emergency ends. This is important. Children have been secluded & restrained for hours and repeatedly over days.

Seclusion is either banned or must end when the emergency ends in 25 states for all children, 28 states, for children with disabilities: Alaska, Alabama, Arizona, California, Colorado, Connecticut, Georgia (ban), Hawaii (ban), Indiana, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Minnesota^d, Mississippi, Michigan, New Hampshire, New Mexico (2017), Nevada^d (ban), Ohio, Oregon, Rhode Island, Vermont, Utah, Washington, Wisconsin, and West Virginia.

Delaware and Illinois are excluded. Delaware bans seclusion but permits it for students without adding this requirement when the state grants a waiver. The waiver form must specify seclusion's duration. Illinois requires seclusion to end when no longer therapeutically necessary, but no longer than 30 minutes after behavior resulting in seclusion 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). Illinois imposes no limits on the basis for seclusion. Finally, based on its 2015 statute, Virginia should add this provision when it adopts final regulations.

There are 4 states imposing 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), or that the procedures end after specified brief periods (Michigan and Utah). These two-part rules can further help ensure that restraint and seclusion are not overused, and are newer conventions introduced after the Congress began working on restraint and seclusion.

By contrast, there are other states that allow restraint and seclusion to go on after the

¹²⁹ 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, which required seclusion and restraint to end when the emergency ends and to last for only a brief time. Thus, Indiana is counted among these states.

¹³⁰ Ohio's regulation, ORS 3301-35-15(H) explicitly mandates that seclusion end when the emergency ends. It does not have such an explicit requirement for restraint. But the regulation orders school districts to adopt policies consistent with Ohio's 2013 positive behavioral support policy. This policy orders seclusion and restraint to end when the emergency ends.

¹³¹ Texas requires only that restraint end when the emergency ends. It 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.

emergency is over and no one is in any danger. There are 5 states that explicitly allow this: Maryland (seclusion period must be appropriate for the event and must end within 30 minutes; restraint must end within 30 minutes or earlier if child is calm); Iowa (restraint for "reasonable and necessary" period; seclusion for "reasonable" period); Illinois (seclusion must end when no longer therapeutically necessary and 30 minutes after behavior resulting in seclusion has ended); and Montana^d (duration set in IEP or BIP). If Illinois restricted seclusion to physical danger emergencies, the therapeutic necessity requirement could end seclusion when the emergency ends. But because Illinois allows seclusion for any reason, the therapeutic necessity requirement is not tied to emergencies. New Hampshire and Connecticut recently strengthened their laws to eliminate similar weaknesses.

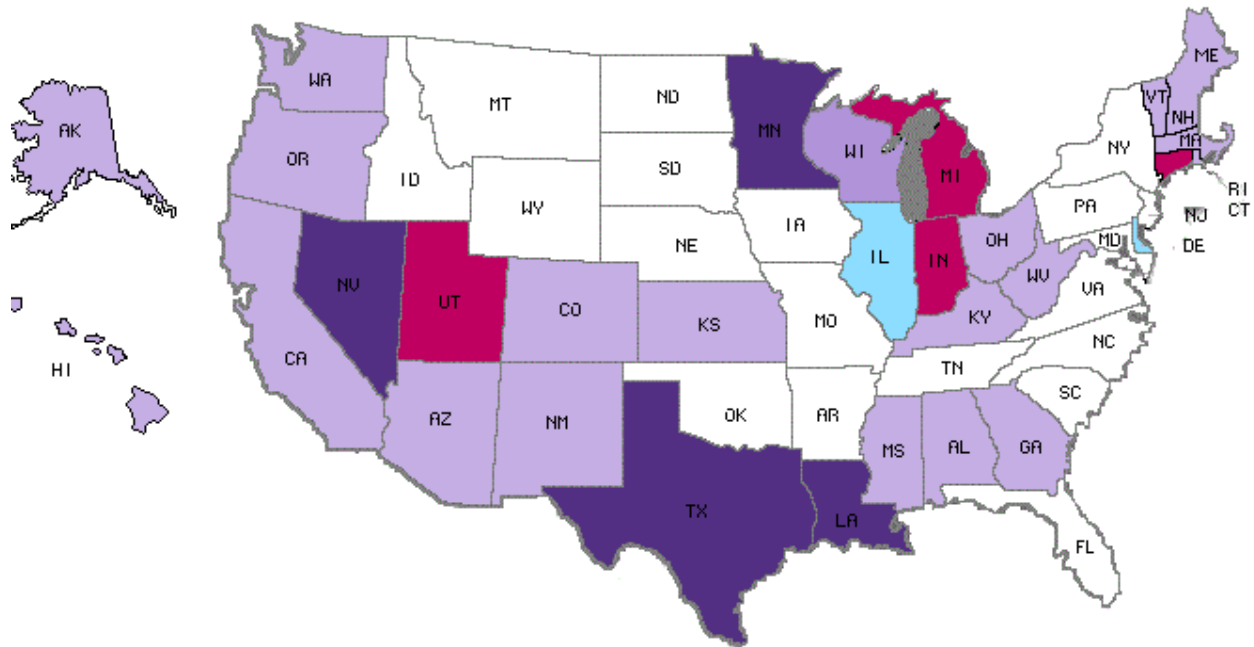
Maryland's durational limit differs from the others in that it sets a hard deadline of 30 minutes under all circumstances, which seems designed to protect children. Maryland is to be lauded for this, but the standard may raise some issues if an emergency ends within 5-10 minutes and a child is still in restraint or seclusion.

Moreover, about 1/3 of states have no laws relating to terminating restraint and seclusion.

There are 6 states with mere voluntary 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 12 states that are wholly silent on this issue: Delaware, Florida, Idaho, New Jersey (has new disability-only statute, but without this requirement), New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Virginia, and Wyoming. New Mexico and Michigan were removed from this list in 2019 due to adopting stronger laws with this protection. 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.

Map 12: State Laws Requiring Restraint/Seclusion to End When the Emergency Ends (July 1, 2019)



Dark Purple: By law, S/R either banned or must end when the emergency ends for children with disabilities only (LA, MN, NV, TX).

Lavender: By law, S/R either banned or must end when the emergency ends for all children.

Magenta: State law requires S/R to end when the emergency ends and also imposes additional restrictions, such as time limits (CT, IN, MI, UT).

Light Blue: DE & IL require restraint to end when the emergency ends, but permit seclusion to last for a longer time period. MS requires seclusion to end when the emergency ends, but not restraint. Note DE imposes additional obligations on seclusion via a restrictive state waiver process.

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V. 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. In 2019, Virginia adopted a new law requiring new regulations that will ban any method of restraint or seclusion that the State Department of Education determines is a significant danger to students. Until the regulations are written and then enacted, the specific contours of the protections are unknown.

1. Restraints that Restrict Breathing and Threaten Life

Restraints that impede breathing and threaten life are highly dangerous. There is no reason to use them on school children. A teenage Jonathan Carey was killed by suffocation after a residential 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-old, 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) allegedly put him into prone restraint, laying on top of him and suffocating him. The young man said that he could not breathe. His teacher replied that if he could talk, he could breathe, his foster mother testified in 2008. She said:

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 reportedly 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.¹³²

The 2009 GAO study counted 20 deaths from restraint alone. Since then, other deaths have been reported that occurred while children were restrained, primarily in



Children have been killed by restraints that impair breathing and threaten life. The GAO counted 20 deaths from restraint alone, four of students who said they could not breathe.

¹³² GAO REPORT at 10-11; *House Hearings* (2009) 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.

private schools. In 2018, Max Benson, a young teen with autism, died after an hour in prone restraint in a California private school.¹³³ Another teen, Corey Foster died in restraint in New York in 2012, allegedly after a sports dispute. The restraint was captured on videotape. His death was ruled an accident by the coroner and the school asserted it acted appropriately.¹³⁴

Numerous states have sought to prevent use of the most dangerous restraints. The states may phrase their prohibitions as bans on "life-threatening restraints," restraints that impair "breathing," or "prone restraints." They generally have the same effect. But because some claim that prone restraint does not impair breathing, some states have carefully banned prone restraint specifically. Moreover, a ban on life-threatening restraint and restraint that impedes breathing can reach other forms of very dangerous restraint, like those that cover the child's face while the child is not face down.

Prone restraint is likely to 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.¹³⁵ 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.¹³⁶

There are 31 states with laws banning the use of life-threatening restraints on all children; 35, on children with disabilities. These states may be divided into three groups.

31 states by law forbid prone or life-threatening restraints on all children, 35, children with disabilities.

First, 2 states ban only prone restraint: Georgia and Pennsylvania^d. They are silent about other restraints that can impede breathing. Before 2019, Oregon banned prone restraint, but not restraint that impaired breathing.

Second, 27 states ban all restraints that obstruct breathing or threaten life for all children; 32, for

¹³³ Sawsan Morrar, *School Where Boy with Autism Was Restrained, Later Died Has Been Investigated by State* *Multiple Times*, SACRAMENTO BEE, Jan. 15, 2019; Doug Johnson, *Parents Begin Taking Their Children Out of Specialty School after Student's Death*, Fox40 (Sacramento, CA), Dec. 11, 2018; Sawsan Morrar, *School Where Student with Autism Collapsed and Later Died Violated Restraint Rules, California Regulators Find*, SACRAMENTO BEE, Dec. 8, 2018.

¹³⁴ Angela M. Hill, Brian Ross, and Matthew Mosk, *Death at School: Child Restraints Spark Controversy*, ABC WORLD NEWS TONIGHT, Nov. 30, 2012; *Mom Sues School Over Special-Needs Son's Death*, ABC WORLD NEWS TONIGHT, Broadcast Dec. 6, 2012; Nina Bernstein, *No Charges in Death at Yonkers Center for Youth*, NEW YORK TIMES, Aug. 2, 2012.

¹³⁵ Disability Rights California, *THE LETHAL HAZARD OF PRONE RESTRAINT: POSITIONAL ASPHYXIATION 17-18* (2002); National Disability Rights Network, *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.")

¹³⁶ 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.

children with disabilities. These states include Alaska, Alabama, Arizona, California (2018 upgrade), Colorado, Connecticut, Delaware, Florida^d, Hawaii, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Massachusetts, Minnesota^d, Michigan, Mississippi, New Hampshire, New Mexico (2017), Oregon (2019)¹³⁷, Ohio, Rhode Island, Tennessee^d, Texas^d, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. Ohio and Texas have implicit bans on restraint that impedes breathing, as both forbid restraint that deprives students of basic human needs. Ohio also bans prone restraint explicitly. While such implicit bans protect students, being explicit is far better. It is unambiguous and prevents someone from claiming that they did not know what the law required.

Of the states listed above, 16 specifically ban both restraints that impair breathing generally and prone restraint more specifically: Alaska, Connecticut, Colorado (2017) (with exceptions for students displaying deadly weapons and other exceptions) Iowa, Kansas, Kentucky, Maryland, Minnesota^d, Michigan, New Hampshire, Ohio, Oregon (2019), Rhode Island, Utah, 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. California permits prone restraint as long as the child is monitored in person. But its law forbids restraint that impairs breathing or the respiratory airway “including techniques in which a staff member places pressure on a pupil’s back or places his or her body weight against the pupil’s torso or back.” These are practices generally known as prone restraint.

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.

Minnesota previously allowed prone restraint, but forbade it in 2016.

Oregon's new 2019 law also forbids supine restraint, restraint that involves intentional pressure on a child's neck, throat, genitals, or other intimate parts, and any action designed for the primary purpose of causing pain.

In addition, 3 states do not ban—but regulate—prone restraint: New Jersey^d (2017), 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. This, however, still requires the parent's child to get the letter from a doctor. New Jersey bans prone restraint unless a child’s physician has specifically authorized it. This is still better than the Massachusetts law. But it still leaves children unprotected, particularly those who may be in private institutions with their own medical staff. Moreover, staff may pressure parents to obtain permission from doctors in order to keep their children in school. Whether this will occur will depend on how events transpire over time. It is highly unusual in the modern era to adopt a law and not ban restraint that impedes breathing.

South Dakota in effect affirmatively permits prone restraint. It bans the practice “except when

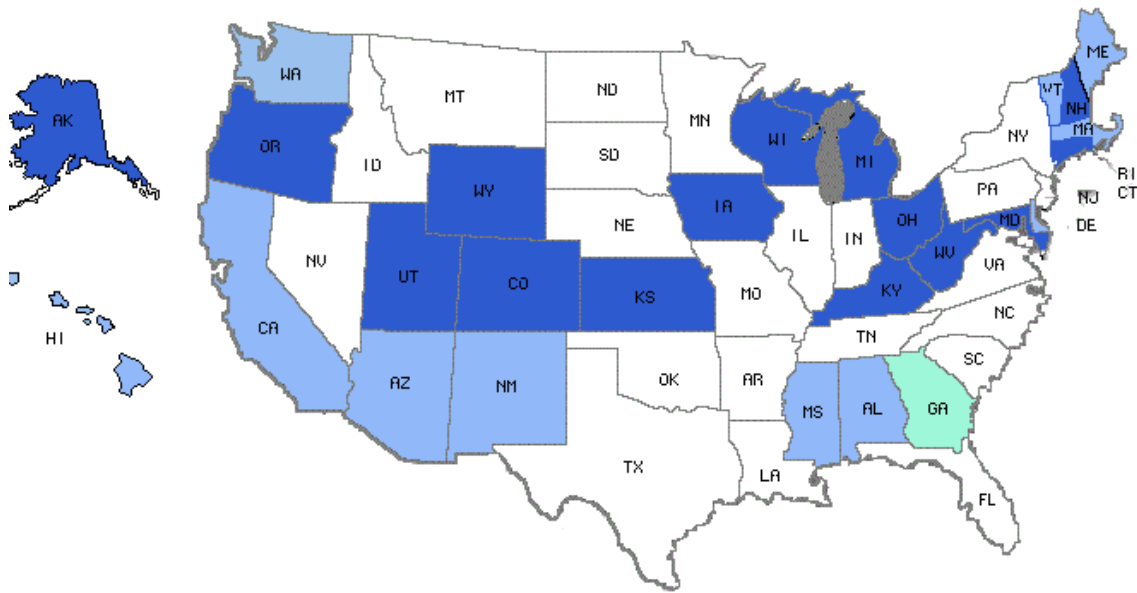
¹³⁷ Before 2019, Oregon forbade only prone restraint. In 2019, Oregon added a ban on all restraint that impedes breathing or involves pressure on a student’s throat or neck.

the use is necessary and reasonable in manner and degree.” This type of language is very broad and subject to interpretation. At a minimum, South Dakota should ban restraint that impairs breathing. One might argue that such restraint is never reasonable, but a prohibition would far better protect children from the most dangerous restraint of all.

Voluntary guidance urges not using life-threatening restraint in 6 states for all students: Arkansas, Missouri, Nebraska, 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.

Indiana is an odd situation. Its statute charged a commission with preventing restraint that “may harm” a student. This would presumably include restraint that impedes breathing. But the regulations issued by the commission say nothing about restraint that impairs breathing, threatens life, or hurts a student.

Map 14: All Children: States Banning Restraints that Impair Breathing and Prone Restraint (July 1, 2019)



Light Blue: Law bans all restraints that impair breathing for all children.

Dark Blue: Law bans both for all children.

Light Green: OR, GA: Law bans prone restraint only 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 in schools. In May 2019, a Rochester, New York school aide was accused of putting duct tape around the body parts of a child with disabilities, according to court papers, WHEC (NBC) reported.¹³⁸ A teacher reportedly duct-taped the mouth of an Ohio nonverbal kindergartener with disabilities. The principal told the family after a teacher's aide told her.¹³⁹ A California child was strapped into a wheelchair and it was inverted. He was helpless to free himself.¹⁴⁰ Children have been duct-taped or tied to furniture for getting up too much or being unable to sit still.¹⁴¹ Fox59 and the Indianapolis Star reported that 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.¹⁴² A 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.¹⁴³

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.¹⁴⁴ 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

¹³⁸ Berkeley Brean, *Rochester Teacher's Aide Accused of Duct Taping Student Fired, Teacher and Teacher Assistant Resign*, WHEC NBC NEWS 10, May 15, 2019.

¹³⁹ Melissa Reid, *Parents of Student Who Had Mouth Duct Taped Shut by His Teacher Speak Out*, FOX 8 CLEVELAND, Apr. 19, 2016.

¹⁴⁰ *D.K. v. Solano Off. of Ed.*, 667 F. Supp. 2d 1184 (E.D. Cal. 2009).

¹⁴¹ 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).

¹⁴² Jill Disis and Bill McCleery, *Advocates: Laws Needed to Protect Special-Needs Students After Girl's Feet Duct-Taped*, INDIANAPOLIS STAR, Feb. 6, 2013; Braden Walker, *Child with Down Syndrome Sent Home from School with Shoes Duct Taped to Legs*, Fox59, Feb. 5, 2016.

¹⁴³ 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.

¹⁴⁴ *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.

worried that in a fire, he would not be able to leave.¹⁴⁵

In Pennsylvania, a teacher allegedly strapped children with bungee cords into therapy chairs, punishing and abusing them.¹⁴⁶ An Alabama nonverbal second grader with autism was reportedly restrained in a chair alone in a bathroom. She flipped the chair over on herself and was hanging by the restraints, having also urinated on herself.¹⁴⁷ 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.¹⁴⁸

There are 21 states that ban mechanical restraint of all children; 25 states, children with disabilities. The states with bans are Alabama, Alaska, Colorado (with exceptions for children displaying deadly weapons and other exceptions), Georgia, Hawaii, Indiana, Illinois, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Michigan, Mississippi, Montana^d, Ohio, Oregon, Pennsylvania^d, Tennessee^d, Utah, 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.

Modern laws are generally more likely to ban mechanical restraint. The majority of the states listed above enacted their protective laws or regulations since 2009, when Congress first proposed banning mechanical restraint.

21 states ban mechanical restraints for all children; 25 for children with disabilities. Mechanical restraints have included duct-tape, tying children to furniture, and sometimes leaving them alone in darkened rooms. States banning mechanical restraint range from Alaska to Utah, Mississippi to Michigan.

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.

Three states do not ban mechanical restraint, but tightly regulate it. Maryland is fairly strict, forbidding mechanical restraint except in very few schools with hospital accreditation. The ordinary public or private school cannot use it. 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

¹⁴⁵ GAO Report at 23.

¹⁴⁶ *Vicky M. v. Northeastern Educational Intermed. Unit 19*, No. 06-01898 (M.D. Pa. May 15, 2007).

¹⁴⁷ Alabama Disabilities Advoc. Program, *SECLUSION AND RESTRAINT IN ALABAMA SCHOOLS* (June 2009).

¹⁴⁸ James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009.

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.)

Among the states without mandatory laws, 5 have voluntary guidelines suggesting that mechanical restraints not be used: Arkansas, Nebraska, Oklahoma^d, South Carolina, and Washington, D.C. While New Mexico's prior nonbinding guidelines argued that schools should not use mechanical restraint, this restriction was not included in its 2017 statute. California's 2017 law and New Jersey's 2017 law are also silent on the issue.

Washington had banned binding of a child's limbs to objects or each other, unless the parent consented to placing this in the child's IEP. In 2015, Washington enacted new regulations, explicitly permitting mechanical restraint as long as the child is continually visually monitored and the other requirements for using restraint are met.

3. Chemical and Drug Restraint

Children can be killed and sickened by improperly used chemical (medical) restraints.¹⁴⁹ 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). The dangers of chemical restraint were documented by the Hartford Courant in 1989. In one story, a teen placed in an institution was subjected to chemical restraint and left in a seclusion room alone, where she died.¹⁵⁰ Chemical restraint is less likely to be an issue in public schools and what might colloquially be called "neighborhood" private schools, meaning parochial and nonsectarian schools students attend that are similar to their neighborhood public school. Drugs generally require prescriptions to be used and staff often lack the medical licensure necessary to administer them.

There are 21 states prohibiting chemical restraints in their statutes and regulations, all applicable to all children: Alabama, Alaska, Colorado, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (2017), Kentucky, Maine, Massachusetts, Michigan, Mississippi, Ohio, Oregon, Rhode Island, Utah, 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.

21 states ban chemical restraint. As with mechanical restraints, such bans are more common in states enacting laws since Congress began including the ban in its bills.

Two states, Connecticut and Tennessee, have laws that

¹⁴⁹ 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).

¹⁵⁰ 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.

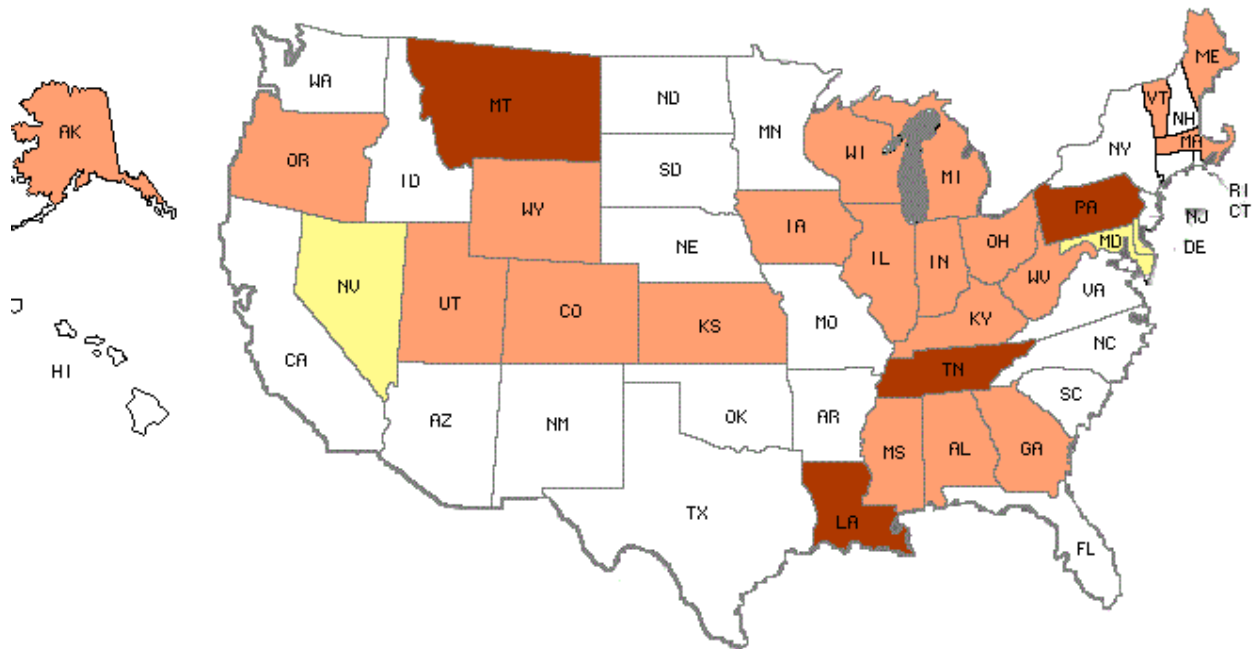
regulate chemical restraint differently, explicitly allowing its use under certain circumstances.

Connecticut previously banned chemical restraints unless otherwise stated in an IEP. Chemical restraint was permitted in an IEP 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. The medication must be used only in doses that are therapeutically appropriate. On the other hand, 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."

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.

Map 15: States Banning Mechanical Restraint (July 1, 2019)



Light Orange: Law prohibits mechanical restraint for all children.

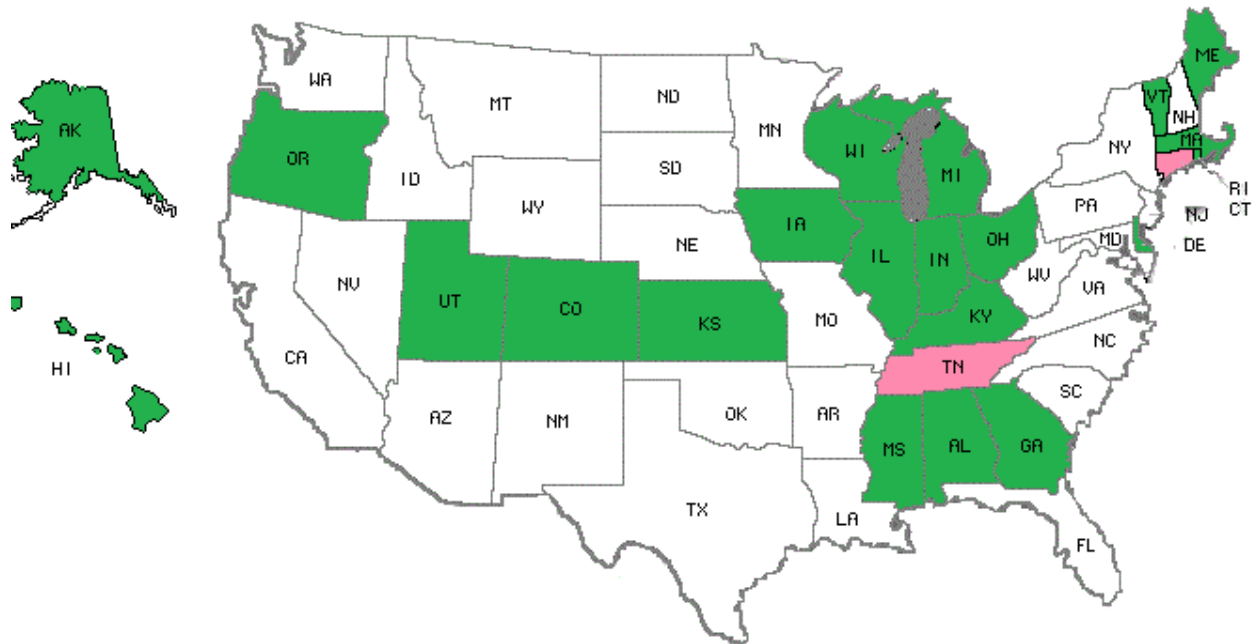
Dark Orange: Law bars mechanical restraint for children with disabilities only.

Yellow: Law explicitly permits mechanical restraint but imposes restrictions. Maryland (banned except for certain schools with hospital accreditation); Nevada (permitted with a physician's order, but requires loosening every 15 minutes); and DE (permitted under state waivers, although state education agency adopted a policy of limiting waivers to threats of serious danger)

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Map 16: States Prohibiting Chemical Restraint (July 1, 2019)



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

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

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B. Continuous Visual Observation of Seclusion

The majority of states require schools to monitor children in seclusion. Most order staff to continuously watch the child, which can help ensure safety and that staff end seclusion when the emergency ends. It does not eliminate trauma. A number of states, however, have no monitoring requirements. A few others simply require the capacity to see inside the room, allow staff to check occasionally, or require staff to monitor without requiring how. All of these are quite dangerous.

In 2004, 13-year-old Jonathan King killed himself in a seclusion room. Paper covered the only window; a teacher sat outside the room monitoring by listening to him. She told him he would have to be calm for 15 minutes to get out. After 35 minutes, she observed that he was quiet. He had hung himself inside the room.¹⁵¹ In January 2011, a student attempted suicide in a seclusion room where he was not observed, the National Disability Rights Network has alleged. He previously had been placed in the room and forbidden to use the bathroom, causing him to urinate on himself. He was secluded again for having relieved himself, during which he allegedly attempted suicide.¹⁵² Other children confined unobserved in closets, bathrooms, and other rooms and spaces have been killed, injured, and traumatized. In 2019, KREM 2 reported that a Spokane-area student was badly bruised after she hit herself repeatedly against a steel door in seclusion.¹⁵³ The Council for Children with Behavioral Disorders has noted that secluded students have committed suicide, been electrocuted, and engaged in "self-injury due to cutting, pounding, and head banging."¹⁵⁴

Children in seclusion who were not watched continually have died or been hurt. 35 states either ban seclusion or require continuous visual monitoring of children with disabilities in seclusion rooms; 25, all children.

There are 35 states with laws either banning seclusion or require continuous visual monitoring of students with disabilities; 25, 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, 30 by law require continuous direct observation of children with disabilities; 23 states, of all children: Alabama, Alaska, Arizona, Arkansas^d, California (2018 upgrade), Connecticut, Delaware (monitoring required if State grants waiver permitting seclusion), Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana^d, Maryland, Maine, Minnesota^d, Michigan, Mississippi, Montana^d, New Hampshire, New Jersey^d, New Mexico (2017), New York^d,

¹⁵¹ Alan Judd, *Death Highlights Lack of Regulation at Psycho-Ed. Schools*, ATLANTA J. CONSTIT., July 27, 2009.

¹⁵² National Disability Rights Network, *SCHOOL IS NOT SUPPOSED TO HURT III 11* (2012).

¹⁵³ Whitney Ward, *Isolated at School: Spokane Parents Claim Isolation Rooms Misused at District Schools*, KREM2 (Spokane WA), Feb. 1, 2019.

¹⁵⁴ Council for Children with Behavioral Disorders, *Position Summary on the Use of Physical Restraint Procedures in School Settings*, 34 BEHAVIORAL DISORDERS 223, 224 (2009).

Oregon, Rhode Island, Tennessee^d, Utah, Vermont, Wisconsin, and Wyoming ("isolation" rooms). Virginia's March 2015 statute requires regulations to be promulgated that should impose this requirement. California most recently upgraded from an earlier amorphous standard of "adequate" supervision.

Massachusetts bans most forms of seclusion, but allows what it calls time-out for purposes of calming in rooms where the door may be locked or blocked by furniture, equipment, etc. If a student is in this form of time-out, staff must be with the child or immediately accessible. This is a change from the old rules that could have allowed staff to be down 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 all school staff to leave children in seclusion unwatched. Some mandate some monitoring, but in terms that allow children to go unobserved.

Laws in 4 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." " Washington requires close monitoring of all students.

Other states do not by law order monitoring. There are 3 states with mere guidance that encourages, but does not require, continuous visual monitoring: 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 5 states without laws or recommended guidelines stating that students should be monitored while in seclusion: Florida, Idaho, North Dakota, 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 Jersey^d, New York^d, and Tennessee^d. Most of these 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.

Continually observing students is vital for their safety. Some have sought to narrow the definition of seclusion to exclude children who are monitored continuously. Seclusion is not fine merely because a child is watched. Seclusion continues to isolate a child and cause psychological trauma. Children may still be injured.¹⁵⁵ Parents need to know their children were secluded and the seclusion needs to be counted in the data. A child could be put into monitored seclusion for dropping a tearing a book, not saying hello, being rambunctious, or activities that threaten no one. Positive and preventative supports are the proper response to nonthreatening behavior, not seclusion with a person watching.

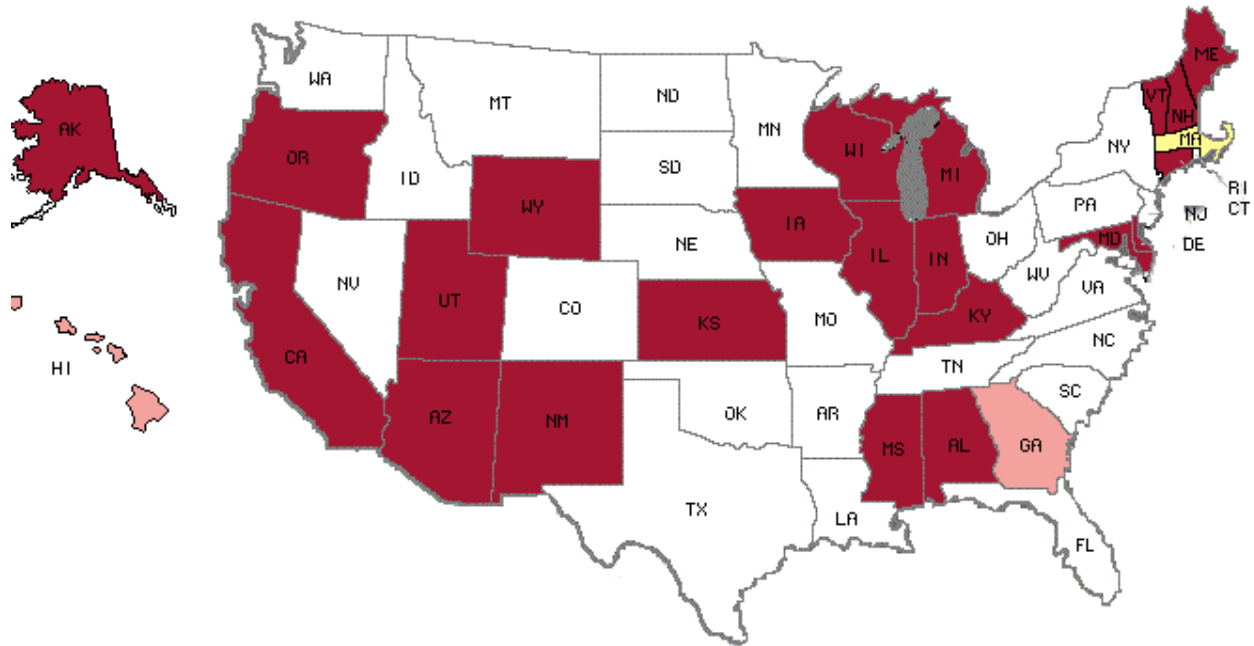
¹⁵⁵ Peter Linton-Smith, *Lawsuit: Footage Shows School Abuse*, MY FOX TAMPA BAY, Aug. 14, 2009.

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.¹⁵⁶ Alex was secluded for tearing paper, running around, and banging on the door, not for putting anyone at risk of danger.¹⁵⁷ Monitoring alone does not resolve the problems and dangers of seclusion.

¹⁵⁶ Alex Campbell, Testimony to General Assembly of Virginia, Feb. 8, 2015.

¹⁵⁷ Rachel Weiner, Virginia Lawmakers Move to Reg. School Seclusion and Restraint, WASH POST, Feb. 8, 2015.

Map 18: States Requiring Staff to Continuously Watch All Children in Seclusion
(July 1, 2019)



Dark Red: State requires continuously watching children in seclusion.

Salmon (Light Orange): State bans seclusion, so unmonitored seclusion not possible.

Yellow: Massachusetts has different rules. See text for discussion.

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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 reportedly have had no choice but to urinate in the room or upon themselves.¹⁵⁸ There have been repeated news reports of students secluded in locked boxes or small seclusion booths.¹⁵⁹ Such boxes likely do not comply with state fire and building codes.¹⁶⁰ 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. In 2019, Virginia adopted a new law requiring new regulations imposing additional seclusion safety standards. That statute became effective in July 2019. But until those additional regulations are written, the extent of the protections is unknown

Some current state law room requirements are below.

Dark Rooms Forbidden (21 states by law): Arkansas^d, Colorado, Illinois, Iowa, Kansas, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Michigan, Mississippi, 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, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Michigan, Mississippi, New Hampshire, New York^d, North 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, Kentucky, Louisiana^d, Maine, Maryland, Minnesota^d, Mississippi, New

Many states do not regulate seclusion room conditions. But others do: 12 states require bathroom access; 21 forbid dark, unlit rooms; 19 require adequate heating/cooling.

¹⁵⁸ See generally 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; Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012; Jason Murdock, *Florida Teacher and Two Aides Locked Autistic Kids in Pitch-Black Bathroom*, NEWSWEEK, Jan. 30, 2019; National Disability Rights Network, *SCHOOL IS NOT SUPPOSED TO HURT* (2009); J. Butler, *UNSAFE IN THE SCHOOLHOUSE* (COPAA 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).

¹⁵⁹ *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.

¹⁶⁰ See SOUTH CAROLINA DEPT. OF ED., *GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT* (Aug. 20, 2012).

Hampshire, New York^d, North Carolina, Tennessee^d, Vermont, Wisconsin, and Wyoming. Michigan requires that the rooms be safe for the child.

Room size requirements (14 states by law): Arkansas^d, Colorado, Iowa, Kansas, Louisiana^d, Maryland, Minnesota^d, Michigan, 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 (11 states by law, 8 explicitly): Iowa, Kentucky, Minnesota^d, Mississippi, New York^d, North Carolina, Wisconsin, and Washington. Of these states, 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 other 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, 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.¹⁶¹ Educators and parents should always refer to those codes, in addition to their state restraint and seclusion laws and policies. See also Section IV.B. above for a fuller discussion of fire and building code issues.

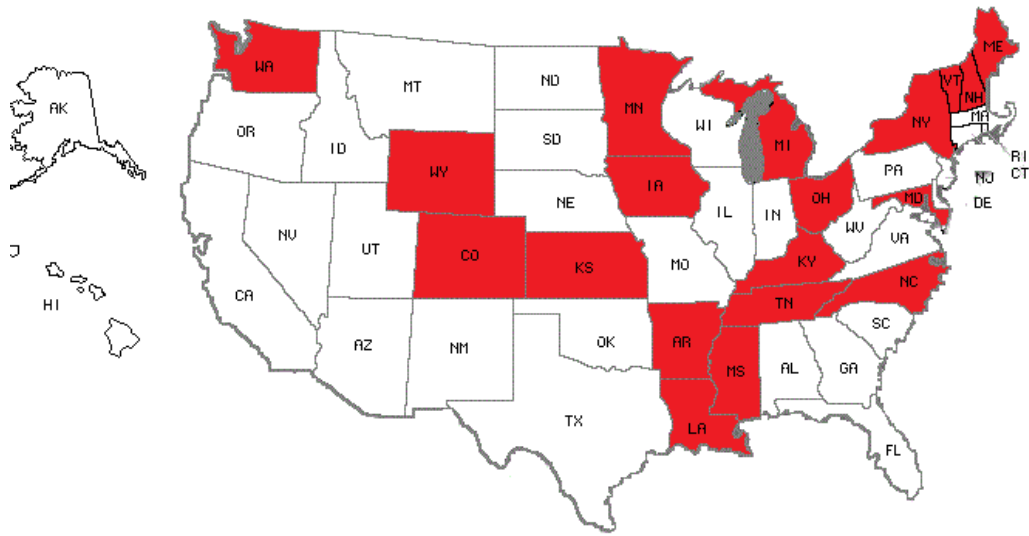
Room conditions are also suggested in the nonbinding guidance in South Carolina.

It is important to note that room condition requirements do not make seclusion rooms safe or prevent children from suffering trauma that can impede their learning. A well-lit and heated or ventilated room would not prevent a broken finger, sprained ankle, 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 prevent staff from putting children in closets. These kinds of things have been used as

¹⁶¹ See Section IV.B.1., 4. regarding fire and other building safety codes.

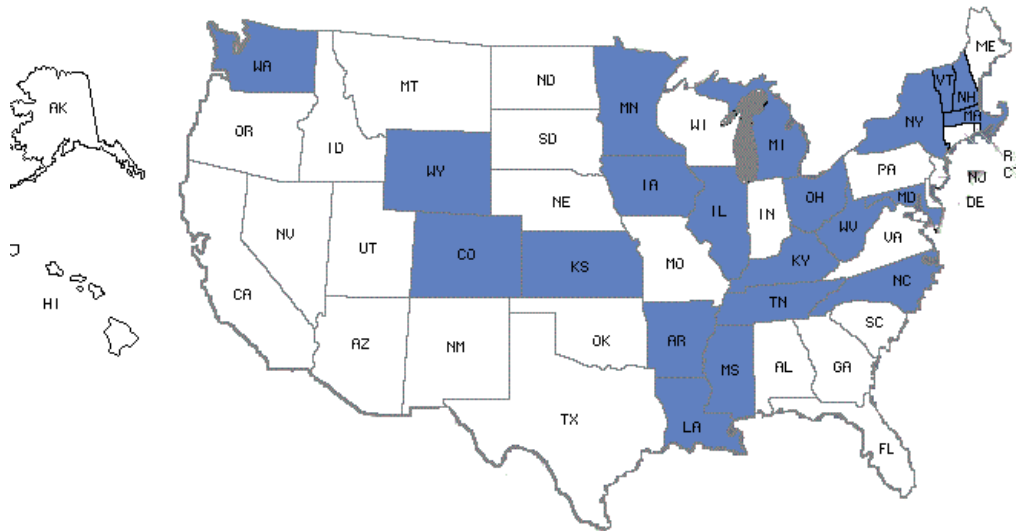
abusive aversives in the past. Finally, room condition requirements can ensure that children's bathroom and other basic human needs are met.

19C. Ventilation



Red: States with rules regarding adequate ventilation, heating, or cooling. Note: some laws limited to students with disabilities. See text.

19D. Dark Unlit Rooms Forbidden



Blue: States forbid use of dark unlit rooms. Note: some laws limited to students with disabilities. See text.

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VI. 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

For years, numerous reports and news stories 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.¹⁶² Some parents only learned from other students who told other adults or took other actions.¹⁶³ News reports in 2019 detailed numerous parents in the Northwest who were not informed that their child was restrained or secluded, despite state laws requiring notice.¹⁶⁴ Quick, honest parental notification is important. There is a crucial, short 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.

¹⁶² See, e.g., National Disability Rights Network, *SCHOOL IS NOT SUPPOSED TO HURT* (2009) (passim); 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).

¹⁶³ Debbie Truong, *A Photo Emerges and a Virginia School System's Use of Seclusion Comes Under Scrutiny*, WASHINGTON POST, May 26, 2018; V.H. Spears, *It Should Never Happen to Anyone Else. Another Autistic Child Dragged by Fayette School Staff*, LEXINGTON HERALD LEADER, Oct. 26, 2018.

¹⁶⁴ Jenny Abamu, Rob Manning, *Desperation and Broken Trust when Schools Restrain Students or Lock Them in Rooms*, NPR, June 5, 2019. See also Rob Manning, *NW Parents Challenge Schools' Handling of Students with Disabilities*, OREGON PUBLIC BROADCASTING, Mar. 18, 2019.

Anne Gaydos testified that her then 7-year-old autistic daughter, Paige, was subjected to numerous restraints and seclusion, leading to injuries. Weighing 40 pounds, she was initially restrained and bruised for wiggling a loose tooth in timeout. Ms. Gaydos testified to Paige's repeated restraint, including facedown with her teacher sitting on her. Despite her parents' protests, Paige remained with the teacher, who on one occasion allegedly forced her wrists between her shoulder blades, grabbed her ankle and hand, and threw her head first into the ground. On another occasion, the teacher even covered her face and mouth while forcing food into her mouth, preventing Paige from breathing. The teacher did not document the incidents in Paige's files. They were not reported to her parents. After Paige was thrown to the ground, the school called her mother to get her, but did not inform her of the incident, Ms. Gaydos testified. That information would have enabled her parents to watch for a concussion and subdural hemorrhage.¹⁶⁵



Restraint and seclusion also cause trauma and behavioral changes in children. Numerous parents have reported watching their children becoming withdrawn and frightened about school, their behavior changing--only to learn much later that their children had been restrained and secluded.

"Calendar day" notice is more effective than "business day" or "school day" notice. Waiting until after a weekend or holiday is not appropriate given the potential medical dangers. Today's communication methods can also make communication much easier. Some laws with longer notice periods were written years ago, before the text and email services routinely used to notify parents today of other school events.

The majority of states require parental notification. When state voluntary guidelines are included, 37 states in some way support and advocate for having schools make reasonable efforts to notify parents of children with disabilities within 1 day or less; 43, within 1 school day or less. Yet, there remain districts with longer timelines or which do not require notification. South Dakota's 2018 statute allows districts to set their own notification policies. This could allow them to decide not to notify parents of certain incidents. In 2017, New Jersey by statute required "immediate" notification of restraint but not for seclusion. Its State Department of Education sought to do so in a guidance document.

¹⁶⁵ *House Hearings* (2009) 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).

The following chart summarizes state parental notification laws. As can be seen, 40 states (3/4 of states) require schools to tell parents of children with disabilities that their child was restrained or secluded; 30 states, all children.

Chart 4: Parental Notification Laws at a Glance (July 1, 2019)

State Statute or Regulation Requirements	All Children	Children with Disabilities
Must notify parents of both seclusion and restraint by law, statute or regulation.	30 states	40 states
Must notify on the same day event occurs	15	20 restraint, 19 seclusion
Must notify within 1 calendar day/24 hours	9	11
Same day or within 1 calendar day/24 hour notice (Subtotal of above two rows)	24	31 restraint, 30 seclusion
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	2	4
* 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 July 1, 2019, 31 states require that parents of all children be notified if restraint or seclusion are used. They are Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts, Michigan, Mississippi, New Hampshire, New Mexico (2017), North Carolina (but not requiring notification under many circumstances noted below), Ohio, Oregon, Rhode Island, South Dakota (2018), Utah, 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, 41 states by law require schools to tell parents when their child was restrained, 40 secluded. (For an unknown reason, New Jersey's 2017 law did not require schools to tell parents if their child was secluded.) They are Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland (unless otherwise stated in IEP/BIP), Massachusetts, Minnesota, Michigan, Mississippi, Montana, New Hampshire, New Jersey^d (2017 law requiring schools to tell parents of restraint but not seclusion), New Mexico (2017), New York, North

Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota (2018), Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

The next section discusses the range of notification deadlines. 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. Parental Notification Same Day or Next Day

Same Day Notification of Both Restraint and Seclusion: This is the rule in 15 states for all children. For children with disabilities, it is the rule in 19 states for restraint, 20, for seclusion. Same Day notification is required in Alaska, Colorado[†], Hawaii, Iowa[†] (attempted), Indiana (same day or as soon as practicable), Maine, Michigan[†], Kansas[†], New Hampshire[†], New Jersey^d (2017) (statute requires notice required for restraint only, guidance seeks same for seclusion)[†], New Mexico[†] (allowing 24 hours if circumstances require), Ohio[†], Oregon[†], Vermont[†] (documented attempt), West Virginia[†] ("good faith"), Florida^{†d}, Minnesota^{†d}, Tennessee^d ("reasonable efforts"), Utah[†], Texas^{†d} ("good faith effort").

24 Hour or 1 Calendar Day Notification of Both Restraint and Seclusion: This is the rule in 9 states for all children and 11 states for children with disabilities: Arizona[†], Connecticut[†], Delaware (same day preferred, 24 hour deadline, but IEP team can set longer deadline), Illinois, Kentucky, Maryland (unless otherwise stated in IEP/BIP), Massachusetts ("reasonable efforts"), 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 5 states for all children, disabled and non-disabled: Alabama, Georgia, Wisconsin, Mississippi[†] (2016, restraint), and California^d (2018 statute retained notice provision for parents of children with disabilities). 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. The “school day” or “business day” requirement can be dangerous when restraint or seclusion happen on the day before school lets out, particularly for longer durations. Since parents may need to seek quick medical help; a calendar day is a far better measure.

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[†] requires notice to parents of seclusion, preferably on the same day, but no later than 48 hours after the event.

Longer: There are 4 states with substantially longer deadlines, three of which were adopted more than 10 years ago. 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 Congressional bill with its same day notification requirement. South Dakota adopted a short law in 2018 directing districts to set a policy for notifying parents, but sets no deadlines or required elements.

4. Notification of One Practice but Not the Other

Notifying parents about one practice but not the other is very troublesome. It can cause some school staff to overuse the practice for which parents receive no notification. Parents are not informed of potential injuries and trauma. They can't know to address an issue with the school or to seek a good behavioral intervention plan. For years, states that fell in this category changed their laws, requiring equal parental notification for both restraint and seclusion. Arizona and New Hampshire, for example, replaced their laws. Yet, in 2017, New Jersey^d became the only state to require notification for one procedure (restraint) but not the other (seclusion).

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

In many states, written notification must contain additional useful information. This can help prevent future incidents of restraint and seclusion by examining and explaining what happened, including what led up to the incident that ended in restraint or seclusion, and what happened during that period. These are the kinds of things that are used to design effective Behavioral Intervention Plans (BIPs), and provide needed supports and services, so that restraint and seclusion do not recur. Fairly typical state requirements include a detailed description of the incident and the type and duration of the restraint or seclusion; the behavioral antecedents leading up to the event; efforts made to de-escalate and use other alternatives; any injuries; and the names of the staff involved.

There are 23 states mandating more detailed written follow-up about restraint and seclusion incidents for all children. Such written notification is required for children with disabilities in 27 states for restraint, 26 for seclusion. These states are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi (parents must request written documentation), New Hampshire, New Mexico (2017), Ohio, Oregon, Utah (parents must request written documentation), Vermont, Washington, West Virginia, Florida^d, Louisiana^d, New Jersey^d (2017; restraint only) and Texas^d. Other states mandate written communication only if verbal or electronic communication on the first day failed, 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 because of mail delays. They include Florida^d, Hawaii, Illinois, Kentucky, Louisiana^d, New Mexico, 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); New Jersey^d (2017, restraint only, 48 hours, none for seclusion), 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.

Almost half of the states require more detailed, written follow up. This is important so everyone can understand what happened, and design effective supports and services to prevent it from happening again.

6. States Without Notification Requirements

There are 11 states without statutes or regulations requiring schools to tell parents their children was restrained or secluded; 19 states, without the requirement for nondisabled children. (This is because several states have disability-only notification rules). Of these states, 6 list notification in their nonbinding guidance.

For children with disabilities, these states do not mandate parental notification of both restraint and seclusion: Arkansas, Idaho, Missouri, Nebraska, Nevada, New Jersey^d, North Dakota, Oklahoma, South Carolina, 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. New Jersey's statute requires notice for restraint but not seclusion. New Jersey's Department of Education has adopted guidelines to require seclusion notification. Virginia's nonbinding guidelines advised the school/school district to set a time period. Evidence indicates that a number of districts used guidelines from a private organization, the Virginia School Board Association that allowed up to 15 business days to notify the family, and not even suggesting notice if restraint is included in the child's IEP.¹⁶⁶ 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 children without disabilities: Arkansas, District of Columbia, Florida, Idaho, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, South

¹⁶⁶ See footnote [52](#), above, and accompanying text.

Carolina, 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.

7. 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, 7 recommend notification, 6 on the same school day: Missouri[†], New Jersey (State Department of Education guidance creates notification for seclusion; state statute requires restraint notice only); 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.

8. 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 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. South Dakota only requires that each school district have a policy about notification, allowing them to decide to notify about some episodes but not others, or create other loopholes.

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 and similar health issues, hypermobile joints, 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 was significant. In 2011-12, 78% of Connecticut seclusion incidents involved students with seclusion in their IEPs.¹⁶⁷ In 2016-17, only 1.8% of seclusions were in accord with an IEP (681) and 98.2% (37,248) were in response to an emergency.¹⁶⁸ (Other states do not collect data with the effort and commitment for transparency

¹⁶⁷ Conn. State Dept. of Ed., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION, SCHOOL YEAR 2011-12.

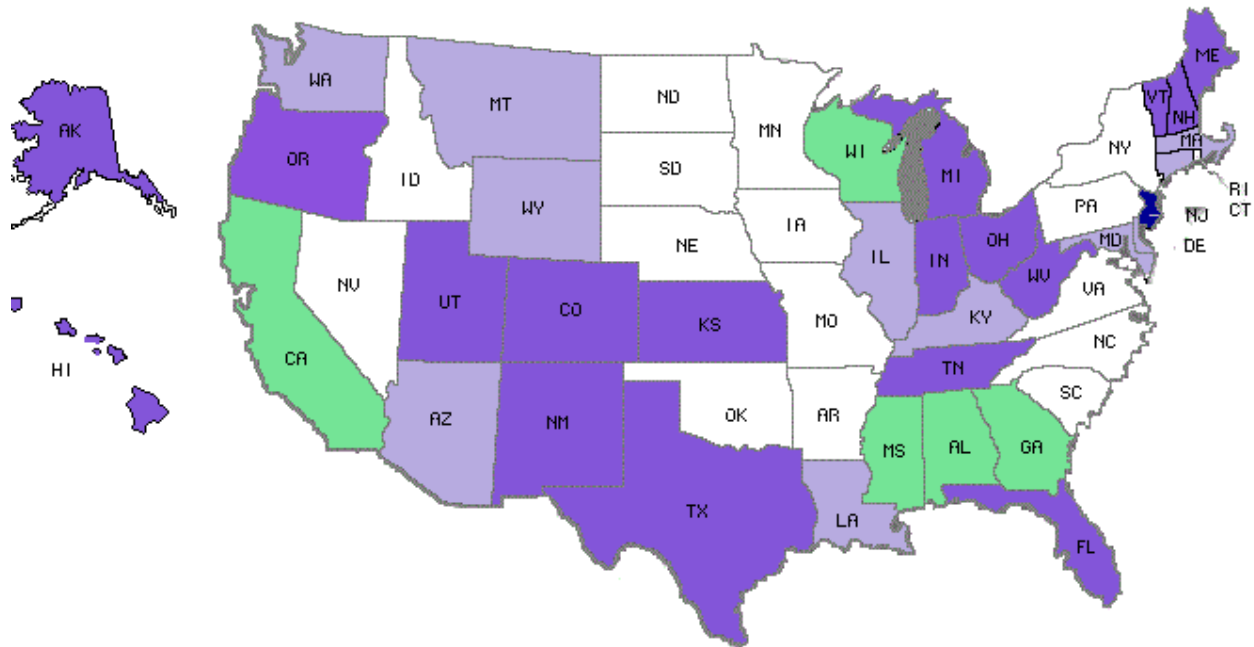
¹⁶⁸ Conn. State Dept. of Ed., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION IN CONNECTICUT SCHOOL YEAR 2016-17.

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 mark¹⁶⁹); 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).

¹⁶⁹ 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 21: Children with Disabilities: State Requires Notification
in 1 School Day or Less, by Deadline (July 1, 2019)**



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

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

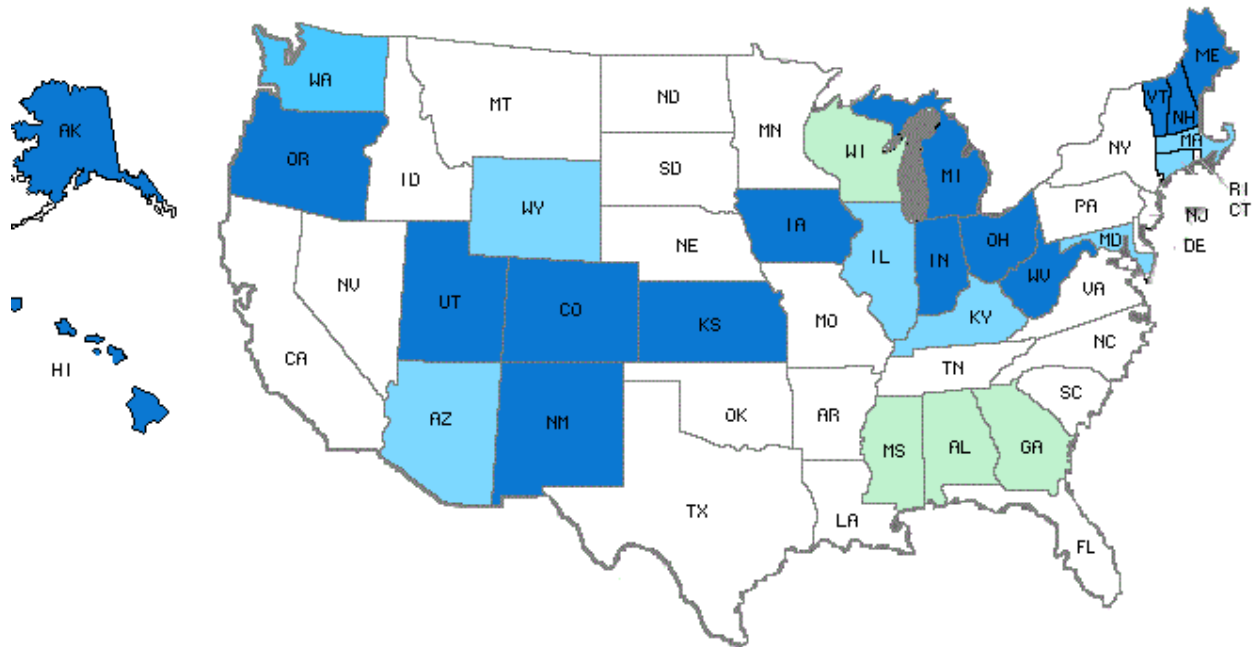
Green (Medium): Law requires school to inform parents within 1 school day or business day for children with disabilities.

Blue: NJ law requires 1 day notice of restraint, but only nonbinding guidance covers seclusion.

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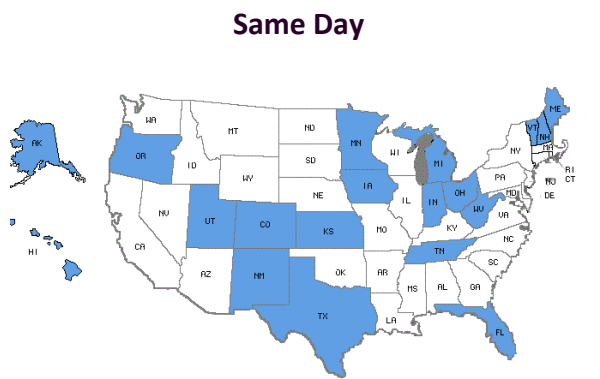
**Map 22: All Children: State Requires Notification
in 1 School Day or Less by Deadline (July 1, 2019)**



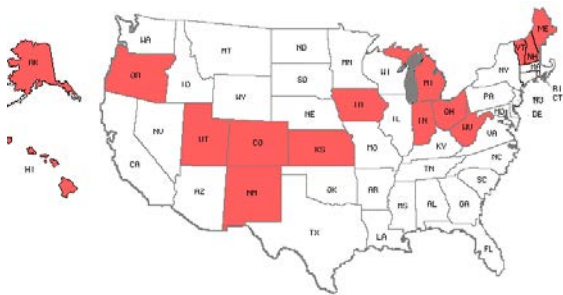
Darker Blue: Law requires school to take steps to inform parent on same day for all children.
Light Blue: Law requires school to take steps to inform parents within 24 hours or within 1 calendar day for all children.
Light Green: Law requires school to inform parents within 1 school day or business day for all children.

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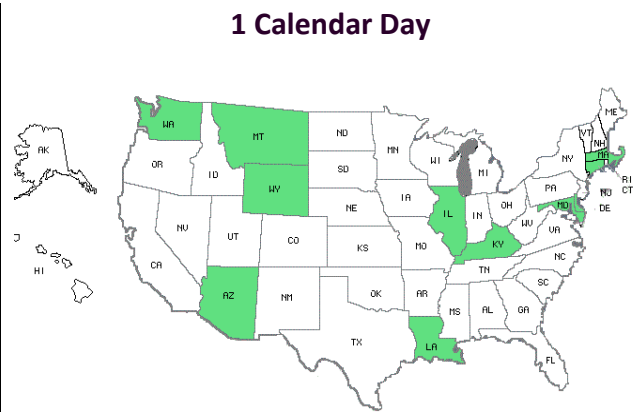
**Map 23: States Requiring Parental Notice Same Day & 1 Calendar Day
Students with and without Disabilities**



Students with Disabilities Only



All Students



Students with Disabilities Only



All Students

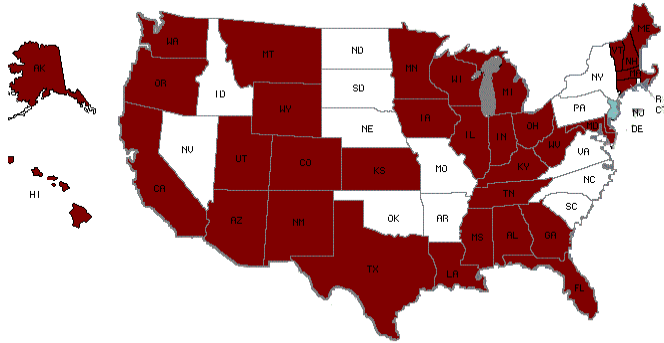
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**Map 24: 2019 vs. 2009: Great Increase in States Requiring Parental Notice within
1 School Day or Less Since Congress Began Taking Action**

Children with Disabilities

2019



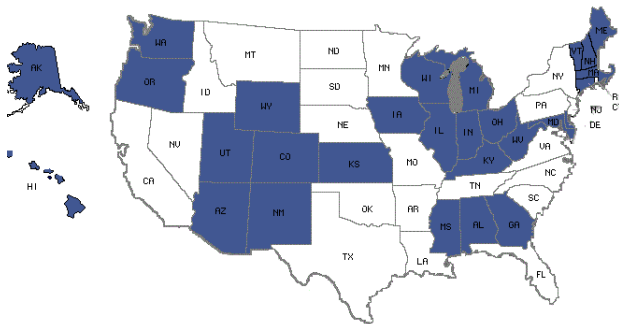
2009 (Before Congressional Action)



Dark Red: Law requires notice within 1 school day or less (this includes states requiring notice within 1 school day, 1 calendar day, 24 hours, or same day). New Jersey in 2019 is blue, as it mandates notice for restraint only.

All Children

2019



2009 (Before Congressional Action)



Blue: Law requires notice within 1 school day or less (this includes states requiring notice within 1 school day, 1 calendar day, 24 hours, or same day).

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B. State Debriefing Requirements

Debriefings are discussions after restraint or seclusion to determine what caused the event, how it could be avoided, and to plan for, and implement, positive and preventative supports. Debriefings are one of the six core strategies for decreasing the use of seclusion and restraint according to the National Association of State Mental Health Program Directors (NASMHPD),¹⁷⁰ described as "critical."¹⁷¹ Staff, parents, and students may attend. In some situations, parents may wish to exercise caution, particularly if they have concerns about the child's age, re-traumatizing their child, or whether the meeting would actually support their child. There may be times that parents wish to consult with a professional advisor about a planned debriefing. Nor are debriefings and data resolution on their own to restraint and seclusion. Parent Renee Smith testified in 2019 that her first grade son was repeatedly secluded. The parents were called to the school repeatedly to review data, she testified. Data review alone apparently did not prevent the use of seclusion. While the child's parents asked repeatedly for positive behavioral supports, the debriefings focused on providing breaks and reacting to negative behaviors. The first grader moved to a school that actively implemented positive and preventative supports, and thrived.¹⁷²

Debriefings are mandated by law for all children in 23 states; for children with disabilities, in 27. The states are Alaska, Alabama, Arizona, California, Colorado, Connecticut, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Mexico (2017), New Jersey^d (2017), Ohio,¹⁷³ Oregon, Rhode Island, Vermont, Wisconsin, Wyoming, Washington, 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. New Jersey's 2018 statute required the state Department of Education to design a review process that districts must use. Accordingly, while part of New Jersey's guidance, this provision is made mandatory by the state.

There are 5 states that suggest a debriefing in nonbinding guidelines: Missouri, Nebraska, Oklahoma^d, South Carolina (seclusion only), and Washington, D.C.

¹⁷⁰ 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).

¹⁷¹ Psychiatric Facilities Interim Final Rule, 66 FED. REG. at 7152; 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).

¹⁷² *House Hearings* (2019) (testimony of Renee Smith).

¹⁷³ Ohio's regulation, § 3301-35-15 does not require a debriefing. It does, however, require school districts to adopt policies consistent with the Ohio State Board of Education's 2013 restraint and seclusion policy. The policy requires a debriefing.

C. State Requirements for Data Collection and Sunshine

1. Data Collection Overview

In its 2009 report, the GAO identified only six states that collected data: California^d, Connecticut, Kansas^d, Pennsylvania^d, Texas^d, and Rhode Island. Almost all of the data was limited to children with disabilities. The rest of the country was largely opaque. Data helps parents, educators, and the public understand the extent of restraint and seclusion. It can help them work to implement policies and procedures to reduce restraint and seclusion. Data can bring to the forefront those who overuse restraint and seclusion, help school districts find patterns and remedy them, and show other problems. For example, a school district may be able to correlate schools with strong positive and preventative support programs and a decline in the use of restraint and seclusion. This may cause other schools to implement rigorous positive and preventative support programs, or may cause policymakers to demand that behavioral intervention plans consist of evidence-based positive and preventative support programs.

States and districts which report and analyze their data 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. States that do not collect or analyze data are weakened in their ability to improve.

Restraint and seclusion have been used in special education for almost 40 years, according to leading professors.¹⁷⁴ The first national data collection was made in 2009. The most recent national data accounted for more than 120,000 students who were restrained or secluded in 2015-16. Known state numbers indicate significant use of restraint and seclusion. Connecticut recorded 37,929 incidents of restraint and seclusion for 2016-17, in response to its state data collection law.¹⁷⁵ Connecticut is a smaller state.¹⁷⁶ 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 publishing it, and for its heightened desire for transparency. Maine data collected under state law showed 3,576 restraint incidents and 4,217 seclusion incidents in 2018, with seclusion increasing by 1,690 incidents from 2017.¹⁷⁷ Delaware data collected under state law included 3,006 incidents of physical restraint in 2016-17. Moreover, 78% of students with disabilities were restrained, compared to 22% of regular education students. African-American students made up 49% of the students restrained but 31% of the population.¹⁷⁸

¹⁷⁴ Joseph Ryan, Reece Peterson, George Tetreault, Emily van der Hagen, *Reducing the Use of Seclusion and Restraint in a Day School Program* 203 (2007).

¹⁷⁵ Conn. State Dept. of Ed., ANNUAL REPORT ON THE USE OF PHYSICAL RESTRAINT AND SECLUSION IN CONNECTICUT SCHOOL YEAR 2016-17 at 5.

¹⁷⁶ In 2015, Connecticut ranked 24th among the states in student population. Nat'l Ctr. for Ed. Statistics, Table 203.40. Enrollment in public elementary and secondary schools, by level, grade, and state or jurisdiction: Fall 2015.

¹⁷⁷ Maine Data Restraint Seclusion Annual Report, 2017 and 2018 data, submitted by Maine Covered Entities Under Chapter 33, <https://www.maine.gov/doe/schools/safeschools/restraint#data>

¹⁷⁸ Dela. Dept. of Ed., 2016-2017 ANNUAL REPORT USE OF PHYSICAL RESTRAINT IN DELAWARE PUBLIC SCHOOL DISTRICTS AND

Ohio's data showed more than 10,000 restraint and seclusion occurrences in 2013-14, many of which involved students with disabilities and young students, in the 3rd grade or below, Disability Rights Ohio reported in 2015.¹⁷⁹

Some states and districts, 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 they do not use restraint and seclusion, or that they have fewer problems. This simply means that they don't publish or collect data, allowing the information to remain hidden.

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, an event 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.¹⁸⁰

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.¹⁸¹

Maine's Protection and Advocacy Organization reported in 2017 that nearly 1/3 of districts did not report data required by the state.¹⁸² In 2019, it reported that a number of covered school entities with previously reported high numbers of restraint and seclusion did not report data, and described underreporting in individual client files. Disability Rights Ohio likewise documented in 2015 underreporting of restraint and seclusion in 2013-14, including in two very large districts. According to the organization, 190,000 students attended school in Ohio districts that did not report data.¹⁸³

In 2019, Fairfax County recognized issues with underreporting after receiving media attention. The county, Virginia's largest, took steps to correct its data and to reduce restraint and

CHARTER SCHOOLS.

¹⁷⁹ Disability Rights Ohio, *THE STATE OF RESTRAINT AND SECLUSION IN OHIO: AN ANALYSIS OF DATA FROM OHIO'S PUBLIC SCHOOLS 3* (Mar. 2015).

¹⁸⁰ 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.

¹⁸¹ Kara Kenney, *CALL 6: School Districts Misreport Seclusion, Restraint Incidents*, *RTV6* (ABC, Indianapolis), Oct. 10, 2016.

¹⁸² Vivien Leigh, *Majority of Students Restrained in Schools Have Special Needs*, *NBC NEWS CENTER MAINE*, Apr. 21, 2017.

¹⁸³ Disability Rights Ohio, *THE STATE OF RESTRAINT AND SECLUSION IN OHIO: AN ANALYSIS OF DATA FROM OHIO'S PUBLIC SCHOOLS 6* (Mar. 2015).

seclusion use, according to media reports.¹⁸⁴ In 2011-12 Prince William County Public Schools in Virginia (over 81,000 students in 88 schools) reported no use of restraint or seclusion,¹⁸⁵ although news reports indicated that the practices were used with some frequency upon County students in the 2011-12 timeframe.¹⁸⁶

Oregon enacted a law in 2019 that deems “nonstandard” districts which have not complied with the state data requirements (both providing it and publishing it on their websites). This can result in the withholding of state funding.¹⁸⁷

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 2011-12.¹⁸⁸ 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."¹⁸⁹

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

State efforts indicate that data can readily be collected. As of July 1, 2019, there were 21 states with their own laws requiring an annual data collection for all children; 26, for children with disabilities: Alaska, Alabama, California (2018 upgrade), Connecticut, Delaware, Florida^d, Hawaii, Indiana, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Michigan, Mississippi, North Carolina, New Hampshire, Nevada^d,¹⁹⁰ Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, Utah, Washington, 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

¹⁸⁴ Jenny Abamu, *Fairfax County Allocates Over \$1 Million To Address Seclusion and Restraint Practices*, WAMU 88.5, May 24, 2019; Nick Iannelli, *Fairfax Co. Schools Tackling 'Seclusion and Restraint' Practices*, WTOP, May 3, 2019; Anjali Hemphill, *Fairfax County School Board Holds Meeting on Seclusion and Restraint Policy*, Fox5 DC (Washington DC metro), Apr. 3, 2019; Jenny Abamu, *Fairfax Schools Superintendent Launches Review of Restraint and Isolation Policies*, WAMU 88.5, Mar. 15, 2019.

¹⁸⁵ Civil Rights Data Collection, District Search, Prince William County Public Schools I.D. No. 5103130 (2011-12).

¹⁸⁶ Donna St. George, *Prince William Schools Restrain, Seclude Disabled Kids Frequently, Inquiry Finds*, WASH POST, Aug 6, 2014.

¹⁸⁷ 2019 OREGON LAWS CHAPTER 267 (S.B. 963 signed by Governor June 6, 2019); Oregon Rev. Stat. § 327.103 (re withholding money).

¹⁸⁸ 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.

¹⁸⁹ Jeffrey Solochek, *Pasco Schools Aim to End Use of Seclusion Rooms*, TAMPA BAY TIMES, Aug. 31, 2014.

¹⁹⁰ Nevada collects restraint data. It bans seclusion of students with disabilities. As it requires data about violations of the law, it encompasses seclusion.

made applicable by its March 2015 statute.

Of these states, the vast majority, 21, took action after Congress proposed comprehensive data collection and reporting in 2009. They either mandated collection or improved collections. Clearly, the experience of these states shows that data can be easily gathered and is valuable in reducing and eliminating restraint and seclusion.

This report is limited to an analysis of state laws and regulations. It is not an analysis of what state education agencies may require in other contexts.

State statutes and regulations explicitly require reporting the number of incidents of restraint and seclusion in 22 states: Alaska, Alabama, California (2018 revision), Connecticut, Delaware, Florida^d, Indiana, Kansas, Kentucky, Louisiana^d, Maine, Massachusetts, Michigan, Mississippi, North Carolina, New Hampshire, Nevada^d, Ohio, Oregon, Rhode Island, Tennessee^d, Utah, Washington, and Wyoming.

State laws require reporting the number of students restrained or secluded in California (2018 revision), Kansas, Kentucky, Louisiana^d, Ohio, Oregon, Washington, and Wyoming.

They require the reporting of deaths and injuries from restraint and seclusion in Alaska, Delaware, Kansas, Kentucky, Maine, Massachusetts, Oregon, and Tennessee^d.

State laws require at least some disaggregation of data by at least disability, and sometimes other demographics, such as race, ethnicity, and gender in Alaska, California, Delaware, Florida^d, Louisiana^d, Michigan, Ohio, and Oregon. Tennessee^d law requires disaggregation but does not specify how it is to be done.

Delaware requires a detailed report on each use to the state. Finally 3 state laws require data reporting without specific elements, Alabama, Texas, and Hawaii.

States require other features. These include data about violations of the state restraint and seclusion law, data on repeated use of restraint and seclusion with particular students, locations of seclusion rooms, the type of restraint or seclusion used, and others. Data about these issues can be important. People First of Nevada, Reno Chapter investigated the use of seclusion rooms in their county, contacting local school district personnel. They were able to identify seclusion rooms in the district, speak of their own experiences having been secluded, and advocate for change.¹⁹¹

Requiring data is important. Voluntary collections can cease, and even when data is voluntarily collected, it may not be accurate. For example, in 2003, Vermont began collecting seclusion/restraint data. Yet, since the state law did not require it, Vermont simply stopped

¹⁹¹ People First of Nevada, Reno Chapter, SCREAM ROOMS: AN INVESTIGATION OF THE EXISTENCE OF SECLUSION ROOMS IN THE WASHOE COUNTY SCHOOL DISTRICT (undated, but after 2012).

doing so a few years later. California had kept data but repealed those requirements in 2013, substituting local reporting for state-wide data collection for the next several years. There were deep concerns that data was vastly underreported.¹⁹² In 2018, California enacted state-wide reporting again. Interestingly, at the time California quit collecting data, there were far fewer systematic efforts to collect data than there were when re-started data collection.

3. Data Reporting at the LEA or School Level

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, Kansas, Maine, Michigan, Mississippi, 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.¹⁹³

Some states keep data at the school level, including, but not limited to, Arkansas (seclusion only), Colorado, Florida^d, Iowa, Kansas, Ohio, Nevada^d, Rhode Island, and Tennessee^d.

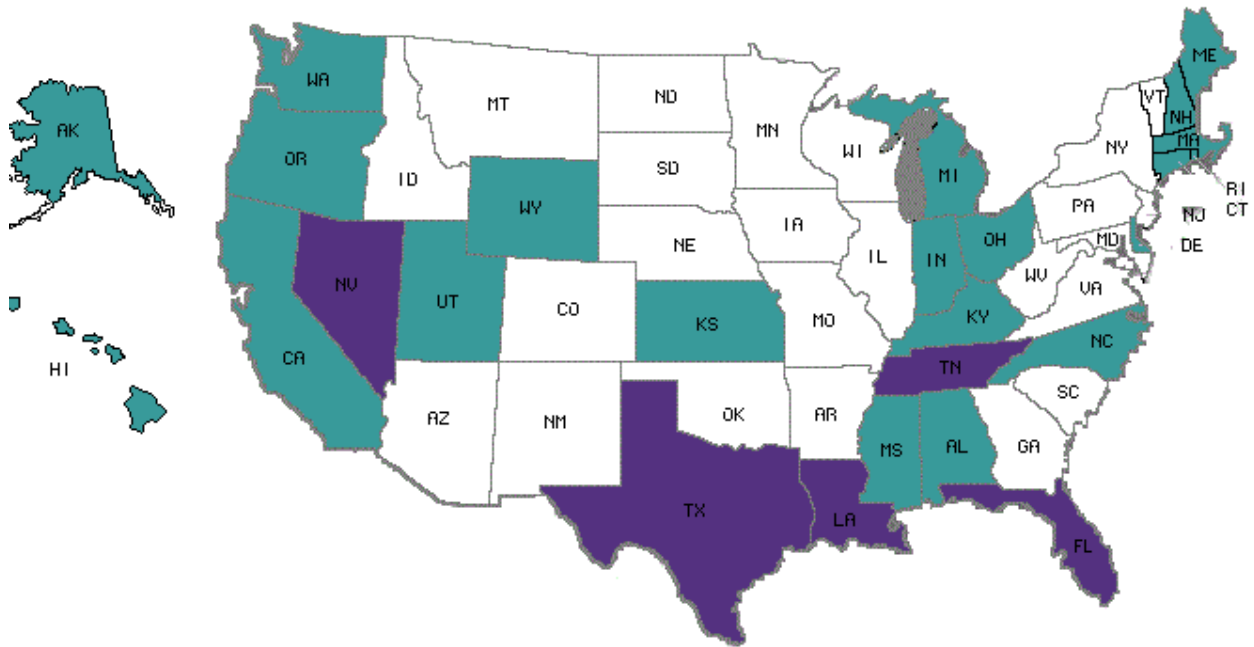
There are 22 states that require an incident report to be put in the child's school file after each use of restraint and seclusion for all children, and 28, for children with disabilities: Alaska, California^d (California's 2018 statute retained this provision for students with disabilities), Colorado, Connecticut, Florida^d, Georgia (but not seclusion as it is banned), Illinois, Iowa, Kansas (regulations), Kentucky, Louisiana^d, Maryland, Massachusetts, Maine, Minnesota^d, Michigan, Mississippi, 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, 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.

¹⁹² Jane Meredith Adams and John C. Osborn, *Little Oversight of Restraint Practices in Special Education*, EdSource.org, Apr. 19, 2015.

¹⁹³ 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 26: State Law Requires Data Collection at State Level (July 1, 2019)

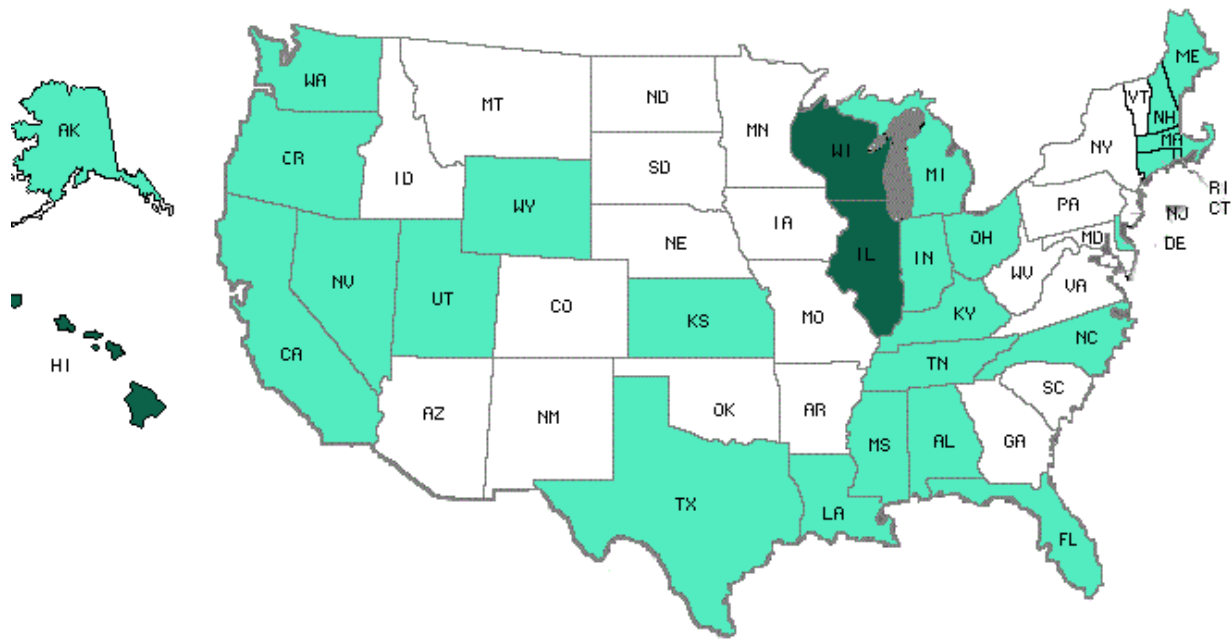


Green (Medium): Data collected by State Education Agency for all children by state law.
Purple (Dark): Data collected by State Education Agency for children with disabilities by state law.

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Map 27: State Law Requires Data Collection at State or Local Level (July 1, 2019)



This map does not distinguish between data on children with or without disabilities.

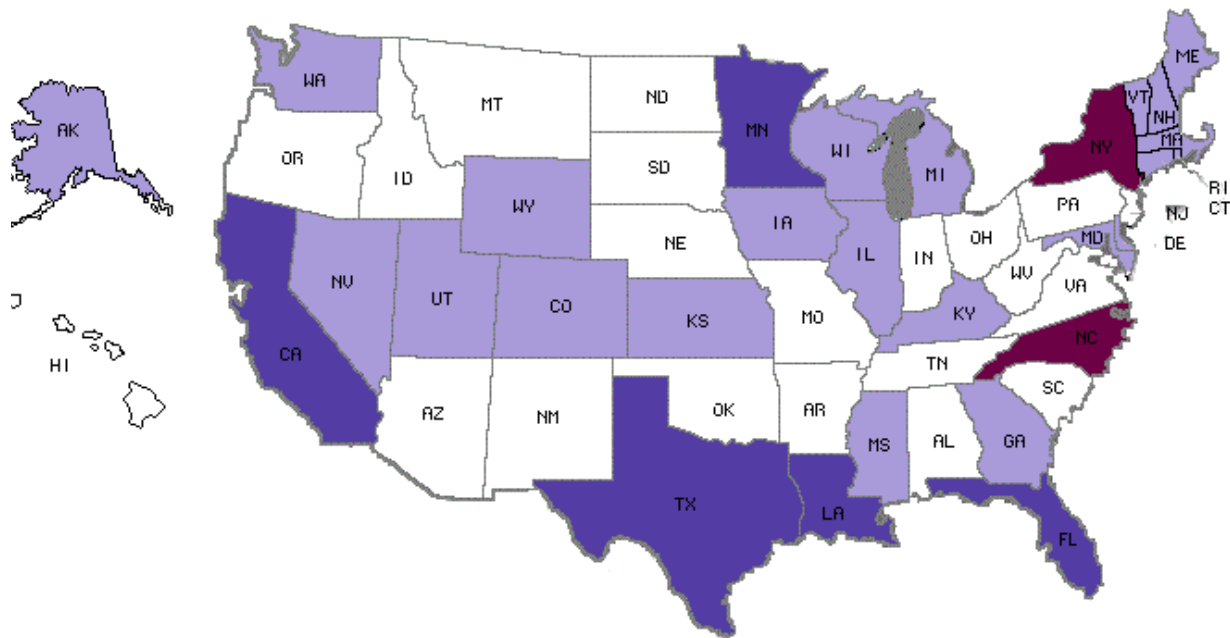
Light Green: Data collected by State Education Agency by state law. Some states also require LEA level reporting.

Dark Green: Data collected only by Local Education Agency under state law.

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**Map 28: State Requires Incident Report in Child's File
After Restraint or Seclusion (July 1, 2019)**



Lavender (light): Required for all children

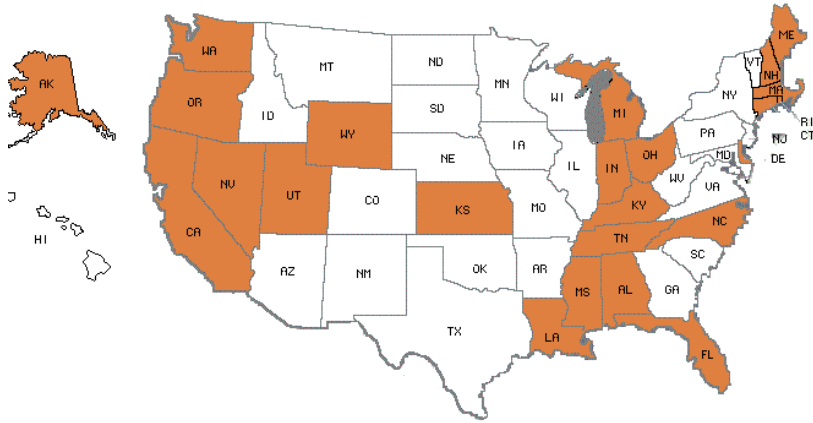
Purple (medium): Required for children with disabilities only.

Maroon (dark): Other. DE: incident report goes to state. NC: Incident report solely for specific forms of restraint and seclusion (see text). NY: for use of aversives and restraint only.

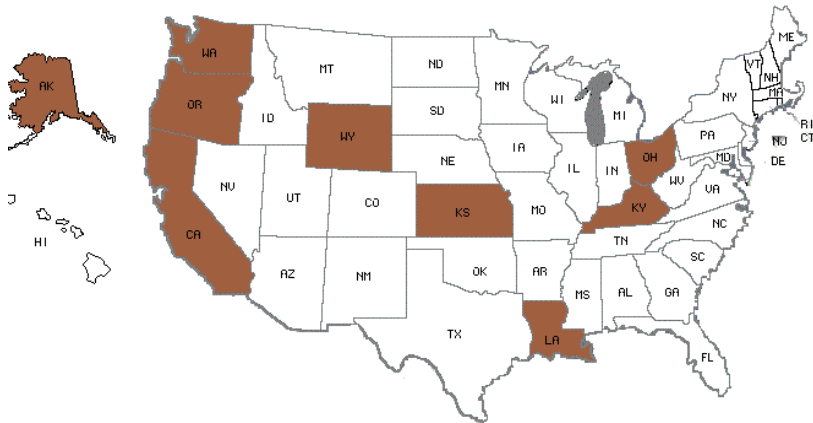
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Map 29A: State Requires Reporting Number of Restraint & Seclusion Incidents

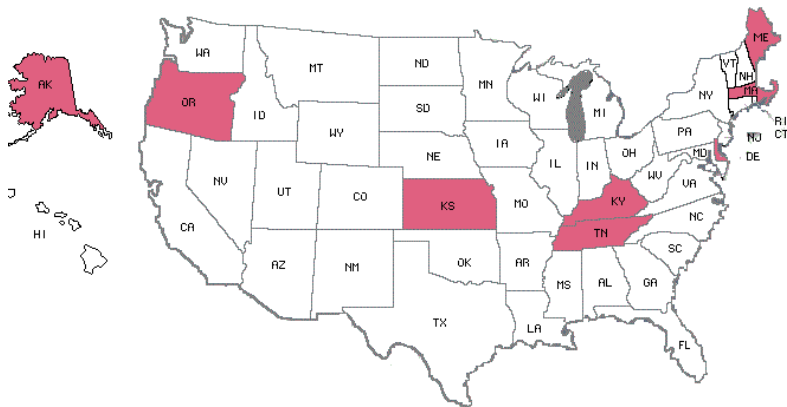


Map 29B: State Requires Reporting Number of Students Restrained or Secluded



Map 29C: States Requires Reporting Deaths or Injuries in Restraint and Seclusion Laws

(†It is possible that states may require reporting deaths and injuries in other laws, but these may not require identifying the relationship to restraint or seclusion, or enable the public to identify them as such.)



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D. Training and Related Matters

A number of the deaths and injuries described by the GAO involved poorly trained or untrained staff.¹⁹⁴ Concerns about poorly trained staff have been expressed elsewhere. A Kentucky report indicated that a child was dragged by his ankles into a room and left alone by an aide who had not completed her crisis management certification, according to the Lexington Herald Leader. He suffered contusions and scrapes, the newspaper said.¹⁹⁵ In Ohio, untrained school staff allegedly utilized life-threatening prone restraint and seclusion rooms to punish students for being noncompliant or disrespectful.¹⁹⁶ A Massachusetts teacher who allegedly 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.¹⁹⁷

Although the GAO found that untrained staff were involved in many injuries, many states lack comprehensive training programs.

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. These bills required training in several things: (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 only states which refer to evidence-based techniques, and 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.

¹⁹⁴ See H.R. REP. NO. 111–417 at 18.

¹⁹⁵ V.H. Spears, *It Should Never Happen to Anyone Else. Another Autistic Child Dragged by Fayette School Staff*, LEXINGTON HERALD LEADER, Oct. 26, 2018.

¹⁹⁶ Molly Bloom and Jennifer Smith Richards, *Probe: Kids Wrongly Put in Seclusion*, STATE IMPACT OHIO & COLUMBUS DISPATCH, Sept. 28, 2012.

¹⁹⁷ James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009.

The following are some state training requirements.

- *Training in conflict de-escalation and prevention of seclusion/restraint (25 state laws, all children; 29, children with disabilities):* Alaska, Alabama, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kansas (2018), Kentucky, Maryland, Massachusetts, Maine, Minnesota^d, Michigan, Mississippi, North Carolina, Nevada^d, Ohio, Oregon, Rhode Island, Tennessee^d, Texas^d, Utah, 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, Mississippi, 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. Note that states may require PBIS training in other statutes or regulations.
- *Training in safe and appropriate use of seclusion and restraint (22 state laws, all children; 27, children with disabilities):* Alaska, Alabama (restraint only; locked seclusion banned), Colorado, Connecticut, Georgia (restraint only; seclusion banned), Hawaii, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Maine, Maryland, Minnesota^d, Michigan, Mississippi, New Hampshire, New Jersey^d, New Mexico, 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, Illinois, Maine, Maryland, Massachusetts, Minnesota^d, Michigan, Mississippi, 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 and restraint (8 state laws, all children; 10, children with disabilities):* Colorado (including dangers of prone restraint), Connecticut, Illinois, Iowa, Maryland, Massachusetts, Minnesota^d, Michigan, Rhode Island, and Vermont.
- *Training in state, LEA, and school policies and procedures (11 state laws, all children; 13, children with disabilities):* Alaska, Connecticut, Iowa (school only), New Hampshire, Kentucky, Massachusetts (school only), Maryland, Michigan, New York^d, Rhode Island

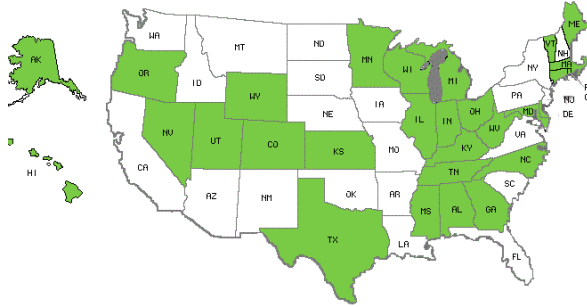
(school only), Tennessee^d (if funding is available for training), Utah, and Wyoming (school only).

- *Certification, proof of proficiency, or periodic re-training required (11 states, all children, 12 states students with disabilities):* Colorado (retrain every two years), Hawaii, Iowa (periodic retraining), Illinois (retrain every 2 years), Indiana (recurrent training in accord with plan adopted by each school), Kansas (2018) (schools retain documentation of training and participants); Maine (certification), Maryland (proficiency required for special school-wide resource staff), Michigan, Mississippi, New Jersey^d (update training annually), Rhode Island (special school-wide resources staff), and Wyoming (certification).

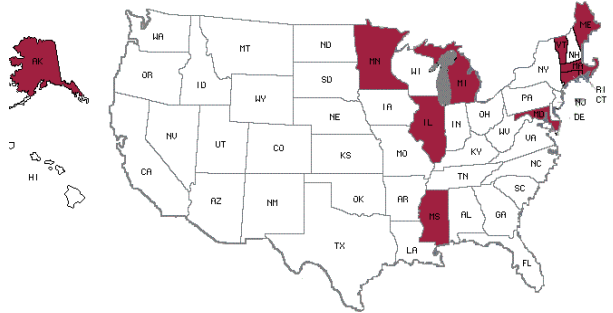
Some states without laws have sought to include training requirements within their nonbinding guidance. Such policies, of course are subject to change. Voluntary guidance in 5 states suggests training in conflict de-escalation and prevention of seclusion/restraint: Missouri, Nebraska, Oklahoma^d, South 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 and restraint is incorporated in 3 states' recommendations: Oklahoma^d, South Carolina, and Virginia.

When Virginia promulgates its new regulations, they should include training requirements in accord with the materials referenced in the state's March 2015 statute. But until those regulations are enacted, students in Virginia lack protections in state law.

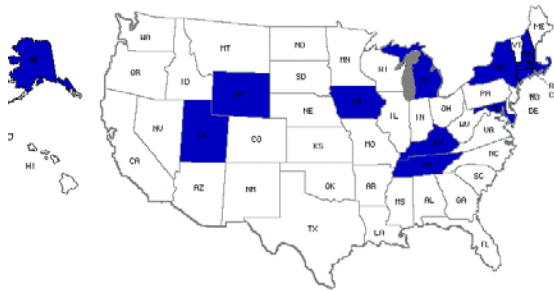
Map 30A: Training Required in Conflict De-Escalation & Restraint & Seclusion Prevention (7/1/19)



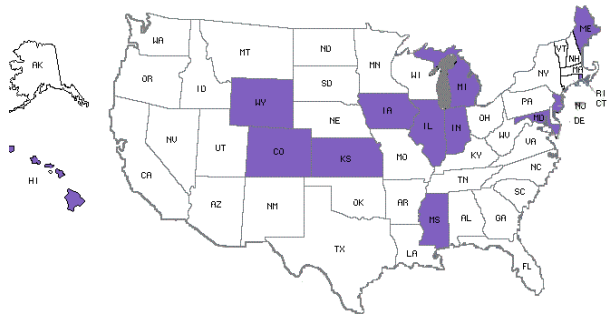
Map 30B: Training Required in First Aid, Detecting Medical Distress, CPR, etc. (7/1/19)



Map 30C: Training in State and Local Restraint/Seclusion Laws/Policies (7/1/19)



Map 30D. Certification or Periodic Re-Training Required (7/1/19)



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

Congressional activity is often considered in the standard bill-to-law framework: bills either become law or they do not. But at least with restraint and seclusion, the Congressional bills have significantly impacted the states. States have adopted and strengthened their requirements in the last decade. States have written rules modeled on the Congressional bills. There has been a marked increase in the adoption of certain provisions after they were included in the Congressional bills. It is clear that what Congress does influences states on restraint and seclusion. The states mirror Congress. (Today's ready access to computerized bills and the ability to copy and paste appears to have had strong benefits for children.) A strong Congressional stance has meant strong state stances.

This section of the report, however, should not be read as meaning that Congressional action is not necessary. Many state laws are limited, some highly limited. Other states are unable or unwilling to adopt laws or strengthen existing ones. States lack the funding that would come with a Congressional bill, which can assist with training and other supports. Rather, this section of the report shows the impact that a strong Congressional bill can have on the states, and correspondingly, the impact that a weak Congressional bill might have. While the 2009 bill may have been a huge step when a decade ago, today, the bills reflect the norm, as seen in multiple state statutes, regulations, and advocacy policies.

A. History of the Congressional Restraint and Seclusion Models

In 2009, members of Congress began focusing national attention on school-based restraint and seclusion, working to pass a bill that would comprehensively protect all children in school. In 2009, the GAO report was published, in response to Congressional request. Congressional hearings occurred in 2009, 2011, and 2019.

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, 2015-16, and 2017-18). The 2011 and 2013 House bills were cosponsored by Congressman Miller and Congressman Gregg Harper; the 2015 and 2018 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. A similar Senate bill was introduced in 2018, sponsored by Senator Chris Murphy.

This section of the report examines state law adoption of some features of the Congressional Keeping All Students Safe bills

B. State Adoption 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.

There are 22 that adopted new statutes or regulations: Alaska, Alabama, Arizona, Delaware, Florida^d, Hawaii, Indiana, Georgia, Kansas (2013 regulations), Kentucky, Louisiana^d, Michigan, Mississippi, New Jersey (2018), New Mexico (2017), Ohio, South Dakota (2018), Vermont, Wisconsin, West Virginia, Utah, and Wyoming. There are 12 states that substantially strengthened existing laws. (In some cases, the first law the state had was also adopted after Congress took action.) They are California (2018 upgrade), Colorado (2017), Connecticut, Kansas (later strengthened 2013 regulations), Maine, Maryland (2018), Minnesota, Massachusetts, New Hampshire, Oregon, Tennessee^d, and Washington. 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 by a large majority of the 33 states that took action after introduction of the first Congressional bill. Of the 33 states:

- 23 states limit physical restraint of children with disabilities to emergencies threatening physical danger. 21 states restrict physical restraint of all children to emergencies threatening physical danger. In 2009, before the first Congressional bill was introduced, only 5 states had this protection for children with disabilities; 3, for all children.
- 24 states prohibit seclusion either entirely or forbid it except for emergencies threatening serious physical danger for children with disabilities. 21 states prohibit non-emergency seclusion for all children (some forbid all seclusion; others limit it to emergencies threatening physical danger). These are the majority of states that prohibit non-emergency seclusion today. The Senate bill has always banned seclusion. The 2018 House bill also does. The prior House bills (including Miller with McMorris Rodgers and Harper) 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.
- 22 states require that less restrictive measures fail or be considered ineffective before restraint and seclusion are used.
- 22 states require the procedure to end when the emergency ends.
- 29 states ban restraints that impede breathing and/or prone restraint.

- 18 states ban mechanical restraint (the majority of states banning mechanical restraint).
- 16 states ban chemical restraint (the majority of states banning chemical restraint).
- 25 states prohibit non-observed seclusion, either by requiring continuous visual monitoring of seclusion or forbidding seclusion.
- 22 states require state-level data collection.
- 16 states require same-day parental notification; 23 require notification within 24 hours. 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 use of shorter time periods in contemporary schemes is likely a result of the Congressional bill activity. Modern communications make prompt notice easier, and laws should reflect that.

A number of requirements in the Senate bills (and 2018 House bill) 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. The House bill did not permit video monitoring; California's 2018 bill is similar. But 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 grant funding 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, but banned restraint that impaired breathing. Several states both ban restraint that impedes breathing and prone restraint by name.

Likewise, the House bill for many years defined seclusion as a locked room, allowing doors to be blocked closed by furniture or equipment. Today, the vast majority of states with definitions define it as room in which a child is placed alone from which the child is physically prevented from exiting. The Senate bill has had this requirement since its 2011 introduction; the House, since 2018. This brings the House into line with the practices in the States.

More states have also added the ability to file complaints, a requirement missing from the Congressional bills.

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 or sometimes, gone beyond them. 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 children 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. Weakening them in the name of uniformity would be a poor decision.

C. Additional Provisions Creating Better Safeguards

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, and states acting more recently appear to have based them on that Senate 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.¹⁹⁸ 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.¹⁹⁹ 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 need staff who can understand them in their language if they experience medical distress.

The bills introduced by Senator Harkin and the 2018 versions of both House and Senate bills would mandate 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 requirements, as these examples show.

- 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."

¹⁹⁸ GAO REPORT at 14, 16-17, 26, 29.

¹⁹⁹ 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).

- 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 prevents a child from using a communication device.
- Michigan: “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.

Numerous 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.

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. Three grown adults subjected a kindergartner in Virginia to a form of restraint that could suffocate him.²⁰⁰ Cedric Napoleon, trying to leave class to get food, died when a teacher twice his size sat on him and suffocated him. A student in Kentucky suffered a fractured femur, an act that would have taken 500 pounds of pressure, according to the Louisville Courier Journal.

²⁰⁰ Bill Sizemore, *Panel OKs Regulation of Seclusion, Restraint in Va. Schools*, WHSV- Channel 3, whsv.com, Jan. 19, 2015.

The bills introduced by Senator Harkin and the 2018 versions of both House and Senate bills 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. The following are examples.

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

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

The necessary force limitation has also been adopted in Massachusetts, Maryland, and other states. Oklahoma, too, includes it in its nonbinding guidance.

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 Congressional bills 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, as noted below.

- Georgia: "Physical restraint is prohibited in Georgia public schools and educational programs . . . when the use of the intervention would be contraindicated due to the student's psychiatric, medical, or physical conditions as described in the student's educational records."
- Vermont: Physical restraint may only be used "In a manner that is safe, proportionate to and sensitive to the student's: (i.) Severity of behavior; (ii.) Chronological and developmental age; (iii.) Physical size; (iv.) Gender; (v.) Ability to communicate; (vi.) Cognitive ability; and (vii.) Known physical, medical, psychiatric condition, and personal history, including any history of physical, emotional or sexual abuse or trauma."
- Louisiana: "A student shall not be placed in seclusion or physically restrained if he or she is known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled."
- 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."
- Kansas: "A student shall not be subjected to an emergency safety intervention if the student is known to have a medical condition that could put the student in mental or physical danger as a result of the emergency safety intervention." Also sets out requirements for establishing the exception.
- 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: Restraint and seclusion must be "proportionate to and sensitive to the pupil's severity of behavior, chronological and developmental age, physical size, gender, physical

A number of states forbid the use of restraint and seclusion when it would medically or psychologically harm the child, mirroring a Senate-created provision.

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, Rhode Island, and others.

4. Anti-Retaliation Clause

Teachers and staff report many incidents of restraint and seclusion, as described in the news stories in the footnote.²⁰¹ 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.”²⁰² Staff reporting is important, because outsiders often are not in the places where restraint or seclusion occur. Other incidents are reported by parents, children, and advocates. School employees and others who report should be safe from retaliation.

Some 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.”²⁰³ The aides’ eventual report led to the teachers’ removal from the classroom.

News reports also indicated that a Kentucky school district far understated the number of restraint and seclusion incidents. An independent auditor reported that, among other things, some principals were discouraged from reporting restraint and seclusion episodes because a

²⁰¹ 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); James Vaznis, *Restraining of Students Questioned, Some Wonder Whether Schools Cross the Line*, BOSTON GLOBE, May 4, 2009 (second teacher freed child from restraint in locked, darkened room); Katie Mulvaney, *Block Island Officials Defend Room in School Basement*, RHODE ISLAND PROVIDENCE J., June 14, 2008 (individual who disclosed existence of locked seclusion room by DVD feared retribution and requested anonymity); Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011.

²⁰² Barbara Jacoby, *Teacher Pleads Guilty in Abuse Case*, MARIETTA DAILY JOURNAL, Feb. 24, 2011.

²⁰³ *Vicky M. v. Northeastern Ed. Intermed. Unit 19*, 486 F. Supp. 2d 437 (2007); 689 F. Supp. 2d 721 (2009).

superior was concerned about the appearance.²⁰⁴ Recently, several media outlets reported that a Florida teacher and aides allegedly used aversives on children, including reportedly blowing a whistle in the ears of a child sensitive to noise and secluding them in a darkened bathroom. The police were tipped off to the incident by two unidentified “witnesses who saw” the acts and notified a school resource officer, Newsweek reported.²⁰⁵ The presence of these witnesses speaks to the importance of ensuring that those who see and hear incidents can come forward without fear.

Anti-retaliation clauses would protect people who report incidents of restraint and seclusion. 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 bills introduced by Senator Harkin likewise included a prohibition on retaliation for reporting. The most recent Senate and House bills in 2018 did not.

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, Georgia, Illinois, Indiana, Massachusetts, Minnesota, Mississippi, Kansas, Kentucky, Maryland, New Hampshire, Ohio, Utah, Vermont, and Washington. A number of these adopted their laws in recent years. For comparison, the Senate bills over the years and the 2018 House bill require schools to provide their policies to parents.

A number of states require school districts to give parents their restraint and seclusion policy. This educates parents; improve student safety; and acts as an inexpensive, but very useful, safeguard.

²⁰⁴ 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.

²⁰⁵ Jason Murdock, *Florida Teacher and Two Aides Locked Autistic Kids in Pitch-Black Bathroom*, NEWSWEEK, Jan. 30, 2019. See also *Report: Warrants Filed for Teacher, Aides Involved in Child Abuse-Related Cases*, WEARTV, ABC 3 (Pensacola, FL), Jan. 28, 2019.

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 bills would allow staff to maintain continuous visual monitoring from a distance. A number of states have similar provisions, as shown below.

- 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.”
- 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.”
- 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.”
- 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.
- 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.”
- Washington: “Restraint or isolation must be closely monitored to prevent harm to 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.

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

VIII. Conclusion

A decade ago, the first nationwide restraint and seclusion bill was introduced in Congress. Since then, many states have adopted comprehensive protections from restraint and seclusion, often mirroring provisions in the Congressional bills. 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. In many other states, children still lack protection from non-emergency restraint and seclusion. Some states still do not require prompt parental notice. A number allow use of dangerous mechanical and chemical restraint, and restraint that impedes breathing. Other states have meaningful laws, but parents lack simple, easily accessed methods to enforce those laws. Many states do not monitor school districts or otherwise check for compliance with state laws.

Importantly, children have little choice of where they live. Parents may face job transfers, be moved to a new military posting, or move to care for family members, or for other reasons. When children board the school bus, they deserve to come home safe. Whether they live on the right side of a highway or river should not make the difference.

IX. Bibliography of State Materials: Summary of State Laws & Policies

EFFECTIVE July 1, 2019

This bibliography provides both 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 report excluded proposals that were never enacted; laws that applied only to limited subgroups of students (*e.g.* children with specific disabilities or in certain kinds of classrooms); and laws applicable only to private schools and institutions but not to public elementary and secondary schools.²⁰⁶

ARIZONA. 2015 ARIZ. LAWS CH. 300 (former S.B. 1459) (2015); ARIZONA REV. STAT. § 15-105. Arizona enacted limited protections from seclusion in 2013 (H.B. 2476) and meaningful protections from restraint and seclusion in 2015 (S.B. 1459).

ALABAMA. Alabama adopted a 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. ALASKA STATUTES 14.33.125, 14.33.127 (2014); ALASKA ADMIN. CODE tit. 4, §§ 06.175, 06.177 (Apr. 2015). Alaska's 2014 statute providing meaningful protections, 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 Ed. & Early Devel., SPECIAL EDUCATION HANDBOOK 145-146 (2013).

ARKANSAS. Arkansas has meaningful protections against seclusion, but is silent on restraint. ARKANSAS SPECIAL ED. 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).

CALIFORNIA. California strengthened its protections in 2018, providing meaningful protection against seclusion and restraint in statute and regulation. CAL. ED. CODE §§ 49005-490063.4 (adopted 2018). A section of its prior disability-only law, CAL. ED. CODE 56521.1 (e)-(h) remains in effect. (The stronger 2015 law replaced a weakened law that was passed in 2013, A.B. 86. That 2013 law had resulted in the removal of what had been CAL. CODE. REGS. tit. 4, § 3052.

COLORADO. Colorado has meaningful protections against seclusion and restraint in statute,

²⁰⁶ As part of the research, searches were performed of the statutes, administrative regulations, and state Education Department websites for Idaho and North Dakota. No materials in force were found that met these standards.

Protection of Persons from Restraint Act, COLORADO REVISED STATUTES §§ 26-20-101 to 26-20-109, and regulations, COLO. CODE REGS. tit. 1, §§ 301-45. Both statute and regulations were revised in 2017.

CONNECTICUT. Connecticut adopted meaningful 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; 10-236b. The new statute resulted in part from comprehensive data collected under a 2012 law, PUBLIC ACTS 2012 No. 12-88. The Connecticut statute has been periodically revised, most recently in PUBLIC ACTS 2018 No. 18-51 (adopted May 17, 2018). Connecticut also has regulations applicable to children with disabilities, REGULATIONS OF CONN. STATE AGENCIES §§ 10-76b-5 to 10-76b-11.

Delaware. DEL. CODE tit. 14, § 4122F (June 26, 2013 statute); DEL. ED. ADMIN. CODE tit. 14 § 610; DELAWARE DEPT. OF ED., 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 ED., 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. ED. 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 Ed., 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. Efforts to adopt strengthening legislation have failed. 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 Ed., 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 Ed., 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 provided very weak protections, and even seemed to encourage restraint and seclusion. 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 ED., 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 Ed., *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 Ed., IDAHO PART B ANNUAL PERFORMANCE REPORT, FFY 2011 (May 15, 2013). But in 2018, it published a manual that appeared to endorse the use of both restraint and aversives as part of a child's educational programming. Idaho State Dept. of Ed., THE EDUCATOR'S GUIDE TO STUDENT DISCIPLINE AND SUPPORTS, A PRACTICAL LEGAL GUIDE FOR SCHOOL PERSONNEL IN IDAHO 21 (Aug. 2018) (physical restraint and aversive use can be part of a child's IEP or 504 plan).

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 most recently amended its regulations in 2018. It has meaningful protections in statute and regulation, INDIANA CODE § 20-20-40 (Apr. 30, 2013); INDIANA ADMINISTRATIVE CODE, Title 513 (revised 2018, initially enacted 2014). (regulations). The law created a commission to write regulations and a model plan for school districts, the Indiana Commission on Restraint and Seclusion in Schools. It published its MODEL SECLUSION AND RESTRAINT PLAN (Aug. 1, 2013). Prior to this, Indiana only had nonbinding guidance adopted in 2009. Indiana Dept. of Ed., POLICY GUIDANCE FOR USE OF SECLUSION AND RESTRAINT IN SCHOOLS (2009).

IOWA. Iowa has meaningful, but more limited, protections against seclusion and restraint in regulation. IOWA ADMIN. CODE r. 103.1 - 103.6. Efforts to write new, more protective laws have failed.

KANSAS. In 2015, Kansas adopted meaningful protections in statute for all students from restraint and seclusion. Kan. Rev. Stat. §§ 72-6151 to 72-6158. Kansas has actively updated its regulations, including in 2016 and 2017. Kansas Dept. of Ed., EMERGENCY SAFETY INTERVENTIONS, K.A.R. 91-42-1 to 91-42-7 (effective June 30, 2016), 35 KANSAS Register No. 21 at 486 (May 26, 2016). These replace prior 2013 regulations, Kansas Dept. of Ed., 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 Dept. of Ed., KANSAS SECLUSION AND RESTRAINT GUIDELINES: GUIDANCE DOCUMENT (2007).

KENTUCKY. On February 1, 2013, meaningful restraint and seclusion regulations became effective. 704 KY ADMIN. REGS. 7:160. Kentucky has nonbinding guidance explaining the

regulations, 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 Ed., EFFECTIVE USE OF TIME-OUT (2000).

LOUISIANA. Louisiana adopted meaningful protections against seclusion and restraint for students with disabilities in a 2011 statute, by statute in 2011, LA. REV. STAT. ANN. §17:416.21. Regulations followed. LA. ADMIN. CODE TIT. 28, §§ 540-543, 601. (In 2010, Louisiana had adopted a statute that only authorized the state to write nonbinding guidelines. In 2011, the new statute was passed, containing specific mandatory protections for children.) 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 by law. Its regulations are CODE ME. R. § 05-071, Chapter 33. In 2012, Maine's legislature 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 excluded brief contact to break up a fight from the physical restraint definition. Because of complaints that staff misunderstood the law, the new statute required annual informational training for staff. In addition, Maine has nonbinding guidance explaining its regulations. Maine Dept. of Ed., RULE CHAPTER 33 RULE GOVERNING PHYSICAL RESTRAINT AND SECLUSION, NON-REGULATORY GUIDANCE (Aug. 2013).

MARYLAND. Maryland has meaningful protections against seclusion and restraint. In 2018, Maryland significantly strengthened its regulations, MD. REGS. CODE tit. 13A, §13A.08.04.01-.06. In 2017, it revised its in statute, MD. CODE. ED. §§ 7-1101 to 7-1104, and regulations. Maryland previously had nonbinding guidance explaining its old regulations, Maryland State Dept. of Ed., TECHNICAL ASSISTANCE BULLETIN 18: USE OF EXCLUSION, RESTRAINT AND SECLUSION (Sept. 2012), and a definition fact sheet, Maryland State Dept. of Ed., *Fact Sheet: The Use of Restraint and Seclusion* (Apr. (2014). The latter two documents are no longer operative due to the 2017 and 2018 changes to its laws.

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. Ed., TECHNICAL ASSISTANCE ADVISORY SPED 2016-1: TIME-OUT AND SECLUSION (July 61, 2015).

MICHIGAN. In 2016, Michigan enacted a restraint and seclusion statute with meaningful protections, Mich. Comp. Laws §§ 380.1307-1307h. In 2017, the Michigan Department of Education adopted the new POLICY FOR THE EMERGENCY USE OF SECLUSION AND RESTRAINT (Mar. 14, 2017), and also issued Emergency Use of Seclusion and Physical Restraint, Frequently Asked

Questions (Sept. 5, 2017). The 2016 law replaced Michigan's 2006 nonbinding suggested guidelines, 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, 2016, and most recently, 2018 (S.F. No. 3326). MINN. STAT. §§ 125A.094, 125A.0941, 125A.0942; MINN. R. 3523.2710(4)(F).

MISSISSIPPI. In 2016, Mississippi adopted a meaningful 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. Ed., MODEL POLICY ON SECLUSION AND RESTRAINT (2010). Efforts to pass comprehensive protections for children have failed.

MONTANA. Montana has meaningful protections against seclusion and restraint in regulation. MONT. ADMIN. R. 10.16.3346 (amended 2010). Montana also has guidance. Mont. Office of Public Instruc., SPECIAL EDUCATION IN MONTANA 109-119 (Sept. 2018). Montana Statute also allows the use of physical restraint, Mont. Code Annot. § 20-4-302, including to protect people from injury, quell disturbances, and protect property from serious harm. Previously, Montana had published a guide, *Aversive Treatment Procedures* (2001). This 2001 guide has been replaced by the updated 2010 regulations and 2018 Special Education Manual.

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 Ed. 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 and seclusion for all children. N.H. REV. STAT. ANN. §§ 126-U:1- 126-U:14 (Amended 2014, S.B. 396); N.H. ADMIN. R. ED. 1200 (effective Jan. 8, 2016); N.H. RULES FOR THE ED. OF CHILDREN WITH DISABILITIES, §§ 1102.01, 1113.04 - 1113.07 (amended 2014). New Hampshire also has advisory guidelines, New Hampshire Dept. of Ed., Technical Advisory, *Reporting Requirements of Instances of Child Restraint and Seclusion*, Sept. 28, 2016. New Hampshire initially had permissive rules in regulation, and then adopted stronger limits on restraint in statute and seclusion for children with disabilities by regulation. In 2014, New Hampshire adopted protections from both restraint and seclusion in statute. In 2016, New Hampshire strengthened the rules, particularly

with regard to complaints, creating a process to investigate complaints and remedy problems.

NEW JERSEY. In 2018, after years of work, New Jersey adopted legislation protecting children with disabilities, P.L. 2017, c291, N.J. Stat. Ann. §§ 18A:46-13.4 to 18A:46-13.7. The statute applies a parental notification requirement to restraint but not seclusion. New Jersey's Department of Education issued guidelines that directed school districts to adopt seclusion notification policies, among other things. N.J. Dept. of Ed., *Restraint and Seclusion Guidance for Students with Disabilities*, May 10, 2018.

New Mexico. In 2017, New Mexico adopted a statute with meaningful protections, N.M. STAT. § 22-5-4.12, and then regulations, N.M. ADMIN. CODE §§ 6.11.2.7, 6.11.2.10. These replaced prior nonbinding, suggested guidance in the form of memoranda from the State Special Education Office. N.M. Pub. Ed. Dept., *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 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 meaningful protections through a 2015 statute, OHIO. REV. CODE, § 3319.46, a regulation, OHIO ADMIN. CODE § 3301-35-15, and a mandatory policy, Ohio Dept. of Ed., State Bd. Of Ed., *Policy on Positive Behavior Interventions and Support, and Restraint and Seclusion* (2013). The statute and regulation make compliance with the policy mandatory. The policy went into effect in January 2013. It was followed by the regulations and then statute. In 2014, the law was made applicable to charter schools. Amend. Sub. H. B. No. 178 (2014). The previous charter school exemption was caused by loopholes in a very different section of the Ohio Code—not because of an intentional elimination of charter schools from the restraint and seclusion requirements. That provision, in very broad and general terms, set the ability of the

State Department of Education to regulate charter schools. In 2009, Ohio had adopted an executive order forbidding prone restraint, Ohio Exec. Order No. 2009-13S (Aug. 3, 2009). That executive order is no longer in effect.

OKLAHOMA. Oklahoma has nonbinding guidance for children with disabilities. Oklahoma State Dept. of Ed., SPECIAL EDUCATION HANDBOOK 173-180 (Aug. 2017) (sections regarding restraint and seclusion). Efforts to adopt laws protecting children have not succeeded.

OREGON. Oregon has meaningful protections against seclusion and restraint in statute. OR. REV. STAT. 339.285-339.308 (2018); 2019 OREGON LAWS CHAP. 267 (S.B. 963 signed by Governor June 6, 2019). The 2019 statute strengthened the comprehensive protections that Oregon already had. Before 2011, Oregon had only 2007 regulations. In 2011, Oregon enacted a comprehensive statute (2011 OREGON LAWS CHAP. 665), which it strengthened in 2013 (2013 OREGON LAWS CHAPS. 30, 130, 650). Regulations updated through the 2013 statute can be found at OREGON ADMIN. REG. §§ 581-081-0550 to 581-021-0570.

PENNSYLVANIA. Pennsylvania has meaningful protections against seclusion and restraint in regulation. 22 PA. CODE § 14.133. Protections for charter school programs are in 22 PA. CODE § 711.46.

RHODE ISLAND. Since 2002, Rhode Island has had meaningful protections against seclusion and restraint in regulations. RHODE ISLAND BD. OF REGENTS FOR ELEM. & SEC. ED., PHYSICAL RESTRAINT REGULATIONS (2002). They were recodified in 2018, but remain largely the same. RHODE ISLAND CODE REGS. §20-30-2.1 to §20-30-2.10 (2018). Because the rules are older, they are not very strong in places. In 2016, Rhode Island enacted the Freedom from Prone Restraint Act, R.I. GEN. LAWS § § 42-158-1 through § 42-158-6., 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 Ed., GUIDELINES ON THE USE OF SECLUSION AND RESTRAINT (2011).

SOUTH DAKOTA. South Dakota adopted its first law in 2018. It is weak but it is an important first step and represents a great deal of work. S.D. CODIFIED LAWS § 13-32-20 (adopted Mar. 23, 2018).

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. ED. 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 2015, Utah adopted meaningful regulations to protect all students. UTAH R. 277-609-1 through 277-609-8. Utah adopted a statute that, in part, affects restraint and seclusion in 2018, §§53-G-8-301 to 53G-8-305 (eff. Jan. 24, 2018). The statute requires abuse and neglect reporting, but seems to exempt from its coverage actions taken in accord with the state’s special education rules. Utah also has nonbinding guidance, Utah State Office of Ed., LEAST RESTRICTIVE BEHAVIORAL INTERVENTIONS TECHNICAL ASSISTANCE MANUAL () (Sept. 2015). Editions of the guidance that predated the Utah regulations were far weaker in protecting children. One such edition was published in 2008

VERMONT. Vermont has meaningful protections against seclusion and restraint in regulations. Vermont State Bd. of Ed., 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 Ed., 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 meaningful restraint and seclusion protections. ACTS OF VIRGINIA Chap. 142 (2015 Session). But by its terms, regulations must be promulgated for children in Virginia to have protection. Virginia has proposed such regulations but has not adopted them. In 2019, Virginia adopted a new statute requiring additional strengthening through regulation. The new 2019 statute required Virginia’s Department of Education to ban methods of restraint or seclusion that pose a “significant danger” to students and establish safety standards for seclusion. Virginia Chap. 591 (H.B. 2599, Governor signed Mar. 18, 2019).

WASHINGTON. in 2015, Washington adopted meaningful 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 Instruc., 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. The Wyoming regulations were modified and weakened in 2017, WYO. ED. RULES 42-1 to 42-8 (Amended effective July 13, 2017, Ref. No. 200602.42.07132017; Permanent Rules initially adopted on Jan. 23, 2012).